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**APPROACHING VICTIMOLOGY AS SOCIAL  
SCIENCE FOR HUMAN RIGHTS. A SPANISH  
PERSPECTIVE**

**With a preface by Prof. E. A. Fattah**

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## **PREFACE BY PROF. EZZAT A. FATTAH: A SOCIAL SCIENCE FOR TOMORROW. THE PROMISING FUTURE OF VICTIMOLOGY<sup>1</sup>**

### **1. The ever expanding inventory of victimizing behaviours in modern, industrialized societies**

The more advanced a society is the more behaviours will be defined as victimizing and the higher the recorded victimisation will be. At first glance this may seem like a paradox but it is actually quite understandable. The steady progression towards a more humane society continuously requires a broadening of the definition of victimisation. This inevitably leads to the identification and addition of previously acceptable or tolerated behaviours to existing lists of victimizing acts. Not only this, but as society moves forward on the path of humanity the awareness of hidden and not too hidden types of victimisation is enhanced and the recognition of subtle kinds and forms of victimizing behaviours is sharpened. Growing humanitarianism also leads to a heightened awareness of the pervasiveness, the extent and seriousness of various types of victimisation. It further generates an enhanced sensitivity to the pain and suffering of various types of victims whose plight was previously unacknowledged, belittled or ignored. This is bound to result in commendable intensive efforts to identify, help and protect hidden, predisposed and vulnerable victims. It also leads to a much deeper understanding of the close link between victimisation and offending and the interchangeable roles of victim and victimiser. And as Victimology has amply shown, in advanced societies, the major part of violence is not predatory but retaliatory in nature.

### **2. Future societies will have even greater need for Victimology than present ones as they will be conflict-ridden and rife with victimisation**

Let me now make a pessimistic though a realistic forecast about the society of tomorrow. There are compelling reasons to believe that it will be conflict-ridden and rife with victimisation.

If what we witness now, if what we watch daily in the news, is any indication of how societies in the future will be like, there is unfortunately little reason for optimism! Genocide which we thought was a phenomenon of a particularly dark era in the history of humanity is still being perpetrated. The condemned practice of child labour is rampant in developing countries. Attempts to prevent human trafficking have not been successful. Oppression, suppression, extra judicial killings, mass disappearances, liquidation of political foes, rivals and opponents are regular features of many world regimes. Police killings of, and police brutality against, members of minority groups, against dissidents and protestors, have become first page news following publicized incidents in different parts of the world. Mass shootings in the most advanced society in the world are a daily occurrence. Hate crimes are common place. Racism, misogyny, anti-Semitism, islamophobia, homophobia, etc. are deeply rooted in many cultures and have proven to be resistant to eradication even change. The victimisation of minorities be it ethnic, religious, cultural or sexual minorities, continues unabated, even in some of the most democratic and most prosperous societies. Advanced technologies have resulted in new forms of victimisation and many new types will inevitably come into being and claim as victims millions of daily users. The aging of society has created a group of citizens who are particularly vulnerable to victimisations of various kinds. The Corona pandemic, to which they became the primary victims, revealed to an

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<sup>1</sup> E. A. Fattah, one of the early pioneers of Victimology, is the founder of the School of Criminology at Simon Fraser University in Vancouver, Canada, where he is professor emeritus.

unsuspecting world the victimizing and dehumanizing conditions in which they were living, even in the richest countries on earth.

And most threatening of all is the controversy surrounding the greatest danger to the planet earth: climate change. One has to wonder, how is it that despite compelling scientific evidence, it is still being labeled by many, including the former president of the USA, as a hoax!

### **3. Sadly, the utopian dream of a peaceful, harmonious, egalitarian, and just society has not materialized**

The overly optimistic and positive predictions of social reformers suggesting that humans have matured, that monstrous atrocities are relics of the past, and that the 21<sup>st</sup> century will be a century of peace, justice and love, have not materialized. In fact they were proven to be no more than wishful thinking. So the ideal of a non-violent, harmonious, egalitarian and just society sadly remains an elusive utopian dream. The optimistic expectation that, slowly but surely, humanity will triumph that love will replace hate, compassion will supersede cruelty and friendliness will prevail over animosity, evaporated like morning dew under the rising sun. To the disappointment and disillusion of many, the world seems more troubled and in greater turmoil today than it has been in the past several decades!

So what does the future hold? History tells us that the more competitive a society is the more conflicts are generated among its members and the more disputes are likely to occur within that society. Today's society is a highly competitive one and tomorrow's society is likely to be even more so. The ever-growing scarcity of natural resources creates a social and economic environment where only the fittest can survive. Divisive issues such as climate change, the use of fossil fuels, migration, inequality, disparities in wealth and power, to mention but a few, will continue to cause major rifts, discords and frictions. Religious schisms will likely escalate. Mounting antagonism and animosity are bound to lead to hostility, strives and clashes between opposing factions. We all watched in disbelief what happened on January 6, 2021, at the Capitol in Washington, D.C. So it is to be expected that friction, enmity and acrimony will create a fertile terrain for victimisation of all kinds. And this in turn will generate a pressing and strongly felt need for Victimology.

### **4. In tomorrow's society Victimology will have a major role to play and may eventually become the social science of the time**

Despite major and frequent setbacks in various parts of the world, despite failures and disappointments, the quest for justice and the struggle for freedom and equality continue. The intensity and speed of the march towards those ideals vary from one country to the next.

Once a society has reached a high degree of egalitarianism and humanitarianism and once it has achieved a reasonable level of progress and prosperity victimisation will become the primary social concern. All forces and resources will be geared towards the prevention of various types of victimisation: violent, sexual, economic, cultural, etc... In democratic societies the quest for justice and equality will flourish and intensify. In totalitarian and authoritarian societies the struggle and mobilization will be geared to fight victimisation by the state and to have democracy established or restored. It is fair to predict that in tomorrow's society, preventing victimisation, reducing its incidence, alleviating its traumatic consequences and helping victims recover and become whole again will be the primary mission and central focus of those who hold the strings of power and who are responsible for the well-being, the safety, security and peaceful co-existence of the citizens.

This major and heavy responsibility will create a pressing need, an urgent demand for objective, unbiased and independent scholarly research that studies and analyzes the victimisation phenomenon, its extent, its manifestations, its contexts, its protagonists, as well as the ways and means of controlling it, reducing its incidence and alleviating its impact. Victimology becomes the social science par excellence. More than any other discipline, it has the potential of providing empirical factual data on, and credible measurements of, victimisation and to offer evidence - based solutions. In the conflict ridden society of tomorrow, Victimology will be called upon to play a primary role similar to the one medicine was asked to perform when the Corona pandemic struck. All indicators suggest that the need for Victimology will become more evident and more pressing. Victimology will gain in importance and stature and will be constantly appealed to and called upon to provide not only valuable and much needed information but also answers, explanations and potential solutions.

To reiterate what was mentioned above let me emphasize that in the multi-racial, multi-cultural, multi religion, multi class society in which we live, conflicts and frictions are common and hard to avoid. Peace and harmony are not easy to achieve. At the risk of stating the obvious, let me offer an advice, based on my life experience that I always gave to my criminology students: it is impossible to legislate love just as it is not possible to outlaw hate. The most we could do as responsible citizens is to strongly condemn, monitor and try by democratic policies and peaceful methods to prevent violence of all types, regardless of what the motivation is and what the contexts are: predatory, retaliatory, political, sexual, hate-motivated, etc.. Although the means to achieve such prevention differed, this has always been the primary goal of social reformers. Regrettably, for millennia society's policy to prevent victimizing behaviours has been to inflict harsh punitive sanctions which achieved little or no success. Restorative justice has shown that a more effective means of changing people's behaviour is to appeal to their human instincts and to sensitize them to the pain and suffering their behaviour causes to fellow humans. This is precisely the humanitarian message that Victimology teaches. Empathy and compassion are not inborn, they are learned, and need perpetual nurture and reinforcement. In an attempt to inculcate a better understanding and sharper sensitivity in the minds of the young, it is not inconceivable that Victimology courses may, in the not too distant future, be made a compulsory subject, not just at the college or university levels but in school curricula as well.

This will signal the arrival of the golden age of Victimology!

Let me end this brief preface with a word of caution and a glimpse of hope. The prominence that Victimology is likely to achieve among social sciences in the future will not be without risks. Just like its sister discipline, Criminology, the young science of Victimology is particularly vulnerable to distortion, pressure, manipulation, and exploitation. Victimologists will need to always be on their guard to avoid being manipulated or exploited for political or other ends. The fact that Victimology is an interdisciplinary science will provide some protective shields. At the same time, it creates enormous possibilities for cooperation, collaboration and cross-fertilization with many other disciplines. Victimology will be urged to look far beyond its traditional frontiers, to broaden its horizon, extend its boundaries and to tackle areas and problems that, at present, are not part of its current subject-matter. In fact, there seems to be no bounds to the issues, problems and questions that Victimology of the future will be

asked to address, study and analyze. And this, in turn, will create limitless opportunities for strongly motivated and well-meaning students and researchers<sup>2</sup>.

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<sup>2</sup> I am deeply honoured and enormously flattered to be given the opportunity to write a brief preface to this comprehensive treatise on Victimology and my sincere thanks go to the author, a long time carrier of the Victimology flag, my esteemed colleague, Prof. Gema Varona.

## INTRODUCTION

### 1. Description and contextualisation

Victimology is an empirical and interdisciplinary social science studying victimisation and recovery processes understood as complex dynamics. The complexity affects the diversity of those experiences throughout time. There are multiple, visible and hidden factors and contexts affecting those processes. Victimology is a young discipline, usually conceived of within Criminology, although some of its concepts can be applied to other traumatic events or harms beyond crime.

This book on Victimology contributes to the objectives of expanding victimological knowledge by helping to understand, apply, analyse and evaluate victimological and further social data from the standpoint of interdependent human rights, particularly when those rights have been violated. The final purpose of Victimology is to prevent, minimise and repair the impact of victimisation, including secondary victimisation. With that aim, this book tries to clarify some concepts as keys for further learning. To focus on basic victimological concepts requires the simplification of entangled individual experiences and social phenomena, while fostering a critical standpoint in order to facilitate more depth and autonomy for future knowledge.

In the European Union document by Milquet (2019, 14), titled “Strengthening victims’ rights: from compensation to reparation. For a new EU Victims’ rights strategy 2020-2025”, the point of departure is a “human rights-based concept of victimisation inspired by different contributions of the Fundamental Rights Agency (FRA)”. In this book, we underline a conceptualisation of victims in a non-essentialist, pathological or antagonistic perspective. Victims do not have the right to punish the offender, but they do have a right to access to justice. Whether justice should be defined in punitive terms or more restorative ones is something that communities should decide under criteria of ethics and evidence, this last one usually quite fragmentary and complex in these issues. In that sense, victims have rights and the state positive obligations towards them. Thus, the state is a duty-bearer<sup>3</sup> towards victims as rights-holders, but those rights, in a true human rights perspective, should be thought of as indivisible and interdependent with other people’s rights, including offenders’, under a critical standpoint of social justice.

The methodology used in this book will allow for the identification of relevant information on Victimology in different areas and at diverse scales, and hopefully, transform that reflection into tools to be applied in the thinking about concrete future study cases where the readers will have to organise quantitative and qualitative data and arrange it systematically in order to get to debatable conclusions. Hence, this book will map some general topics of interest in Victimology and it will underline the gaps between victim law and its practice, particularly within the framework of Spain.

Readers are also invited to apply victimological knowledge to evaluate different options in identifying and understanding victimisation and responding to different victims, finding the resources to do that and defending their positions and proposals informed by the above-mentioned ethics and limited evidence. Perhaps these pages can contribute to a broad dynamic of ongoing and autonomous learning. Among the specific competencies of the discipline of Victimology, we can highlight the integration of interdisciplinary critical knowledge by employing social science methodologies (including the use of recent technologies) which are particularly relevant in evaluating victim policies. That interdisciplinarity will also be present in the following seventeen chapters.

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<sup>3</sup> On the positive obligation of the state and professionals to be victimologically trained, see Article 25 of the 2012 EU Directive and Articles 30 and 31 of the Spanish 4/2015 Statute Act on Victim's Rights.

To recap, we propose to work together on certain aspects of the kaleidoscope of victimisation and de-victimisation, in a sort of Victimology of conversation:

- 1) To grasp the complexity and need for further studies and research.
- 2) To understand the contribution of Victimology within social sciences, from a perspective of inter-professional and transversal education, considering intersectionality issues (gender, age, ethnicity, disabilities issues, etc.) (Long, 2021).
- 3) To understand some elements of the different experiences of victimisation, the problems related to hidden victimisation, the theories that try to explain them and the standards of victimisation prevention and treatment.
- 4) To be able to critically identify problems and tentative responses of social and professional interests by using victimological concepts and knowledge.
- 5) To relate, in an interdisciplinary way, the basic set of concepts on different kinds of victimisation and recovery.
- 6) To find and use adequate literature references as guides for deeper studies.
- 7) To set out hypotheses about future research and be able to contrast them with critical analysis and empirical data.
- 8) To understand the diversity (and injustices) of some victimisation and recovery processes and their social and legal meaning through the study of the implementation of some legislation in force and its limitations.
- 9) To elaborate documents and presentations in this field.

## **2. Methodology**

When we mention the perspective of Spain in the subtitle of the book, we refer mainly to the public policies and the legal framework of Spain, but also to the legal cultural and social aspects of this country, even as they are ever more influenced by the dominant Anglo-Saxon victimological literature, together with the United Nations and the European Union policies.

As mentioned before, the thread that runs through the entire book is the thinking about victimisation and recovery: their meanings for the different stakeholders and their diverse modalities. Throughout the chapters, we try to approach key terms to understand the critical issues with regard to the concepts of victims, victimhood, victimisation risk, impact, reparation and recovery, in different crimes and for diverse populations. Thus, we finally arrive at the concept of restorative justice to argue whether it is possible to construct a more inclusive justice system for victims, while the inertias of the classic criminal justice system seem to overlook the rights and demands of multiple people who have experienced victimisation. Ultimately, victimisation processes can only be understood in relation to power and broader social control processes.

The chapters have an identical structure: an introduction, a list of key concepts, readings with questions for debate, practical exercises and basic references, selecting those mainly in open access<sup>4</sup>. This learning proposal tries to promote the integration of knowledge where the reader is the main actor. Beyond a mere transfer of data, we offer basic concepts as keys or guide to enter into the complexities of Victimology so as to critically open perspectives. Cooperative and active methodologies will be employed by inviting to work on concrete projects and with an action focus orientation. We propose some strategies to learn to look, to see, to observe, to think and to talk about victim experiences and legislation. More readings will be suggested in the final references section of each chapter to open an internal and external dialogue of ideas on the controversial topics of Victimology.

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<sup>4</sup> All references can be found in the references section of the different chapters. The complete reference will be given in the chapter for which is mainly used, even if the reference can also be found in other chapters when first quoted.

Ethical considerations are also important in this book. Some of its readers might have suffered diverse victimisations and this book bases itself on experiences where victims are actors (experts in their own experiences) and not just an object for study. Promoting active listening and critical understanding, as well as providing support information, are central aspects of the book.

### 3. References

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Phare Horizontal Programme on Justice and Home Affairs. (2002). *Reinforcement of the Rule of Law: Final Report on the First Part of the Project*. Brussels: European Commission.



# I. THE SCIENTIFIC CONTRIBUTION OF VICTIMOLOGY IN SPAIN: ORIGIN, EVOLUTION AND CURRENT RESEARCH

## 1. Introduction to the definition and evolution of Victimology

### 1.1 What is Victimology?

Notwithstanding the existence of forensic applied Victimology (Turvey, 2013) mostly related to health or police science, today's Victimology can be best described as an interdisciplinary social science concerned with the processes of victimisation and de-victimisation or recovery. In that endeavour, Victimology can be normative, with a focus on the values and rationales of the systems behind the construction of the notion of the victim and its responses to it, and/or empirical, that is, based on experience or observation. Beyond today's disciplinary encapsulation in hard versus soft sciences, Victimology requires an interdisciplinary understanding of values, ideas, experiences and facts. Besides, transcending mystification or demonization, being a victim or stopping being a victim is not only a personal or interpersonal issue but mainly a cultural, ethical, social, political and economic dynamic.

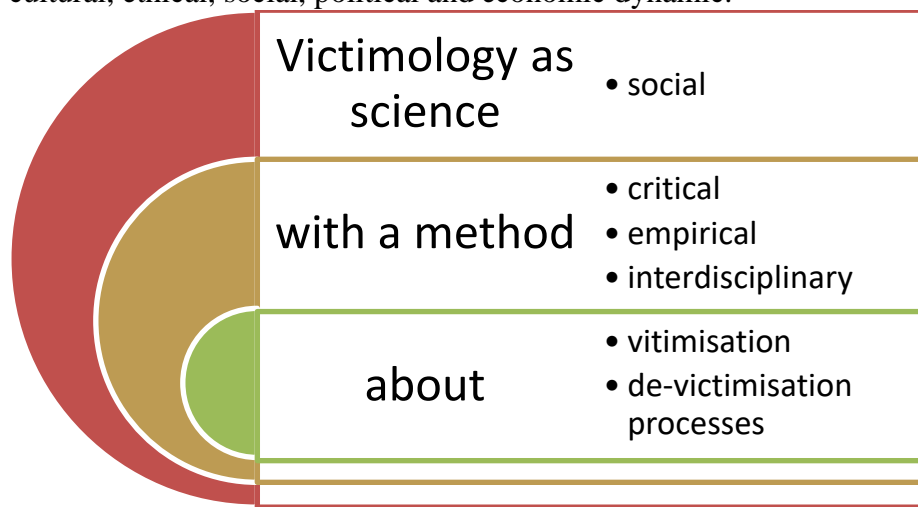


Image 1: Defining Victimology

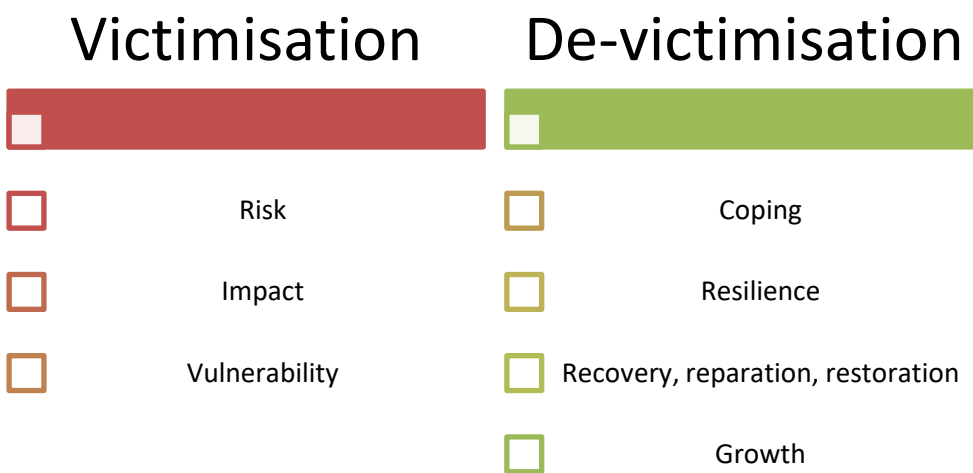


Image 2: Some concepts within the processes of victimisation and de-victimisation

The scientific meaning of the very complex processes of victimisation and de-victimisation, affecting real lives and societies, can only be grasped in the intersections of the micro, meso and macro levels of what we call victimhood, as will be explained later in this book. Interdisciplinarity has to do with intersectionality (Dancig-Rosenberg and Yosef, 2019) and the ecological models (Bronfenbrenner, 1979) for explaining

concrete human behaviour, organisations such as the criminal justice system, and society in general. These pages use a critical structuration theory (Walklate, 1990), where agency and structure interact.

## 1. 2 Brief history of Victimology as a discipline

When Edwin Sutherland included in his 1924 work *Criminology* a chapter entitled “The Victims of Crime”, he was mainly referring to the impact of crime and was not concerned about creating an autonomous discipline. However, in its origin, the definition of Victimology was a very restricted one. Victimology is a young social science that was born under the shadow of positivist criminology in the 1930s in Europe. At that time, criminology, created at the end of the 19<sup>th</sup> century in Europe and influenced by Comte’s positivism, was obsessed with finding the “causes of crime” by assuming that the “criminal other” was different to the “normal us”. The first victimologists thought about the victim as one factor favouring crime and talked about different victim typologies –parallel with the criminal typologies-. According to the so-called fathers of Victimology, von Hentig (1940/1-1948) and Mendelsohn (1940-1956), we could talk of the born, the guilty, the provoking or the consensual victim, among others (Fattah, 2000; Dussich, 2006; O’Connell, 2008; Wemmers, 2010). Perhaps, it is easier to understand this labelling and blaming standpoint, if we consider the kind of crimes and interests in the observation carried out by the above-mentioned authors that made them study processes of crime precipitation, facilitation or provocation by victims. Nuances on the guilt or blame of victims were elaborated in victim typologies and, for example, Mendelsohn referred to the completely innocent victim; the victim with minor guilt; the voluntary victim; the guiltier than the offender victim; the mostly guilty victim; and the imaginary victim.

Von Hentig, a German jurist and psychologist who concentrated on common frauds talked about the scammer being scammed. Mendelsohn, a Romanian lawyer defending men who killed their wives, wrote about the science of the victim. In synthesis, two influences can be found in this first positivist Victimology: one is the positivist criminological search for the causes of crime in an empirical way (developing observation on real cases or experimental studies); the other is the influence of psychoanalysis and “psychological literature” of the time (with Franz Werfel, among others) arguing that even the murdered person might eventually be the guilty one (Fattah, 2000).

In contrast to the above-mentioned typologies, on the origin of Victimology, it is very interesting to note that the English term “Victimology” dates back to the book *The show of violence* (1949) by the polemical German-American psychiatrist F. Wertham. In the so-called American crime comics of that period, Wertham criticised the fact that the victimiser is presented to the youth as a hero whereas the victim is a passive object of his violent acts. Wertham suggested that this cultural representation was linked to increasing juvenile delinquency. This thesis was later developed in his contested book *Seduction of the innocent* (1954). Thus, that view of Victimology was a moralising one. Somehow, in the origin of Victimology, we can see this persistent utilitarian temptation of balancing the notion of the victim between banalising (demonising) and moralising (mystification) . In the birth of the discipline of Victimology, we can find the use (and abuse) of the notion of the victim as an instrument to consider either the causes of violence or the defence of concrete moral ideologies, beyond the tangible injustice of the harm suffered. That potential manipulation should have little to do with scientific research, defined as an attempt to know by being objective (observing reality aware of the persistent potential bias); being dialectical (offering limited evidence and under constant verification), and being intelligible (with a systematic simplification and

representation of the observation of a complex reality). However, Victimology moves in a difficult arena: with those premises, how to conceptualise victims, victimhood, victimisation, victimism, reparation, recovery and justice? And how to develop practical victimological interventions, evaluations and research?

The first Victimology did not look at the whole picture of victimisation<sup>5</sup>. Positivist Victimology was later developed in the fifties in the United States by Ellenberger, who studied the victim risk, as well as Wolfgang, who focussed on victim precipitation in homicide and stated that the victim was the first to use violence or a weapon in 26% of the 588 homicides studied in Philadelphia and committed during the period 1948-1952. Following Wolfgang, Menachem Amir studied rape in that city under a victim-blaming assumption, for example, in relation to the consumption of alcohol. Positivist Victimology has remained always current in criminal law and witnessed a renewed interest in it in the 1980s with the so-called victim-dogmatic hypothesis (studying the self-responsibility of the victims and the role of consent, provocation, legitimate defence and necessity in certain crimes).

Modern Victimology was born in the 1960s, influenced by women rights and civil rights movements promoting victim support groups, legislation and policies, first in the United States and other Anglo-Saxon countries and later in Europe and elsewhere. Stephan Schafer (1968) can be thought of as a victimologist in the transition from positivist to modern Victimology, softening the formal or legalistic and individualistic vision of criminal law. In 1968, he published the first handbook on Victimology.

Within modern Victimology, Walklate distinguishes between:

i) Realist or constructivist Victimology (concerned with aggregated data and victimisation rates in victim surveys<sup>6</sup>, prevalence, incidence and concentration). This

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<sup>5</sup> The ignoring of mass victimisation by positivist Victimology is quite surprising if we consider two factors. First, Victimology emerges in the context of the pre- and post-war periods when evident massive victimisation occurred. Second, the two so-called fathers of Victimology, the Rumanian lawyer Mendelsohn and the German jurist and psychologist von Hentig (1919) suffered, in one way or another, the consequences of the First World War and the Nazi persecution. Von Hentig, even though he was in favour of certain eugenic practices, suffered Nazi persecution because of his sympathy towards Bolshevik ideas that obliged him to leave his university position and migrate to the United States in 1935. Later, after the Second World War, he returned to Germany. With regard to Mendelsohn, the fact that he belonged to a family of Jewish-French origin determined his later links with Israel.

The lack of consideration of the mass victimisations produced in the first half of the 20<sup>th</sup> century by the first victimologists contrasts with the observation made by some abolitionists. Among those abolitionists, Louk Hulsman grew up observing the Nazi concentration camps established in The Netherlands during World War II (Postay, 2012) and Nils Christie started his research interviewing guards of Norwegian concentration camps and thinking about the factors promoting dehumanisation (vid. Christie, N. 1972. *Fangevoktere i konsentrasjonsleire* (Prison guards in concentration camps). Universitetsforlaget, Oslo. Originally published in 1952). However, the victimological impact of these abolitionists' writings came also much later. Thus even though criminal law and Victimology academicians themselves faced the evident qualitative and quantitative violence in processes that we can call macro-victimisation and abuse of power, an early and complete theorisation by the two disciplines supposedly specialised in that sort of violence (internal criminal law and Victimology) is missing. To redress these blind spots, a reframing of the interdisciplinary meaning of violence, macro-victimisation, and abuse of power is needed.

<sup>6</sup> See the International Crime Survey (Kesteren et al., 2017) and the European Social Survey. See the UNODC-UNECE Manual on Victimisation Surveys (2010) (Aromaa, 2012). In Spain, together with the European Social Surveys and local surveys, mainly by local police, see the Catalanian safety surveys by the Generalitat (the Catalanian government). See also thematic surveys carried out by specific organisations or groups, for example, on women's victimisation or sexual victimisation, nowadays more and more online-based (<https://www.devermut.com/que-se-sepa>). Depending on their objective or scope, surveys try to measure the victimisation produced, reported or unreported, the reasons for not reporting, the socio-demographical profile of victims (and offenders), the victim risk, the trust in police and courts,

kind of Victimology usually follows a victim's routine lifestyle and a victimiser's rational choice model to explain victimisation (Hindelang, Gottfredson y Garofalo, 1978; Cohen and Felson, 1979).

ii) Critical Victimology where radical Victimology on collective suffering and abuse of (state) power can be mentioned.

## POSITIVIST VICTIMOLOGY

20th century, 1940s in Europe:

-von Hentig

-Mendelsohn The victim as a cause of crime

## MODERN VICTIMOLOGY: REALIST

20th century, 1960s in the US:

-Schafer

-Dussich, Fattah... Victim within the *iter criminis*, but also considering her reparation and recovery

## MODERN VICTIMOLOGY: CRITICAL AND RADICAL

20th century, 1980s in Anglo-Saxon countries:

-Walklate Victim as a controversial concept related to visibility and discrimination, particularly in relation to abuse of power and structural and cultural issues

-Elias

### *Image 3: Evolution in Victimology*

Beyond the expansion of activist movements for general or specific crime victims worldwide, there has been growing international and comparative legislation on compensation, support and rights, as well as international symposiums, academic courses and training, scientific associations and specialised publications (like the *International Review of Victimology*, first published in 1989, and the *Revista de Victimología/Journal of Victimology*, first published in 2015).

There have also been International Symposiums of Victimology organized by the World Society of Victimology<sup>7</sup> started in 1973, in Jerusalem, Israel, organised by Prof. I. Drapkin. Later, we can mention the following:

- 1976 Boston (USA)
- 1979 Münster (Germany)
- 1982 Tokyo/Kyoto (Japan)
- 1985 Zagreb (then Yugoslavia, today Croatia)
- 1988 Jerusalem (Israel)
- 1991 Río de Janeiro (Brasil)
- 1994 Adelaide (Australia)

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the satisfaction with the treatment received by police and courts, the fear of crime, the prevention measures, the punitive attitudes, etc.

<sup>7</sup> Today with an advisory status at the United Nations. See at <http://www.worldsocietyofVictimology.org/>. This Society collaborated in the draft of the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34). See chapter 5.

- 1997 Amsterdam (The Netherlands)
- 2000 Montreal (Canada)
- 2003 Stellenbosch (South Africa)
- 2006 Orlando (USA)
- 2009 Mito (Japan)
- 2012 The Hague (The Netherlands)
- 2015 Perth (Australia)
- 2018 Hong Kong (Special Administrative Region of the People's Republic of China)
- 2022 Donostia-San Sebastián (Spain)

In recent decades new trends in Victimology can be mentioned such as feminist (Clay-Warner and Edgemon, 2020), developmental (Finkelhor, 2007), positive (Ronel and Toren, 2012), green (White, 2015), cultural (Pemberton, 2018), visual (Walklate, 2019) and narrative (Presser and Sandberg, 2019) victimologies. In relation to today's development of a narrative Victimology, we might argue that we need a conversational Victimology that could develop more ecological critical frameworks. If narrative criminology has critical potential "if concerned (i) about harm beyond crime; (ii) collective involvement in patterns of harm; (iii) dynamism of harm and possibilities of resistance; and (iv) researcher's reflexivity" (Presser and Sandberg, 2019), a conversational Victimology might aim at integrating restorative and transformative forms of justice by questioning assumed social identities, rights and responsibilities of victims, offenders and bystanders (Varona, 2020b; Pemberton, 2015; Green, Calverley and O'Leary, 2021).

### 1.3 Victimology: What for?

The answer to this question has to do with the social contribution to the field of today's general scientific knowledge. By considering the traditional minor role of victims in the modern criminal justice systems, Victimology tries to offer descriptions and explanations on the actual processes of victimisation and de-victimisation for different victims and contexts to avoid further harms by different social agents or the criminal justice system itself (that harm is mainly called secondary victimisation). Victimology holds a quite modest objective, although a very relevant one because we know that cumulative victimisation (the sum of primary and secondary ones, particularly that one produced by the agencies expected of showing some kind of solidarity), makes it more difficult for (direct and indirect) victims to recover and puts them at risk of further victimisation.

In principle, modern criminal law means that a democratic state, respecting the rights of the accused, concentrates on due process where the rule of law will avoid abuses of the *ius puniendi*, conceived mainly to decide around questions pertaining to the responsibility and punishment of the accused person. Within that rationale for decisions, the (legitimate) interests of victims -in relation to being heard and repaired- are usually not considered. The fact of actual secondary victimisation (being produced in penal systems that are supposed to help victims) can be assessed when the recently introduced right to "understand and be understood" is considered. This right is proclaimed in the 29/2012/EU Directive on the rights of victims (and not for foreign victims or victims with disabilities, but for any victim). Moreover, the right to be accompanied by any person of the victim's choice during the penal process is also stated in that Directive because the justice system is considered to be a hostile environment with a high risk of secondary victimisation as empirical research has shown in all countries. The evidence of secondary victimisation, even clearer with victims of violent crimes, has been exposed by the Fundamental Rights Agency of the European Union (2021). This is

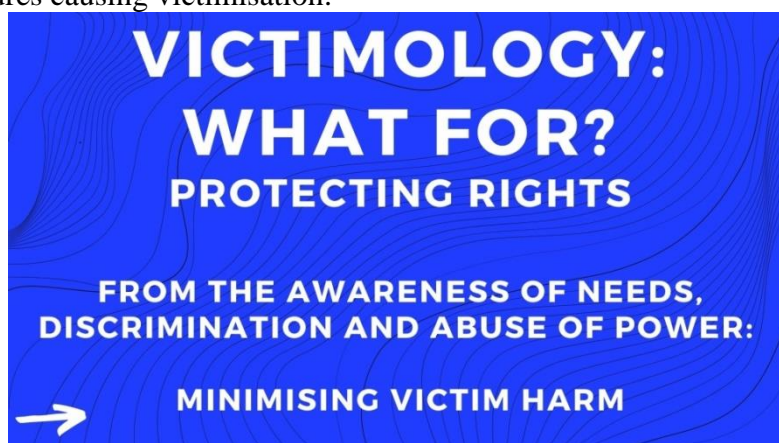
particularly important because victims of violence usually suffer a greater victim impact.

From this point of view (showing solidarity with those harmed and not producing further harm), Victimology is linked to ethics because it has to do with the actual suffering of living beings, not just objects to be classified, counted or described (Varona, 2020c). This also means that we tend to see some sufferings and not others and that that vision can be easily manipulated for political or economic reasons. Victimologists need to be critical in their studies without situating themselves in an elitist or abstract superiority position about their role on understanding and explaining victims' own experiences, always diverse, complex and changing. This victimological ethical and critical awareness can be expressed with the idea written in the sculpture in memory of Concepción Arenal at the Oeste Park in Madrid (Spain), which bears the inscription "Concepción Arenal, loved science, comforted pain".



*Image 4: Sculpture in memory of Concepción Arenal at the Oeste Park in Madrid which bears the inscription "Concepción Arenal, loved science, comforted pain"*

Arenal (1820-1893) was one of the first Spanish women to study law and a pioneer feminist (Pérez Montero, 2021). Her father died in prison, where he was sent by King Ferdinand VII. Concepción Arenal was later appointed as a prison visitor. Her humanism was projected towards so-called "criminals" and "victims" when denouncing unjust structures causing victimisation.



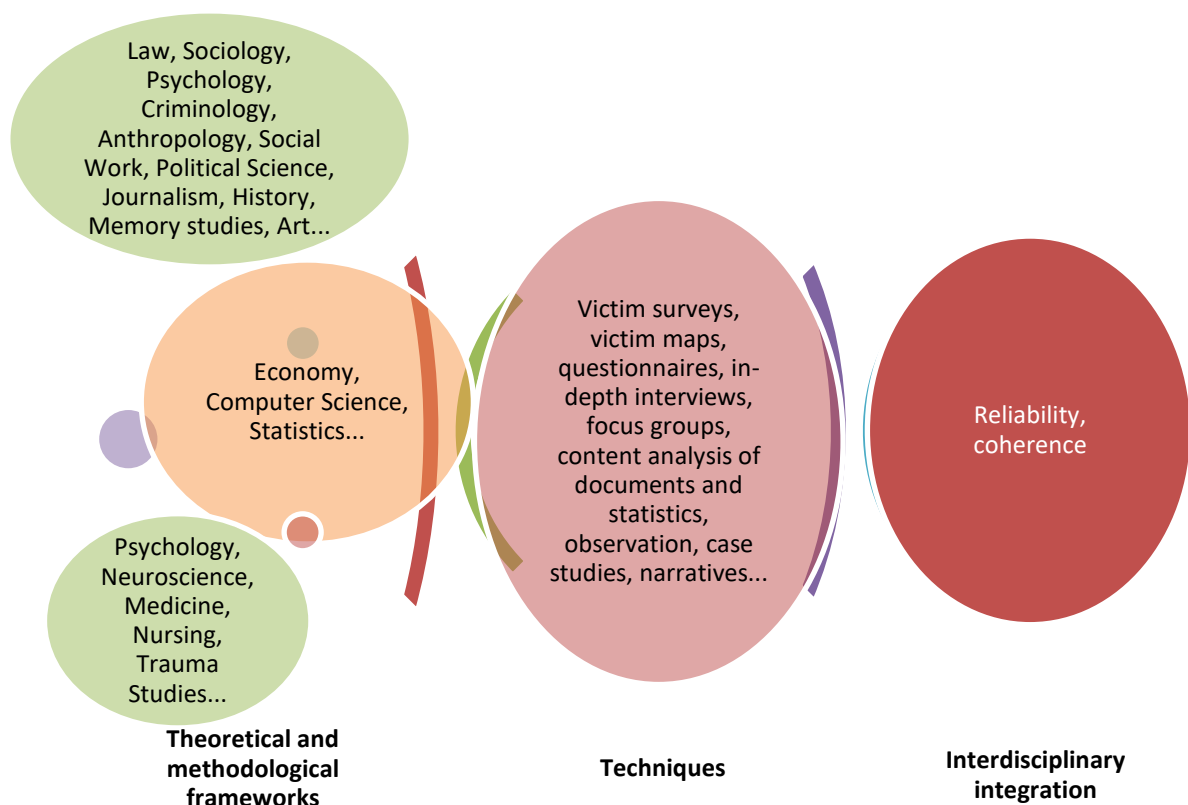
*Image 5: The contribution of critical Victimology*

#### **1. 4 Victimology: How?**

The scientific and social contribution of Victimology towards awareness of victimisation and de-victimisation is done by means of critical reflection on very diverse victimological (quantitative and qualitative) data to draw up proposals for new paradigms and policies to improve social justice and victims' rights. For a critical

Victimology this is done through being aware of the risks of falling into essentialist (victims are mainly or just victims), antagonist (victimisers are victims' enemies or have nothing to do with them), therapeutic/pathological (victims only or mainly need treatment) or paternalistic views (victims do not know what they want). This last perspective is related to many victims' uneasiness with the term "victim" and their preference to be called "survivors" or "victimised/harmed persons". According to Van Dijk (2009, p. 1) the victim label, "although eliciting compassion for victims, assigns to them a social role of passivity and forgiveness that they may increasingly find to be restraining".

Starting from that reflexive critical framework, victimological work (researching, intervening, evaluating etc.) can be done from different interdisciplinary perspectives using quantitative, qualitative or mixed methodologies.



*Image 5: Interdisciplinarity, multi-methodology and triangulation in victim (action) research*

Even if we do not have consistent victimological research results, some inconclusive empirical points of departure can be highlighted with due contextualisation.

- The concept of victimisation holds inter-related objective and subjective dimensions.
- Hidden victimisation is prevalent.
- General prevention and special prevention are questioned.
- More punishment does not mean less victimisation.
- Victims and victimisers are not opposites or natural enemies.
- Victims seem to be less punitive than general society.
- Those fearing crime are not always the same ones who suffer it most. Fear of crime has to do with variables beyond crime.
- Repeat victimisation is high.
- The most important form of violence, in quantitative and qualitative terms, is among people who know each other.
- A grave victimisation does not mean that recovery is not possible.

▶▶▶ Some of the things we know up to now



*Image 6: Some points of departure and questioning in on-going research in Victimology*

## **1. 5 Victimology in Spain**

### **1. 4. 1 The legal system, the legal professions and victims**

The legal rights of victims in Spain will be examined in Chapter 6, but in this introductory section we want to underline how the situation on victims' rights in Spain was similar to other countries' before victims' rights started developing at the end of the 20<sup>th</sup> century and culminated with the transposition of the UE Directive 2012/29/EU on victims' rights.

To give us a grasp of that evolution, in 2007, the first training workshop for specialised prosecutors<sup>8</sup> in Spain was developed. In that workshop the following myths were debated:

- a) Victims lie or are not accurate.
- b) Victims behave too emotionally; they do not know what they really want.
- c) Victims are vulnerable and perhaps mentally ill people.
- d) Victims want revenge instead of justice.

Beyond evident progress on victims' rights, particularly in what is understood as gender violence; to a great extent those myths continue to exist in society and in the criminal justice system.

### **1. 4. 2 Victimology: the academy and scientific societies**

Like in other countries, Victimology is a minor discipline in Spanish academia. Antonio Beristain (2000), a close friend of the Belgian Professor Tony Peters, another significant author in modern Victimology, is beyond doubt the most international author and pioneer in victimological studies in Spain and in many Latin American countries. Since his death in 2009 his works have remained among the most quoted in this field. Evolving from criminal law, Beristain argued for a 'victim justice' and a 'recreative justice' in the sense that justice should first aim at showing solidarity with the victims' needs for recovery and reparation instead of punishing the offenders. Although he used criminal justice statistics and social surveys as secondary data, he focused more on theory rather than empirical research. Later authors like Myriam Herrera (1996; 2014), Noemi Pereda and Josep M. Tamarit (2013), Carolina Villacampa, Anabel Cerezo and Mar Gómez (2019), María Jesús Guardiola (2020), Helena Soletto (2019), Subijana (2006) and José Luis de la Cuesta (Varona et al., 2015; Varona, 2018) have contributed with significant works that incorporate theory and empirical findings. In any case, the predominant educational background of these authors is mainly criminal law, so it is not

<sup>8</sup> According to their legal professional status in Spain, prosecutors should take care for victims' rights.



surprising that younger researchers coming from Psychology, classified now as a health science, have added a more quantitative vision of the discipline, particularly in developmental Victimology, in line with comparative research in Victimology worldwide (Pereda, 2016). Before them, Victimology from a general psychological standpoint had been promoted by Professor Enrique Echeburúa (Baca, Echeburúa and Tamarit, 2006).

Even if Victimology remains a minor discipline, its growing impact on Spanish policies and universities can be observed. Starting in the 1980s, court-based public services to support victims, periodic training for professionals in the criminal justice system, and specific legislation have been developed. Every November, since 2010, there is an international annual congress on Victimology in San Sebastián, in honour of Professor Beristain, organised by the Basque Institute of Criminology<sup>9</sup>. Victimology is studied as part of the criminology undergraduate studies at universities in Spain. Specialisation postgraduate studies and Masters are offered as well. There are important scientific societies of Victimology in Spain, with links with the World Society of Victimology (WSV), that have made joint efforts to create the above mentioned *Revista de Victimología/Journal of Victimology*<sup>10</sup>, both in Spanish and in English. Some Spanish researchers belong to the group on Victimology of the Spanish Society of Criminological Research and the European group on Victimology, within the European Society of Criminology, and publish their work in relevant international reviews and collections.

The Basque Society of Victimology (BSV) is a scientific non-profit organization, founded in 2005 in Donostia-San Sebastián (Basque Country, Spain). It is a member of the WSV. As can be read in its website<sup>11</sup>, it aims to promote victimological knowledge in society in order to contribute to the human rights and wellbeing of victims, particularly those unseen or discarded by society. Its first president was Prof. Enrique Echeburúa. Prof. Antonio Beristain was named an honorary member. With a strong connection to the Basque Institute of Criminology (IVAC-KREI), members of the Basque Society of Victimology are mainly professors, researchers, professionals and practitioners in the field of victimological research, victims' rights and assistance.

The collaboration between the IVAC-KREI and the BSV has also promoted:

a) An innovative audio-visual Dictionary on Victimology (in Basque, Spanish and English)<sup>12</sup>.

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<sup>9</sup> Following the proposal of the Director of the IVAC-KREI, Prof. José Luis de la Cuesta, the Institute's Board created the "Antonio Beristain Prize", awarded by the Chair in his honour. Since 2010, this prize recognizes the best research in the field of Victimology and is awarded during that victimological encounter in November. The Basque Institute of Criminology, during more than a decade, is the only Spanish University institutions offering post-graduate studies specifically covering Victimology as a discipline (Varona, 2008). Moreover, professors of the Basque Society of Victimology, and members of the Basque Society of Vicimology, participate in the only MOOC (Massive On Line Open Course) in Victimology in Spanish, with more than 500 students inscribed annually and have published an open access handbook on Victimology.

<sup>10</sup> In 2015, the Basque Society of Victimology, together with the Catalanian Society of Victimology and Huygens editorial, start editing the *Revista de Victimología/Journal of Victimology*<sup>10</sup>, indexed in the main databases of social sciences in Spanish. It is the only international review on Victimology in Spanish and English. Its scientific committee has members of the Executive Committee of the WSV and prestigious victimologists have written articles for the Journal. See <http://www.huygens.es/journals/index.php/revista-de-victimologia>.

<sup>11</sup> See at <https://www.sociedadvascavictimologia.org/>.

<sup>12</sup> See in <https://www.ehu.eus/es/web/ivac/hiztegia>.

b) Dialogue circles among different professionals, practitioners and victims of different crimes, within the activities of the Restorative Justice Theory and Practice Lab of the IVAC/KREI<sup>13</sup>.

c) Various research projects financed by the Human Rights Unit of the Basque Government on victims of terrorism and the Justice Department of the Basque Government.

d) Training for students, police, magistrates, lawyers, forensic medicine specialists and the personnel of the public services for victims in the administration of justice. These public services belong to the Justice Department of the Basque Country and have been pioneers in the assistance to victims in Spain. Its experience had a great influence in the drafting of the Statue for Victims of Crime, transposing the European Union Directive 29/2012 on victims' rights. The BSV and the IVAC/KREI have also collaborated in the Protocol of good practices with victims.

e) International congresses and seminars, for example, the Annual Conference of the European Society of Criminology (Bilbao, 2012), the European Congress of Restorative Justice (Donostia-San Sebastian, 2016) with GEMME (European Association of Magistrates for Mediation) and the International Symposium of Victimology (Donostia/San Sebastián, 2022).

f) Collaboration in seminars and evaluation of projects in the field of victims' rights and human rights in general with the municipality of Donostia-San Sebastián. Being the European Union Capital of Culture 2016, the city had the opportunity to turn the focus on culture and dialogue as the roads towards improved coexistence<sup>14</sup>. Being the Basque city most affected by ETA terrorism in terms of mortal victims, the municipality, the university and other agencies and institutions worked (and continue working) on reparation and reconciliation, in innovative ways, meeting international standards. One of the key programs of the European Capital of Culture 2016 was the "Lighthouse of Peace".

### **HISTORY AND CONTRIBUTION OF THE SPANISH GENERAL VICTIMOLOGICAL LITERATURE**

On the history of Victimology (the academic study of victims) in Spain, the first professor who wrote about Victimology was Professor Antonio Beristain (Director of the Basque Institute of Criminology, University of the Basque Country). He participated in the first International Symposiums of the World Society of Victimology (1973). Currently the key academicians come from the field of Law and Psychology in multiple universities all over Spain, among others, Enrique Echeburúa and José Luis de la Cuesta (University of the Basque Country), Myriam Herrero (Seville University), Carolina Villacampa (University of Lleida), Josep M. Tamarit (University of Barcelona and UOC), Noemi Pereda (University of Barcelona), Ana Isabel Cerezo (University of Málaga), Helena Soletó (University of Carlos III) and Mar Gómez (Complutense University of Madrid).

Among the publications, besides the specific *Revista de Victimología/Journal of Victimology* (<http://www.huygens.es/journals/index.php/revista-de-victimologia>), see the following handbooks:

-Beristain, A. (1994). *Nueva criminología desde el derecho penal y la victimología*. Valencia: Tirant lo blanch.

-Baca, E., Echeburúa, E. y Tamarit, J.M. (Eds.) (2006). *Manual de Victimología*. Valencia: Tirant Lo Blanch.

-Guardiola, M. J. (2020). *¿Es posible la justicia restaurativa en la delincuencia de*

<sup>13</sup> See in <https://www.ehu.eus/es/web/ivac/sarrera>.

<sup>14</sup> See in <https://www.sansebastianturismo.com/en/to-do/culture-art-architecture/donostia-2016>.

cuello blanco?. *Estudios Penales y Criminológicos*, 40.

-Herrero Moreno, M. (1996). *La hora de la víctima. Compendio de Victimología*. Edersa: Madrid.

-Morillas Fernández, D, Patró, R. and Aguilar, M. (2014). *Victimología: Un estudio sobre la víctima y los procesos de victimización*. Madrid: Dykinson.

-Pereda, N. and Tamarit, J. M. (2013). *Victimología*. Barcelona: UOC.

-Soletto, H. (2019). La ineficacia del sistema español para reparar económicamente a las víctimas de violencia sexual. *Teoría y Derecho*, 26(26), 321-340.

-Subijana, I. (2006). *El principio de protección de las víctimas en el orden jurídico penal. Del olvido al reconocimiento*. Granada: Comares.

-Varona, G. (ed.) (2018). *Victimología: En busca de un enfoque integrador para repensar la intervención con víctimas*. Cizur Menor: Aranzadi.

-Varona, G., de la Cuesta, J. L., Mayordomo, V. and Pérez, A. I. (2015). *Victimología: Un acercamiento a través de sus conceptos fundamentales como herramientas de comprensión e intervención*. Bilbao: UPV/EHU.

-Villacampa, C., Cerezo, Ana I. and Gómez, M. (2019). *Introducción a la Victimología*. Madrid: Síntesis.

Table 1: Selection of key works in the development of Victimology in Spain

## 2. Key concepts to recap

Critical Victimology  
 De-victimisation  
 Ethics in Victimology  
 Interdisciplinarity  
 Intersectionality  
 Modern Victimology  
 Narrative Victimology  
 Positivist Victimology  
 Social science  
 Victim survey  
 Victimisation

## 3. Thinking Victimology

1) Please, read the following excerpt, and think about the possibilities and conditions under which the above-mentioned different trends and frameworks in Victimology can be called “objective”.

From Becker, H. S. (1967):

To have values or not to have values: the question is always with us. When sociologists undertake to study problems that have relevance to the world we live in, they had themselves caught in crossfire. Some urge them not to take sides, to be neutral and do research that is technically correct and value free. Others tell them their work is shallow and useless if it does not express a deep commitment to a value position.

This dilemma, which seems so painful to so many, actually does not exist, for one of its horns is imaginary. For it to exist, one would have to assume, as some apparently do, that it is indeed possible to do research that is uncontaminated by personal and political sympathies. I propose to argue that it is not possible and, therefore, that the question is not whether we should take sides, since we inevitably will, but rather whose side we are on (...).

What do we do in the meantime? I suppose the answers are more or less obvious. We take sides as our personal and political commitments dictate, use our theoretical and technical resources to avoid the distortions that might introduce into our work,

limit our conclusions carefully, recognize the hierarchy of credibility for what is, and field as best we can the accusations and doubts that will surely be our fate (pp. 239; 247).

2) Please, considering the previous sections, try to answer and debate the following questions:

- **Why victims were not important stakeholders for criminal law or criminology until recently?**
- **Why is the concept of secondary victimisation so relevant to understand the legal evolution?**
- **How can we describe and explain the evolution of victimological knowledge?**



#### 4. Applying Victimology

Please, consider the following realms for applying Victimology and provide others of your interest while commenting on critical and ethical issues at stake.

### Working as a victimologist

- a) Technician who designs and advises on victim policies in primary, secondary and tertiary prevention, intervention and reparation, as well as in specific fields such as criminal justice, minorities and social exclusion, journalism, urbanism...
- b) Researcher (using quantitative and qualitative methodologies) and external evaluator.
- c) Practitioner/interdisciplinary professional (volunteer) in prevention and treatment/intervention/reparation programs (victim services)



## Professional ethics

- **Awareness about the impact of suffering: sensitive to victims**
- **Avoiding secondary victimization: victims are NOT objects to be used**
- **On standing by victims: accompanying victims (Brené Brown):**  
<https://www.youtube.com/watch?v=AiZt7Gc0oMo>



Tyte Mugrefia, a psychotherapist working with victims of genocide in Rwanda states that not even a psychotherapist can give an adequate answer to victims, but we might be able to share with solidarity, to walk some steps with victims and learning with them as activities needed for an emancipatory process (Martín Beristain, 2006). Do you find in these words any parallelism with the above quoted Brené Brown's video on empathy? What kind of empathy could be developed by people working with victims in different professional and nonprofessional contexts?

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## II. THE CONCEPT OF VICTIM

### 1. From positivist typologies to a dynamic conceptualisation

According to the Oxford English Dictionary, a victim is defined as a person who has been attacked, injured, or killed as the result of a crime, a disease, an accident, etc. In the Spanish Royal Academy Dictionary (23<sup>rd</sup> edition), the first meaning of “víctima” is a person or animal sacrificed or meant to be sacrificed<sup>15</sup>. Only in its fifth meaning is there a concrete reference to a person who suffers a crime. As van Dijk (2008) explains:

“victim” is not a derivative of the verb *vincere* but of the unrelated Latin word for sacrificial object, *victima*. “Victim” is, for example, used in Latin versions of the Bible to denote a sacrificial animal. The victim is someone or something slaughtered and offered as a sacrifice to the gods (p. 13).

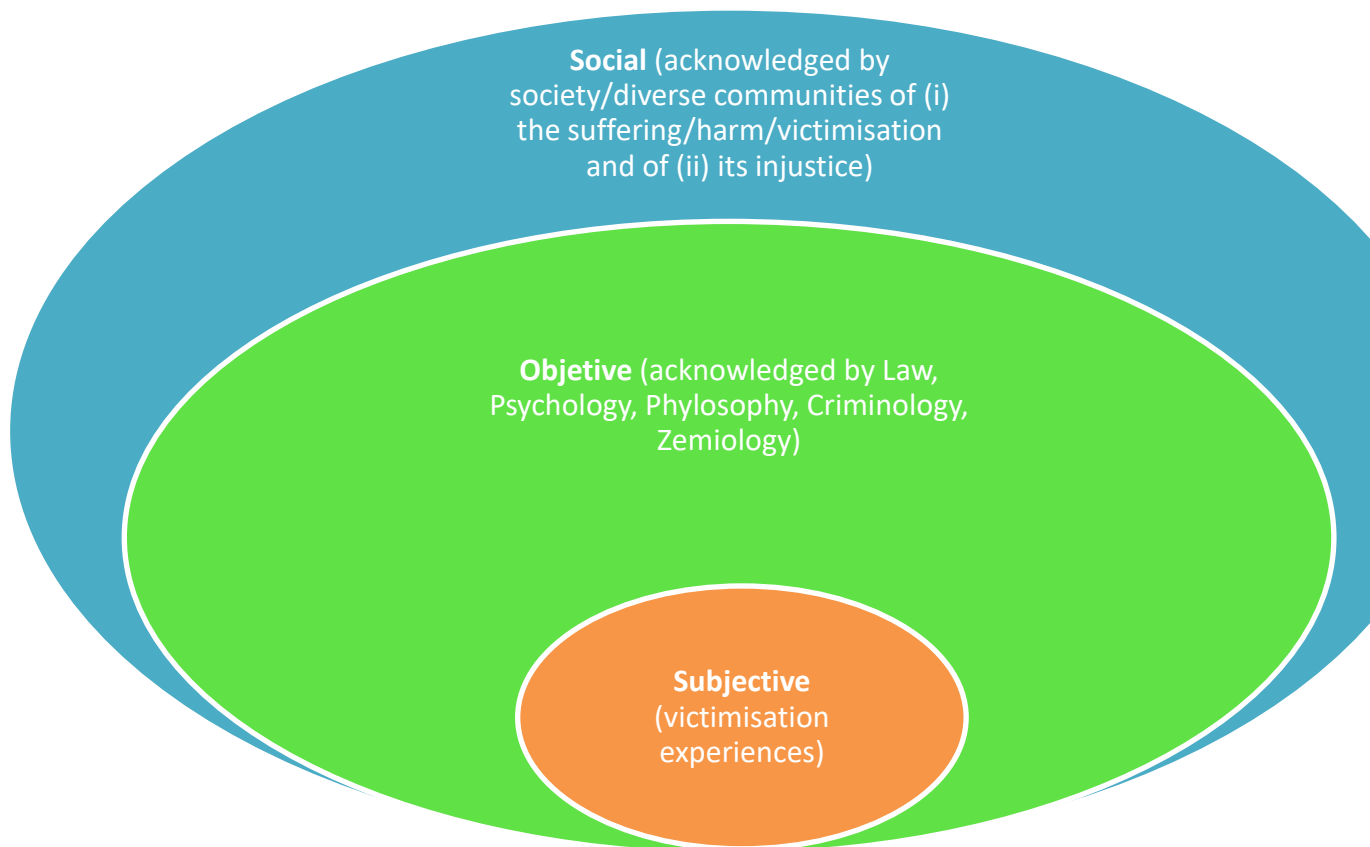
According to van Dijk, the use of the word “victim” to refer to victims of crime seems to be a quite modern one, coming from the humanization of the stories of the Passion of Christ and a growing understanding of the psychological mechanisms of scapegoating, although this interpretation has been debated (Galona, 2018; van Dijk, 2020) and might not work for other non-Western languages.

#### 1. 1 What is to be a victim?

Beyond the mysteries of its etymological origin, we will concentrate on defining the notion of victim nowadays. We could try to answer this difficult question by saying that to be a victim is to be considered a victim by society and, perhaps, the criminal justice system. The notion of the victim always entails the interaction between a subjective (self-perception about the meaning, seriousness and impact of harm, its injustice and the need for redress) and an objective dimension with individual, group and collective elements and processes involved. The objective dimension of the status of victim is its link to different concepts according to the discipline considered and is related to the notion of victimhood as the acknowledgement of the status of victim. In all dimensions, we have to consider the hegemonic hidden victimisation.

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<sup>15</sup> As van Dijk (2008, p. 13) explains, this is not only the etymological meaning in Romance languages, but also in other languages: “In German, for instance, the victim is called *Das Opfer*, meaning the sacrifice; and in Swedish, *Brottsoffer*, the sacrifice of the crime. In Icelandic the word used for victim is *Foernarlamb*, meaning the sacrificial lamb. In Dutch the word is *slachtoffer*. The Dutch term means, literally, the butchered, sacrificial object. The identification of crime victims with sacrificial objects is not limited to English, Romance, or Germanic languages. In Russian (*zherta*), Hungarian (*aldozot*), and modern Greek (*tema*), to name just a few, crime victims are also referred to as sacrificial objects”. This seems to happen too in Hebrew and Arabic languages, but it does not happen in other languages such as Chinese or Japanese.

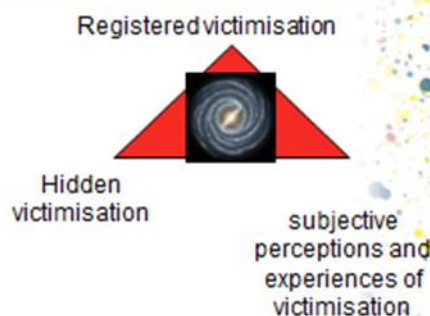


*Image 7: Objective, subjective and social dimensions in the processes of victimisation and de-victimisation*

### On the social and legal construction of victimhood and its relationship to the notions of justice/injustice

Victimhood is a social status depending of formal and informal rules. Without that social recognition, victims are not thought to be (ideal) victims (Strobl 2004, 295).

#### Construction of victimhood



*Image 8: Victimhood and hidden victimisation*

In relation to the objective dimension, from the standpoint of Criminal law we talk about victims of crime (and abuse of power). From that of Psychology, we usually refer to victims of trauma or traumatic events. From Philosophy, we consider the notion of

suffering. From Medicine, we can add the notion of pain. Finally, beyond the strict concept coming from Law, within a more broad Criminology (or Zemiology, Tomb, 2018) -meaning capturing social dimensions-, we can talk about the harm produced to victims.



*Image 9: Notions related to the objective dimension of victimisation/de-victimisation coming from different disciplines or branches of knowledge*

According to the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution A/RES/40/34, adopted by the General Assembly), victims of crime mean:

1. “ (...) persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability”.

In relation to Part B of that UN Resolution, victims of abuse of power mean:

“18. “Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

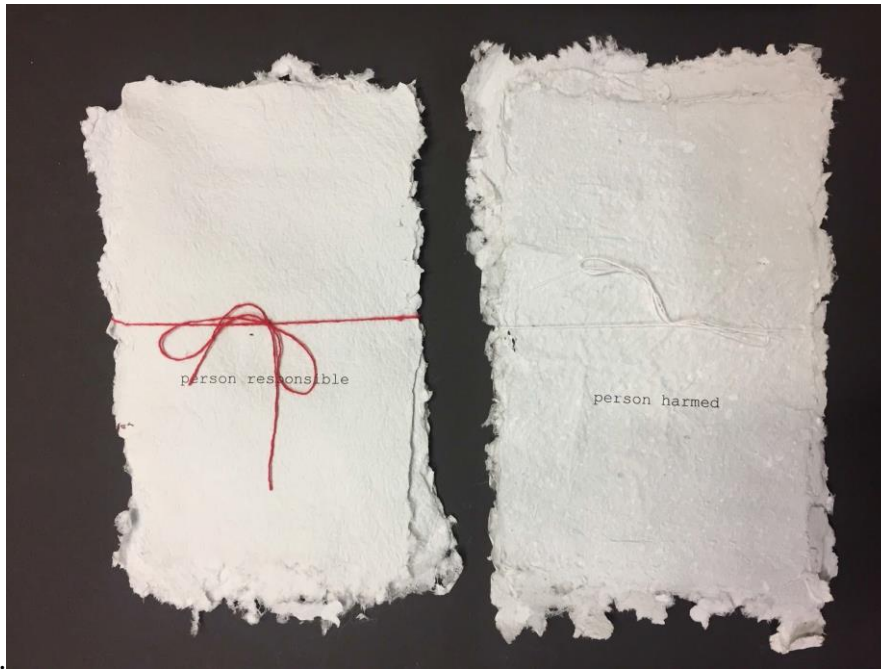
19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support”.

There remains a crucial aspect on the topic of the objective dimension of the notion of the victim, particularly if considered the initial definition of Victimology provided in this book. That objective dimension should not be restricted to the crime/victimisation, traumatic event/suffering/harm, but, as part of that objective dimensions, the justice/reparation/recovery/emancipation processes should be included, beyond a linear thought of steps where one phase (victimisation) progressively follows the other (de-victimisation). The reality is that on many occasions the de-victimisation (Echeburúa and Cruz, 2015) or reparation has to do with previous individual and social experiences, or with experiences that happened right after what is called crime or around its immediate impact. If we focus only on a static definition and understanding of crime, we will not truly comprehend the processes of victimisation and its aftermath. When stating the need for justice of victims, it should be considered that there are many conceptions and definitions of justice (social justice, criminal justice, punitive justice, restorative justice, procedural justice, ecological justice, and etcetera). In order to be more comprehensive, some of them find it necessary to depart from the concrete experience of the injustice suffered by the victims (Braithwaite, 2020, p. 19; Reyes Mate, 2011; Shklar, 1990; Pemberton, 2020), instead of abstract legal or philosophical notions of justice.

## **1. 2 Alternatives to the term of victims in relation to victimhood, victimisation and victimism**

According to Chanel Miller (2020), victim and author of the book *Know my name*, she is a victim needing and claiming the social acknowledgement of having suffered an underserved harm, but the problem with the term “victim” comes when saying that “she is a victim of the aggressor” meaning that she is mainly a victim attached and reduced to a concrete event, when she is and will be much more than that, and meaning that the aggressor is the active role in those happenings and its aftermath when she is the survivor holding an agentic role beyond mere sorrow and secondary victimisation of the criminal justice system. As mentioned before, to avoid patronising, encapsulating or passivity connotations, some victims or support/activist groups prefer the term survivor or harmed/victimised persons instead of the term “victim” (Romero-Sánchez et al., 2021). In any case, some victims do not survive, for example in the most extreme cases, the direct victims of a murder. Apart from those cases, some academics do not agree with the connotations of the translation of the term survivor to other languages. For example, think in Spanish, about the terms “sobreviviente” or “superviviente, which suggest barely living (instead of fully living).

In some restorative justice literature, the terms “responsible person” and “the harmed person” are preferred by some authors to avoid stigmatisation (Aldington et al. 2020) and to favour full reintegration of both into society.



*Image 10: Person harmed / person responsible handmade paper from shredded case notes, Clair Aldington, 2017*

As indicated in other works (Varona, 2021)<sup>16</sup>, a victimisation process is not just an objective or mere descriptive concept for the different experts in the field, these being philosophers, psychologists, criminologists or lawyers. When they perceive and study that victimisation the experts themselves –as part of society- are affected by another process: victimhood. Victimhood is a more concrete concept, where micro and macro elements converge simultaneously. It refers to the process of social (including academic and legal) recognition of the condition or status of being a victim. Victimhood is also unequally distributed in society. Furthermore, both processes (victimisation and victimhood) are related to each other because if victimhood is denied or transformed into victimism, secondary victimisation occurs and contexts for multiple victimisation (revictimisation or poly-victimisation) are created.

Victimhood seems to work better if vulnerability can be attributed to the victim. In today's social and legal terms, the notion of vulnerability is being used in symbolic, extensive, hierarchical and patronising ways. For example, under the European Union Directive 2012/29 on the rights of victims, apart from minors who are considered *per se* victims, anyone could qualify to be considered "vulnerable" under the criteria of the severity of the crime, the kind of victim-offender relationship, the place where the crime has been committed, or the socio-demographic profile of the victim<sup>17</sup>. However, once again, the law in the text contrasts with the real experiences of victims, particularly the unseen ones, who when approaching the criminal justice system in search of protection and justice usually end up experiencing secondary victimisation (Fundamental Rights Agency, 2019). Besides, the notion of vulnerability, as employed today in the social and legal arena, tends to forget social issues. Social vulnerability expresses having been placed in a situation where the rights of some collectivities, some already disadvantaged, might be violated. It is not only about applying criminological theories of rational choice or opportunity theories. The core of the matter lies in embracing

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<sup>16</sup> See the complete quoted references in that work.

<sup>17</sup> See paragraph 38 of the Preamble and Article 22 of the Directive 2012/29/UE. See also art. 22.4 of the Spanish criminal code.

paradigms focused on political, economic, social and cultural aspects, as critical and radical victimologies suggest. In this regard, Fattah (2019) talks about “cultural victims”, victims considered “appropriate” and others whose victimisation is promoted, discarded or not condemned within the culture of the majority.

In opposition to the lack of victimhood, we can find the notion of victimism. Victimism means unfairly claiming victimhood or demanding rights unduly related to the consequences of victimisation. Victimism has been related to exclusionary identity politics, including attacks on the freedom of expression (Campbell and Manning, 2018) and antagonistic memorialisation practices. Dean (2016) has questioned current criticism of victim studies, described as a celebration of injury and a desire to be a victim to gain social status. This growing critical perspective ends up questioning the credibility of many real (and usually unseen) victims. For this very reason, Dean (2016) calls our attention towards the impact of cultural ideals of good and bad victims, traditionally linked to the concept of the ideal victim (Christie, 1986; Duggan, 2018). Still, not only the concept but the term itself, “victim”, is questioned today from very divergent standpoints. For example, as mentioned above, when commenting on the victim labelling theory, Jan van Dijk (2019) traces the criticism back to its religious etymological meaning at the time of the Reformation. Van Dijk argues that the term victim holds an instrumental communitarian vision of unjust suffering.

Concerning victimism, while the overuse of the concepts of trauma and vulnerability have been criticized for their diffuse<sup>18</sup> and individualist approach in clinical psychology (Furedi, 2004), alternative notions about victimisation have emerged, sometimes in contradictory terms, to put the focus on empowerment, altruistic growth, social suffering, harm and zemiology (Boukli and Kotzé, 2018). Specifically, we can wonder whether survivor or overcomer might be a better alternative name (Ben-David, 2020), taking into account a so-called positive perspective (Ronel and Toren, 2012). This perspective might have the potential of avoiding victimism and paternalism, but it may also entail the risk of banalising the impact of victimisation in terms of depth and length of suffering and, perhaps, favouring individualistic and blaming approaches.

### **1.3 Typologies of victimisations beyond victim typologies**

Besides positivist classifications on victims’ participation or contribution to crime, we can think of other criteria such as the following:

- a) risk and vulnerability;
- b) resistance and recovery;
- c) types of crime and abuse of power.

Apart from these typologies, in Chapter 4 we will refer to different victimisation processes according to time and duration, as well as to persons being affected.

#### **1.3.1 Risk and vulnerability**

The notion of victim risk can run parallel to the idea of violence risk and protective factors. Hence we can apply it from a victim, offender or community perspective. Victim risk should be mainly understood before the crime, as the inequality in the distribution of the possibility or chance to become a victim of a certain crime. In this text, victim vulnerability refers to another moment; the inequality of the impact of the crime, once committed, that is, the different degree of capability of being materially, physically or emotionally wounded.

Notwithstanding hidden victimisation, according to various studies (Lauritsen and Rezey, 2018; Wiedlitzka, 2020), people at higher risk for violent victimisation are likely

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<sup>18</sup> Nick Haslam (2016) coined the idea of “concept creep” to help understand the expansion in the general use of some concepts coming from Psychology (abuse/neglect; bullying; trauma; mental disorder; addiction; and prejudice) that might bring an increasing sensitivity to harm with diverse effects in society.

to be young, male, unmarried, with low or middle levels of income and from minority group backgrounds (ethnic minorities, LGBTI communities, people with disabilities, (un)documented immigrants, homeless etc.). The higher risk might also correspond to higher vulnerability.

According to the European Institute for Gender Equality, risk and vulnerability factors are related to:

- the victim (e.g. age/gender/sexual orientation/ethnic origin/pregnancy/being new born, depression/other mental health issues/disabilities/ isolation);
- the perpetrator (e.g. history of violence, mental health issues, access to weapons, previous or current breach of protection order);
- the relationship between the victim and the offender (family members/ neighbours/ offender's authority or power position);
- the community (e.g. poverty, lack of institutional support);
- social risks (external conditions such as norms and practices that may exacerbate the level of risk for a victim).

Beyond specific crimes, Articles 22 and 23 of the Spanish criminal code consider many of these factors. Vulnerability has also to do with the duration and harming potential of the victimisation in terms of violence and scale of the harm.

At the same time, in terms of positive Victimology, risk and vulnerability factors are usually studied balancing the protective and resilience factors. These kinds of factors have to be thought of on a dynamic and interactive basis. Critical thought can also be added as explained above in relation to the expansive and identity-related notion of "vulnerable victim". According to the 2029/12/EU Directive, only children are always considered to be vulnerable victims. However, every victim has a right to individual assessment of his or her individual protection needs and to be protected from any further harm that is related to their participation in the criminal proceedings. In practice, this means that the competent authorities (such as police, prosecutor and/or specially trained staff) will assess the individual needs of every victim, and identify the victims who are the most vulnerable. Such victims will be protected by specific measures. According to the Directive, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics and victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be, among others, duly considered (for a complete list on potential vulnerable victims, see paragraphs 38, 56, 57 and 58 of the Directive Preamble and Article 22).

### 1. 3. 2 Resistance and recovery

There are not many theories or models focused on resistance, resilience or recovery. As an example, a Psycho/Social Coping Model (P/SCM) is presented by Dussich (2011) as a general theory for understanding all forms of victimisation and for facilitating recovery. Limited resources make people vulnerable to victimisation. To prevent victimisation, people lacking resources must be identified so that specific resources to their unique needs are given. According to Dussich (2011), the implications of this model are the following:

- "The P/SCM suggests that persons who have been victimised must be empowered with tailored resources to prevent their re-victimisation or their conversion to offending.

- Notions of victim guilt or blame only have a place in legal considerations, not for understanding victim behaviour and helping victims recover. Guilt or blame is usually considerations when dealing with crime victims.
- Recovery is best facilitated by providing tailored resources that are person-specific, culture-sensitive & situation-realistic.
- Appropriate coping can be taught and is a method that has been shown to reduce violence in many settings, especially schools.
- Some victims may need to learn new coping skills that were never taught them at home. Of special importance are problem-solving skills: how to assess problems realistically, search for alternative solutions based on their consequences, selection of the best options, carrying out the selected option, and, evaluating the results”.

### 1. 3. 3. Criminal law typologies

According to Spanish criminal law we can classify victims in three major groups:

A. Victims of interpersonal violent crimes, from international crimes to terrorism, organised crime and any interpersonal violent crime, including those negligent ones. In the section on green Victimology, we will note that other beings and ecosystems can also be victims of violent crimes, at least in a victimological sense.

B. Victims of economic crimes, from common property crime to economic and white-collar crime where we might find diffuse victimisation, that is, the whole society is thought as the victim (beyond the notion of morality in crimes without victims, as expressed by Schur, 1965).

C. Crimes against public health related to the different forms of diffused victimisation.

In these three categories, for example, cyber-victimisation is distinguished by the digital means of commission or the target of the victimisation, even if the protected juridical good or public interest might be a classical one.

According to the 2019 Annual Statistics Report of the Ministry of the Interior, in 2019 1,173.599 victimisations were registered, of which 105,574 were family violence and 77.861 intimate partner violence (IPV) perpetrated by a man against his female partner or ex-partner (what is legally defined as gender violence in Spain).



GRÁFICO 3-1-16. PORCENTAJE DE VICTIMIZACIONES POR PRINCIPALES TIPOLOGÍAS PENALES

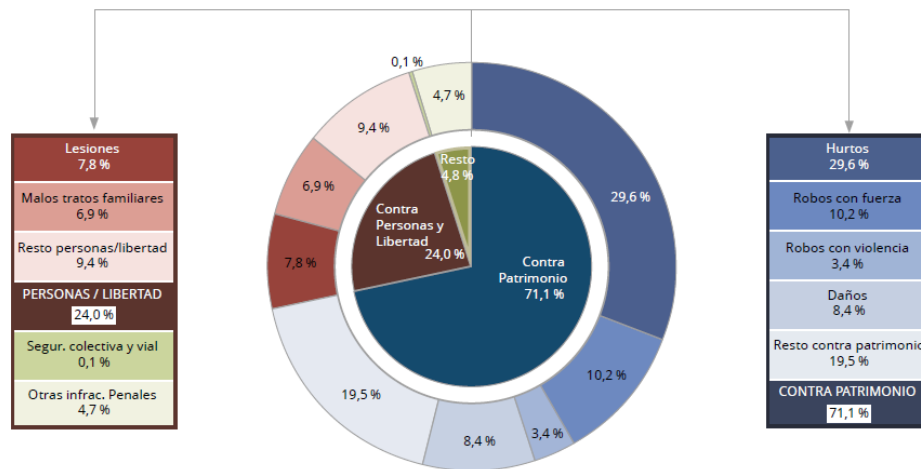
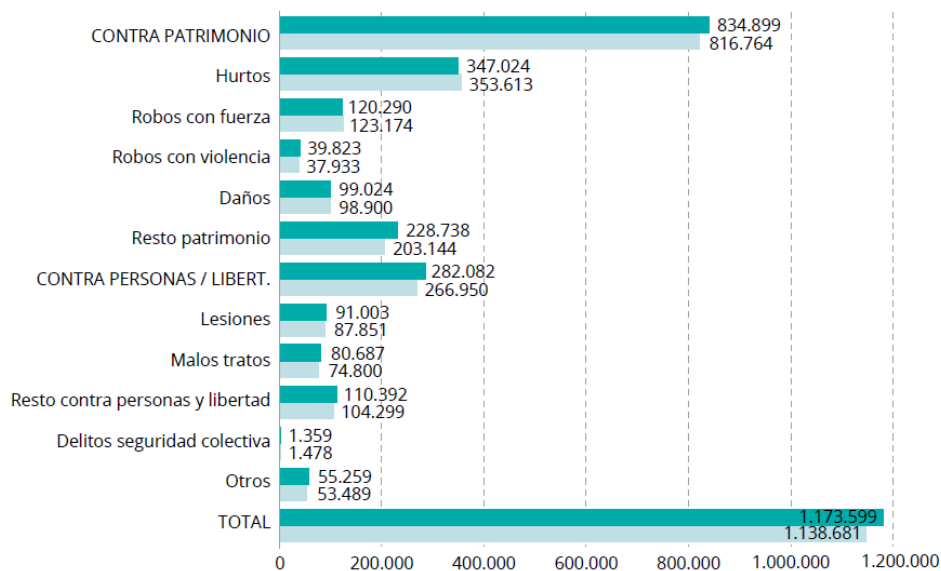


GRÁFICO 3-1-17. VICTIMIZACIONES POR PRINCIPALES TIPOLOGÍAS PENALES



*Image 11: 2019 Annual Statistics Report by the Spanish Ministry of Interior*

### 1. 4 On the notions of the ideal victim: Why many forms of victimisations and victims are socially (and legally) discarded?

The work of the Norwegian abolitionist N. Christie is one of the most quoted ones in Criminology (Duggan, 2018). Christie (1986) begins his classical reflection on the ideal victim, asking himself and his audience the following questions, “Have you ever been victims? When was that? Where was it? What characterized the situation? How did you react? How did your surroundings react?” Christie’s contribution allows us to finish this chapter by reflecting on the notions of victim, victimisation, victimhood and victimism. Victimhood can only be met in society (and law) if five attributes are met (that in the following image are summarised into three): (1) the victim is weak (female, elderly, minor), (2) the victim is acting respectfully or is considered socially respectable, (3) she

is considered innocent or not to be blamed, (4) the offender is superior and bad, and (5) the offender is unknown to her. The ideal victim scarcely exists, as Christie comments, because they have to be simultaneously weak and have some power to claim their status as a victim in a society. The problem is that there are some groups or individuals that are thought of as not deserving that status or if so, they do to a lesser extent. The notion of the ideal victim can exist in different communities of reference simultaneously provoking recognition and exclusion. Moreover, the notion of the ideal victim is also key to understanding how secondary victimisation happens throughout the whole criminal justice system.

**The seminal and controversial work of Christie (1986) on the 'ideal victim' to understand the premises of narrative victimology as developed by Cook and Walklate (2019)**

1

Summarising three main characteristics: vulnerable, respectful, innocent. The notions of victimisation, victimhood and secondary victimisation different from victimism (Campbell & Manning, 2018; Giglioli, 2014; Gatti and Irazusta, 2017; Fassin and Rechtman, 2017) and the criminal law of the enemy (Jakobs, 1985), symbolic or promotional law related to punitivism.

2

The ideal victim as scarce in reality and the need to break given scripts in order to avoid patronising and victim labelling and blaming (van Dijk). Compare with the notion of 'vulnerable' (EU 2012/29 Directive). Redemptive suffering and post-traumatic growth in critical theory terms. Stauffer (2015): ethical loneliness and Caruth's notion of audience in memorialisation studies, particularly in atrocity or mass victimisation (2016).

*Image 12: On the notion of the ideal victim by Christie (1986)*

## 2. Key concepts to recap

Harm  
 Ideal victim  
 Suffering  
 Traumatic Event  
 Victim  
 Victim typologies  
 Victimhood  
 Victimisation  
 Victimiser  
 Victimism (objective and subjective dimensions)  
 Vulnerability

## 3. Thinking Victimology

On ideal victims, according to Christie (1986):

Wives are not “ideal victims.” Not yet. But they are approaching that status. They are more ideal today than yesterday. The explanation of this development is probably as simple as it is sad: the development has taken place because we are now affluent enough, and not because we have improved morally, not because we are becoming more kind. We are now so affluent that parties can divorce - leave. Wives do not have to take it anymore. With changed material conditions, women find it less “natural” to receive the beating or domestic raping. They are also closer to a position where they can claim that their definition of the situation is the valid one. They can make the political claim of being real victims. As ideal as the old ladies.

Or as the virgins walking home from caring for the sick (...) The more females attain an independent status, the more useful it is for them to claim victim-status, and the more they are listened to. But at the same time: the more they gain independence, materially, the less credibility is given to any claim of victim-status as a result of weakness or lack of possibilities for self-protection. I am well aware that my reasoning here is almost like discussing the dangers of too much rain in the Sahara. Equal rights for females are equally far away. When I nevertheless bring up the point, I do it out of pure theoretical concerns. The reasoning brings to the surface another important element in being an ideal victim: she (or sometimes he) must be strong enough to be listened to, or dare to talk. But she (he) must at the very same time be weak enough not to become a threat to other important interests. A minimum of strength is a precondition to being listened to, but sufficient strength to threaten others would not be a good base for creating the type of general and public sympathy that is associated with the status of being a victim (pp. 20-21).

Please, try to explain what Nils Christie wants to transmit in relation with the notion of victimhood and make your own commentary to this excerpt.

#### **4. Applying Victimology**

Visit the webpage called “Victim-centred approaches to tackling hate - Tackling Hate”<sup>19</sup>, read the following excerpt from that web page and do a role-playing imagining you start interviewing a victim because you work for an NGO helping them to get support and justice.

Organisations and frontline practitioners need to be aware that many individuals who suffer hate victimisation do not feel like a victim despite being named as such by the organisations they get in touch with. Moreover, many of these individuals reject being seen and labelled as victims due to a sense of disempowerment associated with it. The universal labelling of those affected by crime as ‘victims’ has been criticised for assigning these individuals a social role of passivity and forgiveness. Besides, contrasting concepts of victimhood among cultures can make the term ‘victim’ culturally inappropriate when dealing with culturally and linguistically diverse people.

Emerging vocabularies have been used to better describe the experience of those who have suffered crimes. For example, there have been calls for mental health professionals to start viewing trauma sufferers as survivors with agency, control, and resilience, as opposed to victims of circumstances that they have no role in changing. Although the term ‘survivor’ remediates some of the stigma that is typically attached to victimisation and emphasises a person’s agency, it has been criticised for focussing on individual capacity, whilst the term ‘victim’ reminds us of the structural oppression behind many forms of victimisation.

As one survivor of sexual assault reflects, there is no single term that can encompass the experiences of individuals who have suffered violence, and a single experience should not define a person.

##### **Recommendation**

Organisations dealing with victims of hate crimes should actively avoid the unreflective adoption of the victim label in interactions with their clients. Instead, they should be aware of the impact that such labelling can have on both the victims’ self-perception and the staff perceptions about that person’s agency. Some organisations may choose to simply delete the term victim from their vocabulary while others may prefer to be cautious not to impose this or other labels to people

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<sup>19</sup> See at <https://tacklinghate.org/trainingmodule/helping-victims-to-report-hate-crimes-best-practice-guidance-for-agencies-that-receive-victims-reports/>.

who report hate incidents (Victim-centred approaches to tackling hate - Tackling Hate).

See also the following image by Eudel (2021). Would you ask the victim how she prefers to be called before following with further questions?

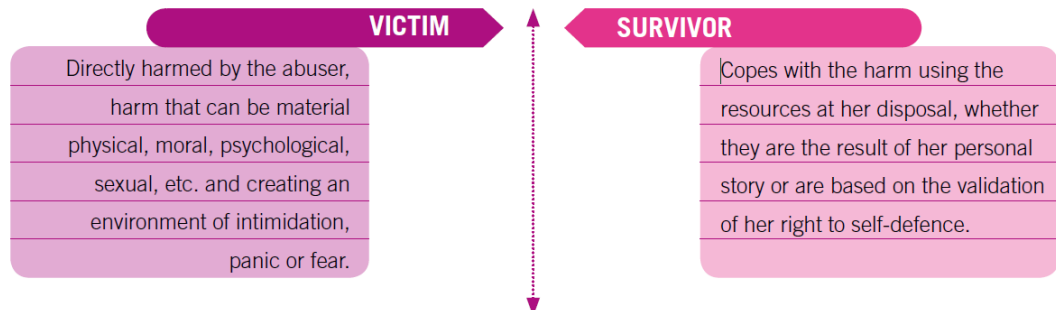


Image 13: Eudel (2021). *Local Actions for the reparation of the victims of violence against women*

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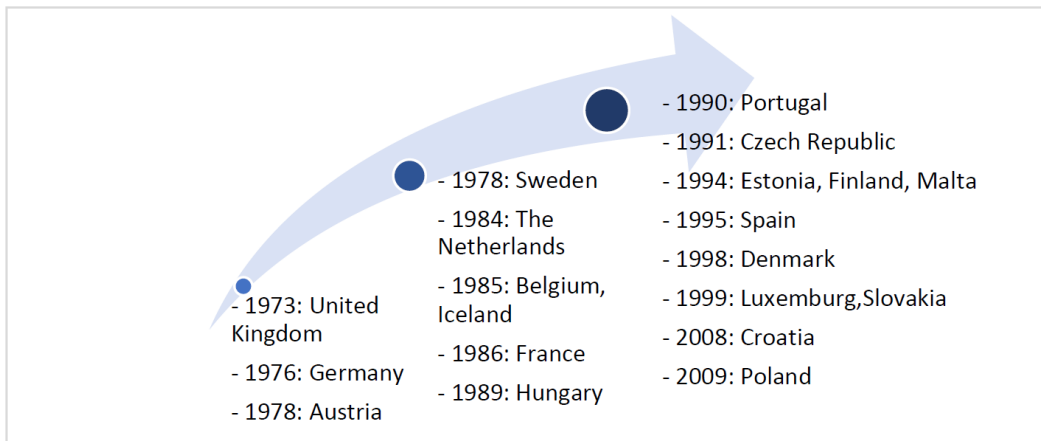
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### III. PUBLIC POLICIES FOR VICTIMS AND THE ROLE OF THE MEDIA: ACTIVISM AND VICTIMISM

#### 1. Victim activism and victim policies

##### 1. 1 Victim activism, media and partisan manipulation risk

Remembering Becker's remarks on minimum objectivity (1965) and the need for a critical perspective in social science, Victimology should be understood as something different from victim activism (Fattah, 2006). Despite the slow advancement in taking into account victims' needs and rights, thanks to victim activism, victim support services have been created and victims' rights have been brought to the fore in the criminal justice system, with greater or lesser success (Cerezo, 2011).



*Image 14: Origin and development of general (private and public) victim support services. Source: Victim Support Europe (2018)*

## VICTIM SUPPORT EUROPE SERVICE STANDARDS

|          |  |
|----------|--|
| <b>1</b> | Making services accessible to victims of all types of crime    |
| <b>2</b> | Respecting victims and treating them with courtesy and dignity |
| <b>3</b> | Working to ensure victims are safe                             |
| <b>4</b> | Responding to individual victims' needs                        |
| <b>5</b> | Supporting victims through diversity of services               |
| <b>6</b> | Delivering for victims through referrals and co-ordination     |
| <b>7</b> | Ensuring good governance structures                            |
| <b>8</b> | Achieving quality through training                             |
| <b>9</b> | Improving our services through monitoring and evaluation       |

*Image 15: Victim support; European standards*

In 1990 in Stockholm, Sweden, Victim Support Europe declared 22 February to be the European Day for Victims of Crime to raise awareness of help and support of victims as well as their relatives. Today, there are specific international and European days for specific victimisations (violence against women, terrorist victimisation, sexual victimisation, road traffic violence etc.)<sup>20</sup>.

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<sup>20</sup> Consider, for example, the following days: 9 December, International Day of Commemoration and Dignity of the Victims of the Crime of Genocide; 30 August, International Day of the Victims of Enforced Disappearances; 21 August, International Day of Victims of Terrorism; 26 June; International Day of Victims of Torture; 30 July, World Day Against Trafficking in Persons 25 November, International Day for the Elimination of Violence against Women; 4 June, International Day of Children Victims of Aggression; 21 March, International Day for the Elimination of Racial Discrimination; 23 August, International Day for the Remembrance of the Slave Trade and Its Abolition; 5 June, World Environment Day; 2 November, International Day to End Impunity for Crimes against Journalists; 15 November, World Day of Remembrance for Road Traffic Victims; 18 December, International Migrants Day; 3 December, International Day of Persons with Disabilities; 17 May, International Day Against Homophobia, Transphobia and Biphobia; and 5 December, Human Rights Day.



*Image 16: European Day of Victims of Crime. Source: <https://victimsupport.scot>*

According to Victim Support Europe<sup>21</sup> (VSE), established in 1990, this organisation promotes the establishment and development of victim rights and services throughout Europe. The organisation aims to ensure that every victim in Europe and worldwide can access information and support services in the aftermath of a crime, regardless of where the victim lives or where the crime took place and regardless of whether or not the crime is reported to the police. Victim Support Europe also works to ensure that victims are respected, have access to other rights and can make their voice heard throughout the criminal justice process. VSE supports the development of victim support services that are: free of charge; confidential; victim-centred; independent; accessible throughout Europe; tailored to meet the individual needs of the victim; and delivered by trained and qualified staff/volunteers. Victim Support Europe monitors and influences the adoption of EU legislation and policies that impact the rights of victims of crime.

Some criminal law professors and academicians contend that the rise of victims' movements (of support and self-help) might be leading to more punitive criminal policies because the victims' interests are being manipulated towards more repressive laws. However, there is evidence that victims are not more punitive than the general population and that they also have prosocial concerns towards the offender and the community (Van Camp, 2017). Contrary to the general basic assumption on victims' punitivism, their participation in the criminal justice system might make it less punitive and, perhaps, more restorative (Brennan and Johnstone, 2019). In any case, any assessment on this topic has to be done distinguishing different victimisations, contexts and countries (Kunst, 2021).

According to international standards, the victims' claims to participate in the criminal justice system have a reasonable and legal basis and the key questions are how that participation should be made more adequate in procedural and substantive terms at different moments of the process and what is happening in practice after legal reforms have entered into force.

Article 26. 2 of the 2012/29/EU Directive refers to cooperation with relevant civil society organisations and other stakeholders. As we will see in Chapter 5, the European Commission on 24 June 2020 adopted its first-ever [EU strategy on victims' rights \(2020-2025\)](#). The main objective of this strategy is to ensure that all victims of all crime, no matter where in the EU or in what circumstances the crime took place, can fully exercise their rights. To that end, it outlines actions that will be conducted by the European Commission, Member States and civil society.

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<sup>21</sup> See at <https://victim-support.eu/who-we-are/our-mission-and-value/>.



This strategy is based on a two-strand approach:

- empowering victims of crime and
- working together for victims' rights.

The strategy presents five key priorities:

- effective communication with victims and a safe environment for victims to report crime;
- improving support and protection to the most vulnerable victims;
- facilitating victims' access to compensation;
- strengthening cooperation and coordination among all relevant actors; and
- strengthening the international dimension of victims' rights.

The EU Strategy mentions the promotion of victim support organisations to “engage with national authorities, including judicial and law enforcement authorities, and participate in mutual training activities”.

### *1. 1. 1 Some remarks on the major milestones in Spain's history of victim activism and policy defining the development of its victim rights and services*<sup>22</sup>

On the major milestones in Spain's history of victim activism and policy defining the development of its victim rights and services, five points can be highlighted:

- 1) The movement of victims of terrorism that fostered the first national legislation on compensation for victims in the 1980s (also influenced by the 1983 Council of Europe Convention; see the 4<sup>th</sup> additional provision of the 21/1986 Act, of December 23, on the Spanish budget for 1987).
- 2) The 35/1995 Act for the provision of aid and assistance to victims of violent crimes and sexual offences (following the 1983 Council of Europe Convention).
- 3) The feminist movement promotion of the adoption of the Organic Act 1/2004 of 28 December on integrated protection measures against gender violence.
- 4) The 2007 so-called Historical Memory Act (complemented by a 2021 draft on Democratic Memory) on victims of persecution during the Civil War and Francoism<sup>23</sup>.
- 5) The adoption of the Act 4/2015 of 27 April 2015 on the Statute of the Victim of Crime (transposing the 2012/29/EU Directive on victims' rights).

Among the main victim stories or events and their impact on the Spanish victim policy or practice, we can recall the following:

- 1) The emergence of the Association for Victims of Terrorism, created by several women victims of the terrorist group ETA, among them, Ana María Vidal-Abarca López (Alonso, 2017), in 1981, when there was no support for them, despite the number of killings and attacks.
- 2) The Alcasser case<sup>24</sup>, regarding three female teenagers kidnapped, raped and murdered which initiated the public debate on the secondary victimisation caused by the media.
- 3) The murder of Ana Orantes<sup>25</sup>, which raised awareness and influenced the approval of the Organic Act 1/2004 of 28 December on integrated protection measures against gender violence.
- 4) The *La Manada* case<sup>26</sup> in which gang or group rape victimisation contributed to forcing the revision of the criminal legislation on consent and sexual crimes with an

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<sup>22</sup> For a comparative approach, see the reports and final publications of the project COST Action CA18121 “Cultures of Victimology”.

<sup>23</sup> Consider also the web page on the Ministry of Justice (<https://sustraccionrecienacidos.justicia.es/victer-webapp/br/bienvenidaCiu>) on stolen babies or missing children during Francoism. On this topic, see the report by Amnesty International (2021).

<sup>24</sup> See at [https://en.wikipedia.org/wiki/Alc%C3%A0sser\\_Girls](https://en.wikipedia.org/wiki/Alc%C3%A0sser_Girls).

<sup>25</sup> See at <https://www.nytimes.com/2020/01/15/obituaries/ana-orantes-overlooked.html>.

integral law on sexual violence. Before that case, the case of conservative Spanish councillor Nevenka Fernández who spoke out against sexual harassment in 2001 was overlooked, but it was brought back to prominence in 2021 because of the release of a Netflix documentary film about the case<sup>27</sup>.

5) The case of Maixabel Lasa<sup>28</sup> who, with other victims, helped to open the debate on the use of restorative justice for terrorism (Martín y Rodríguez, 2019), but also for other serious crimes in the context of prison.

6) The *Romanones* case in Granada in which sexual abuse in the Church against minors was reported in 2014. The accused was finally declared innocent. The Supreme Court indicated that there was some evidence to investigate the case, although insufficient for a sentence, in a case where several alleged crimes could not be brought to justice because of the statute of limitations. After this case, along with the activism in other countries, the victims' movement on this sort of victimisation started to grow in Spain to ask for reparation by the Church, as well a reform of the statute of limitations and better protection for child victims<sup>29</sup>.

In general, Spain does not have high rates of registered victimisation. Despite the lack of sustainable victim surveys, according to police statistics (briefly mentioned in a previous chapter), registered crime is steady or decreasing. In the last years, sexual violence and gender violence is growing slightly, particularly in the cyber space. There is an emerging social awareness on the victimisation of victims of hate crimes; human trafficking; police brutality and sexual abuse in institutional settings (schools, sports clubs, etc.). There is also a growing academic interest in quantifying victims of corporate, environmental and white-collar crime in general, although this is mostly considered as diffuse victimisation.

Beyond criminal victimisation, the term "victim" is also deployed in Spain today for victims such as the victims of the Covid-19; victims of natural disasters; victims of suicides (Tollefson, 2015)<sup>30</sup>; and victims of accidents.

### **1. 1. 2 Victim policy evolution in Spain**

At the international level, Spain has signed and ratified all relevant Conventions (against discrimination against women, rights of the child, International Criminal Court, the Palermo Convention, etc.). At the level of the Council of Europe, Spain has also signed and ratified all the main Conventions in this matter, e.g.: the European Convention on the Compensation of Victims of Violent Crimes, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Istanbul Convention, etc. At the level of the EU, Spain has adopted all the mandatory legislation, particularly the victims' rights Directive of 2012 and specific Directives on victims of human trafficking, child victims of sexual exploitation and child pornography and terrorism.

However, as will be also commented on in the following chapter, the major gaps in victim support and services in Spain refer to the insufficient personal in the public services and the insufficient coordination (mostly achieved for intimate partner violence

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<sup>26</sup> See at [https://english.elpais.com/elpais/2019/07/02/inenglish/1562075359\\_798270.html](https://english.elpais.com/elpais/2019/07/02/inenglish/1562075359_798270.html).

<sup>27</sup> See at <https://www.wsj.com/articles/nevenka-breaking-the-silence-review-speaking-up-in-spain-11614897698>.

<sup>28</sup> See at [https://english.elpais.com/elpais/2013/05/29/inenglish/1369830404\\_022259.html](https://english.elpais.com/elpais/2013/05/29/inenglish/1369830404_022259.html).

<sup>29</sup> See a reference to this case in the book by Ivereigh (2019). See, for example, the activism of the organisation *Infancia Robada* at <https://www.facebook.com/AllSurvivorspain/>.

<sup>30</sup> According to the statistics of the Forensic Medicine Institutes in Spain and the National Institute for Statistics, the quantitative relevance of suicide as a cause of death should be considered, particularly in comparison to homicide and road traffic related deaths. See the 2 minute video on the exhibition on victims' voices and suicide at <https://ehutb.ehu.es/video/6051bd3cf82b2bc71e8b4888>.

of men against women). In this sort of victimisation, the advancement in the gathering of data for evaluation is also observed in comparison to other crimes.

## 1. 2 The role of the media in reporting on victims: Portraying and constructing<sup>31</sup>

The high profile cases mentioned in the previous paragraphs are an example of how the Spanish media has raised awareness<sup>32</sup> and also has caused secondary victimisation. Different studies have shown how victims are usually portrayed as the passive objects of the crime while the offender awakens more curiosity in its active role, particularly when exercising violence. We can think, for example, in how the media portrays serial killers and their victims in popular culture. This does not mean to fall into Wertham's moralism, but to reflect on the attraction of violence and its transformation into market commodification as spectacle. Violence, as part of our culture, has been treated by media as news, but also as spectacle and business, putting into question the value and benefits of informing on certain victimisations. Often the media, particularly today's social media, reinforces the myths on victims and the negative notion of an ideal victim and steals the recognition of all who deserve the acknowledgement and respect of their rights as victims, including not to be manipulated and really helped, beyond punitivism. In this direction, Article 21. 2 of the 2012/29/EU Directive, on the right of protection of privacy, states that: "In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures".

On the ambivalent role of media for victims (Greer, 2007), we reproduce the possible benefits and risks of media (it is important to think them in relation to victims, but also to the society as a whole), as stated by the *Canadian Resource Center for Victims of Crime*<sup>33</sup>, with a particular emphasis on social media.

According to that Center, the possible benefits of sharing victims' stories in the media are:

- *Changing Public Policy and Awareness.* Victims may bring attention to current inadequate government policies and help be a voice for change within the criminal justice system.
- *Awareness of Victimisation.* Being victimised takes a toll physically, emotionally, spiritually, financially, socially and psychologically. Coverage about individual victims can help other citizens understand what happens to crime victims and how violence affects them and their loved ones. Victims can help future victims cope with certain stresses and anxieties. Victims' stories can be a driving force for those who work in the field of victim assistance.
- *Victims' Side of the Story.* Telling victim's story brings balance to the criminal justice system by sharing the perspectives of the crime victim/survivor as the media often focuses on the accused/perpetrator.
- *Prevention.* Educate the public and help prevent similar victimisations.
- *Humanization.* The over-saturation of crime in the news can lead to the dehumanization of victims. Crime deeply affects victims and their loved ones and it also impacts communities. Speaking out through the media may serve to help others see the direct impact of crime.

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<sup>31</sup> On victims' rights to privacy and dignity in relation with the media, see Chapter 4 and Article 34 and final provision 18 of the Spanish 4/2015 Act on the Statute of the Victim.

<sup>32</sup> The agenda setting theory contends that the issue priorities of the news become the issue priorities of the public.

<sup>33</sup> See at <https://crcvc.ca/publications/if-the-media-calls/>.

- *Validation.* Sharing victims' perspective with others may bring support and validate what victims have been through. The experience may prove to be therapeutic in dealing with what has happened.
- *Inspiration.* Victims' circumstances and what they reveal to the public may inspire others to report crime and/or seek support.
- *Empowerment.* Victims may feel that they have regained control of their life by sharing details of their victimisation, as well as through influencing change in the criminal justice system.
- *Support.* Telling the victim's story may increase public support for victim assistance initiatives.

At the same time, the *Canadian Resource Center for Victims of Crime* highlights the possible risks of speaking out in the media:

- *The Police Investigation.* It is wise to refrain from commenting in the media, especially if the police are still investigating. Speaking to the media during the police investigation or trial could jeopardize a criminal case. Victims should be sure to consult with the police media officer or victim services staff if they are unsure.
- *Well-Being.* For some victims, speaking publicly about what happened to them can intensify the trauma of victimisation. It takes time to work through being victimised, let alone coping with ongoing police investigations, court processes and intrusive media.
- *Lack of Control.* It is impossible to predict how one's case will be covered, if at all. There is potential for gaps in coverage and intensity of coverage. Some cases get little coverage due to competing breaking news at the time.
- *Secondary victimisation:* People may feel secondly victimised when reporting is insensitive, inaccurate or sensationalized. The media can cause additional harm by being insensitive and intrusive in searching for information.
- *Photographs.* Victims should keep in mind that any photo provided to the media of their loved one will be used continually in reporting, even months and years later. If the media cannot track down a photo immediately, they will go to social media spaces and may use an image out of victims' control. The media can also film/photograph victims' home.
- *Family Members.* Family members may not be supportive of some direct victims' need to speak out in the media. They may not feel ready to include the public in their grieving process. Family members also might not want certain information released. Victims should consider extended family members and young children/youth that may be affected by media reports now and in the future.
- *Media Letdown.* In the immediate aftermath of the crime, the media are constantly present and the victim's story may be in the headlines. Eventually, other news begins to take precedence and victims may feel abandoned and alone.
- *Aggressive Reporting.* Reporters may seek interviews immediately after the crime, at funerals, trials, sentencing, parole hearings and anniversaries. They may phone or e-mail victims, approach them in public, find them through social media or visit them at their home or workplace.
- *Where the Victim's Information Gets Posted.* When victims release statements to the media, their information can be published in many places. Victims should expect the information they release to be printed in newspapers/magazines, talked about on television and radio, referred to in blogs, on Facebook, Twitter, and all

over the internet. Once made public, it is very difficult to take back or erase the information.

On technology and social media, the *Canadian Resource Center for Victims of Crime* states:

- Technology has changed the way crime is reported and how quickly reporters must write/file their stories. Newspapers no longer have publication deadlines for the morning paper as they all have websites that distribute information about the incident immediately.
- Most crime/justice reporters are on Twitter which allows them to broadcast information instantaneously from crime scenes, the trial, etc.
- The mass media is only bound by publication bans (particularly the names of child victims). Media outlets often fight for access to private information restricted by the courts because it is “in the public interest”. Public interest means information that benefits public safety or welfare.
- Social media can be a source of information for those curious about the victim(s). Journalists look for personal information found in blogs, personal websites and social media sites such as Facebook, Twitter and Instagram to include in their stories. They can gather a great deal of background information and photographs of victims and their family members through their social media pages.
- Many of the users of smartphones have accounts with one or more social media platforms, which allow them to instantly share their feelings or beliefs on victimisation. Users should remember that pictures, comments and status updates may give those who are tagged unwanted attention, and in some cases, put them in danger. Online posts can also change the course of a police investigation or alter a trial verdict. Anything posted online or emailed can be accessed by defence lawyers and used in criminal court. Online activity may also be viewed by the offender, so it is important to maintain privacy.
- Video streaming, available through platforms like Facebook Live, allows users to share events as they happen. They have been used to record assaults and other types of crime. They offer a raw look at what happened and have been used in the media. They can also be used as evidence in court.
- Following victimisation, victims/survivors and their family members should be very cautious about what they post in social media spaces. It is recommended to restrict privacy settings and to refrain from posting personal details or location. Family members may wish to check with a particular social media application to see how to secure or close down their loved one’s accounts.
- Anyone Can Publish. The internet allows people to anonymously post harmful comments, videos, and pictures. This can impact victims by having sensitive or previously undisclosed information about the victim or the offender released. Family members and friends may also learn about important or sensitive information through online sources before victims get a chance to inform them.
- Fact/Fiction. People tend to believe everything that is posted on the internet, regardless of the source or reliability. Falsehoods can be made about the crime, the victim and the offender.
- Even though account profiles may be set to private, victims’ social media presence can still be found. It is almost impossible to keep personal information private when social media is involved. This might compromise victims’ safety or integrity.

### 1. 3 Thinking about photojournalists' role in making severe victimisation visible and reparable: On visual Victimology

The above paragraphs concentrate mainly on common victimisations. In this section, we also want to reflect on the role of journalists as witnesses of severe victimisation and the risks that this entails, in particular for photojournalists. This topic can be related to the emergent trend called visual Victimology (Herrera, 2018; Varona, 2015).

The etymology of the word photography is writing or drawing with light. Photography is viewed both as an art and a technology for recording reality. It is also a technique or instrument for qualitative research in visual anthropology, sociology, criminology and Victimology. Above all, photography is a way of communication. Photography can express dimensions of victimisation and recovery in ways victimological research cannot reach because of the limits of the scientific method. The understanding of any photographic expression will depend, both in public and private spaces, on the eyes and context of the observer, particularly if they were victims. Despite this introspective character, photography has a public and activist character concerning digital memory and recovery from traumatic victimisation. It makes visible the invisible dimensions of victimisation.

Photography is not as spectacular as a monument. It is conceived as the art of seeing life in space and time. When we look at a picture we simultaneously see past and present in a continuum of recorded and unrecorded objects and effects. For this reason, it holds great potential for communicating messages related to the memorialisation of harm.

In any case, many questions remain on the function of photojournalists. Are photographers partial as witnesses or narrators of objective and subjective dimensions of victimisation? To what extent is photojournalists' work more related to artistic photography where the audience might have more open space for interpretation? Finally, the important role of journalists, in general, as witnesses does not neglect the partial political dimensions of any kind of photography and journalistic account, following the seminal work of Susan Sontag (2003).

#### 1. 3. 1 On journalists as direct and indirect victims: Vicarious trauma

On the topic of victims and media, we can also think of journalists as potential victims in war or violence contexts and in continuously dealing with violent victimisation. According to Sian Williams and Tina Cartwright (2021) in a study to examine PTSD symptoms, personal risk and posttraumatic growth in journalists, "those working in conflict areas experience significantly higher levels of post-traumatic stress and post-traumatic growth, than those who do not". Beyond losing their own lives, this work highlights the need "to allow sufficient time for reflection and meaning-making for all those working in hostile environments". According to various experts, the term vicarious trauma (Perlman and Saakvitne, 1995) describes the phenomenon generally associated with the "cost of caring" for others (Figley, 1982). It means the emotional impact of working with victims. It is an accumulative process that might produce a feeling of lack of meaning and efficacy in the work being done, of lack of trust in others and in the future, and also depression (Dubberlay et al., 2015; Dubberlay and Grant, 2017; Varona, 2021).

### 2. Key concepts to recap

Agenda setting theory  
Journalists' vicarious trauma  
Media  
Myths  
Popular punitivism  
Promotional victim law

Secondary victimisation  
Social Media  
Symbolic victim law  
Victim activism  
Victims' movements

### 3. Thinking Victimology

Please, read this excerpt by Gallo and Elias (2018), and their whole article if possible, and comment on the situation in your country.

Classical Victimology has accepted the idea that victims and offenders are different and opposed. In this line of argument, it seems that victims can obtain satisfaction through the lowering of the guarantees for suspects and detainees, and the increase of punishment. This perspective has been promoted by the United States, followed by other countries like the United Kingdom. However there is at least one model that differs from them: the Swedish case (...). In the States, the promotion of services for victims is connected to a harsh punitive criminal policy. By contrast, in Sweden, improving the rights of victims is related to the idea of human rights, treatment and support. This study shows different possible approaches to victims and crime, in diverse cultural contexts, as well as realistic possibilities of applying these policies in other countries. Finally, this text questions the dominant assumptions about how to help victims in a better way (p. 10).

### 4. Applying Victimology

Please, write a “General guide for victims to deal with the media” and a “General guide for journalists to raise awareness on victims’ rights and needs”. Consider the following excerpt from Mulley (2001):

Contrary to popular opinion, some crime victims and witnesses will derive great comfort from receiving media attention. Talking to the media can be beneficial for a number of reasons, in addition to a general desire to help with the police investigation and the detection of the offenders. Some individuals need to express their feelings and convey the hurt and anguish they have suffered. Others will want to tell their side of the story (rather than all the attention necessarily being focused on the offender), or they may believe that the record needs to be set straight. This can be particularly important for people who have been bereaved through violent crime, who may wish to exert some control over what is being reported about a loved one. Another strong motivation for cooperating with media interest is altruistic: to help and give strength to others who may have suffered a similar experience. Unwanted intrusion However, for many other crime victims, media attention is an unwanted intrusion at a very stressful time. Media interest is often experienced as a form of secondary victimisation and can make individuals feel harassed, vulnerable, lacking control ... A device that can be particularly painful is the use of library footage of previous crimes and disasters to illustrate a current news story. Their privacy has been violated. All of these feelings may well have been experienced when the crime was originally committed, and they are then compounded by the response of others to that crime. Victim Support, through offering its services to over one million individuals each year, has unique access to the concerns and common problems experienced by crime victims and witnesses. Unwanted and invasive media attention is one such problem. For example, when researching the treatment of the families of murder victims, 50 of the 80 families interviewed for the research had complaints about the media. Only one reported a positive experience. Victims of crime (whether or not they want publicity) are of intrinsic interest to the media, and often at a time when they are least able to cope

with it. This is particularly true for victims of the most serious crimes. When people are suffering from shock or trauma or grief, either soon after an incident or at a significant event such as the trial, they may find it extremely difficult to cope with assertive and persistent journalists. At Victim Support, we have heard of extreme cases of intrusion and harassment, for example of journalists repeatedly shouting through the letterbox, climbing into the back garden or refusing to leave the pavement outside the house. Many victims simply do not want their names or photographs to be published with details of the crime. Victim Support is aware of several cases where victims have been subjected to intimidation from the friends of the offender following newspaper reports which have printed their names and addresses. At the moment anonymity is only legally guaranteed for child witnesses, or when the person is a victim of rape or sexual assault. However, in cases where the witness is likely to suffer fear or distress the judge can now impose reporting restrictions. For victims of the most serious crimes, media interest may be a life sentence. Certain crimes enter the public consciousness almost becoming public property, the personal anguish of the individuals directly concerned forgotten. Ten and twenty years after the event journalists will still be asking questions, making reconstructions and writing books (p. 30).

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## IV. VICTIMISATION AND RECOVERY PROCESSES

### 1. 1 Explaining the processes of victimisation and devictimisation: The limits of victimological theories

As we have commented in other works (Varona, 2020)<sup>34</sup>, victimology is primarily based on empirical research with a low empirical test (Bruinsma, 2016, p. 666) in comparison to other sciences. In any case, problems remain concerning the idea of causation and its unlikely universal validity for all countries and for all victimisations. Notwithstanding the autonomy of victimological theories, many relate to general criminological ones. Bruinsma (2016, p. 664) contends that despite the increasing number of theories and their causal models, the main groups have a “probabilistic nature and can be labelled as propensity theories, not as behavioural or action theories”, only rational choice theories would be close to these. Some authors point out their incapacity to adequately explain or predict (criminal/victim) behaviour. Moreover, often the theory “is restricted to several simple (correlational) hypotheses between independent variables, with the dependent variable neglecting the mutual causal relationships among the independent variables”. On top of that, they have been developed in specific populations and contexts that cannot be generalized (Bruinsma, 2016, p. 665).

More than just the study of the causes of victimisation, Victimology can also be conceived of as concerned with victimhood, recovery and reparation processes. Yet traditionally, more efforts have been made towards the measurement of victimisation (Zaykowski and Campagna, 2014), rather than developing specific or autonomous theories about the way society and the criminal justice system responds to victims. Transcending current criminology, perhaps the task of the discipline should not be to give the right answers to important questions about why victimisation occurs (Bruinsma, 2016, p. 671), but to question the concept of victimisation itself and, in some contexts, see it as one independent variable among many others within cultural and social processes beyond crime.

To speak about the limits and contribution of victimological theories, now that they are under stress by some interpretations of algorithmic Victimology that argue that we can have access to the whole universe of experience via big data and it is from that access from which we have to construct theory (Varona, 2020), we can recall that every theory in this field is constructed to answer, directly or indirectly, the following five questions (Einstadter & Henry, 1995):

- 1) On human nature and behaviour: are humans free, social, aggressive, vulnerable, resilient? Are human beings different among themselves?
- 2) On social order and society: Does cooperation or conflict rule society? Who forms society and what makes members of society coexist without violence? How does society change?
- 3) On law, crime, victims and offenders: Does criminal law express integration or lack of it? Is criminal law interdependent on other normative systems? Is it a dynamic system? What is crime? Are there typologies of offenders and victims?
- 4) On causal logic: Are there motives for crime? Can crime be freely chosen or does determinism prevail? Is there a biological, psychological or external determinism? Is there a propensity to become a victim? Is causality linear, multiple, interactive or dialectic? Can the conditions favouring or inhibiting criminality and victimisation be measured and controlled?

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<sup>34</sup> All quotations on this section can be found in Varona (2020).

- 5) On the criminal justice system: Which is the institutional and procedural framework responding to victimisation? Is there a philosophy behind the system operation? What are the techniques of crime and victimisation control? How does the administration apparatus work?

Beyond psychopathological and biological perspectives, according to Zaykowski and Campagna (2014), five main categories of victimological theories can be described: victim precipitation, exposure/opportunity, learning/culture, control and critical. Every one of them answers the questions posed above differently.

Dating from the origin of positive Victimology at the beginning of the 20<sup>th</sup> century, victim precipitation theories look for explanations of what actions or characteristics of victims increase the risk for harm. Here the victim's legal culpability, engagement in criminal lifestyles, conflict and careless behaviour are examined and victims are classified as innocent, partially responsible, and guilty victims who might become offenders in an overlapping process of diverse directions.

Exposure and opportunity theories explain victimisation by examining the context of spatial and social risk, constructing the idea of 'vulnerable targets' for a 'motivated offender' and a 'lack of a capable guardian'. These theories talk about lifestyle exposure, routine activities, structural choice and situational prevention (Fattah, 2000).

Social learning and cultural theories consider that victimisation and/or offending is learned or transmitted via norms and values present in family, peer groups, society and the media. Victims and offenders "learn that violence/crime is normal or appropriate to use in particular circumstances"(Zaykowski and Campagna, 2014).

Control perspectives examine victimisation and/or offending through weak internal or external controls. In this sense, low self-control leads to risky lifestyles and enhances the risk of victimisation.

Finally, critical theories focus on the collective dimension of victimisation, questioning the concept of the victim in society and the lack of visibility for different forms of victimisation. Social marginalization, inequality and abuse of power might be good predictors of victimisation. The standpoint of critical Victimology (Mawby and Walklate, 1994; Walklate, 2015) allows interrogation around a narrow logic-mathematical vision on human beings in different contexts. That kind of vision, presented as purely scientific is political as it makes certain injustices invisible or unavoidable.

We can relate different aspects of victimisation typologies to the different trends in Victimology, explained in Chapter 1, but also to concrete victimisation related theories of different range (Turanovic and Pratt, 2019; Pratt and Turanovic, 2021), such as routine activities and lifestyle theories; trauma theories (including the window of tolerance); neutralisation and moral disengagement theories; just world theory; victim labelling and ideal victim theories; victim-blaming theories; injustice theories (Pemberton, 2020); learned self-helplessness theory; coping theory (Dussich, 2011); buffering effect theory (Pazzona, 2020); reintegrative shaming theory; resilience and post-traumatic growth theories, and etcetera. However, any comprehensive theory of the diversity, complexity and dynamic processes of victimisation and de-victimisation must consider the general structuration theory on the interdependence of agency and structures.

|                                  |   |
|----------------------------------|---|
| <b>Routine activities theory</b> | Cohen and Felson (1979): crime (victimisation) occurs when three elements converge: (1) a motivated offender, (2) a suitable target, and (3) the absence of a capable guardian. |
| <b>Lifestyle/exposure theory</b> | Hindelang et al. (1978): the likelihood an individual will suffer personal victimisation depends heavily upon the concept of lifestyle.   |

|  |  |
|--|--|
| <b>Trauma theories (including the window of tolerance)</b> | Coming from Freud, the scientific studies developed in the 20 <sup>th</sup> century on trauma concerning the effects of traumatic events. In the 1980s Post-Traumatic Stress Disorder was medically recognised.<br>According to D. Siegel, victims of trauma might fluctuate between hyper- and hypo-arousal (window of tolerance) which might explain the so-called flight/freeze/fight victim reactions at different times and contexts.   |
| <b>Neutralisation and moral disengagement theories</b>     | -Sykes and Matza (1957): five neutralization/justification techniques: denial of responsibility, denial of injury, denial of victims, appeal to higher loyalties, and condemnation of condemners.<br>-Bandura (1976): an individual convinces him/herself that ethical standards do not apply to him/herself within a particular situation or context. There are four loci of moral disengagement: behavioural, agency, effects and victim.  |
| <b>Just world theory</b>                                   | Lerner (1980): A just world is one in which actions and conditions have predictable, appropriate consequences, creating the impression that bad things only happen to bad people or people that somehow deserve it.  |
| <b>Victim labelling and ideal victim theories</b>          | -Kenney (2010): labelling process for victims in whom differential social reactions to this status, flowing from varying attributions of sympathy worthiness, have an impact on the behaviours, adjustment, and identities of the individuals concerned.<br>-Christie (1986): ideal victims are non-existent.  |
| <b>Victim blaming theories</b>                             | Related to Lerner's theory, blaming the victim is a phenomenon in which victims of crimes or tragedies are held accountable for what happened to them (Karmen, 2004).  |
| <b>Injustice theories</b>                                  | Pemberton (2020) proposes "that the justice process itself can be an important site for reconnection: of victim experience with society and with important symbols of shared values. This critical stance has some degree of synergy with the restorative justice perspective and central to his proposition is the need to understand that injustice concerns a relationship of the victim with his or her self, rather than a relationship with other persons. The second requirement is to appreciate that this self is only accurately understood if it is conceived as being-in-the-world. Only then does the experience of injustice come into its own—when it amounts to an ontological assault". |
| <b>Buffering effect theory</b>                             | Pazzona, 2020: A buffering effect is a process in which a psychosocial resource reduces the impact of life stress on psychological well-being.   |
| <b>Learned helplessness theory and learned optimism</b>    | Seligman: subjecting participants to situations in which they have no control results in three deficits: motivational, cognitive, and emotional (Abramson, Seligman, and Teasdale, 1978). The cognitive deficit refers to the subject's idea that his circumstances are uncontrollable. The motivational deficit refers to the subject's lack of response to potential methods of escaping a negative situation. Finally, the emotional deficit refers to the depressed state that arises when the subject is in a negative situation that he feels is not under his control. Within positive psychology, Seligman created the model of <i>learned optimism</i> through resilience training.             |
| <b>Coping theory</b>                                       | Dussich (2011): persons who have been victimised must be empowered with tailored resources to prevent their re-victimisation or  |

|                                     |  |
|-------------------------------------|--|
|                                     | their conversion to offending  |
| <b>Reintegrative shaming theory</b> | Braithwaite (1989): Emphasis on responses that strengthen the moral bond between the offender and the community, in some cases, by thinking about the real harm produced (to victims and society). |

Table 2: Some theories in relation to victimisation

## 1. 2 Primary, secondary and other definitions of victimisation processes

### 1. 2. 1 The impact of victimisation across time and life dimensions: Throwing a stone into the water or into a window



Images: Metaphors of the victimisation impact

The risk and impact of primary and secondary victimisation are unequally distributed in society (Mawby and Walklate, 1993). Primary victimisation refers to the crime or primary harm, as a journey, where temporal dimensions are relevant. As we will see in section 1. 2. 5 of this chapter, secondary victimisation can be defined as the additional harm caused to victims by the agencies (from society at large to the criminal justice system) that are in charge of supporting them or react with solidarity (Clemente and Padilla-Racero, 2020). Multiple victimisation means suffering several crimes or harms of the same nature (revictimisation) or a different one (poly-victimisation). Multiple victimisation has been related to having previously suffered primary or secondary victimisation (Farrell, 1992).

#### Andrea's crime journey

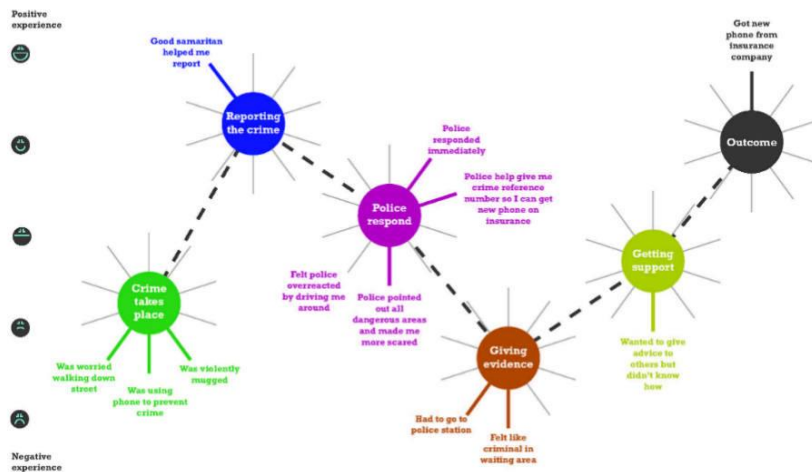


Image 17: Victimisation journey. Source Siodmok (2014)

Trauma studies have related the so-called flight, fight freeze responses<sup>35</sup> with the so-called window of tolerance. Generalisations, false assumptions about victims and the lack of understanding of the immediate and long impact of victimisation on victims might provoke secondary victimisation.

<sup>35</sup> See at <https://trauma-recovery.ca/impact-effects-of-trauma/fight-flight-freeze-responses/>.

# How Trauma Can Affect Your Window Of Tolerance

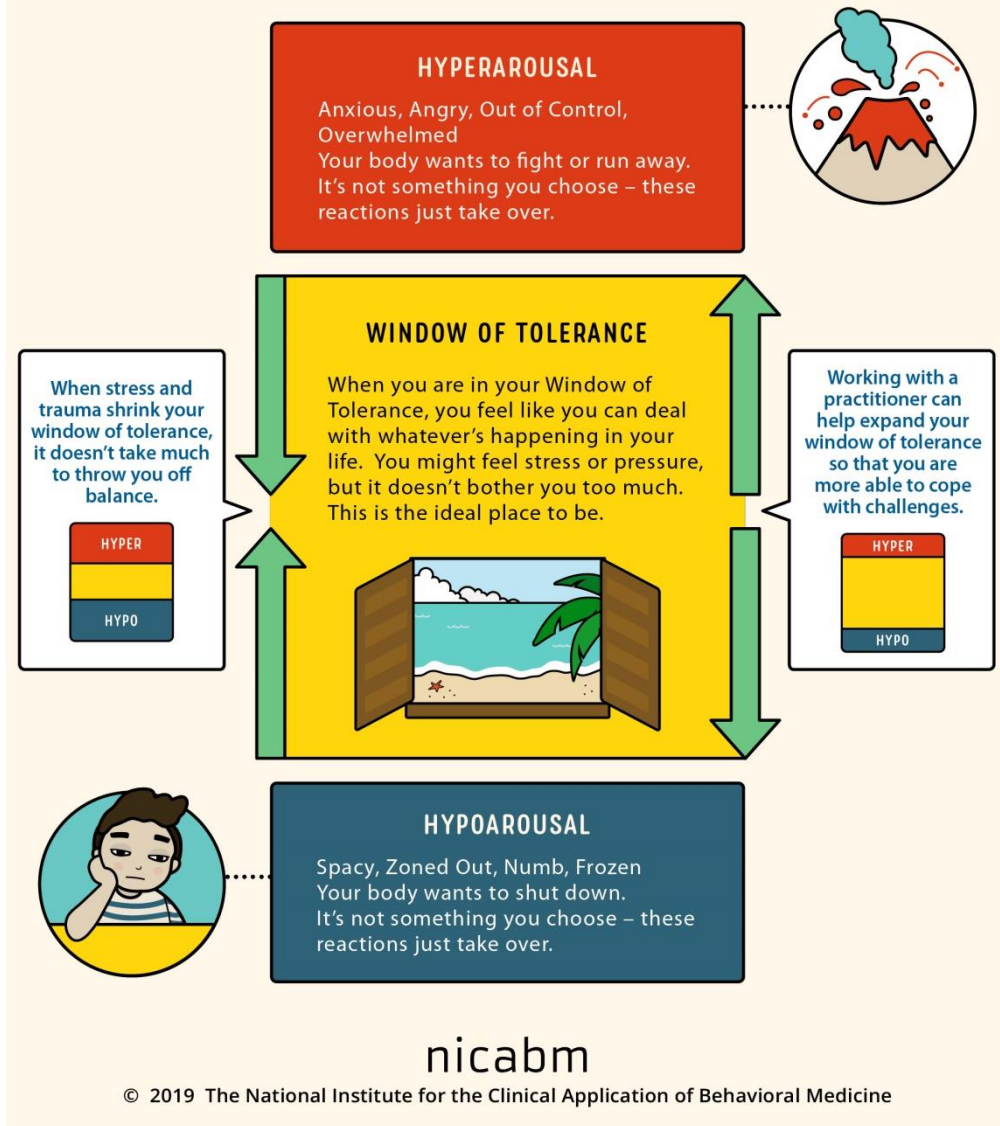


Image 18: Window of tolerance: Source: NICABM

The following images help us to understand the impact of victimisation<sup>36</sup>:

<sup>36</sup> Most of the images reproduced in this chapter are adapted from Artinopoulou, Koufouli and Michael (2018).

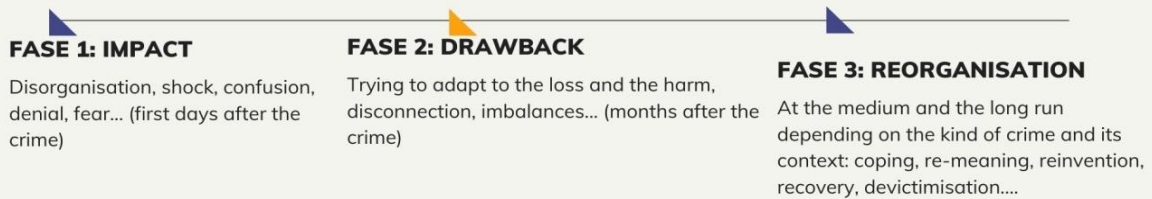


*Image 19: Victim impact dimensions and harms*



*Image 20: Consequences of the victimisation*

# POTENTIAL PHASES IN THE VICTIM IMPACT DEPENDING ON THE SOCIAL SUPPORT AND OTHER FACTORS



*Image 21: Potential impact process of victimisation*

## 1. 2. 2 Needs of victims

The needs of victims can be defined as safety, well-being, social acceptance and recognition, respect (for the person and the protecting norms), autonomy/control/agency, meaning and justice (including reparation).

Some theories on victims' needs depart from Maslow's general theory on human needs, as expressed in the following image.



*Image 22: Maslow's theory on human needs (1943)*

Kirchhoff, Strackb and Wagner (2013) in relation to the human motivation theory (Maslow, 1943; Taylor, 2003; Ten Boom and Kuijpers, 2012) have set out some victims' needs.

*Items (starting with "The incident kept me from..." or "Because of the incident I had/have Factor loading Mean (SD) the feeling...")* Source: Kirchhoff, Strackb and Wagner (2013)

### **NEED FOR PLEASURE**

- ...having fun.



|  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• ...recovering.</li> <li>• ...enjoying my life.</li> <li>• ...spending my time with pleasure.</li> </ul>   | <ul style="list-style-type: none"> <li>• ...feeling free.</li> </ul> |
| <b>NEED FOR ACCEPTANCE</b>   |  |
| <ul style="list-style-type: none"> <li>• ...that the person(s) do(es) not take me as I am.</li> <li>• ...that the person(s) has/have a bad opinion of me.</li> <li>• ...that the person(s) do(es) not accept me.</li> <li>• ...that the person(s) do(es) not appreciate me for what I do.</li> </ul>             |  |
| <b>NEED FOR RESPECT</b>  |  |
| <ul style="list-style-type: none"> <li>• ...that the person(s) do(es) not adhere to the common rules.</li> <li>• ...that the person(s) do(es) not adhere to the norms.</li> <li>• ...that the person(s) do(es) not pay regard to me.</li> <li>• ...that the person(s) do(es) not have respect for me.</li> </ul> |  |
| <b>NEED FOR SAFETY</b>   |  |
| <ul style="list-style-type: none"> <li>• ...that I am still being threatened.</li> <li>• ...that there is still danger stemming from the person(s).</li> <li>• ...that my safety is threatened.</li> </ul>   |  |
| <b>NEED FOR SELF-EFFICACY</b>  |  |
| <ul style="list-style-type: none"> <li>• ...that I was not able to prove my abilities.</li> <li>• ...that I am useless.</li> <li>• ...that my achievements are not sufficient.</li> <li>• ...that I do not have a say.</li> </ul>  |  |
| <b>NEED FOR MEANING</b>  |  |
| <ul style="list-style-type: none"> <li>• ...that I don't really understand what happened.</li> <li>• ...that I have to rack my brains over why these things happened.</li> <li>• ...that for me questions remain unanswered about what happened.</li> </ul>  |  |

Table 3: Victims' needs according to Kirchhoff, Strackb and Wagner (2013)

**1. 2. 3 Typology of victimisation processes, according to time and what causes the harm**

According to the moment of the process of harm and its causes, we can distinguish different kinds of victimisations.

1) PRIMARY

- a) Direct/indirect.
- b) Individual, collective, diffuse.
- c) Occasional, multiple (poly/recurring victimisation), repeat, chronic.
- d) Anticipated.
- e) Hidden.

2) SECONDARY

3) TERTIARY

|                               |   |
|-------------------------------|---|
| <b>Multiple victimisation</b> | Repeat victimisation or revictimisation (of the same kind of crime) |
|                               | Poly-victimisation (of different kinds of crime).                   |

Image 23: Multiple victimisation

### 1. 2. 4 Understanding hidden victimisation

Hidden victimisation is usually represented through three different metaphors: an iceberg, a funnel and the ocean foam.

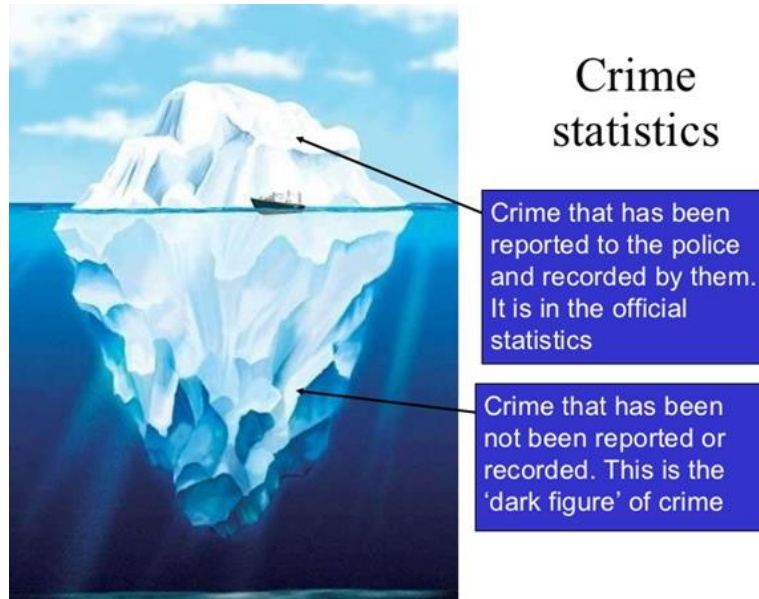


Image 24: Crime statistics in an iceberg. Image credit: Sociology Exchange (2011)<sup>37</sup>

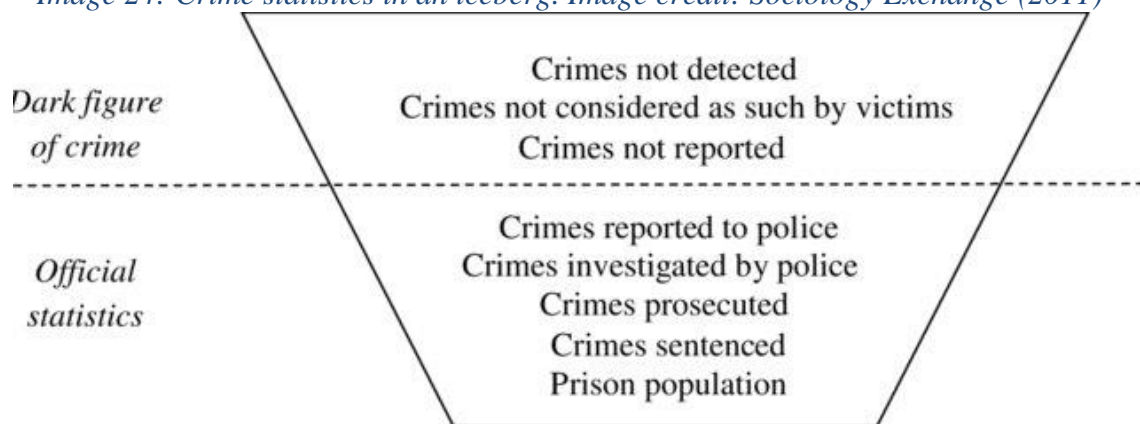


Image 25: 'Funnel' of crime data. Source: D. Buil-Gil<sup>38</sup>

<sup>37</sup> Source: <https://Victimology1994.wordpress.com/2019/02/27/the-impact-of-victim-blaming-in-sexual-exploitation-cases-an-analysis-of-the-rotherham-abuse-scandal/>.

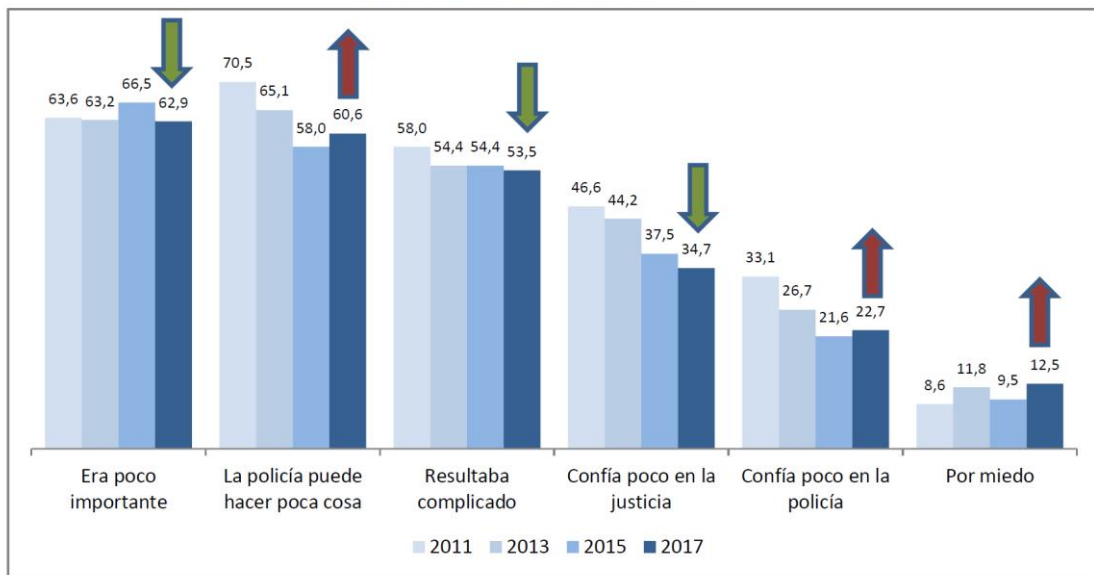
<sup>38</sup> Source: [https://www.researchgate.net/publication/337972603\\_Small\\_area\\_estimation\\_in\\_criminological\\_research\\_Theory\\_methods\\_and\\_applications/figures?lo=1](https://www.researchgate.net/publication/337972603_Small_area_estimation_in_criminological_research_Theory_methods_and_applications/figures?lo=1).



*Image 26: Hidden victimisation as ocean foam*

There are different reasons for not reporting victimisation, as the following image shows us.

**Figura 6. Motivos para no denunciar (%)**

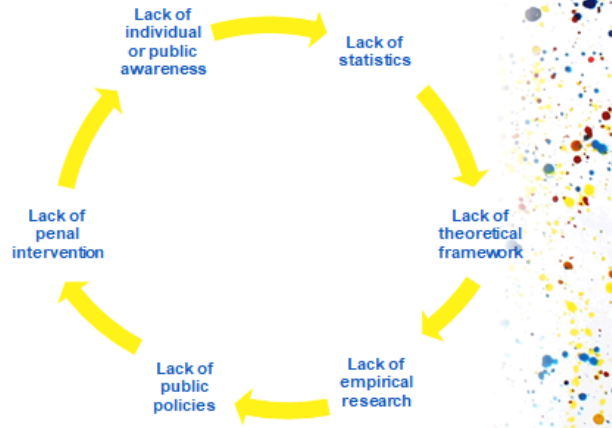


Fuente: Encuesta de Seguridad Pública de Catalunya (DGAS; Departamento de Interior, Generalitat de Catalunya).

*Image 26: Reasons for not reporting. Source: Guillén (2020a)*

Hidden victimisation reproduces itself through a vicious circle of silence as shown in the following image.

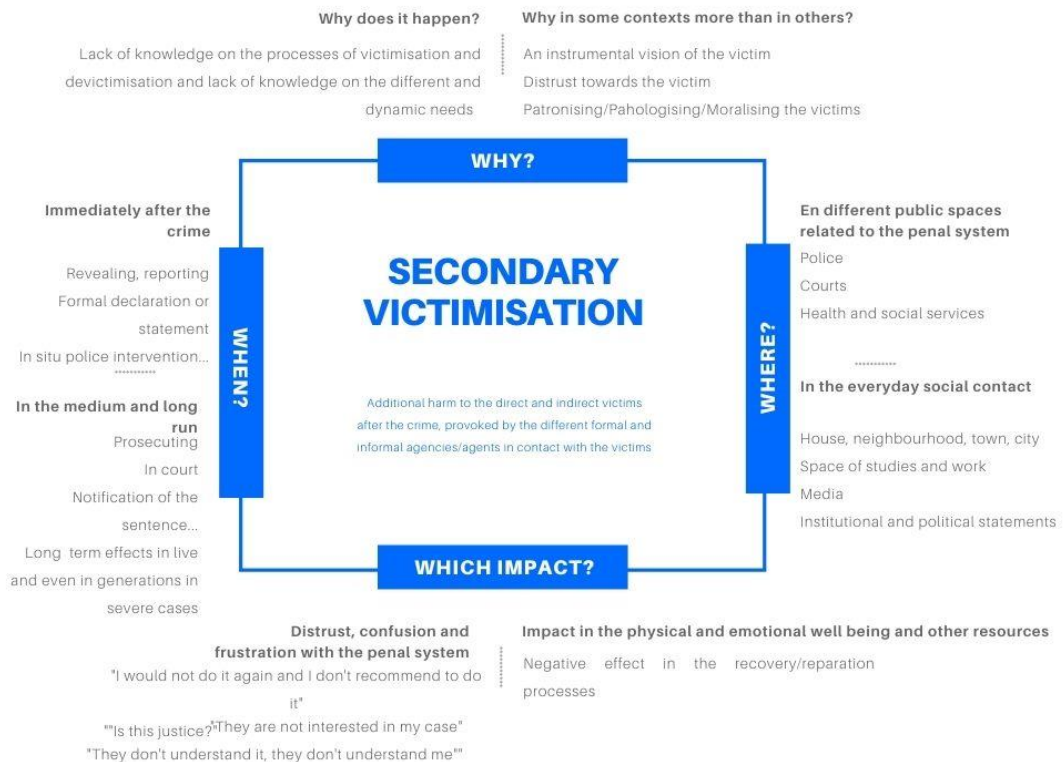
**The vicious circle of hidden victimisation: Davies, Francis and Jupp (1999) on white collar crimes:**



*Image 27: The vicious circle of hidden victimisation*

**1. 2. 5 Secondary victimisation**

Defined in a previous section, secondary victimisation can be explained through the following images where the sum of primary and secondary victimisation can be called cumulative victimisation.



*Image 27: Secondary victimisation (1)*

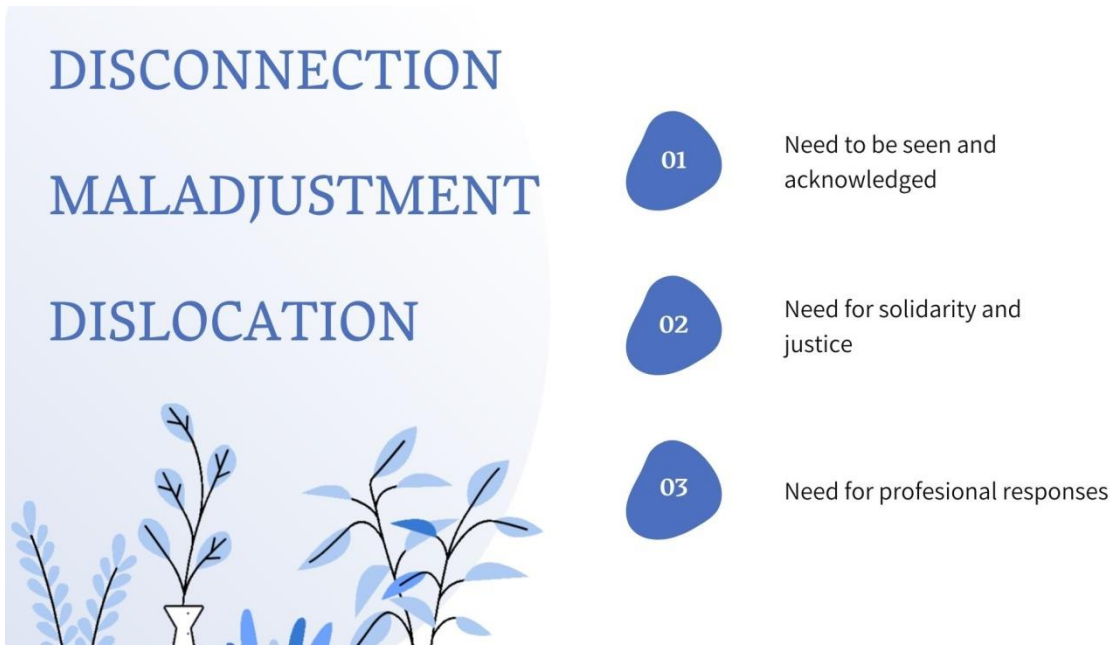
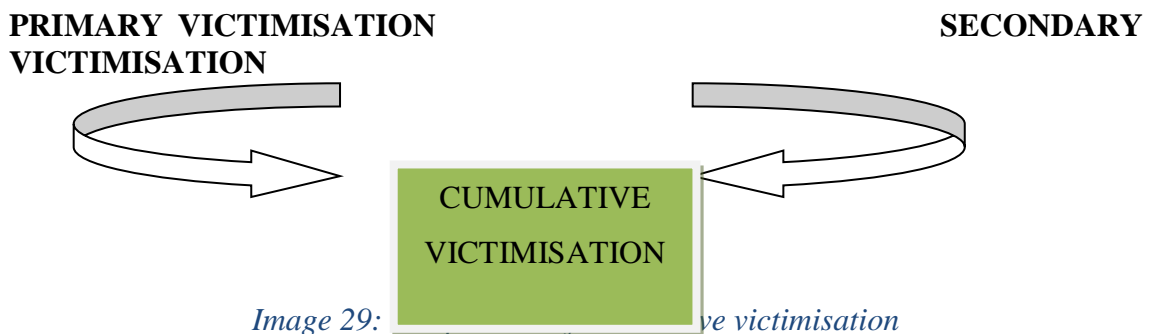
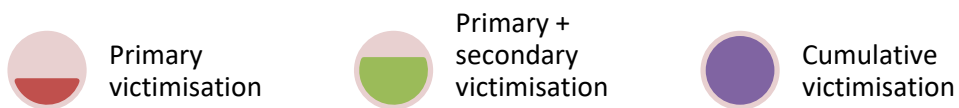


Image 28: Secondary victimisation (2)



**1. 2. 6 How to minimize secondary victimisation**

Secondary victimisation might be minimised by applying some principles coming from integrative law and justice, including procedural justice, restorative justice and therapeutic jurisprudence (Wemmers et al., 1995; Winick, 2003), as shown in the following images.



*Image 30: Elements of integrative law and justice*



*Image 31: Verification list to derive victims to other services according to their needs*

## PREPARATION FOR THE COMMUNICATION WITH VICTIMS AND THE COMPANIONS OF THEIR CHOICE



### LANGUAGE

- Precise and clear, not bureaucratic.
- Facial expression and body language: interest, understanding, avoiding judging, visual contact, intervention of two people to be aware of all this and, at the same time, collecting the necessary information on the case.
- Be aware of cultural or other categories of discrimination.

"

### SPACE AND OTHER MATERIAL RESOURCES

Adequate to the characteristics of the persons and their experiences (they can be minors), privacy...

### ATTITUDE

Empathetic, active listening, calm, supportive, respectful, grateful...

*Image 32: Training and preparation for the communication with victims*

## Avoiding the why questions?

BECAUSE THEY ACTIVATE GUILT FEELINGS AND DEFENSE MECHANISMS

Avoid: why didn't you leave before, report before?...

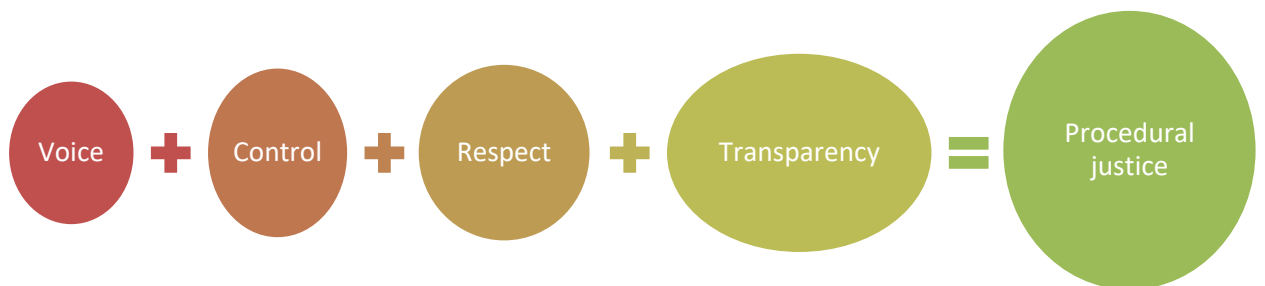
BECAUSE PEOPLE FEEL JUDGED AND THEY ARE CONFUSED

Victims ask themselves why that happened to them. There is no satisfactory answer because human behaviour is not that predictable and preventable and because victims did not deserve the harm suffered.

USE MORE OPEN QUESTIONS: WHAT, HOW?

Less directive questions avoid judging and assuming on very variable and complex experiences of victimisation. Understanding better, without causing added harm, and connecting with victims help gathering information within a proactive, reparative and preventive process of response to the victimisation right from the first contact with authorities.

*Image 33: Avoiding the "why?" questions*



*Image 34: Procedural justice*

In cases of serious victimisations, there might be reasons to apply a (more therapeutic) trauma and violence-informed approach that does not forget the needs for responding to the injustice.

***Four principles for implementing trauma and violence-informed approaches to be applied to many different sectors, including justice, health, anti-violence, social work and housing***

Source: Government of Canada (<https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html>)

***1. Understand trauma and violence and their impacts on peoples' lives and behaviours***

***Service providers***

- *Acknowledge the root causes of trauma without probing. Your clients do not necessarily need to disclose what may have happened to them for you to help them*

*"I know that people who have had difficult experiences often have difficulty trusting people in authority, or have chronic pain."*

- *Pause and reflect when someone acts or reacts in an unexpected way*

*"What happened to this person?" vs. "What's wrong with this person?"*

- *Listen, believe and validate victims' experiences*

*"That sounds like a horrible experience." or "No one deserves to be treated like that."*

- *Recognize their strengths*

*"You have really survived a lot."*

- *Express concern*

*"I am really concerned for your safety."*

***Organizations and systems***

- *Develop organizational structures, policies and processes that foster a culture built on an understanding of how trauma and violence affect peoples' lives*
  - *Develop hiring practices that seek people who understand trauma and violence and reward systems that compensate employees for building*



*their competencies in this area*

- *Train all staff on the connections between violence, trauma and health outcomes and behaviours, including vicarious or secondary trauma*

## **2. Create emotionally and physically safe environments**

### **Service providers**

- *Communicate in non-judgemental ways so that people feel deserving, understood, recognized and accepted*

*“I am happy to see you came in today.”*

- *Foster an authentic sense of connection to build trust*

*“I can see from your body language/face/comments that you don’t agree with what I’ve said. What are you thinking about right now? What are you worried about?”*

- *Provide clear information and consistent expectations about services and programs*

*“I can’t give/provide you with [that service] because of the rules I have to follow. But I’d like to help you find other ways to help manage your situation.”*

- *Encourage clients to bring a supportive person with them to meetings or appointments*

*“If bringing a family member or friend or someone else would help you feel more comfortable at our next meeting, you are more than welcome to do so.”*

### **Organizations and systems**

- *Walk through your practice setting to see and assess how a client might experience each moment. This simulation can help identify where improvements can be made. For example:*

- *Travel to the site on bus and see what it feels like to arrive at the service site. Is it difficult to access?*
- *Spend time in the waiting area, fill out the forms and experience how long a client might wait to be seen.*
- *Go through all client activities, such as being asked to undress/put on a gown, being physically examined or asked sensitive questions.*

- *Pay attention to welcoming intake procedures and signage, comfortable physical space, consideration of confidentiality*

- *Seek client input for inclusive and safe strategies*
- *Create policies and structures to allow clients to bring a support person with them to meetings*

- *Provide support for service providers at risk of secondary trauma and facilitate their self-care.*

- *Consider peer support, regular clinical supervision and self-care programs.*

## **3. Foster opportunities for choice, collaboration, and connection**

### **Service providers**

- *Provide choices for treatment and services, and consider the choices together*

*“Last time you were here, we had a plan to try [strategy x]. How did that work out for you? What about our plan would you like to change?”*

- *Communicate openly and without judgement*

*“In order to provide the best care possible, it’s helpful for me to know about people’s alcohol use. Could you tell me how much you drink? IF YES, “okay, and can you tell me how often you drink? for example, most days? once a week? once a month?”*

*NOTE: Start with most days.*

- *Provide the space for clients to express their feelings freely*

*“Is there anything you would like to tell me that might be helpful for our work together?”*

- *Listen carefully to the client's words and check in to make sure that you have understood correctly*

*"So it sounds like your living situations is ... difficult, stressful, etc."*

***Organizations and systems***

- *Offer training and professional development opportunities for staff on:*
  - *the importance of critical self-reflection on power differences between practitioners and clients*
  - *how experiences of violence can influence the way that clients engage with providers*
- *Set expectations, create opportunities and provide the time and space for collaborative relationships to be formed between (e.g. generous appointment time allocations, clients' advisory mechanism)*

***4. Provide a strengths-based and capacity-building approach to support client coping and resilience***

***Service providers***

- *Help clients identify their strengths, through techniques such as motivational interviewing, a communication technique that improves engagement and empowerment*
- *Acknowledge the effects of historical and structural conditions on peoples' lives*  
*"Life circumstances often make it difficult to move forward in your life, like finding housing or getting a job."*
- *Help people understand that their responses are normal*

*"It's understandable that you feel angry about being treated unfairly. It sounds like you feel you were dismissed."*

- *Teach and model skills for such as calming, centring and staying present*

***Organizations and systems***

- *Provide sufficient time and resources to support meaningful engagement between practitioners and clients*
- *Offer a range of services and interventions that respond to people's needs, strengths and contexts*
- *Foster an organizational culture that recognizes the importance of emotional intelligence and social learning in the workplace*

*Table 4: Principles for trauma/violence informed-approaches by the Government of Canada*

## 1. 2. 7 Resilience and post-traumatic-growth



Image 35: Kintsugi. Source: <https://esprit-kintsugi.com/en/quest-ce-que-le-kintsugi/>

According to the victim of the Holocaust<sup>39</sup> and neurologist, Dr. Boris Cyrulnik, an area of ground is resilient “if, after a flood or a fire, it is able to provide life for new plants, new animals, starting another kind of life. It is not the same as before but renewed”. Resilience is a process, not a result, in which two things are needed, in Cyrulnik’s words:

- i) Affectivity (to receive feelings of affection beyond words).
- ii) Narrative (to give meaning to what happened with words).

The *Manitoba Trauma Information & Education Centre* (2013) distinguishes general, relationship, community, cultural and physical ecology factors of resilience:

1) General factors of resilience are: assertiveness; ability to solve problems; self-efficacy; ability to live with uncertainty; self-awareness; a positive outlook; empathy for others; having goals and aspirations; ability to maintain a balance between independence and dependence on others; appropriate use of or abstinence from substances like alcohol and drugs; a sense of humour; and a sense of duty (to others or self, depending on the culture).

2) Relationship factors are parenting that meets the child’s needs; appropriate emotional expression and parental monitoring within the family; social competence; the presence of a positive mentor and role models; meaningful relationships with others at school, home, and perceived social support; and peer group acceptance.

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<sup>39</sup> In an interview, Cyrulnik recalls: “I think my first years in life were very happy, but due to the war my father joined the French army 1939, ended up in hospital and was then arrested in the hospital by the police of the country for which he was struggling and he disappeared in Auschwitz. My mother was arrested three years later 1942 and disappeared in Auschwitz as my whole family did. I was left alone 5 years old and it was a real trauma. However, I was soon surrounded by a lot of good people. I did not know their names, who they were, but they were around me and I trusted them very much and I developed resilience (...) Triggering a process of resilience is about escaping the prison of our past. Psychosomatic syndrome, to be traumatized, means to be a prisoner of our past, to keep on thinking about the same images, same words, same scenery. Being unable to talk about other things (...) To trigger resilience in a traumatized person, we must help him or her to start thinking about a project, a dream. If we can help him or her have visions, ideas, plans for the future, it is the starting point of a process of resilience”. Source: <https://www.sohforum.org/2020/01/22/what-is-resilience-interview-with-dr-boris-cyrulnik/>.

3) Community factors are: opportunities for age-appropriate work; avoidance of exposure to violence in one's family, community, and with peers; government provision for children's safety, recreation, housing, and jobs when they are at the appropriate age to work; meaningful rites of passage with an appropriate amount of risk; tolerance of high-risk and problem behaviour; safety and security; perceived social equity; and access to school and education, information, and learning resources,

4) Cultural factors: are affiliation with a religious organization; tolerance for different ideologies and beliefs; adequate management of cultural dislocation and a change or shift in values; self-betterment; having a life philosophy; cultural and/or spiritual identification; and being culturally grounded by knowing where you come from and being part of a cultural tradition that is expressed through daily activities.

5) Among physical ecology factors, we can find access to a healthy environment; security in one's community; access to recreational spaces; sustainable resources; and ecological diversity.

### *Post-traumatic growth*

On post-traumatic growth, *the Manitoba Trauma Information & Education Centre*<sup>40</sup> states the following:

The research suggests that between 30-70% of individuals who experienced trauma also report positive change and growth coming out of the traumatic experience (Joseph and Butler, 2010). Post traumatic growth is defined as the "experience of individuals whose development, at least in some areas has surpassed what was present before the struggle with crises occurred. The individual has not only survived, but has experienced changes that are viewed as important, and that go beyond the status quo" (Tedeschi and Calhoun, 2004). Individuals have described profound changes in their view of "relationships, how they view themselves and their philosophy of life" (Joseph and Linley, 2006).

What is essential to keep in mind is that post-traumatic growth is not a direct result of trauma but rather related to how the individual struggles as a result of the trauma (Tedeschi and Calhoun, 2004). There are a number of things that people who have experienced trauma and subsequent growth identify that was significant to their struggle. These include: having relationships where they felt "nurtured, liberated or validated" in addition to experiencing "genuine acceptance from others" (Woodward and Joseph, 2003). The ability to connect with people who are able to provide this level of assistance and support through active, attentive and compassionate listening can lead to not only to recovery but can foster post-traumatic growth. This may include a therapist, close friend, family member, spiritual leader and/or mentor.

It is important not to minimize the impact of the trauma in an effort to promote post-traumatic growth. This is not always the outcome for individuals who have experienced trauma and it's important not to imply any failure or minimize the impact of the trauma. It is also important to be aware that even in the presence and development of post-traumatic growth it doesn't mean that there is an absence of distress. Both can occur simultaneously. Post-traumatic growth can be considered an outcome as well as a process. It is about maintaining a sense of hope that not only can a person who has experienced trauma survive but they can also experience positive life changes as a result. Keeping in mind it is not the event that defines post-traumatic growth but what can develop from within the person and service providers can play a significant role in this process.

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<sup>40</sup> See at <http://trauma-recovery.ca/resiliency/post-traumatic-growth/>.

## 2. Key concepts to recap

Accumulative victimisation  
Chronic victimisation  
Compensation  
Devictimisation  
Diffuse victimisation  
Direct and indirect victims  
Guarantees of non-repletion  
Hidden victimisation  
Polyvictimisation  
Post-traumatic growth  
PSTS  
Recovery  
Reparation  
Repeat-victimisation  
Resilience  
Restitution  
Restoration  
Revictimisation  
Secondary victimisation  
Secondary victimisation  
Tertiary victimisation  
Theories on victimisation and devictimisation  
Victim circle  
Victim impact  
Victim risk  
Victimisation  
Victimism  
Victim-offender overlapping  
Vulnerability

## 3. Thinking Victimology

1) According to Hall (2021), on counting crime victims (and victimisation) by UK police:

The picture of crime generated by police records was thus increasingly said to be inconsistent, missing many offences and reflecting a widespread dismissal of victims' perspectives (see Tarling and Morris, 2010). Critical criminologists, and particularly feminist criminologists, emphasised that certain forms of victimisation, and notably certain forms of victim, were being repeatedly dismissed by police. Indeed, in a wider sense it was such revelations that lead to a shift in the focus of Victimology away from its positivist roots towards becoming a subdiscipline concerned with victims' lived experience and their treatment by the criminal justice system as a whole (see McGarry and Walklate, 2015). As such, the 'no-criming' of certain offence types has been widely explored by the victimological literature: most prominently in the areas of domestic abuse and sexual crime. As a consequence, significant research evidence has developed which highlights the traditional lack of belief by police of victims alleging rape or other sexual assault (Payne, 2009) especially when perpetrated within existing personal, family or intimate relationships (Hickman and Simpson, 2003) (...) This leaves us with the question of whether victims are once again – as they have so many times before – being

employed here as a convenient driver for a quite different set of policy goals, furthering a more streamlined and marketised version of the criminal justice system and, at worst, potentially expanding a culture of control.

2) In the Spanish literature, tertiary victimisation refers to the additional (generally unintentional) pain provoked by the execution of the penalty on offenders, including the impact on their own health, rights, family (mainly children) etc. Due to the human rights obligations of the States towards sentenced offenders and inmates, tertiary victimisation suffered by offenders might respond to multiple factors. Please, consider the following international standards and think about the victims' interests in their fulfilment in a democratic state. Consider how human rights and the humanity principle in the criminal justice system apply to both victims and offenders in a non-antagonistic perspective.

### **TERTIARY VICTIMISATION AND INTERNATIONAL LEGAL STANDARDS**

#### **1) UNITED NATIONS**

<https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html>

-On Mandela Rules (2015) <https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/>

See 2 minute video at <https://www.penalreform.org/resource/the-nelson-mandela-rules-an-animated-introduction/>

-The [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \('the Bangkok Rules'\)](https://www.penalreform.org/issues/women/bangkok-rules-2/) were adopted by the UN General Assembly in December 2010: <https://www.penalreform.org/issues/women/bangkok-rules-2/>

-United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985.

-Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules) f

-Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002

-Handbook for alternatives to imprisonment (2007) at [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_of\\_Basic\\_Principles\\_and\\_Promising\\_Practices\\_on\\_Alternatives\\_to\\_Imprisonment.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf)

#### **2) THE COUNCIL OF EUROPE**

<https://www.coe.int/en/web/prison>

See in particular: <https://rm.coe.int/compendium-e-2019/16809372d2>

Consider the role of the European Covenant on Human Rights (Court) (<https://echr.coe.int/Pages/home.aspx?p=home>) and the European Convention against Torture (Committee) (<https://www.coe.int/en/web/cpt>), both on prison and other detention centres (eg: for migrant persons).

*Table 5: Tertiary victimisation and international legal standards*

#### **4. Applying Victimology**

1) Aware of the fact of hidden victimisation, design a questionnaire for a victim survey (either general or for a specific crime or group of victims). Explain your choices in framing the questions (and answers) and in the way you would administer that survey.

2) Think about the stories of these five women and a man, victims of terrorism and sexual aggression, and their experiences on victimisation and devictimisation. If you could interview them in-depth for victimological research, what (general/specific) question/s would you ask them?:

- a) Irene villa, author of *Los ochomiles de la vida* (see, among other videos, at <https://www.rtve.es/television/20201106/irene-villa-nuevo-libro-ochomiles-vida/2053645.shtml>).
- b) Gill Hicks, author of *One Unknown: A powerful account of survival and one woman's inspirational journey to a new life*, at [https://www.ted.com/talks/gill\\_hicks\\_i\\_survived\\_a\\_terrorist\\_attack\\_here\\_s\\_what\\_i\\_learned](https://www.ted.com/talks/gill_hicks_i_survived_a_terrorist_attack_here_s_what_i_learned).
- c) *I have Life-Raped, Stabbed & Left for Dead: Allison's Inspiring Story of Survival as Told to Marianne Thamm* (2004) (Alison Botha, South Africa), at <https://www.youtube.com/watch?v=RfwmkFhYt9o>.
- d) Susan Brison, author of *Aftermath*, at <http://susanbrison.com/>. See also at <https://www.youtube.com/watch?v=OYLN5K6ISrc>.
- e) Chanel Miller, author of *Know my name*, at <https://www.chanel-miller.com/>.
- f) James Rhodes, author of *Instrumental*, at [https://www.youtube.com/watch?v=p\\_HYlhzaW5c](https://www.youtube.com/watch?v=p_HYlhzaW5c).
- 3) See the Protasis project at <https://protasis-project.eu/> and draft one-day training with police, in order to consider victims' rights and avoid secondary victimisation, considering potential topics and dynamics (<https://protasis-project.eu/informational-material/>).

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## V. INTERNATIONAL LEGAL STANDARDS AS A RESPONSE TO GENERAL VICTIMISATION

### 1. International standards: Soft and hard international law

Today we have an international *corpus iuris* on victims' rights composed of soft (non-binding but benchmarking for best minimum standards) and hard (mandatory and judicially enforceable) law.

#### 1. 1. Universal standards proclaimed by the United Nations

According to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34, 29 November 1985, of the 96<sup>th</sup> plenary meeting), considered soft law, victims of crime and victims of abuse of power must have their rights recognised. This Declaration was the first international norm on victims of crime and abuse of power in general and it still represents the best minimum standards on the specific human rights of victims. It has informed further legal developments and policies in many countries and also the legislation of the European Union.

In Part A of the Declaration, victims of crime are the focus of the following provisions:

- 1. "Victims" mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
- 2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.
- 3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinions, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

In Part B of the Declaration, victims of abuse of power are defined and their rights recognised as follows:

- 18. "Victims" mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.
- 19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support. 20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.
- 21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

In 1999 two handbooks (for practitioners and policy makers) on the application of this Declaration were published.

Moreover, according to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted and proclaimed by the General Assembly resolution 60/147 of 16 December, 2005), also soft law:

- 10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.
- 11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:
  - (a) Equal and effective access to justice;
  - (b) Adequate, effective and prompt reparation for harm suffered (full and effective reparation, as laid out in principles 19 to 23, include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition);
  - (c) Access to relevant information concerning violations and reparation mechanisms.

### **1.2 Council of Europe conventions and recommendations**

At the level of the Council of Europe, the following provisions can be mentioned (all soft law, except for the Conventions ratified in every country):

1. European Convention on the Compensation of Victims of Violent Crimes of 1983, No.116. It covers intentional violent crime, only when compensation is not fully available from the offender or other means. Compensation should cover loss of earnings, medical expenses, hospital fees, and loss of maintenance (in the case of the victim's dependants).

2. Recommendation No. R(85)11 on the position of the victim in the framework of criminal law and procedure.

3. Recommendation No. R(87)21 on assistance to victims and the prevention of victimisation. The document recommends that member states take measures to prevent victimisation, conduct research on victimisation, and make every effort to raise public awareness of victims' needs.

Its guidelines concern particular efforts to be made to define major forms of assistance (with special services for special typologies), i.e., satisfying the victim's immediate needs, especially the need for security; providing medical, psychological, social, and material help; providing information on the victim's rights and advice; preventing further victimisation; providing assistance during the criminal procedure and helping the victim in obtaining effective reparation or compensation.

### **1.3 European Union legislation**

In the European Union, all Directives are mandatory and directly enforceable if not transposed into national legislation within the foreseen deadline. According to the European Union portal, the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime ensures that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice. The Directive replaces the 2001 Framework Decision on the standing of victims in criminal proceedings and strengthens the rights of victims and their family members to information, support and protection and victims' procedural

rights in criminal proceedings. The Directive also requires that the Member States ensure appropriate training on victims' needs for officials who are likely to come into contact with victims and encourage cooperation between Member States and coordination of national services of their actions on victims' rights<sup>41</sup>, procuring the collection of information for evaluation.

Moreover, the European Commission (2020b), in its report to the European Parliament and the Council on the implementation of Directive 2012/29/EU<sup>42</sup>, recalls that the Directive required that Member States, by 16 November 2017 and every three years thereafter, to communicate to the Commission available data showing how victims have accessed the rights set out in this Directive (Article 28). The data should include at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims (recital 64).

The first two articles of the Directive, applicable in the Member States since November 2015<sup>43</sup> read as follows:

Art 1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

Article 2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

However, in comparison to the UN Declaration, the definition of victim is restricted. Thus Art. 2. 1 states the following:

(a) 'victim' means:

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<sup>41</sup> See also the reports of the EU Commission and Parliament on monitoring the correct implementation of the Directives on victims' rights (European Commission 2020b). See the jurisprudence of the European Court of Human Rights (on positive obligations, among other issues) (<https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c>) and the case-law of the EU Court of Justice (<https://eur-lex.europa.eu/collection/eu-law/eu-case-law.html>). The position of the Commission Coordinator for victims' rights was set up in 2020 in the context of the EU Strategy on victims' rights (2020-2025). The Coordinator ensures consistency and effectiveness of actions in relation to the victims' rights policy. In particular, the Coordinator is responsible for ensuring implementation of the EU Strategy on victims' rights (2020-2025). The Coordinator synchronizes the victims' rights related actions of other EU level stakeholders ([https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/ec-coordinator-victims-rights\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/ec-coordinator-victims-rights_en)).

<sup>42</sup> As the European Commission (2020b) mentions, in 2018 the European Parliament published a report on the implementation of the Directive, based on a study from 2017. The European Parliament also looked into the Victims' Rights Directive in a general study on criminal procedural law in the EU, published in 2018. In 2019, various stakeholders published additional reports on the implementation and application of the Directive (a report by Special Adviser to President Juncker, Joëlle Milquet, on 'Strengthening victims' rights: from compensation to reparation' published in March 2019, Four reports by the Fundamental Rights Agency on Justice for victims of violent crime, published in April 2019, and VOIARE synthesis report by Victim Support Europe, published in June 2019).

<sup>43</sup> The Directive is binding on all Member States with the exception of Denmark.

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death

(b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim.

The previous Directive 2004/80/EC relating to compensation for crime victims provides that persons can apply for state compensation when they have fallen victims to crime abroad, and receive assistance to do so. The Directive requires that all Member States have a state compensation scheme which provides fair and appropriate compensation to victims of intentional violent crime. That 2004 Directive also creates a system of cooperation between national authorities for the transmission of applications for compensation in cross-border situations and victims of a crime committed outside their Member State of habitual residence can turn to an authority in their own Member State to submit the application and get help with practical and administrative formalities.

With regard to specific groups of victims, the EU legislation further establishes protection and support for victims of human trafficking<sup>44</sup> and child victims of sexual exploitation and child pornography<sup>45</sup>. On 15 March 2017, the European Union adopted Directive (EU) 2017/541 on combatting terrorism (the Counter-terrorism Directive) with a Chapter V on provisions for protection of, support to, and rights of victims of terrorism.

The EU also offers trans-border protection, particularly in gender and domestic violence. Thus, the Directive 2011/99/EU on the European Protection Order (EPO) sets up a mechanism allowing persons who benefit from a protection order in criminal matters issued in one Member State to request a European Protection Order. Such an order allows for protection also in other Member States where the protected person travels or moves. Protection orders covered by the Directive concern situations where victims, or potential victims, of crime benefit from a prohibition or regulation of entering certain places, being contacted or approached by a person causing risk. The Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters sets up a mechanism allowing for direct recognition of protection orders issued as a civil law measure between Member States. Thus, persons who benefit from a civil law protection order issued in the Member State of their residence may invoke it directly in other Member States by presenting a certificate to competent authorities certifying their rights.

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<sup>44</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Among other rights, Member States shall ensure that victims of trafficking in human beings have legal representation and access to existing schemes of compensation to victims of violent crimes of intent.

<sup>45</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA is aimed at combating sexual offences committed against children.

Finally, for all victims, in the proposal for an EU strategy on victims' rights (Milquet, 2019, p. 16)<sup>46</sup>, it is underlined that, as mentioned above, according to international law and international agreements, full and effective reparation should include, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, underlining that all aspects of reparation are strongly connected and interlinked.

**Restitution** consists of measures trying to re-establish, as much as possible, the situation of the victim prior to the violation but in including when needed the irreversible effects of the violent act (...). **Compensation** is a specific form of reparation provided to victims when replacement or recovery is not possible. This applies for instance to victims of rape or terrorism where the experience, psychological consequence or other cannot be erased. The financial compensation can pertain to pecuniary (monetary) or non-pecuniary losses. Money will be used not to replace but form a monetary substitute for the pre-victimisation status. But money is insufficient to provide reparation for victims. That is why support services must also be included in a broader definition of compensation. **Rehabilitation** is the provision of medical and post-trauma or psychological care, as well as additional social services that foster the rehabilitation of a victim. **Satisfaction/Recognition** refers to forms of reparation that include 'full and public verification of the facts, and formal acceptance of any State responsibility'. The concept of satisfaction is closely linked to the recognition of victims. **Guarantees** of non-repetition or non-recurrence is a form of reparation where governments and actors take the necessary responsibility and actions to protect the victims and reduce the risk of repetition (...) (Milquet, 2019, p. 16).

In any case, even if the major needs of victims have become rights in international standards (in terms of information, protection/prevention, access to justice, fair treatment, -psychological, social, material- support and reparation), the challenge of the real enforcement and actual impact of those rights on victims remain. According to the Commission (2020b):

The implementation of the Directive is not satisfactory. This is particularly due to incomplete and/or incorrect transposition. (...) This report also raises numerous concerns on the practical implementation of the Directive. Shortcomings in implementation of some key provisions of the Directive, such as access to information, support services and protection in accordance with victims' individual needs, were found in most Member States. It seems that the provisions related to procedural rights and to restorative justice are less problematic<sup>47</sup> (...) Infringements for incomplete transposition are currently on-going against most Member States. If necessary, the Commission will open further infringements proceedings for incorrect transposition and/or incorrect practical implementation.

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<sup>46</sup> This document proposes a 'paradigm shift' from an approach based on victim's needs for limited financial support to a more ambitious and fairer approach based on victim's rights to reparation for the harm suffered". See the final document on the EU Strategy in European Commission (2020a).

<sup>47</sup> According to the report: "The Directive does not oblige Member States to introduce restorative justice services (...). A large number of Member States concerned have failed to transpose completely one or more of the minimum conditions for restorative justice set out in Article 12(1). Examples of incomplete or incorrect transposition include a lack of the obligation that victims give 'informed' consent to participate in the process or a lack of guarantee to inform the victims on the potential outcomes of the process. On facilitating the referral of cases to restorative justice services (Article 12(2)), a few Member States were found to have no specific measures in place".

Moreover, the Commission (2020b) recalls that the Victims' Rights Directive provides for minimum standards on victims' rights. Member States can and are encouraged to go beyond these minimum standards.

**Source: European Commission (2017) *The Victims' Rights Directive What does it bring? Factsheet, February 2017***



### Did you know?

Every year, an estimated **15 %** of Europeans or **75 million people** in the European Union fall victim to crime.

The New EU rules on victims' rights that apply since 16 November 2015 bring major changes in the way victims of crime are treated in Europe. The Victims' Rights Directive lays down a set of binding rights for victims and clear obligations on EU Member States to ensure these rights in practice.

The aim is that all victims of crime and their family members are recognised and treated in a respectful and non-discriminatory manner based on an individual

approach tailored to the victim's needs. They change attitudes towards victims and place victims at the centre of criminal proceedings. The rules improve the situation of millions of victims in Europe.

They apply to all people who fall victim to crime in Europe regardless of their nationality.



## 1. Rights of victims' family members

When victims die as a result of the crime, their family members become victims too. Under the new rules, family members of deceased victims will enjoy the same rights as direct victims, including the right to information, support, protection and compensation. Family members of surviving victims also have the right to support and protection.

Ellie's husband was killed in a terrorist attack. From now on, she has exactly the same rights as any other victim of crime under the Directive, including the right to information, support, protection and compensation.

Tim's mother is abused and the crime is reported to the police. As the child of a victim of crime, Tim has the right to support and protection according to his individual needs.



## 2. Right to understand and to be understood

Under the new rules, all communication with victims must be provided in a simple and accessible language. The form of communication must be adapted to the specific needs of every victim, including, for example, needs related to age, language and any disability.

Alberto is a young child aged six and becomes the victim of a crime. All people who come in contact with him must use language that is adapted to his age. They must also make sure that they understand what he is trying to tell them.

Mathilda is autistic and falls victim to hate crime. The police and all those coming into contact with her throughout the court proceedings must ensure that information is provided to her in a way that is adapted to her needs.



Mathilda is autistic and falls victim to hate crime. The police and all those coming into contact with her throughout the court proceedings must ensure that information is provided to her in a way that is adapted to her needs.



### 3. Right to information

The new rules require that national authorities give victims a range of information concerning their rights, their case and the services and assistance available to them. For example, they must be informed about the type of support they can obtain, the procedure to make a complaint, how and under what conditions they can obtain protection, legal advice or compensation. The information must be given from the first contact with a competent authority and without delay.

If criminal proceedings are launched, victims - if they so wish - must be informed about their case including the time and place of the trial, any final judgement or important steps in the case. The victims should also be offered the possibility to receive notification about the release or escape of their offender.

Thomas is a British citizen on holiday in Germany. His car is stolen and he reports the crime to the police however he cannot manage to explain all the details of what happened in German. The police arranges for an interpreter so he can explain what has happened and can receive information. He also receives an information sheet in English. When the investigation starts, he is kept up to date with the investigation, is informed about the decision to go forward with the prosecution and the date of the trial. When the offender is sentenced to prison, he is asked if he wants to be informed when the person is released.



#### 4. Right to support

Member States must guarantee that victims have access to support services and must facilitate the referral from authorities to such services. Support must be free of charge and confidential and available also to victims who do not officially report the crime. Support must include both general support services and specialist support services, such as shelters, trauma support and counselling specifically adapted to different types of victims.

Maya is a refugee fleeing from Syria. She falls victim to violence in Europe but does not want to officially report the crime to the police. A social worker gets into contact with her. The social worker refers her to a specialist support service, where she will find shelter and will receive information, advice and emotional and psychological support.



#### 5. Right to participate in criminal proceedings

Victims are entitled to get a more active role in criminal proceedings. They have the right to be heard and be informed about the different steps of the proceedings. In particular, they must be informed if the offender will not be prosecuted and have right to have such a decision reviewed if they do not agree with the decision. They also have the right to compensation and if restorative justice proceedings are used in the national system, there are now safeguards in place to ensure victims' safe participation.

Emilie's case is dismissed due to lack of evidence. She requests the public prosecutor's office to review the decision and the case is checked by another prosecutor who finds additional evidence to base a prosecution. She is heard during investigation and at the trial. She files a compensation claim which is dealt with in the criminal proceedings and receives a decision on compensation from the offender at the end of the trial.



#### 6. Right to protection and to individual assessment

Victims must be protected from both the offender and from risk of further harm by the criminal justice system itself. In order to determine their protection needs, all victims must receive an individual assessment to see whether they are vulnerable to further harm that may arise during the criminal proceedings. If so, special protection measures must be put in place to protect them during the proceedings and against any possible threat from the offender. Special attention is given to the protection of children.

László and his family are assaulted in their home by armed robbers. The police asked them about any possible needs for protection or assistance during proceedings. During the criminal investigation that followed, the questioning of the parents was kept to a minimum and was always conducted by the same police officer, and their children were only interviewed once by a specialised officer to avoid any risk of harm. When the case went to court, they could wait in a separate waiting room so they did not have to face the perpetrators outside the court room.

**Source: European Commission (2017) *The Victims' Rights Directive What does it bring? Factsheet, February 2017***

*Image 36: The Victims' Rights Directive What does it bring?*

## 2. Key concepts to recap

Empowerment  
Guarantees of non-repetition

Hard versus soft law  
 International minimum standards on victims' rights  
 Judicial supervision of rights  
 Needs and rights  
 Participation in the criminal process  
 Patronising  
 Right to access to justice  
 Right to be treated with empathy  
 Right to fair treatment  
 Right to information  
 Right to protection  
 Right to reparation  
 Rights implementation and monitoring  
 Rights model versus assistance model  
 Victim legal status  
 Victims' rights commissioner

### 3. Thinking Victimology

According to the European Union<sup>48</sup>:

People falling victim to crime have a range of needs, varying from victim to victim. To meet these needs, all victims must be treated individually. However, the needs of victims can be grouped into five broad categories:

- respectful treatment and recognition as victims,
- protection from intimidation, retaliation and further harm by the accused or suspected and from harm during criminal investigations and court proceedings,
- support, including immediate assistance following a crime, longer-term physical and psychological assistance and practical assistance,
- access to justice to ensure that victims are aware of their rights and understand them, and are able to participate in proceedings,
- compensation and restoration, whether through financial damages paid by the state or by the offender or through mediation or other forms of restorative justice.

Do you think that these needs have become rights nowadays in the European Union? Could you explain the difference between needs and rights and the consequences of naming needs as rights?

### 4. Applying Victimology

Read the following table, an excerpt from Milquet (2019), and try to add more challenges in relation to the European Union action towards victims by writing a letter to the email address of the EU Commission Coordinator on victims' rights<sup>49</sup>. Please, explain why attention should be paid to certain victims or aspects of victimisation and reparation processes not considered or insufficiently considered up to now.

**Source: Milquet (2019)**

#### **1. State of play**

In Europe 75 million people become victims of serious crimes every year. That's 15%

<sup>48</sup> See the European Union portal at [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights-eu\\_en#:~:text=The%20Victims'%20Rights%20Directive%20establishes,support%20and%20access%20to%20justice.](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en#:~:text=The%20Victims'%20Rights%20Directive%20establishes,support%20and%20access%20to%20justice.)

<sup>49</sup> See at [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/ec-coordinator-victims-rights\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/ec-coordinator-victims-rights_en).

of the population, or 200,000 victims every day. One in three women report being sexually or physically abused. In 2016, around 5 200 intentional homicides and over 1.3 million home burglaries were reported. Millions more are being defrauded, robbed or physically assaulted. Eurostat even reports a rise in physical assaults in the last years. One in five children under the age of 18 in Europe is a victim of sexual violence. In 70-85% of cases, the perpetrator is a person known to the child and part of their “circle of trust”. Concerning victims of terrorism only in 2017, 88 EU citizens were killed, 70 of them in the EU territory and 18 Europeans died in attacks outside the EU’s borders. With regard to the victims of terrorism in the period of 2000-2017 there were 1790 victims killed including 740 victims killed in the European Union and 1050 European victims killed outside the European Union. Among the 740 victims killed in the EU, 614 were EU nationals, 117 were of another nationality and 9 unknown nationalities. The Member State most affected by terrorist acts since 2000 is Spain with 269 victims, including 203 victims of the Madrid attack. Spain is followed by France with 254 victims including 151 victims of the Paris attacks and the United Kingdom with 120 including 67 in London. Attacks in Paris (2015), Brussels, Nice, Berlin (2016), London, Barcelona (2017) and Strasbourg (2018) demonstrate the devastating impact of jihadist/extremist terrorism in Europe and the high number of cross-border cases. However, it is necessary to recall that these figures concern only the victims who died during these attacks but this number can be largely multiplied if we count the number of injured or the relatives of the victims. There is also an underestimation of the actual number of victims. Many violent crimes are unreported with, for example, studies pointing to only 10% of child abuse cases reported to the police. 20,532 victims of trafficking in human beings were registered in the EU Member States over the two years of 2015 and 2016. Trafficking has a strong gender dimension: 68 % of registered victims for all forms of exploitation were female. Trafficking for sexual exploitation remains the most widespread form (56%) within the EU.

## **2. New threats and challenges**

### **a) Increased mobility of persons**

It is unquestionable that the European area of freedom security and justice has brought great advantages to EU citizens. It brought however also new challenges and new European responsibilities vis-à-vis EU citizens. The principle of free movement within the European Union has led to an increase in the number of individuals working, studying or travelling abroad. Around 13.6 million EU citizens live for diverse reasons in a Member State that is not the Member State where they were born in. Over the last few decades, crime is becoming increasingly globalized, posing particular challenges to national criminal justice systems. With the increased mobility of people in the EU and the increasingly globalized nature of crime, more and more people are becoming victims of crime in a Member State other than their own.

### **b) The rise of the terrorist threat**

Europe has faced a high and evolving terrorist threat over the last decade. While this terrorism threat is shared across the EU, there are differences in the threat level faced by the different Member States. Radicalisation which may be leading – as seen in several cases - to violent extremism and terrorism is not a new phenomenon. Nevertheless, the process is taking place at an alarming speed and scale. Social media as well as a combined interplay of other factors such as sense of injustice and discrimination, identity crisis, social exclusion participate in radicalisation mechanisms at a much faster pace than previously experienced. With the changing threat of terrorism in Europe, new challenges for the EU include securing the rights of cross-border victims which represent a significant percentage of fatal casualties.

Cyberterrorism presents a new and ever-growing threat in the realm of terrorism. CEPOL defines cyberterrorism as ‘the use of computers and/or related technology with the intention of causing harm or damage, in order to coerce a civilian population and influence policy of target government or otherwise affect its conduct’. Similarly, NATO defines cyber-terrorism as ‘[a] cyberattack using or exploiting computer or communication networks to cause sufficient destruction or disruption to generate fear or to intimidate a society into an ideological goal’ .

**c) Cybercrime**

Cybercrime consists of criminal acts that are committed online by using electronic communications networks and information systems. It includes among others harassment, hate speech, child abuse, trafficking or terrorism. Cybercrime poses a real threat for EU citizens and residents. In recognition of this, several EU legislative actions already contribute to the fight against cybercrime. These include the 2011 Directive on combating the sexual abuse and sexual exploitation of children and child pornography as well as the 2013 Directive on attacks against information systems.

**d) Climate change**

1.8 million migrants have come to Europe since 2014. Although recent figures show that the number of migrants and asylum seekers entering the EU has decreased since 2015 – 2016. In many parts of the world and in Europe, people are suffering from growing environmental disasters such as droughts, floods, heatwave and other extreme weather. Due to the effects of climate change, the scale of voluntary or forced environmental migration to Europe is likely to increase.

**e) Trafficking in human beings (THB)**

Trafficking in human beings is yet another current threat to our society. This is also a highly profitable form of crime. The annual profits from all forms of trafficking in human beings are estimated at EUR 29.4 billion globally. Europol equally highlights the profit generated by the trafficking of children. Driven by considerable profits and a very complex the interplay of supply and demand, trafficking involves a complex chain of actors who are knowingly or unknowingly involved.

Moreover, trafficking in human beings is a transnational crime, often involving cross-border movement and exploitation of victims, where for detecting, investigating and prosecuting the crime, there is a need for cross-border cooperation by law enforcement and judicial authorities, including joint law enforcement actions for following the money involved in the crime and seize and confiscate the criminal proceeds.

**f) Racism, homophobia, sexism, gender-based violence**

Moreover, the EU is confronted with new challenges such as populist and extremist movements manifesting in sexist, homophobic and racist hate speech or violent acts. The fear of migration and terrorism increased the number of victims of violent acts based on origin or religious beliefs. The EU is also confronted with resistance to gains made in women’s and girls’ rights. After decades of progress in terms of gender rights, several parts of Europe are currently facing new waves of resistance to progressive gender equality, equal pay and equality in decision-making. The increase in social movements of discontent in Europe can also lead to an increase of violence and therefore there will be more victims of violent acts - as we saw recently in France.

*Table 6: European Union action challenges towards victims (Milquet, 2019)*

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## VI. GENERAL SPANISH LEGISLATION ON VICTIMS' RIGHTS: THEORY AND PRACTICE

### 1. Spanish general legislation on victims' rights

The following legislation constitutes the general framework for victims' rights:

- *Código Penal* (Spanish Criminal Code)
- *Código Civil* (Spanish Code of Civil Procedure)
- *Ley de Enjuiciamiento Criminal* (Criminal Procedure Rules)
- *Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito* (Law 4/2015 of 27 April 2015 on the standing of crime victims)
- *Real Decreto 1109/2015, de 11 de diciembre, por el que se desarrolla la Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito, y se regulan las Oficinas de Asistencia a las Víctimas del Delito* (Royal Decree 1109/2015 of 11 December 2015 implementing Law 4/2015 of 27 April 2015 on the standing of crime victims and regulating the Crime Victim Support Offices)
- *Ley Orgánica 8/2015, de 22 de julio y Ley 26/2015, de 22 de julio, de modificación del sistema de protección de la infancia y de la adolescencia* (Organic Law 8/2015 of 22 July 2015 and Law 26/2015 of 22 July 2015 amending the system for the protection of children and adolescents)
- *Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia* (Organic Law 8/2021 of 4 June 2021, on integral protection to children and adolescents against violence)<sup>50</sup>
- *Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea* (Law 23/2014 of 20 November 2014 on mutual recognition of decisions in criminal matters in the European Union)
- *Real Decreto 671/2013, de 6 de septiembre, por el que se aprueba el Reglamento de la Ley 29/2011* (Royal Decree 671/2013 of 6 September 2013 establishing detailed arrangements for implementing Law 29/2011)
- *Ley 29/2011, de 22 de septiembre, de Reconocimiento y Protección Integral a las Víctimas de Terrorismo* (Law 29/2011 of 22 September 2011 on Recognition and Comprehensive Protection of Victims of Terrorism)
- *Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género* (Organic Law 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender-Based Violence)
- *Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores* (Organic Law 5/2000 of 12 January 2000 regulating the criminal responsibility of children)
- *Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor* (Organic Law 1/1996 of 15 January 1996 on Legal Protection for Children)
- *Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita* (Law 1/1996 of 10 January 1996 on legal aid)

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<sup>50</sup> It contains an amendment to the aggravating circumstance of article 22.4 of the Criminal Code, which states as follows: "Committing the crime on racist, anti-Semitic or other discrimination regarding the ideology, religion or beliefs of the victim, ethnicity, race or nation to which he belongs, his sex, age, orientation, identity, gender, gender reasons, reasons for aporophobia or social exclusion, the disease you suffer or your disability or any other reason based on discriminatory prejudice, regardless of whether such conditions or circumstances surrounding effectively the person over whom the conduct relates to".



- *Ley 35/1995, de 11 de diciembre, de ayuda y asistencia a las víctimas de delitos violentos y contra la libertad sexual* (Law 35/1995 of 11 December 1995 on aid and assistance for victims of violent crimes and crimes against sexual freedom).
- *Real Decreto 738/1997, de 23 de mayo, por el que se aprueba el Reglamento de ayudas a las víctimas de delitos violentos y contra la libertad sexual* (Royal Decree 738/1997 of 23 May 1997 approving the Regulation on aid for victims of violent crimes and crimes against sexual freedom)
- *Ley Orgánica 19/1994, de 23 de diciembre, de protección a testigos y peritos en causas criminales* (Organic Law 19/1994 of 23 December 1994 on protection for witnesses and experts in criminal cases)

### **1. 1 Law 4/2015 of 27 April 2015: Victims' rights to protection, information, understand and be understood, accompaniment, support, access to justice and reparation with respect<sup>51</sup>**

According to the e-justice portal of the European Union<sup>52</sup>, under Law 4/2015 of 27 April 2015<sup>53</sup>, natural persons that are the victims of offences committed in or which may be prosecuted in Spain are considered to be victims of crime, regardless of their nationality, of whether they are of legal age or minors and of whether or not they are legally resident. The provisions of this Law shall apply:

a) As a direct victim, to any natural person who has suffered harm to his or her person or property, especially physical or mental injury, emotional suffering or economic loss directly caused by an offence.

b) As an indirect victim, in the event of death or disappearance<sup>54</sup> of a person directly caused by an offence, except where the events are directly attributable to:

1. The victim's spouse, where they are not legally or effectively separated, and to any children of the victim or of the victim's spouse, where they are not legally or effectively separated, who are living with them at the time of the death or disappearance; any person who, at the time of the death or disappearance, is in a comparable sentimental relationship with the victim and any children of that person who are living with the victim at the time of the death or disappearance; to the victim's parents or direct or third-degree relatives for whom the victim has parental responsibility and persons under the victim's guardianship or who are being fostered by the victim.

2. Where none of the above persons exist, other direct relatives and the victim's siblings, with preference being given to the victim's legal representative.

All victims are entitled to protection, information, support, assistance and care, as well as to participate actively in criminal proceedings and to receive respectful, professional, personal and non-discriminatory treatment from their first contact with the authorities or officials, while victim assistance and support and restorative justice services are being provided, throughout criminal proceedings and for a sufficient period of time after their conclusion, regardless of whether or not the identity of the offender is known and of the outcome of the proceedings.

As a victim of crime, the law grants victims certain individual rights before, during and after court proceedings (trial). Criminal proceedings in Spain start with an investigation

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<sup>51</sup> All the information on this section comes from the English translation provided by the e-justice portal of the European Union.

<sup>52</sup> See at [https://e-justice.europa.eu/content\\_rights\\_of\\_victims\\_of\\_crime\\_in\\_criminal\\_proceedings-171-es-en.do?member=](https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-es-en.do?member=).

<sup>53</sup> See also the Royal Decree 1109/2015, of the 11th of December, developing the Law 4/2015.

<sup>54</sup> The mention to disappeared persons is not included in the Directive, but it corresponds to international human rights minimum standards.

of the crime, conducted by the judicial police under the supervision of an examining magistrate. At the end of the investigation, the examining magistrate sends the case to the public prosecutor who decides what to do next. If there are not sufficient grounds to bring a case against the offender and the public prosecutor fails to press charges, the examining magistrate will dismiss (end) the proceedings. Otherwise, the case will be referred to the relevant court for trial. During the trial, the court examines the evidence and decides whether the alleged offender is guilty or not. If the offender is found guilty the court will impose a penalty. The criminal proceedings may continue with the possibility of an appeal before the higher court.

The victim can take part in criminal proceedings as a witness or have a more active role as a private prosecutor and thus benefit from additional rights derived from being a party to the proceedings. In any case, the public prosecutor shall safeguard the interests of victim/s throughout the proceedings (Article 124 of the Spanish Constitution). The victims of some offences, like those related to gender-based violence (there are special courts for gender-based violence), are assisted by a specialised lawyer from the preliminary enquiries onwards.

From the first contact with the authorities or officials and during intervention by the assistance and support services provided by the public administrations, including prior to reporting the crime, victims have the right to receive protection, information, support, assistance and care.

Public services for victims exist within the court system and they are called victim support offices, created in 1995, although some Autonomous Communities had them before that year<sup>55</sup>. In these offices, victims will be assisted free of charge and confidentially, even if they have not previously reported the crime. Victims may also be accompanied by a person of their choice from the first contact with the authorities and officials. Furthermore, victims have the right to understand and be understood in any action that has to be carried once the crime has been reported, including the information prior to lodging the report, with interpreting being provided in legally recognised sign languages, as well as means of support for oral communication in cases where this is needed. All communication, both oral and written, will take place in clear, simple and accessible language and will take into account the victim's personal characteristics and needs, especially if victims have any sensory, intellectual or mental disability or if the victim is a minor.

### *1. 1. 1 Right to information*

From the first contact with the authorities or officials and during the intervention of the assistance and support services, information will be provided on:

- the procedure for reporting the crime and obtaining advice and the assistance of a lawyer and, where appropriate, the conditions under which this may be obtained free of charge;
- the assistance and support measures available, whether these are medical, psychological or material, and the procedure for obtaining them;
- the possibility of requesting protection measures and, where appropriate, the procedure for doing so;
- the compensation to which victims may be entitled and, where appropriate, the procedure for claiming it;
- the restorative justice services available, in cases where this is legally possible (upon free will and no provoking vulnerability, mediation is only forbidden for

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<sup>55</sup> See at <https://www.mjusticia.gob.es/es/ciudadanos/victimas/oficinas-asistencia-victimas>.

IPV by adult men against women –it is not forbidden, in principles, for cases where the offender is under 18 and are sent to the juvenile justice-);

- the cases in which victims can be refunded for legal expenses and, where appropriate, the procedure for claiming them.

If victims need it, they can also receive information about the interpreting and translation services, and the communication aids and services available. If victims are not resident in Spain, they are entitled to receive information about the procedure for exercising their rights.

#### *Victims living in the EU country where the crime took place*

Crime victims who reside in Spain (EU and non-EU citizens) can report criminal acts that were committed in other European Union countries to the Spanish authorities (victim of a crime in cross-border situations). In the event the Spanish authorities decide not to proceed with the investigation owing to lack of jurisdiction, they will immediately forward the report to the competent authorities of the State where the acts were committed, and they will inform victims of this as the complainant. The Crime Victim Support Offices can provide these victims with information on the legal proceedings to follow in the country where the crime was committed and on the compensation to which victims may be entitled. If it is a terrorist crime, there is a special central office, and victims should contact the Ministry of the Interior's Directorate-General for the Support of Victims of Terrorism (*Dirección General de Apoyo a las Víctimas del Terrorismo del Ministerio del Interior*).

If the victims are not residents in Spain, they have the right to an interpreter free of charge, if they do not speak Spanish or the respective regional language. The police can provide victims with a form in their language for reporting the crime, and access to an interpreter by telephone or in person. The courts have an interpreter service, which will coordinate with the Crime Victim Support Offices. These victims are entitled to receive information about the procedure for exercising their rights.

If victims are the beneficiary of a protection order issued in a Member State, they can request a European protection order. Using a simplified and accelerated process, victims will be granted protection through a new protection measure taken by the Member State to which victims are travelling or moving.

#### *Information to be given after reporting a crime*

At the time of reporting a crime, victims are entitled to receive a duly certified copy of the report. Victims will also be entitled to free language assistance and a written translation of the copy of the their file if victims do not understand or speak any of the official languages of the place where the crime is reported.

Victims will also be entitled to receive information about the following:

- the care and support measures available to them, whether medical, psychological or material and the procedure for obtaining them, including, if necessary and appropriate, information concerning the possibilities of obtaining alternative accommodation;
- the right to give evidence to the authorities in charge of the investigation;
- the possibility of requesting protection measures and, where appropriate, the procedure for doing so;
- the compensation to which victims may be entitled and, where appropriate, the procedure for claiming it;
- the interpreting and translation services available;
- any communication aids and services available;
- the procedures through which victims can exercise their rights if victims live outside Spain;

- the appeals victims can lodge against any rulings victims consider to be incompatible with victims' rights;
- the contact details of the authority in charge of handling the procedure and the communication channels victims can use with them;
- the restorative justice services available;
- the cases in which victims can be reimbursed for legal expenses and, where appropriate, the procedure for claiming them;
- the right to make a general request to be notified of certain decisions in the proceedings such as, among others, the decision not to initiate criminal proceedings, the final judgment in the proceedings, decisions to imprison or subsequently release the offender, as well as the possible escape of the offender from custody, and decisions of any judicial or prison authority affecting persons convicted of crimes committed using violence or intimidation that pose a risk to victims' safety.

Victims will be informed of the date, time and place of the trial, as well as the substance of the charges against the offender.

Where the crimes in question have caused particularly serious damage, the public administrations and Crime Victim Support Offices should extend to the victim's family members the right of access to assistance and support services. To that end, family members are defined as people linked to victims by marriage or similar relationship, and relatives up to the second degree (grandparents, siblings and grandchildren).

#### *1. 1. 2 The right to an interpreter and to translation*

Victims are entitled to be assisted free of charge by an interpreter who speaks a language the victim can understand when they give evidence to the judge, public prosecutor or police officials during the investigation, or when victims appear as a witness in the trial or any public hearing. This right will also apply if victims have hearing or speech impairments.

Victims have also the right to the translation free of charge of certain decisions in the proceedings such as, among others, the decision not to initiate criminal proceedings, the final judgment in the proceedings, decisions to imprison or subsequently release the offender, as well as the possible escape of the offender from custody, and decisions of any judicial or prison authority affecting persons convicted of crimes committed using violence or intimidation that pose a risk to victim's safety, and the decision to close the investigation. Victims can request that the translation include a summary of the grounds of the decision taken;

Victims have the rights to the translation free of charge of any information that is essential for victims to take part in the criminal proceedings. To that end, victims can submit a reasoned request for a document to be considered essential. Victims have the right to be informed, in a language they understand, of the date, time and place of the trial.

Assistance from an interpreter may be provided using video conference or any telecommunication medium, unless the judge or court, ex officio or at the request of one of the parties, agrees to have the interpreter physically present to safeguard victims' rights.

The written translation of documents may be exceptionally substituted by an oral summary of their content in a language victims understand to ensure the fairness of the proceedings.

If police actions are not interpreted or translated, victims can appeal to the examining judge. The appeal is considered to have been lodged from the time at which victims expressed their disagreement with being denied the interpreting or translation requested.

### **1. 1. 3 Victim support services<sup>56</sup>**

Crime Victim Support Offices are a public multidisciplinary service provided free of charge to meet victims' needs, set up by the Ministry of Justice. There are Offices in all the autonomous communities, in nearly all provincial capitals, as well as in other cities. The Crime Victim Support Offices will provide victims with comprehensive, coordinated and specialist support as a victim of crime, meeting victims' specific legal, psychological and social needs.

The right of access continues during the intervention of the assistance and support services and, where appropriate, the restorative justice services, throughout the entire criminal proceedings and for an appropriate period of time after they end, regardless of whether the offender's identity is known and of the outcome of the proceedings, including the time prior to the crime being reported.

If victims have underage children or victims are a minor who is subject to guardianship, custody by a female victim of gender-based violence or by persons who are victims of domestic violence, victims will be entitled to the specific assistance and protection measures established by law<sup>57</sup>. In addition, certain victims have the rights recognised by the specific legislation for each type of crime.

The State police officials and, where appropriate, the police of the autonomous community where the crime occurred, will carry out an initial individual assessment of the victim's situation when reporting the crime, to determine the victim's protection needs and to identify the victim, if applicable, as a vulnerable victim. During this initial assessment, victims will receive information on the possibility of going to a Crime Victim Support Office.

Any authority or official who comes into contact with a victim must refer victims to the Crime Victim Support Offices where necessary, depending on the seriousness of the crime or in any cases where the victim so request.

### **1. 1. 4 Victims' privacy protection**

Access to the assistance and support services provided by the public administrations, as well as those provided by the Crime Victim Support Offices, will in all cases be confidential. Access to the assistance and support services, free of charge and on a confidential basis, will not be conditional on reporting a crime beforehand.

The information victims provide to police officials or any authority or official who assists victims from the first moment may only be passed on to other assistance and support services, such as the Crime Victim Support Offices, with victims' prior and informed consent. These Offices are also obliged to respect victims' privacy in the same terms.

Regarding the judicial sphere, the judges, courts, public prosecutors and other authorities and officials in charge of the criminal investigation, as well as any others that are in any way involved or take part in the proceedings, will take the necessary measures, in accordance with the law, to protect victims' privacy and that of their family members and, in particular, to prevent the dissemination of any information that may reveal their identity if victims are an underage victim or a person with a disability in need of special protection. Moreover, the judicial authority may prohibit the obtaining, disclosure or publication of images of victims or their family members, especially if victims are underage or have a disability in need of special protection.

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<sup>56</sup> See later the protocols and different phases of the intervention with victims in these Offices. See the leaflets of these offices in English at <https://www.mjusticia.gob.es/es/Ciudadano/Victimias/Documents/TR%c3%8dPTICO%20INGL%c3%89S.pdf>. In Catalonia at <http://web.gencat.cat/es> and in the Basque Country at <http://www.justizia.eus>.

<sup>57</sup> See also the Act 8/2021.

### *1. 1. 5 Right to protection*

The authorities and officials in charge of the investigation, prosecution and trial of the crimes will take the necessary measures established by law to safeguard the life of the victim and their family members, their mental and physical wellbeing, freedom, safety, sexual freedom and integrity, as well as to adequately protect their privacy and dignity, particularly when they are making statements or have to testify in court.

The public prosecutor will particularly ensure the fulfilment of this entitlement to protection in the case of underage victims, taking the appropriate measures in their best interest where necessary to prevent or reduce the damage that may arise for them from the conduct of the proceedings.

If the victim is an underage victim<sup>58</sup> or victim with a disability (victims in need of special protection), evidence has to try to be examined before the trial by experts and the interview with a specially trained team in a special room has to be recorded.

The victim's particular circumstances will be assessed to determine which protection measures must be taken at different moments of the process by the following agents:

- during the investigation of the crime, the examining judge or the judge dealing with violence against women, without prejudice to the provisional assessment and decision that must be carried out and taken by:
- the public prosecutor, during their investigations or in proceedings concerning underage victims, or
- the police officials involved in the initial phase of the investigations;
- during the trial, the judge or court responsible for trying the case.

Particular circumstances will always be assessed first to determine which protection measures must be taken. The State police officials and, where appropriate, the police of the autonomous community where the crime occurred, will carry out an initial individual assessment of victims' situation when victims report the crime, to determine the protection needs and to identify victims, if applicable, as vulnerable victims. During this initial assessment, victims will receive information on the possibility of going to a Crime Victim Support Office.

If victims are assisted in a Crime Victim Support Office, this service will also carry out an individual assessment. The information collected in the police assessment may be passed on to the Office if victims consent to this. The individual assessment will consider the needs victims express as well as their wishes, and will fully respect their physical, mental and moral integrity.

It will especially consider the following:

- their personal characteristics, situation, immediate needs, gender, disability and level of maturity, and will assess, in particular, whether victims have a disability or are in a relationship of dependence with the alleged perpetrator of the crime, whether victims are underage, whether they need special protection or there are other factors of particular vulnerability present;
- the nature of the crime victims are a victim of and the seriousness of the damage caused, as well as the risk of the crime reoccurring. Their protection needs will be assessed with special care if victims are a victim of crimes of terrorism, crimes committed by a criminal organisation, gender-based and domestic violence, crimes against sexual freedom and integrity, human trafficking, enforced disappearance and crimes committed for racist, anti-Semitic or other reasons concerning ideology, religion or beliefs, family situation, membership of

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<sup>58</sup> See the Barnahus model at <https://www.barnahus.eu/en/> with several projects being implemented in Spain.

an ethnicity, race or nation, their national origin, their gender, sexual orientation or identity, or for reasons of gender, illness or disability;

- the circumstances of the crime, in particular in the case of violent crimes.

If victims are underage or have any disability and need special protection, victims' opinions and interests will also be taken into account, as well as their personal circumstances, and the principles of the best interest of the underage or disabled person in need of special protection will be respected in particular, as well as their right to information, non-discrimination, right to confidentiality, privacy and the right to be protected.

#### **Assessing victim risk of further harm by the criminal justice system (during investigation and trial)**

**During the investigation of the crime**, it will be the examining judge or judge dealing with violence against women or, if it is a crime of gender-based violence, the public prosecutor or the police officials involved in the initial phase of the investigations that will assess and determine the protection measures that may be appropriate for victims.

If victims are in danger, victims will receive police protection. Victims' evidence will be given via video conference for reasons of safety, public order, utility or to preserve their dignity.

Victims of certain specific crimes that lead to special protection measures being granted to their victims, such as gender-based violence, domestic violence, human trafficking for the purposes of sexual and labour exploitation, injury, crimes against freedom, torture, crimes against the individual, against sexual freedom, privacy, the right to self-image, the inviolability of the home, honour and socio-economic order, have the right to one of the following bans being imposed on the aggressor if it is strictly necessary for victims' protection: ban on residing in or going to a place, neighbourhood, city or region, ban on approaching them or communicating with certain people.

The following measures may be taken during the investigation for victims' protection:

- victims may give evidence in specially designed or adapted facilities to specially trained professionals;
- if victims have to give evidence several times, the evidence will be taken by the same person, unless this could significantly jeopardise the conduct of the proceedings or their evidence must be taken directly by a judge or public prosecutor;
- in case of being a victim of gender-based violence, domestic violence, a crime against sexual freedom or integrity, their evidence may be given by someone of the same sex where victims so request unless this could significantly jeopardise the conduct of the proceedings or their evidence must be taken directly by a judge or public prosecutor.

If victims are summoned to testify and the judge sees victims are at serious risk or their freedom, property or family is at risk, he/she can take the following action:

- protect their identity, address, profession and workplace, not using this information in the proceedings;
- prevent victims from being seen in court and establishing the court as an address for notifications;
- prevent their image from being recorded in any way;
- order police protection during and after the proceedings;
- provide victims with transport to the court in official cars;
- in the courts, place victims in waiting rooms guarded by the police;
- in exceptional circumstances, provide victims with a new identity and financial aid to change their place of residence or of work.

If victims are victim of a crime of gender-based or domestic violence, victims can get a ‘protection order’ that includes general precautionary measures against the aggressor (ban on residing or going to certain places, neighbourhoods, cities or regions, ban on approaching or communicating with certain people).

**During the judicial proceedings**, the judge or president of the court may order a private hearing (restricting the presence of audio-visual media in the trial sessions and prohibiting the recording of all or some of the hearings) to protect morality, public order and victims as a victim and/or their family. They may also prohibit disclosure of the identity of the experts or any other people who take part in the trial. As a private prosecutor, victims could request a private hearing.

During the proceedings, the following measures may be taken for their protection:

- measures that prevent victims from having visual contact with the alleged perpetrator and that ensure victims can be heard without being present in the courtroom; communication technologies may be used for this (setting up a screen in the courtroom and making statements via video conference);
- measures to prevent questions from being asked that are related to their private life and have no relevance to the criminal act being prosecuted, unless the judge or court exceptionally considers that they must be answered;
- holding the oral hearing in private, although the judge or president of the court may authorise the presence of persons who can prove special interest in the case.

The measures to prevent visual contact with the alleged perpetrator and the asking of questions regarding their private life may also be taken during the investigation.

#### *Protection for vulnerable victims*

If the victim is a minor<sup>59</sup>, during the **crime investigation** phase the victim will be treated according to protocols that are specially created to protect victims. Special precautions will be taken when the victim has to give evidence. The public prosecutor, who has the specific duty to protect minors, must always be present. Visual contact between the victim and the aggressor must be prevented using any technical means.

The victim will be interviewed by a specially trained team in a special room, which will not seem threatening to the victim, as there is the possibility of evidence being examined before the trial by experts and the interview being recorded.

Victims can give evidence just once, in the presence of the examining judge, the court clerk and all the parties to the proceedings, and not again during the trial.

During the **judicial proceedings**, if victims are minors giving evidence, visual contact between the victim and the accused will be prevented by any technical means possible. Confrontation is also restricted.

#### *1. 1. 6 Indirect victims’ rights*

If a family member has died because of a crime, victims will be an indirect victim of the crime caused to the victim’s family member (direct victim) if victims are in certain situations provided for by law (excluding in all cases the person responsible for the crime), as well as if the victim was the spouse of the direct victim and victim were not legally separated or living apart; if victims were the child of the direct victim or the spouse not legally separated or living apart and victims were living with them; if victims were linked to the direct victims through a similar relationship and living with them, among other situations.

Remember that all victims are entitled to bring a criminal action and civil action according to the law and to appear before the authorities in charge of the investigation

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<sup>59</sup> The only category defined *per se* as vulnerable victim, according to the Directive (including a presumption of being a minor, in case of doubt).



to provide them with the evidence and information considered relevant to clarify the facts.

As an indirect victim, victims will have confidential access free of charge to the assistance and support services provided by the public administrations, as well as those provided by the Victim Support Offices, provided that it has been considered appropriate to extend this right to the family members of the direct victim given that the crimes have caused particularly serious damage. To that end, family members will be defined only as the people linked to the direct victim by marriage or similar relationship, and relatives up to the second degree (grandparents, siblings and grandchildren).

As an indirect victim, victims may receive information about the assistance and support measures available, whether medical, psychological or material, and the procedure for obtaining them, as well as the compensation to which the victim may be entitled and, where appropriate, the procedure for claiming it.

The Crime Victim Support Offices will advise victims about the economic entitlements related to the proceedings, in particular, regarding financial aid for damages caused by the crime and the procedure to claim it, and they will offer victims the emotional support and therapeutic assistance victims need, thus ensuring the appropriate psychological assistance to overcome the traumatic consequences of the crime.

In terms of **the financial aid to which victims are entitled as an indirect victim of crime**, in Spain there is a system of public aid for the benefit of indirect victims of intentional and violent crimes committed in Spain resulting in death or serious damage to the victim's mental health.

Victims must fulfil certain requirements to be considered an indirect victim for the purposes of financial aid (beneficiary):

- be Spanish or a national of any other European Union Member State or, if neither of those cases applies to the victim, the victim must be ordinarily resident in Spain or a national of another State that grants similar aid to Spanish citizens in its territory. In the event of death, the nationality or ordinary residence of the deceased does not matter;
- be the spouse of the deceased person, not legally separated or living apart, or the person who lived with the deceased permanently in a similar relationship for at least two years prior to their death, unless victims had children together, in which case merely living together will suffice. This also includes the children of the persons mentioned, even if they were not the children of the deceased person, provided they were financially dependent on that person and lived with them;
- beneficiaries will not, in any case, include anyone convicted for intentional homicide in any of its forms, where the deceased was their spouse or person with whom they were or had been stably linked through a similar relationship;
- be the child of the deceased person, who was financially dependent on that person and lived with them, assuming that children who are underage or disabled adults are financially dependent;
- the victim was the parent of the deceased person and was financially dependent on that person, provided there is no one in the above situations;
- the parents of minors who die as a direct consequence of the crime are also considered indirect victims for the purposes of the financial aid established by Spanish law.

Victims must claim the aid within one year of the date on which the crime occurred. In the event that the death occurred as a direct consequence of bodily injuries or damage to health, a new time limit of equal duration will be triggered to claim the aid. As a general

rule, the granting of aid is conditional on a final judicial decision ending the criminal proceedings having been taken. The aid cannot be combined with the compensation established utilizing the judgment, although all or part of the aid will be paid where the person guilty of the crime has been declared partially insolvent, or with the compensation or aid from private insurance if the amount is higher than the amount set in the judgment, or with the social security subsidy that could be payable owing to the temporary disability of the victim. The amount of aid may not in any case exceed the compensation set in the judgment.

#### ***1. 1. 7 Mediation or restorative justice services for victims***

Victims are entitled to receive information about alternative dispute resolution with the use, where appropriate, of mediation and other restorative justice measures, and about the available restorative justice services, in the cases in which this is legally possible (all except gender violence committed by adult men). The Crime Victim Support Offices will provide the victim with this information.

In addition, the Crime Victim Support Offices will be able to propose to the judicial body that criminal mediation be used where this is considered beneficial for victims, and they will provide support to the restorative justice services and other out-of-court settlement procedures established by law.

Victims can access restorative justice services to obtain appropriate compensation for the material and non-material losses arising from the crime, where the following requirements are met:

- the offender has recognised the essential facts from which their liability arises;
- victims have given victim's consent, after having received exhaustive and impartial information about their content, their possible outcomes and the procedures in place to enforce compliance;
- the offender has given their consent;
- the mediation procedure does not entail a risk to the victim's safety, nor is there any danger that conducting it may cause victims new material or non-material losses;
- it is not prohibited by law for the crime committed<sup>60</sup>.

The discussions held as part of the mediation procedure will be confidential and may not be disseminated without the victim's consent and the offender's consent. The mediators and other professionals who take part in the mediation procedure will be subject to professional secrecy in relation to the events and statements they have had knowledge of in the performance of their duty.

Both the victim and the offender will be able to revoke the victim's consent to participate in the mediation process at any time. Mediation usually takes place in the case of less serious crimes, at least at the trial stage (it can also be a process to be developed in prison, see the final chapter of this book).

In juvenile justice (ages 14 to 18), mediation is expressly laid down as a means to re-educate the minor. In this area, the mediation is carried out by the teams who support the juvenile prosecution service, although it may also be carried out by agencies from the autonomous communities and other entities such as certain specialist associations.

#### ***1. 1. 8 Access to justice and participation in the criminal justice system: The official role of victims in the justice system: victim, witness, civil party or private prosecutor***

As victims of a crime, in criminal proceedings victims are entitled to the following:

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<sup>60</sup> In Spain, there is only a legal prohibition for mediation in violence of an adult man against his partner or ex-partner woman.

- to bring criminal and civil actions according to the provisions of the criminal legislation in force;
- to appear before the authorities in charge of the investigation to provide them with sources of evidence and relevant information to clarify the facts.

The different roles victim can perform in the justice system are:

- **direct or indirect victims:** according to the crime reported or, in the case of requesting access to victim assistance and support services, without having previously reported the crime, since access to these services is not dependent on submitting a report;
- **witness:** if there is a report. Victim's involvement in the proceedings takes place once the victim receives the summons;
- **private prosecutor:** if victims decide to appear in the criminal proceedings as a private prosecutor, in the event victim bring an action against the offender (semi-public crimes and private crimes) and before the indictment is prepared, i.e. before the oral proceeding begins, except in the case of criminal proceedings against a minor;
- **civil party:** in general, if victims decide to bring a civil action as part of the criminal proceedings, i.e. victims claim the restitution of property, the making good of the damage or the compensation for damages, both material and non-material, caused by the crime.

In general, victims must be present at the hearings, even if they are not public. Victims will only be obliged to attend to give evidence as a witness.

**If the victim is a victim who has not appeared in the criminal proceedings,** victims will be informed of the date and place of the trial. The victim's main role will be to testify as a witness. To be able to notify the victim of the date and time of the trial, victims must communicate any change in their address during the proceedings.

Victims can appear in the proceedings as a **private prosecutor** before the indictment is prepared, i.e. before the start of the oral trial, except in the case of criminal proceedings against a minor. Victims will be represented by the victim's lawyer, who will defend their case, and by the victim's court representative, who will represent the victim formally in the proceedings.

If victims are already private prosecutors, victims' lawyers will have access to the summary and the other case documents, and other rights, similar to those of the public prosecutor, including the following:

- to request the collection of more evidence;
- to propose new witnesses or experts who will support the victim's case;
- to propose confrontations, etc.

In the event the accused is convicted, the court may order him/her to pay victims the following costs: the cost of lawyers and court representatives, experts, certificates from public registers and notaries, etc.

As a **witness**, victims have the right to an interpreter free of charge, if victims do not speak Spanish or the respective regional language, but victims do not have the possibility of document translation. Even though it is generally difficult to avoid eye contact with the accused and court buildings do not usually have different waiting rooms for witnesses, if victims have been a victim of sexual assault victim can:

- benefit from a screen in the courtroom, or
- testify via video conference.

If victims are going to testify and victims are in danger, the president of the court can order a private hearing to protect morality, public order and direct and indirect victims. As a private prosecutor, victims could request a private hearing.

If victims are summoned to testify and the judge sees victims are at serious risk or victim's freedom, property or family is at risk, he/she can take one of the following actions:

- protect the victim's identity, address, profession and workplace, not using this information in the proceedings;
- prevent victims from being seen in the court and establishing the court as the address for notifications;
- prevent victim's image from being recorded using any medium;
- order police protection during and after the proceedings;
- provide victims with transport to the court in official cars;
- at the court, place victims in a waiting room guarded by the police;
- in special circumstances, provide victims with a new identity and financial aid to change location, residence and job.

If the victim is a minor making a statement, eye contact between the victim and the accused will be prevented using any technical medium possible. Confrontations are also restricted. If victims have any conflict of interests with the victims' legal representatives that do not make it possible to be confident that the victim's interests will be adequately managed in the investigation or criminal proceedings, or the conflict is with one of the victim's parents and the other parent is not able to adequately perform his/her duties to represent the victim or assist the victim, among other cases, the public prosecutor will ask for the judge or court to designate a guardian ad litem for the victim, who will have the duty to represent the victim in the investigation and the criminal proceedings.

If the victims are foreigners, they can have an interpreter free of charge, if they do not speak Spanish or the respective regional language. The police can offer victims a form in the victim's language for reporting the crime, and access to an interpreter by telephone or in person. The courts have an interpreter service that will be coordinated with the Crime Victim Support Office.

If victims wish to bring a civil action in the criminal proceedings (civil party), victims must appear with a lawyer and court representative at the time of offering the possibility of entering the proceedings as a private party and always before the offence is classified. In this case, victims will be represented by the victim's lawyer, who will defend the victim's case, and by the victim's court representative, who will formally represent victim in the proceedings.

If victims obtain any subsidy or aid based on their status as such and have been the subject of any protection measure provided for by law, they must reimburse the subsidy or aid, in the cases of conviction for a false report of a crime or simulation of the crime, as well as the obligation to pay the costs incurred for the administration for its recognition, protection and support actions and the services provided, without prejudice to any other civil or criminal liabilities that may apply.

#### *Victim statements during the trial*

Regardless of the victim's role in the criminal proceedings, victims can usually be present at the hearings, even if they are not public. Victims will only be obliged to attend to testify as a witness.

While victims take part in the proceedings victims can continue to benefit from the services of the Crime Victim Support Offices.

If the victim has not appeared in the criminal proceedings, that victim will be informed of the date and place of the trial. Victims' main role will be to testify as a witness. So that victim can be notified of the date and time of the trial, victims must communicate any change in their address during the proceedings.

The victim can appear in the proceedings as a **private prosecutor** before the indictment is prepared, i.e. before the start of the oral proceeding, except in the case of criminal proceedings against a minor. Victims will be represented by their lawyer, who will defend their case, and by their court representative, who will represent the victim formally in the proceedings.

If victims are already a private prosecutor, their lawyer will have access to the summary and the other case documents, and other rights, similar to those of the public prosecutor:

- to request the collection of more evidence;
- to propose new witnesses or experts who will support the victim's case;
- to propose confrontations, etc.

In the event the accused is convicted, the court may order him/her to pay victims the following costs: the cost of lawyers and court representatives, experts, certificates from public registers and notaries, etc.

As a **witness**, victims have the right to an interpreter free of charge, if victims do not speak Spanish or the respective regional language, but victims do not have the possibility of document translation. Despite the fact that it is generally difficult to avoid eye contact with the accused and court buildings do not usually have different waiting rooms for witnesses if victims have been a victim of sexual assault victim can:

- benefit from a screen in the courtroom, or
- testify via video conference.

If victims are going to testify and victims are in danger, the president of the court can order a private hearing to protect morality, public order and direct and indirect victims. As a private prosecutor, victims could request a private hearing.

If victims are summoned to testify and the judge sees victim are at serious risk or victim's freedom, property or family is at risk, he/she can take one of the following actions:

- protect victim's identity, address, profession and workplace, not using this information in the proceedings;
- prevent victims from being seen in the court, establishing the court as an address for notifications;
- prevent victim's image from being recorded using any medium;
- order police protection during and after the proceedings;
- provide victims with transport to the court in official cars;
- at the court, place victims in a waiting room guarded by the police;
- in special circumstances, provide victims with a new identity and financial aid to change location, residence and job.

If the victim is a minor making a statement, eye contact between victims and the accused will be prevented using any technical medium possible. Confrontations are also restricted. If victims have any conflict of interests with the victim's legal representatives that do not make it possible to be confident that their interests will be adequately managed in the investigation or criminal proceedings, or the conflict is with one of victim's parents and the other parent is not able to adequately perform his/her duties to represent victims or assist victims, among other cases, the public prosecutor will ask for the judge or court to designate a guardian *ad litem* for victims, who will have the duty to represent victims in the investigation and the criminal proceedings.

If victims are foreigners they can have an interpreter free of charge, if victims do not speak Spanish or the respective regional language. The courts have an interpreter service that will be coordinated with the Crime Victim Support Office.

### *Victims' right to information during the trial*

Victims have the right – if the victims have made the relevant request – to receive information about the date, time and place of the trial and the content of the accusation against the offender, as well as to be notified of the following decisions:

- the decision not to initiate criminal proceedings;
- the final judgement in the proceedings;
- decisions to imprison or release the offender, as well as the possible escape of the offender from custody;
- decisions adopting personal precautionary measures or amending those already agreed, where they are in place to ensure victim's safety;
- decisions from any judicial or prison authority affecting subjects convicted for crimes committed using violence or intimidation and that pose a risk to victim's safety;
- decisions that involve victim's participation as victims in the enforcement of the sentence and that are handed down in the prison environment, such as those affecting the classification of the convicted prisoner in a grade 3 open prison regime, prison benefits, short-term leave, conditional release, etc.

When requesting to be notified of the above decisions, victims must designate an email address or, otherwise, a postal or home address, to which the communications and notifications will be sent by the authority.

Exceptionally, if victims do not have an email address, they will be sent by ordinary mail to the address victims have provided.

If victims are a citizen residing outside the European Union and victims do not have an email or postal address that communications can be sent to, they will be sent to the Spanish diplomatic or consular office in victim's country of residence for publication.

The notifications victims may receive will include, at minimum, the operative provisions of the decision and its legal basis.

If victims have formally appeared in the proceedings, the decisions will be notified to victim's court representative and will also be communicated to the victim at the email address they have provided.

Victims may at any time express their desire not to be informed of the decisions mentioned above, and the request victim made will then become inoperative.

If victims have asked to be referred to a Crime Victim Support Office or victims are receiving care through one of these Offices, victims have the right to receive information on the contact details of the authority responsible for handling the procedure and the channels for communicating with this authority, as well as information on the date, time and place of the trial and the content of the accusation against the offender.

If victims are a victim of a crime of gender-based violence, victims have the right to be informed about the procedural situation of the aggressor and the precautionary measures taken, without having to ask for this. Victims may at any time express their desire not to receive the information.

### *Victims' access to court files during the trial*

If victims are already carrying out a private prosecution, their lawyer will have access to the summary and the other case documents. Lawyers' daily activities include accessing legal information and documentation, particularly in cases where their client is not a party in the proceeding. Pursuant to Spanish legislation, the parties appearing may be informed of the proceedings and participate in all the procedural formalities.

### *Victims' right to appeal against the ruling*

If victims would like to appeal against the judgment in the event the accused is declared innocent, bear in mind that if victim has not been party to the proceedings, they cannot appeal against the judgment.

If victims have been party to the proceedings and area private prosecutor, they can appeal as follows:

- against the judgment within ten days of it being notified; there are various grounds for appeal and it is possible to review the evidence. This is an ordinary appeal.
- Cassation appeal within five days of the judgment being notified; the grounds are a violation of the law or the Spanish Constitution or formal grounds. This is an extraordinary appeal.

As a civil party, victims can only lodge an appeal in cassation regarding matters related to the victim's compensation. As regards possibilities for lodging other appeals, if victims have first lodged an ordinary appeal, victims could lodge a cassation appeal as a second appeal. The cassation appeal is decided by the Supreme Court. The Crime Victim Support Offices will provide victims with information about the appeals victims can lodge against rulings the victim considers incompatible with their rights.

### *Victims' rights after sentencing*

If victims have made the relevant request, victims have the right to be notified of the following decisions:

- the decision not to initiate criminal proceedings;
- the final judgment in the proceedings;
- decisions to imprison or release the offender, as well as the possible escape of the offender from custody;
- decisions adopting personal precautionary measures or amending those already agreed, where their aim is to ensure victim's safety;
- decisions from any judicial or prison authority affecting subjects convicted for crimes committed using violence or intimidation and that pose a risk to victim's safety;
- decisions that involve the victim's participation in the enforcement of the sentence and that are handed down for prison-related matters, as well as those affecting the classification of the convict in a Grade 3 open prison regime, prison benefits, short-term leave, conditional release, etc.

The victim's main rights during enforcement of the judgment are the right to information on the sentencing of the accused. In general, the information regarding their release from prison would be considered part of their privacy and could not be communicated to the victim.

Exceptionally, if victims have been victims of a crime of gender-based violence, victims will be provided with information on the procedural status of the accused and how they are serving their sentence, for as long as the protection order or restraining order remains in force.

If victims acted as a prosecutor in the proceedings, they can take part in the suspension of the sentence of the accused. A prison sentence of less than two years can be suspended if there is no repeat offending within a given period of time. After this period, the sentence lapses. The court decides on the suspension of the sentence and victims will be heard by the judge before its decision.

The Crime Victim Support Offices will provide information about the possibility of victims have to participate in the prison sentence enforcement and will carry out

whatever assistance activities are needed so victims can exercise the rights recognised by law.

If victims are a victim of terrorism, the National High Court's Terrorism Victim Information and Support Office will provide the victim with the information channels needed so victims can find out everything related to the prison sentence enforcement up to the full serving of the sentences, especially in cases where benefits are granted or the convicts are released.

#### *Victims' right to support or protection after the trial*

If the judgment is enforced and it is necessary, victims can continue to be protected, if the judge so decides. Victims can have police protection or, in exceptional cases, a new identity or financial aid to change their place of residence or work.

For certain crimes, such as gender-based or domestic violence, victims can ask for a protection order the temporary validity of which will be established by decision of the judicial authority. The protection order may be requested directly from the judicial authority or public prosecutor, or law enforcement officials, the Crime Victim Support Offices or social services or care institutions attached to the public administrations. The protection order represents a comprehensive protection status that will include the civil and criminal precautionary measures set out by law and any other assistance and social protection measures established in the legal system.

The granting of a protection order will imply the duty to keep victims informed on an ongoing basis regarding the procedural situation of the accused or suspect, as well as regarding the scope and validity of the precautionary measures taken. In particular, victims will be informed at all times of the alleged aggressor's prison situation. To that end, the protection order will be forwarded to the prison administration.

Victims can also be protected by certain penalties or security measures being imposed on the offender: restraining orders, deprivation of parental rights or guardianship, deprivation of the right to carry and use weapons, etc. Furthermore, in cases where the sentence is suspended before entering prison, the judge can ban the offender from going to certain places or from approaching victims, oblige the offender to take part in specific educational programmes, etc.

As victims, victims are entitled to:

- a) ask for the behavioural measures or rules provided for by law and considered necessary to ensure victim's safety to be imposed on the parolee, where this person had been convicted for acts from which a situation danger may reasonably arise for the victim;
- b) provide the judge or court with any information that is relevant to rule on the enforcement of the penalty imposed, the civil liabilities arising from the crime or the confiscation that was agreed.

The Crime Victim Support Offices will cooperate and coordinate with the bodies, institutions and services that may be involved in assisting victims: the judiciary, public prosecution service, law enforcement officials, especially in the case of vulnerable victims with a high risk of victimisation. Moreover, if victims are victims who require special protection measures, they will assess the victim's case to determine which protection, assistance and support measures should be provided, which may include the following:

- the provision of psychological support or assistance to deal with the disorders caused by the crime, using the most appropriate psychological methods for victim's care;
- accompaniment to trial;



- information on the available psychosocial and care resources and referral to these services if victim request this;
- any special support measures that may be necessary if victims are a victim with special protection needs;
- referral to specialist support services.

The protective measures of a judicial nature will be valid for the period of time established in the relevant decision from the judicial authority.

The Crime Victim Support Offices will monitor the victim's situation, especially if they are considered vulnerable, throughout the entire criminal proceedings and for an appropriate period of time after they end, regardless of whether the offender's identity and the outcome of proceedings are known.

#### *Victim's right to information if the offender is sentenced*

The victim's main rights during enforcement of the judgment are the right to information on the sentencing of the accused. In general, the information regarding their release from prison would be considered part of their privacy and could not be communicated to the victim.

Exceptionally, if victims have been the victim of a crime of gender-based violence, victims will be provided with information on the procedural status of the accused and how they are serving their sentence, while the protection order or restraining order is in force, except where victims express their desire not to receive any notification on the matter.

The Crime Victim Support Offices will provide information about the possibility victims have to participate in prison sentence enforcement and will carry out whatever assistance activities are needed so victims can exercise the rights recognised by law.

If victims are a victim of terrorism, the National High Court's Terrorism Victim Information and Support Office will provide victims with the information channels necessary for the victim to find out everything related to the prison sentence enforcement up to the time the sentences have been fully served, especially in cases where benefits are granted or the convicts are released.

If victims have made the relevant request, victims have the right to be notified of the following decisions, among others:

- decisions to imprison or release the offender, as well as the possible escape of the offender from custody;
- decisions from any judicial or prison authority affecting subjects convicted for crimes committed using violence or intimidation and that pose a risk to victim's safety;
- decisions that involve the victim's participation in the enforcement of the sentence and that are handed down for prison-related matters, as well as those affecting the classification of the convict in a Grade 3 open prison regime, prison benefits, short-term leave, conditional release, etc.

The Crime Victim Support Offices will provide information about the possibility victims have to participate in the prison sentence enforcement and will carry out whatever assistance activities are needed so victims can exercise the rights recognised by law.

If victims are a victim of terrorism, the National High Court's Terrorism Victim Information and Support Office will provide victims with the information channels necessary for them to find out everything related to the prison sentence enforcement up to the time the sentences have been fully served, especially in cases where benefits are granted or the convicts are released.

### *Victims' involvement in release or parole decisions*

As victims of the crime, victims will be entitled to:

- ask for the behavioural measures or rules provided for by law considered necessary to ensure victim's safety to be imposed on the parolee, where this person had been convicted for events from which a situation danger could reasonably arise for the victims;
- provide the judge or court with any information that is relevant to rule on the enforcement of the sentence imposed, the civil liabilities arising from the crime or the confiscation that was agreed.

The Crime Victim Support Offices will provide information about the possibility for victims to participate in the prison sentence enforcement and will carry out whatever assistance activities are needed so victims can exercise the rights recognised by law.

If victims are a victim of terrorism, the National High Court's Terrorism Victim Information and Support Office will provide victims with the information channels necessary for victims to find out everything related to the prison sentence enforcement up to the time the sentences have been fully served, especially in cases where benefits are granted or the convicts are released.

If victims have asked to be notified of certain decisions handed down for prison-related matters, as well as those affecting the classification of the convict in a Grade 3 open prison regime, prison benefits, short-term leave, conditional release, etc., victims can appeal against them even if they not been party to the proceedings. Victims must make victim's desire to appeal known to the competent court clerk, without needing to be assisted by a lawyer to do so, within a maximum period of five days counted from the time at which victims were notified of the decision and lodging the appeal within fifteen days from this notification.

In order to appeal the possible classification of the convict in a Grade 3 open prison regime, victims must be victim of one of the following crimes:

- homicide;
- abortion;
- injury;
- crimes against freedom;
- crimes of torture and against moral integrity;
- crimes against sexual freedom and indemnity;
- crimes of theft committed with violence or intimidation;
- crimes of terrorism;
- crimes of human trafficking.

Before the prison authority hands down any of the decisions stated above, the decision in question will be communicated to victims so victims may submit any arguments victims deem appropriate, provided that victims have made the relevant request to be notified of these decisions.

The Crime Victim Support Offices will provide victims with any information victims may need about the appeals victims can lodge against rulings victim consider being incompatible with victim's rights

#### *1. 1. 9 Right to compensation*

As a private prosecutor, victims can claim compensation for damages by means of a civil action within the same criminal proceedings or defer this claim until the criminal proceedings have ended. If the two actions are separate, the civil action must wait until the criminal proceedings have ended.

Victims can also only appear in the proceedings as a civil party that will not have any capacity in the proceedings. If victims do not appear as a civil party to seek

compensation, the public prosecutor will claim the civil action on the victim's behalf. If the court declares the accused not guilty or does not award the victim the compensation, the victims can always claim damages through a civil procedure.

The civil liability of the accused covers the restitution of the property, the making good of the damage and the compensation for damages, including those caused to the victim's partner and children.

The victim can also obtain compensation from the State. The Crime Victim Support Offices are the crime victim assistance authority in cross-border situations, in cases where the crime victim have suffered was committed in a European Union Member State other than Spain and victims are ordinarily resident in Spain. In cases of crimes of terrorism in cross-border situations, the Ministry of the Interior is the assistance authority, via the Directorate-General for the Support of Victims of Terrorism.

In general, except for crimes of terrorism, the assistance authority will cooperate in initiating and handling the procedures for the award of aid by the European Union Member State where the crime was committed, so that the victim, as claimant, can access, from Spain, the compensation from the State in whose territory the crime was committed.

To this end, the Crime Victim Support Offices will provide victims, as aid claimant, with the following information:

- information about the possibilities of claiming financial aid or compensation, the procedures or forms required, including how these must be completed, and the supporting documentation that may be necessary;
- general guidance about how to fill out requests for additional information.

Moreover, as assistance authority, the Crime Victim Support Offices must do the following:

- forward victim's claim and supporting documentation, as well as any documentation that may be required subsequently, where applicable, to the decision-making authority appointed by the State in whose territory the crime was committed;
- cooperate with the decision-making authority where, in accordance with its national legislation, this authority decides to hear the claimant or any other person.

The decision-making authority is the Ministry of Economy and Finance's Directorate-General of Personnel Costs and State Pensions when the claim for the legally established State aid is dealt with via the assistance authority of the State where the claimant is ordinarily resident.

The decision-making authority must communicate the following both to the victim as aid claimant as well as to the assistance authority:

- receipt of the State aid claim, the body that opens the proceedings, the timeframe for handing down a decision and, if possible, the anticipated date when the decision will be taken;
- the decision closing the proceedings.

For crimes of terrorism, the Ministry of the Interior (Directorate-General for the Support of Terrorism Victims) will act as the assistance authority in cases in which the place where the crime is committed is a European Union Member State other than Spain and victim as aid claimant are ordinarily resident in Spain so that victims can access, from Spain, the appropriate compensation, where applicable, from the State in whose territory the crime was committed. The actions that must be undertaken by the Directorate-General of Support for Victims as the assistance or decision-making authority are

equivalent to those pertaining to the Ministry of Economy and Finance's Directorate-General of Personnel Costs and State Pensions.

*Ensuring the payment of the compensation order imposed on the offender*

The State will pay all or part of the aid where the offender has been declared partially insolvent.

The State will be subrogated, up to the full amount of the provisional or final aid victim have been granted as victim or beneficiary, to victim's rights against the party civilly liable for the crime.

The State may bring an action for recovery against the party civilly liable for the criminal act to demand the full or partial reimbursement of the aid granted.

This action will be carried out, where appropriate, by means of the administrative recovery procedure and will apply in the following cases, among others:

- where the final judicial decision finds that no crime has been committed;
- where after payment, both victims as victims as well as victims' beneficiaries obtained, on any grounds, full or partial compensation for the damages suffered in the three years following the granting of the aid;
- where the aid was obtained based on the provision of false or deliberately incomplete information or by any other fraudulent means, as well as the deliberate omission of circumstances that would lead to the refusal or reduction of the aid claimed;
- where the compensation awarded in the judgement is less than the provisional aid.

This action will be brought by the appearance of the State in the criminal or civil proceedings being conducted, without prejudice to the civil action that may be brought by the public prosecutor.

*Advance state compensation in case of the offender's inability to pay*

The State will pay all or part of the aid where the person convicted of the crime has been declared partially insolvent. Provisional aid may be granted before the final judicial decision ending the criminal proceedings is handed down, so long as the precarious economic situation in which victims were left as victims or beneficiaries has been demonstrated.

Provisional aid may be claimed once the victim has reported the events to the competent authorities or where criminal proceedings are conducted ex officio based on these events.

The victim can obtain compensation from the State. In Spain, there is a system of aid for victims of intentional and violent crimes, committed in Spain, resulting in death, serious bodily injury or serious damage to physical or mental health. Aid is also awarded to victims of crimes against sexual freedom, even when these crimes are committed without violence. In general, victims can access the legally established financial aid if, at the time the crime is committed, they are Spanish or a national of any other European Union Member State, or, if neither of the above applies to the victim, victims are ordinarily resident in Spain or a national of another State that grants similar aid to Spanish nationals in its territory.

In the event of death, the above-mentioned nationality or residence requirements must be met by the beneficiaries, not the deceased person.

In the event of serious bodily injury or serious damage to physical or mental health, the direct victims, i.e. those who suffered the injuries or damages, will be the beneficiaries.

In the event of death, the beneficiaries are the indirect victims, who would be the following:

- The spouse of the deceased person, if they were not legally separated, or the person who lived with the deceased on a permanent basis in a relationship akin to marriage for at least two years before the death, unless they had children together, in which case mere cohabitation will suffice. The children of the persons mentioned are also included, even if they were not the children of the deceased person, so long as they were financially dependent on that person and there was cohabitation.

Beneficiaries will not, in any case, include anyone convicted for intentional homicide in any of its forms, where the deceased was their spouse or the person with whom they were or had been in a stable relationship akin to marriage.

- The child of the deceased person, who was dependent on that person and there was cohabitation, assuming that children who are underage or disabled adults are financially dependent.
- The parent of the deceased person, who was financially dependent on that person, so long as there is no one in the above situations.
- The parents of a minor who dies as a direct consequence of the crime are also considered indirect victims for the purposes of the financial aid established by Spanish law.

The injuries that entitle victims to receive financial aid are those that damage bodily integrity or physical or mental health and that temporarily disable, for longer than six months, or permanently disable, with a degree of disability of at least 33 %, the person who suffered them.

Taking into account the timeframes for deciding on criminal cases, before a final judicial decision ending the criminal proceedings is handed down, the law provides for the possibility of granting provisional aid, taking into consideration the precarious economic situation of the victim of the crime or their beneficiaries. Provisional aid may be claimed once the victim has reported the events to the competent authorities or when the criminal proceedings have been initiated by the competent bodies without the need for a report.

The amount of aid may not, in any case, exceed the compensation set in the judgement. In the event of the death of a minor or disabled person as a direct consequence of the crime, the parents or guardians of the minor will be entitled only to aid consisting of compensation for the funeral expenses they have paid up to the legally established limit. In cases of crimes against sexual freedom that cause the victim damages to his/her mental health, the amount of aid will cover the costs of the therapeutic treatment freely chosen by the victim, with a maximum established by law<sup>61</sup>.

In general, the time limit for claiming the aid is one year counted from when the crime was committed. This time limit will be suspended when the criminal proceedings begin and will resume when the final judicial decision has been handed down and notified to the victim.

The receipt of aid is incompatible with the following:

- compensation established by means of the judgement. Nonetheless, all or part of the aid will be paid where the offender has been declared partially insolvent;
- compensation or aid from private insurance, as well as with the Social Security subsidy that might apply due to the victim's temporary disability. Nonetheless, the aid would be paid to the beneficiary of private insurance where the amount of the compensation to be received under this insurance was lower than the amount established in the judgement;

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<sup>61</sup> See the 2021 draft on sexual violence.

- the receipt of this aid will not, in any case, be compatible with the compensation for damages to victims of armed groups and terrorists.

The receipt of aid is compatible with the following:

- in cases of permanent disability or death of the victim, with the receipt of any State pension the beneficiary is entitled to receive;
- the social assistance provided for in Article 27 of Organic Law 1/2004 of 28 December 2004 on Comprehensive Protection Measures against Gender-Based Violence (*Ley Orgánica 1/2004 de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*).

The aid for permanent disability will be incompatible with the aid for temporary disability.

The competence to process and decide on claims for the legally established State aid lies with the Ministry of Economy and Finance's Directorate-General of Personnel Costs and State Pensions, for victims of any crime except for victims of terrorism, in which case the Ministry of the Interior (Directorate-General for the Support of Victims of Terrorism) will be competent.

If victims are a victim of terrorism, there is a series of State aid intended for victims of terrorism to compensate them for the damages caused by these kinds of crimes, provided there is a full connection between the terrorist act and the damages suffered.

The following are damages eligible for compensation:

- bodily injuries, both physical and mental, as well as expenses for medical treatment, prostheses and surgery.

These expenses will be paid to the person affected only in the event they are not fully or partially covered by a public or private welfare system;

- material damages caused to the homes of natural persons or those occurring in commercial and industrial establishments, headquarters of political parties, trade unions and social organisations;
- the costs of provisional accommodation while repair work is carried out on the ordinary residences of natural persons;
- damages caused to private vehicles, as well as those suffered by vehicles used for ground transport of people or goods, except publicly-owned vehicles.

Compensation for the damages indicated, except for bodily injuries, will be subsidiary to that established for the same cases by any other public body or those arising from insurance agreements. In these cases, any amounts that might result from the difference between what was paid by these public administrations or insurance entities and the official valuation will be compensated.

The amount of compensation will be determined according to the damage produced (severity of the injuries and type of disability they cause, death, etc.).

#### *Other kinds of aid:*

- for study: where a terrorist act results in personal injuries of particular significance to a student, their parents or guardians, or these injuries render them unfit for the exercise of their regular profession;
- immediate psychological assistance and counselling, both for victims as well as for family members;
- extraordinary aid to mitigate, exceptionally, situations of personal or family need of the victims, who are not covered or are covered in a markedly insufficient way by ordinary aid.

#### *Aid beneficiaries:*

- if there are injuries, the injured persons;

- if there was death:
  - the spouse of the deceased person;
  - the unmarried partner with whom the deceased had cohabited for at least two years;
  - the unmarried partner with whom the deceased had children;
  - the parents of the deceased person if they were financially dependent on that person. In the absence of parents and in this order, the grandchildren, siblings and grandparents of the deceased person who were financially dependent on that person;
  - if there are none of the above persons, the children and, in their absence, the parents who were not financially dependent on the deceased person.

In general, the time limit for submitting claims for compensation for personal or material damages will be one year, counted from the date on which the damages occurred.

The National High Court's Terrorism Victim Information and Assistance Office (*Oficina de Información y Asistencia a Víctimas del Terrorismo de la Audiencia Nacional*), in collaboration with the Ministry of the Interior's Directorate-General for the Support of Victims of Terrorism, will help victims as a victim of terrorism through the process of claiming compensation: obtaining certificates of the final judgements, of orders not to enforce civil liabilities and other documents required to process the aid.

#### *Victims' entitlement to compensation if the offender is not convicted*

The final judgement in the criminal proceedings, which cannot be appealed, must prove that the death, bodily injuries and serious damage to physical or mental health constitute an intentional and violent crime and, consequently, the judgement will have to determine the appropriate compensation.

To submit the claim for financial aid, victims must attach to the claim a copy of the final judicial decision ending the criminal proceedings, whether it is a judgement, default judgement or decision to close the case due to death of the offender, or decision to dismiss the case.

The amount of aid granted may not, in any case, exceed the compensation set in the judgement. Provisional aid may be granted before the final judicial decision ending the criminal proceedings is handed down, so long as evidence is provided of the precarious economic situation in which victims as the victim or victim's beneficiaries have been left. Provisional aid may be claimed once victims have reported the events to the competent authorities or where criminal proceedings are conducted ex officio based on these events.

#### *1. 1. 10 Intervention with victims at the Crime Victim Support Offices*

Victim can go to a Crime Victim Support Office (*Oficinas de Asistencia a las Víctimas del delito*). Crime Victim Support Offices are a free, public multidisciplinary service to address victims' needs, run by the Ministry of Justice. There are Offices in all the autonomous communities, in nearly all provincial capitals as well as other cities. The Crime Victim Support Offices will provide victims with comprehensive, coordinated and specialist support, meeting victims' specific legal, psychological and social needs.

If the victim is a victim of terrorism, she can contact the National High Court's Terrorism Victim Information and Support Office (*Oficina de Información y Asistencia a Víctimas del Terrorismo de la Audiencia Nacional*), although victims may go to the Crime Victim Support Office in the victim's province if she prefers it. The Crime Victim Support Office will coordinate with the National High Court's Terrorism Victim Information and Support Office.

The care and support offered by Crime Victim Support Offices is provided in the following three phases:

**1. Reception and orientation phase:** the orientation phase is when the Office provides victims with comprehensive information about the actions victims must take, the issues victims have to deal with and the possible consequences. This phase generally takes place through an interview, either face-to-face or over the phone, where victims will explain the victim's problems and needs. Based on the victim's explanation, they will be given guidance, the possibility of interventions from other resources will be assessed and referrals will be made, if necessary.

**2. Information phase:** as a victim, starting from the first contact with the authorities and officials, even before filing a complaint, victims have the right to receive information that fits the victim's personal circumstances and conditions and also the nature of the crime victim has experienced and the damages suffered. This information concerns certain aspects such as:

- How victims can make a complaint and the procedure for filing it.
- The specialist services and psychosocial and care resources available, regardless of whether a complaint is filed, and how to access them.
- The care and support measures (medical, psychological or material) available and the procedure for obtaining them, including, when appropriate, information concerning the possibilities of obtaining alternative accommodation.
- How victims can obtain advice and legal defence and, where appropriate, the conditions under which it may be obtained free of charge.
- Accompaniment for victims, throughout the proceedings, to the trial, if victims require this, and/or to the different criminal authorities.
- Possibility for victims to request protection measures and, where appropriate, the procedure for doing so.
- Advice on economic rights related to the proceedings, particularly regarding the aid and compensation to which victims may be entitled based on the damages caused by the crime and, where appropriate, which procedure should be used to claim them.
- The procedure victims must follow to exercise victim's rights as a victim of a crime if victims live outside Spain.
- The contact details of the authority responsible for handling the victim's proceedings and the channels for communicating with them, and information on the date, time and location of the trial as well as the content of the accusation against the offender.
- The restorative justice services (e.g. mediation) available, in cases where this is legally possible.
- The cases in which victims can be reimbursed for legal expenses and, where appropriate, the applicable procedure for claiming them, etc.

**3. Intervention phase:** the intervention by the Crime Victim Support Offices takes place in different areas:

- Legal interventions: the Offices will provide victims with the legal assistance victim need and, specifically, they will give victims information about the type of assistance victims can receive in the context of judicial proceedings, the rights victims can exercise as part of the proceedings, the way and the conditions in which victims can access legal advice and the types of services or organisations victims can contact for support.



The legal assistance will in all cases be general regarding how the proceedings are carried out and the way to exercise different rights, as the victim's lawyer is responsible for the guidance and legal aid in each case.

- Medical and psychological interventions: the psychological care offered by the Offices consists in assessing and treating victims' situation to reduce the crisis caused by the crime, to cope with the judicial proceedings resulting from the crime and accompaniment throughout the proceedings and reinforcement of victims' strategies and abilities, enabling help from victim's surroundings.

The Offices will create a psychological support plan in the event of the victim being particularly vulnerable or in need of special protection.

- Economic interventions: regarding economic aid to which victims are entitled if the victim has been the victims of a violent crime or crime against sexual freedom, the Offices mainly play an informational role and can assist with handling claims.
- Social and care interventions: in this area, the Offices will be coordinated in the care they provide victims and, where appropriate, they will refer victims to the social services, care institutions or organisations available to ensure safe accommodation, immediate medical care and any financial aid victims might be entitled to, with particular attention given to needs arising from situations of invalidity, hospitalisation, death and those caused by a possible situation of vulnerability.
- Monitoring phase: the Offices will monitor victims' case, especially if the victim is a vulnerable one, throughout the entire criminal process and for an appropriate period of time after the process ends. In this phase, the Offices will analyse the victim's legal, medical and psychological, social and care and economic situation following the crime at different periods. The appropriate time for monitoring will be determined based on the victim's situation.

In relation to victims of terrorism, the main functions of the National High Court's Terrorism Victim Information and Support Office are the following:

- to provide victims with information on the status of the judicial proceedings that may affect victims based on the crime committed;
- to advise victims on everything related to the criminal and administrative proceedings that may affect victims;
- to offer victims personal accompaniment to the trials held regarding the terrorist acts that may affect victim;
- to provide the victim with emotional and therapeutic support, without prejudice to the competencies of the Ministry of the Interior;
- to promote the protection of victim's safety and privacy as a victim of the crime in victim's participation in the judicial proceedings;
- to inform victims about the main compensations for terrorism victims, in all cases referring victims to the Ministry of the Interior's Directorate-General for the Support of Victims of Terrorism;
- to notify victims of everything related to the enforcement of the prison sentence, until the sentence has been served in full, particularly in cases where the convicts have been granted benefits or released.

#### *Victim support hotline*

During the reception or orientation phase, the victim may be attended in person or via telephone at the Crime Victim Support Offices. For certain crimes like gender-based violence, in Spain there are telephone services for assistance and guidance, e.g. the 016 Telephone Service for Information and Legal Advice concerning Gender-Based

Violence. The 016 Telephone Service for Information and Legal Advice concerning Gender-Based Violence provides free, professional assistance 24 hours a day, 365 days a year. The data of persons who use this service are guaranteed to remain confidential at all times.

Assistance is offered in 51 languages. Specifically, 24-hour assistance is offered in Spanish, Catalan, Galician, Basque, English and French, and via a tele-translation service for calls in German, Portuguese, Mandarin, Russian, Arabic, Romanian and Bulgarian. Assistance in the other languages is offered via a tele-translation service.

The accessibility of the service for people with hearing and/or speech impairments is guaranteed via the following means:

- text telephone (TTY) on 900 116 016;
- Telesor service via the Telesor website (<https://www.telesor.es/>). An Internet connection is required in this case;
- mobile telephone or PDA. In both cases, it is necessary to install a free application by following the steps indicated on the Telesor website.

This service offers assistance for anyone with queries related to specific cases of gender-based violence: female victims of gender-based violence, people who are close to a female victim of gender-based violence (relatives, friends, neighbours, etc.), professionals attending to a female victim of gender-based violence or who are aware of a situation of this kind of violence, etc.

The information provided refers to the resources and rights available to victims as victims of this kind of crime, concerning employment, social services, financial support and information, assistance, reception and legal advice resources.

In the event of receiving an emergency call, it is immediately diverted to the 112 emergency number of the respective autonomous community. If victims are underage victims of gender-based violence, any calls victim make to the 016 Service will be diverted to the ANAR Hotline for Aid for Children and Adolescents (900 20 20 10). The ANAR Foundation Hotline is a free, confidential and anonymous service, available 24 hours a day, 365 days a year, which mainly consists of three aid lines. This service will divert the calls victims make to the 016 Service if victims are an adult female and victim of gender-based violence or an adult who is aware of a case of this kind of violence.

### *Victim support from non-governmental organisations*

Non-governmental organisations (NGOs) can offer support to victims of specific crimes by means of establishing personalised pathways according to each victim's needs and characteristics. The assistance function mainly includes legal advice, information about the different resources and aid available and psychological and emotional support.

### **1. 2 Current implementations of the Statute of the Victim in Spain**

According to different experts (Tamarit and Villacampa, 2019)<sup>62</sup>, some gaps and challenges regarding the practical implementation of the Victims' Directive in Spain can be identified.

In relation to bureaucracy,

the inertia of the judicial system is a big problem for the protection of victims' rights and victims' ability to exercise them. An official, bureaucratic and restrictive conception has prevailed in relation to supporting victims. Moreover, there is fragmentation of private entities supporting victims and the existence of territorial inequalities, derived from the existence of various competent administrations regarding victim support and the differences in the capacity to apply resources

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<sup>62</sup> See also the above mentioned reports of the European Union in relation to Spain.

provided by the General State Administration and by various autonomous administrations with powers in the field (Tamarit and Villacampa, 2019).

In relation to the lack of budget,

The lack of allocation of budgetary resources for the implementation of the Law 4/2015 has greatly limited its effective application. There has not been the necessary extension of resources to support victims, or to an expansion of the existing public office offer nor through transfers of resources or agreements with non-governmental entities. Neither has been made by all competent administrations the necessary efforts for training and awareness of the various professional groups or for the development of new programs of restorative justice. In addition, shortcomings have been detected in the accessibility of public victim assistance offices and in the quality of some key services for adequate care for foreign victims who do not know the official languages in the various territories, such as interpretation services. The ease of the victims of having the services of a lawyer has been revealed, as some studies have pointed out, as an important resource so that they can effectively exercise their rights, which in practice constitutes a source of inequality. There have also been shortcomings in the possibility that victims may have psychological assistance, which is so necessary in certain forms of victimisation (Tamarit and Villacampa, 2019).

To overcome the existing limitations, the following recommendations are proposed by Tamarit and Villacampa (2019):

1. Improve the accessibility to victim support offices and extend the existing offer through new resources, such as, for example, the telematics attention program for victims of crimes implemented by the Government of Catalonia in 2016.
2. Promote a non-governmental organization to support victims and seek the contribution of public resources to it by the competent administrations.
3. Develop at a legal level referral rules of restorative justice proceedings in criminal proceedings in a sensitive manner to the rights of crime victims.
4. Establish restorative justice programs and provide more resources to develop existing ones.
5. Establish a quality assurance system for translation and interpretation services.
6. Extending free legal aid.

According to the five conclusions of the Spanish report of the European project “Towards a more responsive victim-centered approach of the criminal justice system (RE-JUST)” (Gómez et al., 2020, p. 12):

1. Criminal Justice in Spain needs more human and economic resources. Our legal and judicial systems are both saturated, and the procedures are extremely slow. Ombudsman (2019 report, from May 13<sup>th</sup> 2020)<sup>3</sup> has recommended developing the different laws we already have; also the budget that has already been approved should be implemented because the money is not really being allocated to the projects.
2. The full enjoyment of victim’s rights needs of suitable resources: trial courts with separated spaces, audio-visual equipment, means for witnesses’ protection, available specialized victim assistants, translators etc. At the moment there is not a real availability of the resources procedures, conditions and safeguards laid down by the Law 4/2015 and the Royal Decree 1109/2015 implementing the law.
3. Specialized training is an urgent matter for legal practitioners in Spain. We need every legal operator (police, judges, lawyers, prosecutors, doctors, psychologists etc.) to have specialized training in Human Rights, Victims assistance, non-discrimination issues, gender, minor rights etc. Victims are tired of seeing that

they are not being believed and they feel like they are being judged, the roles are twisted. Victims need personalized programs and procedures to be and feel protected. Also, awareness and training about differences between violence against women, gender-based violence, domestic violence, sex-based harassment... should be implemented. 4. It is strongly recommended for victims to take a more active role as a private prosecutor (own lawyers, not public prosecutors) and ask for free public lawyers to ensure their rights as a party in the procedure. 5. The tribunals in Spain should apply more the International Law and not just the national one.

## 2. Key concepts to recap

Compensation  
Criminal procedural law  
Evaluation  
Minimising harms  
Office to Assist Victims  
Right to accompaniment  
Right to understand and be understood  
Secondary victimisation  
Solidarity  
State compensation  
Subsidiarity

Victims' rights (protection, information, support, access to justice, reparation, respect)

## 3. Thinking Victimology

According to Fernández de Casadevante (2020):

As a result of increasing migration, many immigrants with no knowledge of our language require legal assistance. At the national level, there are several instruments and laws that include, to a certain degree, the right to translation and interpretation in the legal field, and which take into account that the immigrant may need the presence of an interpreter both when acting as a defendant and as a victim. However, we find that the Spanish Criminal Procedure Act and Spanish Act 4/2015, on the Standing of Victims of Crime, contain aspects that do not guarantee equal conditions regarding access to justice for those not sharing the language of the court.

Taking into account those deficits and the lack of victimological training for potential translators and interpreters in the criminal system, please, draft a training module for interpreters and translators working with victims of crime. Would you include testimonies of victims of crime? If so, how would you work with those testimonies in the training?

## 4. Applying Victimology

Visit the following link where you can find a questionnaire for research, developed by the Basque Institute of Criminology on the implementation of victims' rights by local Spanish police:

[https://docs.google.com/forms/d/e/1FAIpQLSdwFKqOfWS0x2qwsPc1nYia182gqsQU\\_BTDcLVyspIKTSuj20w/viewform?usp=pp\\_url](https://docs.google.com/forms/d/e/1FAIpQLSdwFKqOfWS0x2qwsPc1nYia182gqsQU_BTDcLVyspIKTSuj20w/viewform?usp=pp_url)

Please, try to assess to what extent we need other kinds of questions to approach victims' experiences with police in relation to their rights. Moreover, try to design a research to assess the relevance of the right to be accompanied by a person of victims' choice from the first contact with authorities and officials (Art. 4 c of the Spanish Statute, within the right to understand and be understood).

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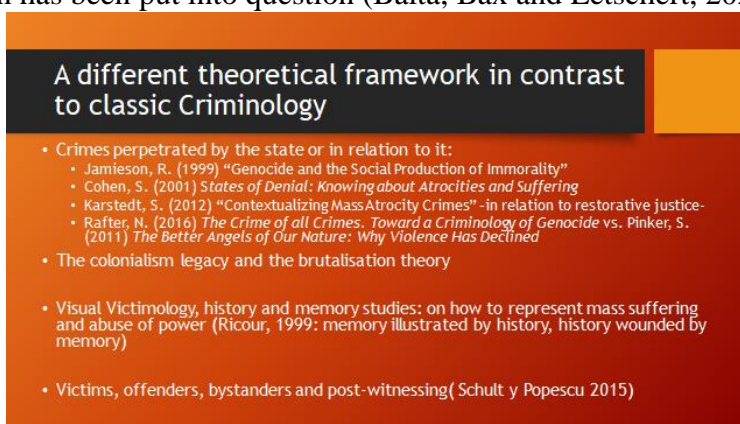
## VII. VICTIMS OF INTERNATIONAL CRIMES

### 1. The notion of an international criminal justice

After the experience of the League of Nations (1919-1945), which, together with penitentiary reform and juveniles, addressed such issues as people trafficking and prostitution, slavery, piracy, obscene publications, terrorism, and, most importantly, drugs, the establishment of the United Nations gave momentum to concern for international crimes, or crimes against the international community (Varona and de la Cuesta, 2019). Here, the different roles of the two Nuremberg prosecutors and jurists, Hersch Lauterpracht and Rafael Lemkin, help in understanding the inclusion of the terms ‘crimes against humanity’ and ‘genocide’ and what they implied in terms of international criminal law in action (Sands, 2016).

Adopted on 17 July 1998 by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Court, the Rome Statute of the International Criminal Court (ICC) that entered into force on 1 July 2002 created the International Criminal Court as an independent and permanent court of last resort, in contrast with ad-hoc international criminal courts (International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda created by the United Nations Security Council, as well as various internationalized, hybrid or mixed criminal courts created in other countries as post-conflict justice). ICC competence concentrated initially on genocide, crimes against humanity and war crimes; but, following the provisions of the Treaty also aggression became the object of the ICC competence.

As a novelty it should be noted that the ICC Rules of Procedure and Evidence victims are given special relevance for the first time in international justice, recognizing their right to protection, voice before the court and reparation<sup>63</sup>. However, the real impact of this recognition has been put into question (Balta, Bax and Letschert, 2021).



*Image 37: The need for a different theoretical framework in international crimes, mostly state and corporate crimes, not just interpersonal or group violence*

<sup>63</sup> On the Fund for Victims, see <http://www.trustfundforvictims.org/about-us>. The 2020 EU Strategy on victims acknowledges the relevance of the international dimension of victimisation in relation to human rights.



Image 38: Concentration and extermination camps and their relation to a dangerous use of language<sup>64</sup>



Image 39: Other genocides

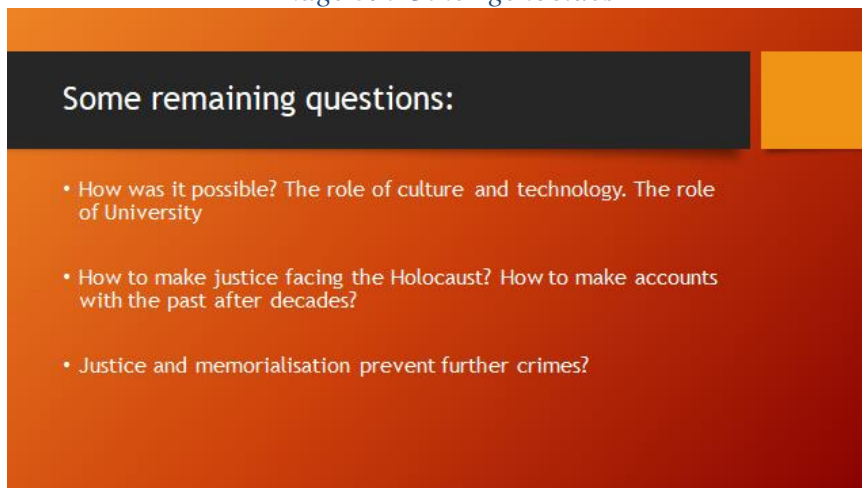



Image 40: Remaining questions on genocide and international crimes

<sup>64</sup> See Watt (2000) and Oz (2016).

Some explanations: on banalisation (H. Arendt) and naming perpetrators individually and collectively: psychopaths, fanatics, bureaucrats, indifferent, opportunists...




On contexts and consequences by two German writers of Jewish origin: Stefan Zweig (*Castello vs Calvino*, 1936) and Walter Benjamin (*Der Erzähler. Betrachtungen zum Werk Nikolai Lesskows*. In: *Orient und Occident*, 1936), both committed suicide before the II WW ended

Buchenwald, 1945

Image 41: Some explanations for international crime victimisation

## JUSTICE AS A RESPONSE TO THE HOLOCAUST AND OTHER INTERNATIONAL CRIMES?



-The 20th century as the century of genocides (Bruneteau 2006):

- 1) The 19th century imperialism/colonialism allowed administrative slaughters, dehumanising the enemy, extreme violence and mass victimisation, continued during WW.
- 2) The definition of the genocide during the 20th century: aim, intention, profile and modus operandi of perpetrators.

-Sentences on genocide? (not in Nuremberg or Tokyo), yes in Rwanda and former Yugoslavia (Srebrenica).

-Legal difficulties on its application (Sands, 2016). 1948: crime against humanity (Lauterpacht) vs. genocide (Lemkin) and potential activist misunderstandings/manipulation.

*The Memory of Justice* (1976) a documentary film directed by Marcel Ophüls, restored (2015) by the Academy Film Archive in association with Paramount Pictures and the Film Foundation available on HBO. INDIVIDUAL AND COLLECTIVE RESPONSIBILITY

Image 42: International criminal justice and the Holocaust

## Never again? The prevention of genocide by the UN in the 21st century

• <http://www.un.org/en/genocideprevention/index.html>




Image 43: International Criminal Justice as a way of prevention fighting against impunity

International or atrocity crimes are different from transnational crimes, although they are usually related to organized global criminality. As mentioned before, the crimes under the jurisdiction of the ICC (which cooperates but is independent from the UN) are the following<sup>65</sup>:

- > Crimes against peace, aggression. Article 8 *bis* of the Rome Statute (in force since December, 2017) defines the crime of aggression as “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military

<sup>65</sup> See at <https://www.icc-cpi.int/Pages/Main.aspx>.



*action of a State*, of an act of aggression which . . . constitutes a manifest violation of the Charter of the United Nations.” In principle, this crime could be committed by non-state armed groups and corporations.

- > War crimes (1949 Geneva Conventions, e.g.: crimes against civilian population and prisoners) (Art. 8 Rome Statute).
- > Genocide (1948 Convention) (Art. 6 Rome Statute): certain serious acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.
- > Crimes against humanity: inhumane acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (Art. 7 Rome Statute)<sup>66</sup>.



*Image 44: The IIC Building in The Hague and map of the countries in relation to the application of the Rome Statute*

The ICC works under the rule of the complementary principle: the ICC will only act if internal remedies are not possible. The Rome Statute recognizes that States have the first responsibility and right to prosecute international crimes. The ICC may only exercise jurisdiction where national legal systems fail to do so, including where they purport to act but in reality are unwilling or unable to genuinely carry out proceedings.

In relation to this, some countries allow universal jurisdiction<sup>67</sup> for international and transnational crimes. If the legislation of a state recognises universal jurisdiction, a national court may prosecute individuals for serious crimes against international law based on the principle that such crimes harm the international community or international order itself, even if the defendant is not a national of the State, the defendant did not commit a crime in that State’s territory or against its nationals, or the State’s own national interests are not adversely affected.

One of the prominent cases involving universal jurisdiction was the United Kingdom’s consideration of Spain’s request to extradite former Chilean dictator Augusto Pinochet

<sup>66</sup> With regard to this list, the debate continues today with proposals to include other crimes such as terrorism, human trafficking, piracy or crimes against the environment (ecocide) within the jurisdiction of the ICC.

<sup>67</sup> See the annual report and the database on the legislation and practice of the universal jurisdiction in different countries at [www.trialinternational.org](http://www.trialinternational.org).

(UK House of Lords Nov. 25, 1998 judgment and summary)<sup>68</sup> from the International Crimes Database. Another important case started in April 2010, when victims and human rights associations<sup>69</sup> filed a complaint before the Argentinean criminal courts which began an investigation into alleged crimes against humanity committed during the Franco regime. The Spanish Supreme Court Judgment no 101/2012 prevented the enforcement of a previous Order of 2008 which sought to initiate an investigation into alleged crimes committed during the Franco regime, on the basis of the Spanish 1977 Amnesty Law; the principle of legality and the prohibition of retroactivity; and the existence of statutes of limitations for the crimes under investigation<sup>70</sup>.

### *Transitional justice*

The term “transitional justice” was coined by American scholars in the 1990s and was later explored by European researchers (Ker, Redwood and Gow, 2021). It refers to how to deal with the past after mass victimisation in collective violence situations, mainly transitions from non-democratic regimes or war to peaceful democracy. According to the *International Center for Transitional Justice*, the tools proposed are criminal prosecutions for at least the most responsible for the most serious crimes, truth-seeking or fact-finding processes into human rights violations by non-judicial bodies; reparations for human rights violations with an individual, collective, material and symbolic character; and reform of laws and institutions including the police, judiciary, military and military intelligence.

The scholarship of transitional justice has been supported by United Nations. According to the United Nations, transitional justice is, “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law”. Following Art. 33 of the UN Charter, the United Nations Peacebuilding Commission was established on 20 December 2005 by resolutions of the General Assembly (resolution 60/180) and the Security Council (resolutions 1645 (2005) and 1646 (2005)). The Peacebuilding Commission (PBC) is an intergovernmental advisory body that supports peace efforts in conflict-affected countries.

In the 2012 Declaration of the High-level Meeting on the Rule of Law, Member States of the United Nations stressed the importance of a “comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures to ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system and restore confidence in the institutions of the State and promote the rule of law”. These ideas are part of the above mentioned Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and

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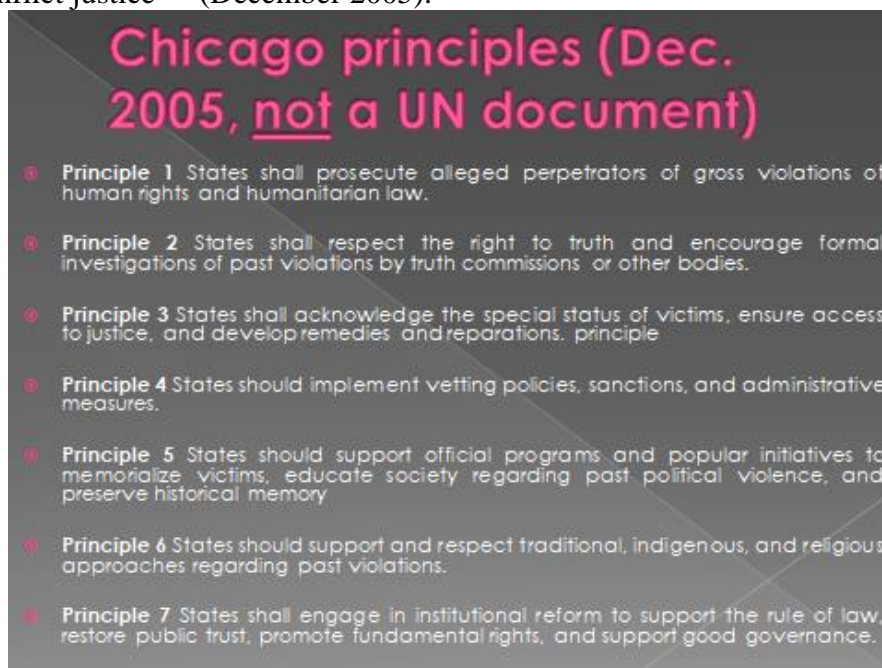
<sup>68</sup> See at ICD - Pinochet - Asser Institute ([internationalcrimesdatabase.org](http://internationalcrimesdatabase.org)).

<sup>69</sup> On 16 March 2016, Women’s Link Worldwide (WLW) presented a supplement to the criminal complaint in the Argentinian case, which concerned sexual and gender-based violence crimes during the Civil War. WLW and Trial International also presented a complaint against the UN Human Rights Committee. In 2021, even if acknowledging the indifference of Spain on this matter, that Committee denied the investigation of this disappearance, among other reasons, because appealing is still possible within Spain before going to that international Committee.

<sup>70</sup> Even though human rights experts and activists underlined that genocide and crimes against humanity are not subject to any limitation periods or amnesties. On the 7<sup>th</sup> of August, 2020, the UN Working Group on Enforced or Involuntary Disappearances pointed out how the Amnesty Law and the Supreme Court’s decision contravene states’ obligations to ensure that perpetrators of enforced disappearances are prosecuted and sanctioned.

Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

Beyond the UN documents, the contradiction of transitional justice (in principle, only during a period of transition where it is necessary to balance justice for victims and peace with accountability) is also expressed in the Chicago principles and the term “post-conflict justice”<sup>71</sup> (December 2005).



*Image 45: The Chicago principles*

In comparison to restorative justice, transitional justice is defined by macro politics as temporary and extraordinary (McEvoy and McConnachie, 2012; Clamp, 2016), sometimes because it involves mass victimisations and a great number of victimisers with some cases of victim/offender overlapping (for example, when child soldiers are involved).

## 2. Key concepts to recap

Abuse of power  
Altruist behaviours  
Atrocity crimes  
Banalisation of evil  
Bystander effect  
Gross violation of human rights  
International community  
International crimes  
Macro-victimisation  
Macrovictimización  
Mass victimisation  
Sex crimes as international crimes  
Torture  
Transitional justice  
Transnational crimes  
White-collar crimes  
Zimbardo's Lucifer effect

<sup>71</sup> See at [http://www.concernedhistorians.org/content\\_files/file/to/213.pdf](http://www.concernedhistorians.org/content_files/file/to/213.pdf).

### 3. Thinking Victimology

1) Do you agree with the following excerpt by Schwöbel-Patel (2018):

Seeing justice done for the harm caused may lie in psychological benefits of overcoming trauma; it may lie in material benefits of receiving reparations; it may lie in gaining information to understand responsibility and it may have broader societal functions of advancing efforts of post-conflict transformation. Speaking on behalf of victims, therefore, has both practical and symbolic benefits (...) the symbolic has been prioritized to meet the demands of a sector in which global justice actors compete for attention. This helps us understand the construction, normalization and reproduction of an 'ideal' victim. As agency and voice are restricted, or denied entirely, victims of international crime find themselves in a market place, matching themselves against the notion of an 'ideal' victim. In its practices of representation, whether institutionalized procedurally or aesthetically, the ICC has been shown to fix a particular notion of the 'ideal' victim. By employing simplified – seemingly, more marketable – messages of good and evil, of victims and perpetrators, of peace and justice, the ICC has been primarily appealing to a Western donor community. It does not seem overstated to say that it has consequently (unwittingly) presented itself as an imperialist and interventionist institution. Meanwhile, the vast majority of victims are non-ideal. The lines between victim, perpetrator and bystander are in reality often blurry; the lines between action and compulsion are equally complicated (...) Victims have agency, as many inspiring examples throughout history teach us. Indeed, for a more recent example, one might think of the Black Lives Matter movement. Further research needs to be conducted on how international criminal justice, and, particularly, the ICC, can unsettle the stereotype of the feminized, infantilized and racialized victim. Allowing victims to speak for themselves and not reproducing stereotypes may be a good place to begin. In regard to the broader societal challenges, the study and emphasis on social movements of victims as active agents may be an entry point into questioning representation more fundamentally. Ultimately, however, as Said notes of an alternative to orientalism, 'one would have to rethink the whole complex problem of knowledge and power'.

2) Consider the following excerpt by Varona (2021)<sup>72</sup> on sexual violence in political violence and war, and debate why sexual violence should be considered a war crime or a crime against humanity or both<sup>73</sup>.

*Meanings of sexual violence against women in the general context of war and international criminal law*

The topic of violence against women during war is quite recent in the fields of History, Medicine, Law or Victimology (Amnesty International, 1993; Brown, 2005; Brownmiller, 1975; Buss, 2009; Ewald, 2002; Koos, 2017; Malik, 2020; McCormick, 2001; Nordstrom, 1996; Swiss and Giller, 1993). Sexual violence can be seen as a tool of control of certain human beings over others. Even though many male victims exist, this domination has always worked in a continuum with the general violence against women in pre- and post-war

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<sup>72</sup> Complete quoted references can be accessed in the original paper.

<sup>73</sup> On this topic the legacy by Nepali Tejshree Thapa, a human rights lawyer whose work spanned crises and conflicts in the Balkans, Nepal, Bangladesh, and Sri Lanka, must be highlighted. She passed away on March 26, 2019, in New York City. She joined Human Rights Watch in 2004 and was its senior South Asia researcher. See also the 72 minute documentary film by Fiona Lloyd-Davies, titled *Seeds of Hope*, following the story of Masika Katsuva, a Congolese woman helping others deal with the consequences of the civil war where rape became commonplace as a weapon of war. At Masika's centre, a community of rape victims, they try to rebuild their lives.

societies. This fact does not diminish the specific characteristics of rape during wartime: public occurrence, group character, prolongation as sexual slavery and its use for ethnic cleansing (Hagen and Yohani, 2010). In the context of war, we can understand rape as a gendered process where the audience or bystanders play a key role (Joly, 2012, p. 112).

Rape during war, mainly committed by armed agents against civilians, can be defined as mass victimisation because of the number of victims affected and the magnitude of the abuse of power. The bodies of women are used as a “ceremonial battlefield” (Brownmiller, 1975, p. 38; Lamb, 2020) to compensate fighting men, humiliate the enemy, express revenge and transmit terror. Turshen (2001) refers to the political economy of rape in war in relation to its long-lasting effects on the victims, their families and their communities, in particular to the loss of their status in cultural terms, which brings intertwined political and economic consequences. Rape is traditionally associated in patriarchal societies (and legal systems) with experiencing dishonour (Neill 2000). This dishonour is augmented if women end up pregnant, which causes social rejection, risky abortions, shame and depression, and committed or attempted suicide (Mochmann, 2017).

Customary laws on war prohibited systematic rape, but there was a common understanding that they were a by-product of war violence<sup>74</sup>. Notwithstanding the historical accounts on the Second World War<sup>75</sup> and other previous armed conflicts, a clear legal recognition of this problem took place only after the war in the former Yugoslavia (Stigmayer, 1994; Engle, 2005). After the UN admitted its widespread character as a military and political strategy<sup>76</sup>, more legal evidence on this kind of victimisation was brought in the case of Rwanda (Human Rights Watch 1996) and Sierra Leone (Menzel, 2020). Finally, Article 7. 1 g) of the 1998 Rome Statute of the International Criminal Court included it as crimes against humanity. Sexual offences were also considered war crimes (Article 8), independently of the international nature of the conflict.

Moreover, the United Nations Security Council Resolution 1325 was adopted on 31 October 2000, aimed to end violence and abuse against women during war and to bring women’s voices into peace talks. In 2008, the Resolution 1820 recognised sexual violence as a tactic of war and called for the intervention of the Security Council to provide safety for women. In 2009, the UN Security Council Resolution 1888 urged prompt action for the protection of civilians, including women and children, from all from all forms of sexual violence. This Resolution established an Office on Sexual Violence in Conflict to coordinate

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<sup>74</sup> See the 1864 Geneva Convention, the Hague Conventions of 1899 and 1907, on the Laws and Customs of War on Land, where there was not a particular concern on violence against women.

<sup>75</sup> After the Second World War, Article 27 of the Geneva Convention relative of the protection of the civilian persons in time of war, of 12 August 1949, mentioned rapes in the following terms: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. In addition, Article 4 of the Additional Protocol II of 8 June 1977 stated the prohibition of “rape, enforced prostitution and any form of indecent assault” against civilians. However, those provisions did not recognise sexual offences as a grave breach of the Geneva Conventions and it was necessary to force interpretation to understand those offences as torture and cruel treatment. In 1969 the Commission on the Status of Women talked about the vulnerability of women in armed conflicts.

<sup>76</sup> Rape is mentioned within crimes against humanity in Article 5 of the 1993 Statute of the international Criminal Tribunal for the former Yugoslavia and, within crimes against humanity and war crimes, in Articles 3 and 4 of the 1994 International Criminal Tribunal for Rwanda Statute where judges have interpreted rape as an instrument of genocide.

different UN entities to approach sexual violence in conflict and support the Special Representative of the Secretary-General on this topic. This Resolution acknowledged the significant impact of this sort of victimisation not only on victims but also on communities and future peace. In its webpage (OSRSG-SVC, w.d.), the Office objectives are defined as “converting cultures of impunity into cultures of justice and accountability through consistent and effective prosecution”, by “fostering national ownership and leadership for a sustainable, survivor-centred response” and “addressing the root causes of conflict-related sexual violence”.

Despite international criminal law reforms to make sexual violence against women during armed conflicts, preventable, punishable and repairable, impunity persists (Dowds, 2020). This is partly so because possibilities of prosecution are rare in the chaos of war and the fight for mere survival. Besides, many women, family members and witnesses are killed or suffer permanent terror. At the same time, cover up happens under the law of silence in military corporatism. In addition, some rapes are usually considered less serious than others depending on the geopolitical situation and who the perpetrators and the victims are (Gebhard, 2016), including the case of peace-keeping forces who committed sexual crimes (Myrntinen, 2020). Taking into account these complexities, some authors argue for access to transitional and restorative justice (Braithwaite, 2020).

Paradoxically, Nadj (2018) critically contends that international criminal tribunals and legal narratives have constructed women in passive terms of victimhood and motherhood. Thus other controversial and multi-gendered identities or subjectivities in wartime are excluded and separated from relations of power. Feminist studies highlight why certain victimisations and experiences are silenced and how these processes have to do with different interests and structures of power (Peterson, 2007).

**3)** Which scheme do you consider more adequate to respond to the victimisation arising from the Spanish Civil War and Franco’s dictatorship: international criminal justice, transitional justice, restorative justice or a hybrid?

In relation to other forms of reparations in the case of the Spanish Civil War and Franco’s dictatorship, beyond courts of criminal justice, see the Department of the Democratic Memory within the Moncloa (before 2020, under the Justice Ministry) at <https://www.mpr.gob.es/memoriademocratica/normativa-y-otros-recursos/Paginas/index.aspx>. See also other victim legislation in some Spanish provinces, eg: <https://www.gipuzkoa.eus/es/web/gizaeskubideak/memoria-historica>.

#### **4. Applying Victimology**

**1)** Please, read the following excerpt from Becker (2020):

Germany committed genocide in Africa 40 years before the Holocaust of the European Jews. In 1904 and 1905 the Ovaherero and Nama people of central and southern Namibia rose up against colonial rule and dispossession in what was then called German South West Africa. The revolt was brutally crushed. By 1908, 80% of the Ovaherero and 50% of the Nama had died of starvation and thirst, overwork and exposure to harsh climates.

The army drove survivors into the waterless Omaheke desert. Thousands more died in concentration camps.

For many historians this first genocide committed by Germany provided the template for the horrors that were to come 40 years later during the Holocaust of the European Jews. The philosopher Hannah Arendt, herself a Holocaust refugee from

Germany, explained in 1951 that European imperialism played a crucial role in the development of Nazi totalitarianism and associated genocides.

Following on an earlier Norwegian edition, a new book, *Mama Penee: Transcending the Genocide*, by Uazuvara Ewald Kapombo Katjivena, to be published by UNAM Press in Windhoek (...), makes an extraordinary attempt to present the lived experience of the genocide (...).

Based on oral and family history, Katjivena, a former exiled liberation Namibian fighter until the country's independence from South Africa in 1990, tells his grandmother's story in a biography deeply infused with family and oral history. His grandmother, Jahohora, survived the genocide as an 11-year-old girl (...).

Katjivena intersperses Jahohora's personal perspective with historical facts. We read a detailed, chilling account of General Lothar von Trotha's extermination order of 2 October 1904. The oral history telling, however, also indicates instances of humanity during an entirely inhumane era (...).

Importantly, human remains of genocide victims were repatriated from Germany to Namibia in 2011, 2014 and 2018. These had been shipped to academic and medical institutions in Germany and had remained there until recently.

In 2019 some significant items of cultural memory, which had been stolen during colonial conquest, were returned to Namibia from the Linden Museum in Stuttgart (...). On the political level, the German government finally acknowledged the colonial genocide in 2015. Ever since, Namibian and German envoys have been talking about an official apology by Germany.

Most controversial have been negotiations about reparations. Also controversial has been the role of the Ovaherero and Nama communities that were directly affected by the genocide.



*Image 46: Herero women in Namibia. Source: <https://everygirlafrica.com/><sup>77</sup>*

<sup>77</sup> According to <https://everygirlafrica.com/>: “Their style of dressing was influenced by the wives of German missionaries and colonialists who first came to the country, Namibia, in the early 1900s and settled there, bringing with them all the prejudice that centuries of civilization had bred into them. The traditional semi-naked dress of the Herero was unacceptable to these paragons of virtue and eventually the Herero women were coerced into adopting the Victorian dress, adapting it into the style so distinctive today. The Herero dress is symbolic of the tragic history of the Herero people. After a genocide carried out by German settlers in the 1900s which saw an estimated 100,000 killed, the Herero have, ironically, made this dress – with its German roots – their own (...) Keeping the memory of the Herero-German war alive is very important for the Herero tribe, and there is an annual festival in August to commemorate this”.

Did you know anything about this genocide? Taken into account the international minimum standards on reparation to victims of gross violation of human rights, consider how a memorialisation practice could be envisaged for this first genocide of the 20<sup>th</sup> century. How is that practice of memorialisation different from reparation understood as compensation?

2) What kind of conditions are needed, after due learning and practice, to be a facilitator between victims and perpetrators (or collaborators or indifferent bystanders) in cases of gross violations of human rights where the victims are interested in forgiveness? Take the example of Eva Mozes Kor by watching the following short video: <https://www.facebook.com/BuzzFeed/videos/10156791799070329/>.

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## VIII. VICTIMS OF WHITE-COLLAR CRIME, IN PARTICULAR ENVIRONMENTAL CRIME

### 1. 1 On the concepts of white-collar crime and green Victimology

The origin of the term “white-collar crime”<sup>78</sup> comes from its use by the US scholar Edwin Sutherland concerning the differential association theory (1939) and the ubiquity of criminality (Simpson, 2019). This concept is defined by three main characteristics of the offenders (1949):

- their high socio-economic status,
- their social respectability, and
- the commission of the crime in relation to their professional activity (in the course of their occupation).

White-collar criminality is a sociological and criminological concept that does not entail a legal meaning, but it helps to understand the process and relevance of this kind of victimisation, usually understudied, under-investigated and under-sanctioned and with a lower social perception of harm (Croall, 2007; Gottschalk, 2013; Piquero, 2018; Guardiola, 2020; Rodríguez Puerta, 2020). This kind of victimisation can also mean corporate victimisation (Shichor, 1989; Forti, 2017) and entail crimes of the powerful victimisation (Rothe and Medley, 2019). In the Spanish criminal code we can find white-collar crimes mainly in its Title XIII (crimes against the socio-economic order: private corruption in businesses, corporate crimes, money laundering); XIII bis (unlawful financing of political parties); XIV (crimes against tax authorities and social security); XV (criminal offences against the rights of workers); XVI (criminal offences concerning the organization of the territory and town planning, protection of the historic heritage and environment); XVIII (forgery); XIX (crimes against the public administration, including public corruption); and XX (crimes against the administration of justice).

In this chapter, we will concentrate on the victim impact and harm of this kind of victimisation that, to a great extent, implies a certain level of violence, even if this is discounted (Moore and Mills, 1990) and not usually understood as such in common and criminal terms. Due to their specific invisible character and lack of criminal investigation until recent times, as illustration, we will mainly refer to crimes against the environment and animals, a topic under the study of the so-called green Victimology in relation to the notions of macro-victimisation and abuse of power.

Environmental criminal law examines environmental crimes and regulations, both at the national and international levels<sup>79</sup>. With a classical legal mindset, it concentrates on defining criminal behaviours and their sanctions, mainly in the sphere of illegal taking or trading of flora and fauna, waste and pollution offences, and the transportation of banned substances (Hall, 2018). By contrast, green criminology and green Victimology concentrate on the notion of harm understood as damage or potential damage to ecological (human and non-human) wellbeing, including broadening notions of climate change (through deforestation or global warming), and biodiversity threats (species extinction and genetic modifications). The notion of ecological wellbeing appears in the UN Environment Programme (w.d.) where the ecological imperative is mentioned for human survival, even though a certain holistic understanding of the interdependency between species and the ecosystems is also present (White & Heckenberg, 2014). Other international standards take a more anthropocentric perspective, for example, the 1992 UN Framework Convention on Climate Change, the 1998 UNECE Convention on

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<sup>78</sup> The term white-collar workers referred to suit-and-tie workers who work in service industries by contrast to blue-collar workers usually engaged in more physical activities.

<sup>79</sup> These paragraphs reproduce Varona (2021).

Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, and the EU Directive 2008/99/EC on the Protection of the Environment through the Criminal Law.

With regards to non-human animals, apart from international and national legislation pertaining to scientific research ethics, the 1976 Council of Europe Convention for the Protection of Animals Kept for Farming Purposes was followed by the 1998 EU Council Directive 98/58/EC of 20 July 1998, under the same name. This legislation pertains to the EU agencies of health, food and transport. Even if the debate on animals' rights continues (see Francione, 2020), the EU legislation recognises the so-called five freedoms: freedom from hunger and thirst, from discomfort, from pain, injury and disease, from fear and distress, and freedom to express their own behaviour. In 2009, based on neuroscience research, Article 13 of the Lisbon Treaty introduced the recognition that animals are sentient beings. Despite the approval of these minimum standards, Article 13 also states that those norms will be applied, 'while respecting the legislative or administrative provisions and customs of the EU countries relating in particular to religious rites, cultural traditions and regional heritage' (European Union, w.d.).

That remark expresses the limited and conflictive character of the protection granted. In any case, it reflects the change from the understanding of farm (and domestic) animals as just things or objects of property to advance the possibilities of enhanced ethics of consideration (Pelluchon, 2015). Domestic law also goes in this direction. For example, in 2015, the Spanish criminal code was amended to punish ill-treatment of non-wild animals with penalties ranging from three months up to one year in prison, with the possibility of alternative programmes to prison for those found guilty of 'mistreating animals unjustifiably in any manner' or else inflicting injury on them or submitting them to sexual abuse. Legally, animals cannot be granted the status of 'victim' (only possible to be applied to natural persons, according to the 2029/12/EU Directive on the rights of victims). Moreover, in 2017 a reform was initiated to change the Spanish Civil Code to de-objectify animals, defined as 'movable property'. However, this legislative process was interrupted due to the succession of general elections in the country at that time (Giménez-Candela, 2019).

These fragmented and very diverse interests protected by environmental law, criminal and administrative law finally led to divergent comprehensive proposals for environmental, ecological, interspecies or green justice, all of them with a critical character towards the *lex lata* and the *lex ferenda*. According to Walters (2020, 54):

(...) a Green Justice seeks to embrace the intellectual exchange between Green Criminology, environmental sociology, ecophilosophy, environmental law and environmental science that has created an exciting, evolving and dynamic blend of discourses that critique political ideologies and environmental policy on local, national and global scale.

Criminology has been defined as the science of the 'other' because it has traditionally considered 'the criminal' as a distinct category from 'the normal'. In a parallel fashion, it is possible to think of the victim as 'other' in order to grasp the victimisation that environmental crime and harms, including the notion of potential risks, are producing to ecosystems and animals. The key question is why, until very recently, harm has been discarded as victimisation and, therefore, as an intervention sphere for restorative justice. We are confronted with the challenge of relying upon criminology, defined by creating 'otherness', as a platform for helping restorative justice to become an ecologically inclusive justice.

Three reasons justify the use of the term ‘green restorative justice’. First, it allows alignment with studies in green criminology and Victimology. Second, it does not have to deal with the critique of reductionism by using the notion of ‘environment’, neglecting others like the ‘ecosystems’ and ‘human and non-human beings’. Third, it might be better to evoke the colour or intangible atmosphere of those ecosystems, and the life within them, as frameworks to think about justice and also as subjects for restoration.

Green criminology started being developed mainly by Anglo-American criminologists in the 1990s. As mentioned before, it can be broadly described as the study of environmental harm, environmental laws and environmental regulation by criminologists (White, 2018), although there are certainly different green criminologies (Hall, 2017). According to Gibbs, Gore, McGarrell and Rivers (2010), some might be more legalistically focusing on the violation of criminal laws that protect the health and safety of people and the environment. Other approaches situate themselves in the realm of socio-legal studies where the frontiers between what are a crime, administrative offences, civil damages, and unethical behaviours are blurred. Finally, we can think of biocentric or ‘deep green’ standpoints with a much broader worry about ‘any human activity that disrupts a biotic system’ (Gibbs et al., 2010: 127).

For some authors, the adjective ‘green’ entails activist or political commitments inappropriate for the need for calm reflection, consistency and objectivity in academia (Halsey, 2004). However, as long as scientific methodology is respected, the presence or absence of those commitments might not seem relevant at all. According to Hall (2018) there have been other proposals for naming this branch of knowledge, but all of them seemed less accurate and less clear. For example, environmental criminology was already covered by situational crime prevention and analysis, following Quetelet’s pioneering steps in the 19<sup>th</sup> century. Groombridge (1991) proposed the term ‘eco-criminology’ drawing on ethics, religion, politics, economics and feminism. Years later, Lynch (2019) added an adjective to be more precise (‘eco-critical criminology’). Halsey (2004) contends that the adjective ‘green’ might not correctly capture the inter-subjective, inter-generational, or inter-ecosystemic costs. Finally, Gibbs et al. (2010) prefer using the words ‘conservation criminology’, based on criminal justice and criminology, risk and decision analysis, and natural resource conservation and management.

We agree with Hall (2018) and Ruggiero and South (2000) in that green criminology is not a bad naming option in comparison to the others presented above. It is short, illustrative, clear, and it has been adopted in most research papers in English and other languages, even if, as in the case of Spain, ‘green’ might have other non-related meanings, such as those connected to sex. Therefore, almost thirty years of green criminological studies can cast some light on what a green restorative justice might consist of. Moreover, green criminology through its disciplinary link with green Victimology draws our attention to the meaning of being a victim in this field of environmental harm.

### **1. 2 The (cultural, symbolic, structural and yet victimologically and criminally unconsidered) violence inherent in macro-victimisation and abuse of power**

This section will try to get deeper into the understanding of the inherent violence within victimisation processes defined as macro-victimisation and abuse of power (Varona, 2021), in particular for so-called green crimes like ecocide. These processes have been traditionally ignored by criminal law and Victimology.

In the Spanish criminal code, violence is defined as using physical or moral force understood in an interpersonal way. The blindness of criminal law towards certain

modalities of violence is also true for Victimology. Because of the cultural embeddedness of Victimology (and thus of the concept of victimisation), this discipline has been centred on the study of individual harm and interpersonal violence according to the definitions of crime in every historical and geographical context. For this reason, despite some assumptions (Pérez-Rivas, 2017), the mass victimisations produced in the first half of the 20<sup>th</sup> century, including the Holocaust, were not the origin of the development of Victimology as a discipline (Wemmers, 2010). Victimology developed at the end of the decade of the 1930s within an individual or micro perspective (Fattah, 2000). Still, today, even though there has been an evolution, many sorts of victimisations remain academically and socially as blind spots, among those we find those pertaining to white-collar and corporate crime.

According to the World Health Organization (WHO, 2002), violence is defined as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation” (p. 4). The World Health Organization indicates four kinds of violence: physical, sexual, psychological, and provoking deprivation. It also considers three sub-types of violence according to the given victim-perpetrator relationship: self-directed violence; interpersonal violence (in the family or the community) and collective violence (social, political and economic violence committed by larger groups of individuals). In peace studies, Galtung (1969) was a pioneering author in developing the term structural violence as that violence, different from personal or cultural violence that results in harm caused by a non-identifiable actor. As part of those peace studies, in restorative justice writings, violence has been defined as a tragic expression of unmet legitimate needs (Duchscherer, 2020).

Although the limitations of this chapter prevent us from carrying out a consistent analysis of the meaning of violence in philosophical (Crosswhite, 2013; Balibar, 2015; Nail and Ellsworth, 2019) and legal theory (Morgan, 2007; Teubner, 2019), we would like to quote a recent contribution from post-structuralist philosophy that illustrates the line of reasoning in these pages. According to Butler (2020, p. 18), violence destroys certain conditions of life and livability and assaults interdependence. However, in the context of each interdependency, there are different ethical duties and obligations. Moreover, violence should not be understood only as physical violence, even though it might include a physical impact at a certain point. Economic, legal, and political structures are violent not only because they end up acting upon bodies, but because they involve that assault in the form of structural or systemic violence too (Butler 2020, pp. 1-2). Butler suggests the need for alternative frameworks to think about violence beyond positivist legal definitions that equate violence to intentional physical or psychological violence. To do so, Butler (2020, p. 3) contends that we need to think of a less physical binary system (“the one striking and the other struck”) and of a less instrumental view on violence. Concerning the justification of violence, she quotes Walter Benjamin’s (2004) questioning of the means/ends distinction. Breaking that distinction is needed to be aware of and prevent the praxis of violence. In a similar manner to Simon Weil’s (1960) reflection on the objectifying power of violence towards the victim and the victimiser, Butler refers to its dehumanising force towards the one using it. Within this awareness, Butler (2020, p. 17) proposes actions of non-violence to face “forms of power that establish the unequal worth of lives by establishing their unequal grievability”.

In the praxis of violence, the notion of cultural and structural violence is related to forms of economic and financial macro-victimisations, as mentioned before,

traditionally unconsidered in criminal and victimological studies. Macro-victimisation is a term rarely used in the literature from English-speaking countries. The prefix “macro” entails being large, prominent, involving large quantities, or being produced on a large scale. Even if having been used very differently in other victimological academic studies in relation to group identity and resentment (Tomlin, 2018), macro-victimisation could be defined as that victimisation caused in a macro dimension, understood by its systematic or structural character which brings again the idea of violence beyond the use of physical or moral force. Considering the perpetrator, it means imbalances of power (and thus, abuse of power), not only in war situations (Pecar, 1992) but mainly in peace. Considering the victim, it can involve very severe harm upon a collectivity or a great number of victims (in what some authors prefer to call mass victimisation, e.g. Clamp, 2016). Here we follow Beristain’s (1989) understanding of macro-victimisation as that caused by unjust social or political structures (Rodríguez Manzanera, 1988; Daza, 2014). Although acknowledging that this is an excessively diffuse concept in positivist legal terms, it should be stressed that calling for legal and victimological consideration does not amount to simple criminalisation and punishment in international instruments or the criminal code. Today’s relevance of the term of macro-victimisation is evident, for example, in systemic racism or racial injustice in the United States (ProPublica, 2020) and other countries (Walker, 2020). In relation to this issue, we could even come back to Rusche and Kirchheimer (1939) to critically update the notions of social structure and the violence of legal punishment itself. Another relevant macro-victimisation is the so-called refugee crisis in the Mediterranean with roots in our unjust global economic system.

As we have seen, macro-victimisation always entails conditions of abuse of power. The term abuse of power is commonly used in victimological and human rights literature. From a human rights standpoint, radical Victimology deploys the concept of abuse of power beyond the positive notion of crime (Daems, 2020). Like violence, there are different forms of abuse (e.g. cultural, political, sexual, physical, verbal, emotional, financial, etcetera), but in the heart of the concept of abuse of power, we can find unjust inequality defined as coercion by the offender(s), lack of agency by the victim(s) and collaboration or indifference on the side of the audience or bystanders.

In this book, we interchangeably use the notions of macro-victimisation and abuse of power, because even if it does not produce mass or collective victimisation and even if it does not always mean structural violence, the main character of the concept of (economic) abuse of power is creating or taking advantage of that imbalance. Furthermore, by creating or augmenting those abusive conditions and practices, a dehumanising perspective about the victim is adopted.

Power imbalance also flourishes under conditions of social distance, a term quite wrongly used in times of pandemic. One of the key elements of abuse of power is social distance, a concept that originated in Georg Simmel’s (1971) writings (Ethington, 1997). After Simmel, the sociologist Robert Park, one of his American students in Berlin, studied race relations to understand how the social order rests on social distance, understood as a conservative, but not aggressive force (Park and Burgess, 1969). In the School of Chicago, at Park’s suggestion, Emory Bogardus (1925) developed the “Bogardus Social Distance Scale”. However, Ethington (1997) points out that Park, Burgess and Bogardus concentrated on the psychological lack of proximity whereas Simmel’s conception considered both the geometric or physical sense and the psychological and sociological one. Simmel understood that the spatial elements determine and symbolise conditions of social relationships because those elements

structure everyday life in space-time and thus they promote or prevent strangeness, creating a fertile ground for economic abuses of power.

As mentioned before, in the international legal context, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly Resolution 40/34 of 29 November 1985, contains a Part B, dedicated to victims of abuses of power. Its Article 18, in line with universal jurisdiction as an exception to the territoriality principle of *ius puniendi*, defined victims of abuse of power as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. The Declaration, so-called soft law in itself, urges States to proscribe “serious abuses of political or economic power”, including through international treaties, and to provide for remedies for victims, in particular, “restitution and/or compensation, and necessary material, medical, psychological and social assistance and support”. Those public responses, according to the Declaration, should be responsive to the need to adapt themselves to changing circumstances to prevent, intervene in and repair victimisations where structural violence is implicit.

In the United Nations Handbook that develops the application of the above-mentioned Declaration (United Nations, 1999), it is acknowledged that victims of abuse of power “have particular difficulty in gaining recognition of the fact that they have been victimised”, usually by majority groups within society, corporations or the State. That difficulty happens, among other things, because “The essence of abuse of power is that it is committed by those who should be expected to protect the population” and for this reason “The shock and loneliness of victimisation can be much greater for these victims” (p. 9). Victims face secondary victimisation together with the problem of the lack of acknowledgement of the victimisation itself and finally the lack of victimhood. Moreover, mobilising the criminal justice system becomes a paramount task, even if having specialised prosecuting agencies. This task is even worse when the abuse occurs globally and transnational elements bring jurisdictional problems, as the Handbook (United Nations, 1999) explicitly recognises.

When Foucault refers to ‘cultural unconscious’ (Rössing et al, 2020), he is underlining the particularities of a given historical period that determines what could and could not be thought in a variety of social spheres. Specifically, when society and the legal culture think about violence as a universal and timeless physical or moral force and only in an interpersonal way, the contingencies of how the historical contexts influence those thoughts are not being considered.

To show the need for an alternative more comprehensive framework to think about violence, we will apply the definition of culture (Schein, 2010) to the study of environmental victimisation, the actual violence being used cannot be thought of as cultural and structural by some affected bystanders and by the legal system itself. In the case of environmental victimisation, mainly a white-collar crime in itself, the assumption that the technology will find ways for perennial resources to be found places value on endless and prioritised economic growth, materialised in policies that affirm inequalities and, at the same time, provoke or amplify certain victimisations where victimhood is denied. Even if legislation provides for investigation, the instrumental condition of victims, many collective or diffuse, in the criminal justice system makes secondary victimisation possible and multiple victimisations may end up occurring over a sustained period of time and on a global geographical basis (Hall, 2017). Under these conditions, some victims or groups of victims are criticised as exaggerated, unrealistic

or falling into victimism. In environmental crime, as happens with network corruption (Slingerland, 2018), the interaction of multiple actors (including the bystanders) makes a sort of network victimisation possible and this affects public policies and criminal investigations. In understanding this kind of network victimisation, law, social psychology and ethics should be considered.

#### *Violence in environmental macro-victimisation*

The idea of the “Anthropocene” confronts us with the idea of being witnesses to and actors of a global and extreme impact created by humans on the ecosystems (Varona, 2020a). This awakens the problem of responsibility for facts such as climate change, cruelty towards animals, and the decrease in biodiversity. The broader notion of environmental harm includes a variety of results and endangering behaviours labelled as crimes, administrative offences or unethical activities. Environmental victimisation affects a diversity of victims, including non-humans and, despite the relevance of its impact on society and the planet Earth, the criminal justice system does not seem to be part of the response. Notwithstanding its *ultima ratio* character, this is so, in part, because the inherent violence of environmental victimisation is unconsidered by the criminal system in practice (Varona, 2020a). In order to understand that violence, we would need a less anthropocentric and immediate justice that takes non-human victims and future victims into account, together with the denounce of the connivance between the economic and political powers. Moreover, we need a less material meaning for reparation as most of the harms we are referring to might be also classified under the category of “irreparable”.

These ideas have been studied under the above mentioned green Victimology which mainly developed in the early 2000s by studying the victimisation derived “from environmentally destructive activities or omissions” (Hall 2017, p. 2), sometimes involving a victimising role of the state and its alliances with large corporations in a network and continuum abuse of power. Critical studies against colonialism, racism and capitalism, as well as political ecology or environmental ethics, have added more interdisciplinary understanding to the topics studied by green victimologists. Within green Victimology, cultural Victimology includes in its scope how environmental harm and its victims are conceived, constructed and reproduced in the media and the cultural climate. The invisibility of environmental crimes happens when nature is portrayed in our society as a commodity within patterns of consumption or as an instrument of the political contest over space and resources, where the use of scientific criteria seems central though insufficient because at the very end political decisions on ethical values are required (Varona, 2020a).

Environmental crimes and harms grow under cultural conditions of the invisibility of violence in terms of future negative potentialities, agents’ accountability, diffuse victimisation, and cultures of consumption, endless progress and inevitability. Let us remember that the World Health Organization (2002) defines violence as the power that results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation, even if the results will only be evident in time in what can be called a potential victimisation process. This longitudinal impact will make it difficult to make claims for the alleged suffering and introduces problems of legal evidence into the causes and consequences which usually structure criminal accountability (Varona, 2020a). Besides, even if the criminal liability of corporations is increasingly recognised in legal systems, companies are usually in positions of political and economic power, understood on a transnational basis, and the voice of the victims of environmental crimes and harms is very diverse and sometimes impossible to be heard (in the case of not legally represented victims or non-human victims). A slow,



predatory or practical violence appears under the assumption of a desirable, inevitable and endless economic growth (usually restricted to some groups and territories) where a universal sense of justice seems more difficult to justify when, simultaneously, balances of values have to be set up at the cost of instrumentalising some victims.

Extreme forms of environmental harms have been called ecocides by combining the words ecology and genocide (White and Kramer, 2015), perhaps with an activist aim to draw attention to the gross violation of (human and non-human) rights and the health and well-being of species and systems (Whyte, 2018). The term, created by the biologist Arthur W. Galston in 1970, was used in 1972 by Olof Palme during the United Conference on the environment. As commented on in previous works (Varona, 2020a), the debates on ecocide have reached the International Criminal Court in 2002 (Wattad, 2009). The Rome Statute does not employ this term, and it includes only the destruction of the environment by private or public agents in wartime in its article 8(b)(iv). However, some scholars have proposed changes in article 7(l)(k) of the Rome Statute so that ecocide is expressly included (Hadden, 2015) as causing serious damage or destroying the environment with significantly and durably alteration of the global commons (Paul, 2017).

Even in these severe cases of so-called ecocide, the response of the (criminal) legal system is not adequate because we should aim at notions of social and ecological harms with a more dynamic, collective and non-anthropocentric perspective, stressing the diversity of psychological, material, economic, and cultural impacts of this sort of violence on different beings and entities. By opening an alternative framework of thought on violence in these cases of macro-victimisation and abuse of political and economic power, further debate arises (Varona, 2020a). For example, in what sense can we translate classical and recent victimological terms to this field, such as violence, victim, victimisation experience, secondary victimisation, multiple victimisations, narratives, recovery, restoration, the need for well-being, acceptance, respect, safety, self-efficacy and meaning? In the end, we can see the emergence of questions on ethical accountability, beyond criminal and civil liability, for that environmental violence described as abusive macro-victimisation.

## **2. Key concepts to recap**

- Abuse of power
- Corporate crime
- Crimes of the powerful
- Diffuse and collective victimisation
- Ecocide
- Economic crime
- Ecosystems and animals as victims
- Green Victimology
- Macro-victimisation
- White-collar crime
- Wild and companion animals

## **3. Thinking Victimology**

Please, consider different free accessible academic publications on green Victimology by Prof. Matthew Hall and watch his definition of green Victimology at <https://www.ehu.es/es/web/ivac/hiztegia>. Would you add more topics of interest under the branch of green Victimology?

## 4. Applying Victimology

### Background:

At the beginning of 2021 ten experts in penitentiary law elaborated a program for the rehabilitation of inmates condemned for economic (white-collar) crimes in Spain. It is called PIDECO (*Programa de Intervención en Delitos Económicos/Program for the Intervention in Economic Crimes*) and it has been presented in the press as a “world pioneer program”. Based on legal guarantees for the inmate (under the principle of reinsertion) and effectiveness, it is done on a voluntary basis. Its objective is to work the inmate’s accountability by apologising and making amends (reparation) so that re-offending is avoided. It is a program thought to be developed inside prison and also at a community level (at the *Centros de Reinserción Social*) for prisoners serving the last years of their prison sentence. The program has a length of 10-11 months with at least 32 group sessions (once a week with three hours per session) so that seven therapeutic working units could be developed. In these units, with the help of a psychologist, some concepts would be discussed: self-esteem, emotions, value system and responsibility. The program also includes working with marginalised people and restorative justice sessions with victims.

Please, try to design a rehabilitation program for this kind of crimes by approaching the following elements:

- Objective of the program.
- Recruitment and access conditions.
- Dynamics of the sessions to be offered with the possibility of victim participation.
- Professionals and other agents to be involved in the development of the program.

On drafting and standards of rehabilitation prison programs in general, see:

United Nations (2017). *Roadmap for the Development of Prison-based Rehabilitation Programmes*, accessible at [https://www.unodc.org/documents/justice-and-prison-reform/17-05452\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/17-05452_ebook.pdf). See also <https://www.corrections.sa.gov.au/Rehabilitation-education-and-work/rehabilitation> and Government of South Australia (2020). *Rehabilitation program branch. Model Service*, accessible at [https://www.corrections.sa.gov.au/\\_data/assets/pdf\\_file/0010/94069/Rehabilitation-Programs-Branch-Model-of-Service.pdf](https://www.corrections.sa.gov.au/_data/assets/pdf_file/0010/94069/Rehabilitation-Programs-Branch-Model-of-Service.pdf).

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## IX. TERRORIST VICTIMISATION

### 1. 1 The concept of victim of terrorism, its quantification and its legal framework

With its nearest etymological meaning linked to the French Revolution, terrorism means the use of violence to achieve political aims (under which religious aims might be included) or to force a government to do something. Within the terrorist calculation, high impact attacks (very cruel or with many victims) can provoke counter-terrorism policies that might violate human rights and, thus, delegitimise democratic states so that the terrorist groups can present their armed action as legitimate defence in an environment of war.

In 2020, the European Commission set up the *EU Centre of Expertise for Victims of Terrorism*<sup>80</sup> (the EUCVT) to ensure that the EU rules on victims of terrorism are correctly applied. The Centre runs with the support of a consortium of victim support association led by Victim Support Europe.

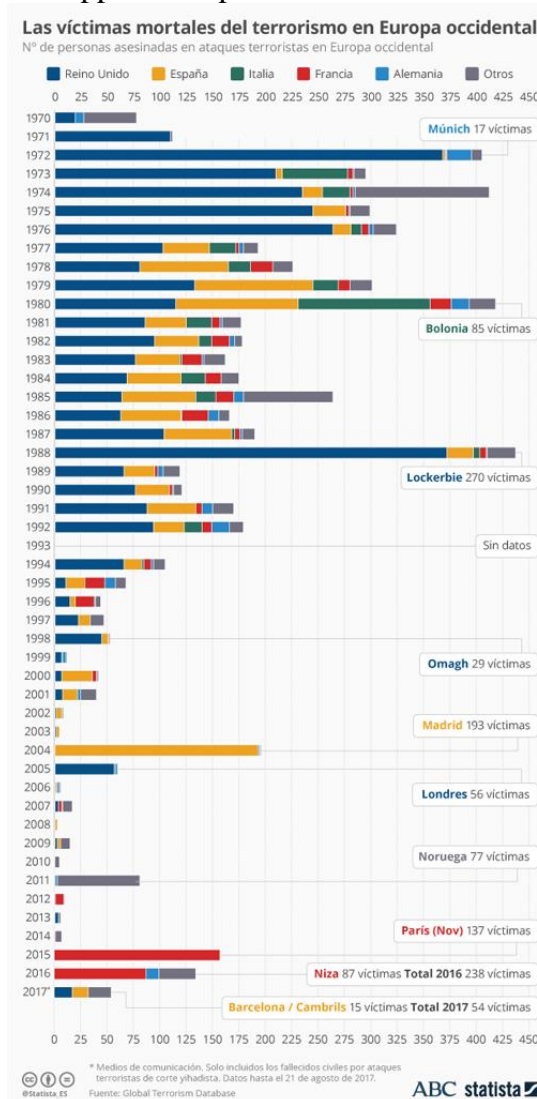


Image 47: Murdered victims of terrorism in Western Europe. Source: ABC

<sup>80</sup> See at [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/eu-centre-expertise-victims-terrorism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/eu-centre-expertise-victims-terrorism_en).



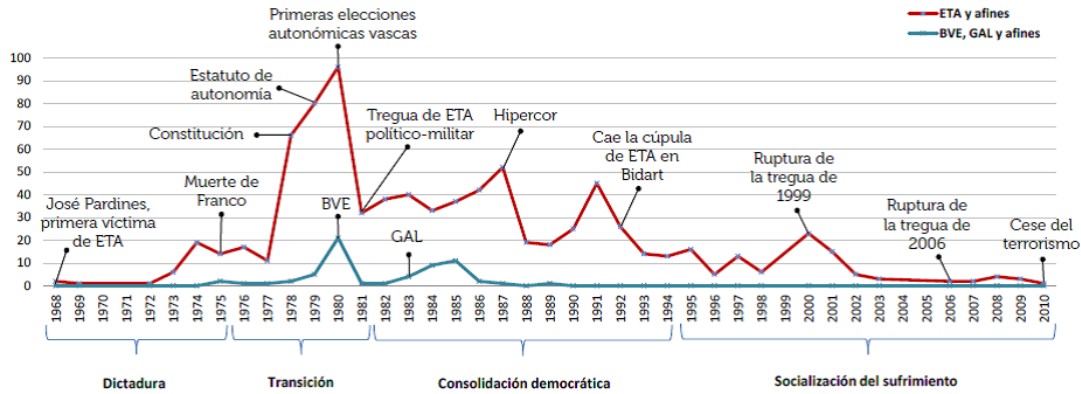


Image 48: Murdered victims of terrorism in Spain. Source: López Romo (2015)

In relation to the specific international legal framework for victims of terrorism<sup>81</sup>, the following instruments should be considered (Fourez, 2021):

*Framework principles for securing the human rights of victims of terrorism*, United Nations Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 2012 (A/HRC/20/14).

- *Guidelines on the protection of victims of terrorist acts*, adopted by the Committee of Ministers of the Council of Europe, on 2 March 2005 and revised on 19 May 2017<sup>82</sup>.
- *Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA*, OJEU 31 March 2017. According to this Directive: “A victim of terrorism is that defined in Article 2 of Directive 2012/29/EU, namely a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, insofar as that was directly caused by a terrorist offence or a family member of a person whose death was directly caused by a terrorist offence and who has suffered harm as a result of that person’s death”.

## 1. 2 The case study of the Basque Country

### Background<sup>83</sup>

On the 20<sup>th</sup> of October 2011, the terrorist group ETA announced a ceasefire. ETA (*Euskadi ta Askatasuna - Basque Homeland and Freedom*) was a terrorist group, influenced by marxism, whose ultimate goal was the independence of the Basque Country, including Navarre and three French territories. It started in the Francoist dictatorship, but the majority of its victims were killed during democracy (Elorza, 2006).

Within Spain ETA has caused 829 deaths and other violent victimisations: injuries, kidnappings, coercion, material damages, etc. (Victims of Terrorism Foundation; Alonso and Reinas, 2005; Sánchez-Cuenca, 2009; Alonso, Domínguez and García, 2010). From the end of the 1970s to the end of the 1980s, extreme right, para-police and

<sup>81</sup> For the Spanish legislation, see [https://e-justice.europa.eu/content/rights\\_of\\_victims\\_of\\_crime\\_in\\_criminal\\_proceedings-171-ES-maximizeMS-en.do?clang=en&idSubpage=5&member=1](https://e-justice.europa.eu/content/rights_of_victims_of_crime_in_criminal_proceedings-171-ES-maximizeMS-en.do?clang=en&idSubpage=5&member=1); see also <http://www.interior.gob.es/web/servicios-al-ciudadano/ayudas-y-subvenciones/a-victimas-de-actos-terroristas> and <https://www.mjusticia.gob.es/es/Ciudadano/Victimas/Documents/TR%c3%8dPTICO%20INGL%c3%89S.pdf>. For a quality support guide, see de Vicente (2019).

<sup>82</sup> Although without specific references to victims, see the *Convention on the Prevention of Terrorism* adopted on 16 May 2005 (and its additional protocol of 2015).

<sup>83</sup> These paragraphs reproduce the work of Varona, de la Cuesta y Echeburúa (2015).

state terrorist groups (ATE, BVE, Triple A, GAL) also operated in the Basque Country and French territory. They were responsible for approximately 70 murders as well as injuries, torture, threats and kidnappings (Carmena, Landa, Múgica and Uriarte, 2013)<sup>84</sup>.

### *Terrorist victimisation and experiences with justice*

Notwithstanding the turning point of September 11 (Pemberton 2010), academic research on terrorist victimisation is scarce in comparison to other forms of interpersonal violence (Staiger, 2010). Scientific research regarding ETA victimisation started in Spain in the 1990s (Varona et al., 2009). A literature review about the psychological impact of terrorism on survivors shows that some survivors develop post-traumatic stress disorder (Verger et al., 2004; Baca et al., 2005; Baca, 2006; Echeburúa, 2007; Gabriel et al., 2007; Larizgoitia et al., 2009; Martín-Peña et al., 2011; García-Vera and Sanz, 2016). This disorder can have multigenerational consequences (Ayalon, 1993; Danieli 1998) and affect different spheres of life (Ochberg, 1980; Muldoon, 2003; Schmid, 2003; Echeburúa, 2010). Social work and legal research on recovery policies reveal the limitations of these recovery policies (Itzhaky and Dekel, 2005; Albrecht and Kilchling, 2010), particularly with regard to children (Pereda, 2013), and they also demonstrate the relevance of personal and informal resources (Butler, 2007).

Collective and personal abuses of memory in the form of revenge seem to hinder recovery (Rieff, 2011; Echeburúa, 2014), although different studies highlight that most victims are not vengeful (Wemmers and Cyr, 2006), at least not more than the general population (Carlsmith, Wilson and Gilbert, 2008). Injustice is experienced by the victim as a lack of recognition as an equal human being within a diverse population. Some survivors might feel that personal, social and/or political harm caused by terrorism is neither made visible nor declared unbearable by social institutions (Honneth, 1992; Reyes, 2011). In the particular case of the Basque Country, secondary victimisation in the form of lack of social or institutional support (Funes, 1998; Varona et al., 2009) seems to explain the distrust on the part of victims of the administration of justice and of the public administration overall.

However, perceptions of justice are related to the recovery of victims (Taylor, 2009; Lambourne, 2004; Karstedt, Loader and Strang, 2011; Lynch and Argomaniz 2015). The framework of transitional justice in practice seems insufficient to contextualize harms suffered during prolonged terrorism (Palmer, Granville and Clark, 2011; Haldemann, 2008). Other complementary approaches for a more participatory or inclusive justice for victims should be considered in the field of therapeutic jurisprudence (Erez, Kilchling and Wemmers, 2011) and restorative justice (Varona, 2013; Olalde, 2014).

In this section, we will comment on a study developed in the Basque Country with the greatest number of family members of terrorist groups interviewed. ETA's terrorism encompasses unique characteristics that elude the generalizations of the results of most terrorist victimisation studies quoted above. The high number of victims, mainly non-nationalists, during a prolonged period within a European democracy can be partially explained by the explicit social support of a significant minority, particularly in rural villages and towns. By contrast, concerning the victimisation by other terrorist groups in the Basque Country, its special feature was the lack of recognition by the Spanish government, despite some social support that was not always desired by survivors who feared political manipulation.

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<sup>84</sup> On the specific report by the Basque Country on torture committed by different police corps, in the context of counterterrorism, see Etxeberria (2017).

The general objective of the study commented (Varona, de la Cuesta and Echeburúa, 2015) was to sound out individual perceptions about the victims' personal and social situation in 2013. We hypothesised that ETA's declaration of a ceasefire caused what the Spanish writer Javier Marías (2011) called a "sorrowful relief". This expression contains the paradoxical character of bittersweet feelings experienced by various victims, particularly those of the ETA, that condition their attitude and behaviour in relation to victim policies. As an oxymoron, sorrowful relief brings together relief at the end of terrorism and sorrow because of the feeling that ETA and other terrorist groups could have been eradicated before causing more victimisation.

## *Method*

### *Contextualizing fieldwork*

We contextualized our study within a literature review on legal and public opinion issues as well as with a content analysis of main headline news on victims of terrorism during our study fieldwork (Cuesta 2014b). This focus indicates the impact of the 2013 European Human Rights Court judgement on the so-called Parot doctrine (many prisoners who served long sentences were released during our fieldwork) and the changes for a more comprehensive compensation regulation by the Spanish government.

The Parot doctrine implied a change in the case law of the Spanish Supreme Court in 2006 (Judgment 197/2006 of 28 February). Under this doctrine prison benefits were to be applied to each sentence individually, and not to the maximum. As a result, imprisonment terms were longer. The European Court of Human Rights considered the Parot Doctrine in violation of the European Convention on Human Rights (Decision on Case of Del Río Prada v. Spain, App. No. 42750/09, Strasbourg, Oct. 21, 2013).

### *Target population and unit of analysis*

We analysed the survey data of 154 indirect victims of terrorist murders in the Basque Country in 2013. Our target population consisted of adults living in the Basque Country at the moment of the fieldwork (October-December, 2013), with a family member killed by a terrorist group from 1960 to 2010. To contact them and respect personal data legislation, we asked the Victims' and Human Rights Unit of the Basque Government to send a letter informing victims that the Basque Institute of Criminology (BIC) would be calling them in the next months. At that point, only 51 indirect victims refused to be contacted by the BIC.

The Basque Government holds a database with the names, addresses and telephone numbers of the nearest family members of murdered victims. The first time we telephoned a family member, we offered him the possibility to discuss with other family members the possibility of participating in our study.

From the Basque Government database and indirect victims' information on other family members wishing to participate, we contacted 336 persons. Of those, only 154 (39.79%) completed our semi-structured questionnaire. The majority of reasons for refusals expressed suffering in the process of remembering, satiety and scepticism. Others excused themselves because of their advanced age, illnesses, care tasks, lack of time or poor language skills.

For different reasons, this was not a classical victimisation survey. We did not want to address the whole Basque population in general but to focus on family members of victims who had been murdered by terrorist groups. In addition, we did not look for a representative sample. We tried to contact all the universe. We acknowledged difficulties in contacting indirect victims of terrorism. At the same time, as a sub-hypothesis, we wanted to reflect on the different experiences of victimisations within the same family. Thus, our unit of analysis was not the family unit or household but

each indirect victim of the various families who accepted to participate. We were able to reach 104 different families. Distortions provoked by this fact are discussed in the final report (Cuesta, 2014).

### *Questionnaire*

Drawing upon the results of various studies on the Basque Country (Cuesta, 2012, 2014a, 2014b; Varona, 2014a, 2014b; Sáez de la Fuente, 2011; Iniciativa Gleencree, 2012), we designed a specific victimisation survey addressed to indirect victims of terrorism in this territory. By indirect victims, we mean surviving family members of murdered persons by any kind of terrorist organisation operating in the Basque Country. Due to the large number of victims of terrorism in Spain and the specific context of the Basque Country, we limited our study to this territory.

The questionnaire was designed to measure the evolution in the victims' perception of the different public and social agencies in touch with victims. We asked them particularly about the criminal justice and the penal and penitentiary policies, as well as victims' contribution to the future of the Basque society. The questionnaire had 43 questions, both in Spanish and Basque. It included eight open questions. It was structured into five sections: a) socio-demographic data of the direct and indirect victim; b) personal well-being and evaluation of political and social agencies; c) personal evaluation of the criminal and prison policy; d) general evaluation of the current situation; e) final questions about the possibility of participating in focus groups and being informed of the results. After a preliminary training session, eight employees of a private survey agency were recruited to apply the questionnaire, during October and November 2013.

Regarding questionnaires, to avoid secondary victimisation, we emphasized our preference for face-to-face interviews. However, we gave them the option to choose: 55.2% of the interviews were conducted face-to-face, 20.8% were by ordinary post, 15.6% were by email and 8.4% were by phone.

### *Focus groups*

Twenty-four interviewees participated in two focus groups which were carried out over eight hours during one day at the end of November 2013. The focus groups were designed to supplement SPSS analysis of data provided by answers to closed questions in questionnaires. The topics to discuss were the same as the questionnaire in a format of open space dialogue which was later analysed using the free versions of QDA Miner and QCMap.

### *Participatory action research*

We aimed at a participatory action research. Spanish and Basque legislation on victims of terrorism recognised the right of victims to participate in victim policies. Thus, their opinion should be measured and considered. However, beyond the main victims' groups in the public sphere, we do not know much about their opinions. Most victims do not belong to any association or group. By giving them the chance to participate and be heard, participatory action research included receiving comments and suggestions on the content and method of our survey and focus groups and sending individuals information on the final research report. Notwithstanding objectivity, this pertains to research ethics: victims are suffering human beings who have been dehumanized by terrorism and cannot be treated as mere objects of study.

### *Results*

Findings from questionnaires and focus groups indicate contradictory feelings of victims expressed in distrust, scepticism, relief and sorrow. In general, serious secondary victimisations by agencies in touch with victims could be assessed.

Among the murder victims in our study, 95.5% were young and middle-aged men. Two murder victims were minors. Approximately 80% of murder victims had children and 33.6% had three or more children. Only approximately 23% of murder victims were members of police forces (National police, Civil Guard or Basque police).

For 93.5% of the respondents, it was the first time that the University of the Basque Country contacted them for a study. Among the respondents, 71.4% were women and 78% were older than 45. Their work or job situations were very diverse: 66.9% lived in the rural areas or small villages, 32.5% were widows, 33.1% were children of the murder victims, 22.1% were brothers or sisters, 7.8% were mothers or fathers, and 86.2% of respondents were victims of the ETA. Most of these direct victims of the ETA were killed in the 1980s (49.4%) and 1970s (21.4%), two decades when victims were particularly abandoned by public institutions and society (COVITE, Collective of Victims of Terrorism in the Basque Country, n.d.).

When asked about their personal situation facing a possible end of the terrorist violence, most respondents stated that they did not feel well. Only approximately 38% said they felt better. Approximately 13% opted for open answers, mostly in negative terms (table 1).

Most respondents did not feel well treated by public institutions. Interviewees justified their answer by expressing a lack of support or empathy, the feeling of having been manipulated, the lack of a trial and the impact of the European Court of Human Rights judgment on the so-called Parot doctrine (table 2).

| <b>Table 1</b>   |            |            |
|--|------------|------------|
| <i>How do you feel after terrorist violence has disappeared?</i> |            |            |
|  | <i>%</i>   | <i>N</i>   |
| Better   | 37.7       | 58         |
| The same   | 11.7       | 18         |
| Worse  | 5.8        | 9          |
| I do not believe it has disappeared because                      | 29.9       | 46         |
| ETA has not handed over its arms and it is not dissolved         |            |            |
| Other  | 13.0       | 20         |
| No answer  | 1.9        | 3          |
| <b>Total</b>   | <b>100</b> | <b>154</b> |

| <b>Table 2</b>   |            |            |
|--|------------|------------|
| <i>Today, do you feel well treated by institutions in your condition of a victim of terrorism?</i> |            |            |
|  | <i>%</i>   | <i>N</i>   |
| Yes  | 37.7       | 58         |
| No   | 50.6       | 78         |
| No answer  | 11.6       | 18         |
| <b>Total</b>   | <b>100</b> | <b>154</b> |

Persons who felt well-treated at the moment of the study emphasized that it was only with some particular institutions, that this positive change was very recent, that steps in this direction could be improved and that discriminatory treatment should be avoided among victims. They valued both a human approach and public recognition as victims, after many years without it, together with memorialization initiatives. Most respondents were critical of all social agencies. Among social agencies, Basque society was the most valued, followed at a great distance by local and religious public institutions.

When asked who is contributing to a possible end of terrorism that does not provoke further harm to victims, victims' groups or associations are the most valued. The least valued are some political parties and the media. Respondents demand from political institutions more consensus, more victims' participation, long-term victim policies and better use of terms in policies regarding victimisation.

Among the respondents, 64.9% think that Basque society prefers to turn the page as quickly as possible (Table 3). This is related to their perceptions of impunity and isolation. Members of society closer to victims are better valued (friends, colleagues, neighbours, etc.). Moreover, 54.3% believe that close community do care about victims. Nonetheless, 53.9% state that they want to turn the page as well.

| <b>Table 3</b>  |           |            |            |
|---|-----------|------------|------------|
| <i>Please, value the next statements: For the Basque society...</i> |           |            |            |
|   |           | %          | N          |
| <i>Victims of terrorism are important</i>                           | Agree     | 44.8       | 69         |
|   | Disagree  | 40.9       | 63         |
|   | No answer | 14.3       | 22         |
| <i>Victims of terrorism are not important</i>                       | Agree     | 42.2       | 65         |
|   | Disagree  | 39.0       | 60         |
|   | No answer | 18.8       | 29         |
| <i>It is important to turn the page rapidly</i>                     | Agree     | 64.9       | 100        |
|   | Disagree  | 21.4       | 33         |
|   | No answer | 13.6       | 21         |
| <i>Victims of terrorism are a problem</i>                           | Agree     | 53.3       | 82         |
|   | Disagree  | 32.4       | 50         |
|   | No answer | 14.3       | 22         |
| <b>Total</b>  |           | <b>100</b> | <b>154</b> |

Regarding criminal policy, 42.9% believed that offenders' rehabilitation is the central issue, 21.4% stated that they are not the most appropriate people to give their opinion in these matters and only 14.9% thought that criminal policy tries to balance victims' recovery, offenders' rehabilitation and society interests. It should be noted that 20.8% of respondents did not know or did not want to answer.

Most victims feared impunity (62.3%). By impunity they meant an insufficient penalty (23.4%), pardon (19.5%), lack of trial and/or penalty (11%) and penitentiary benefits (10.4%). From the analysis of open answers (16%), some emphasized the absence of reparation, mainly in the political, social and symbolic spheres. Most of the respondents (83.1%) did not have any information on the "No impunity Decalogue" signed by the main victims' association at the end of 2010.

Secondary victimisation is particularly relevant in relation to the criminal justice system. Only 29.9% were informed of the detention of suspects of the crime of which they were victim. Only 14.3% received information about the process. Only seven respondents were informed about the statute of limitations of the crime and/or the penalty.

In addition, 11.8% of the respondents had support during the trial, either by the Spanish or the Basque government; 6.3% said that measures were adopted during the trial to avoid direct contact with family members or friends of the suspects; and 22.8% did not have any data about the trial or expressed their will not to go.

Among the respondents, 64.6% indicated that a penalty was imposed and 26.8% did not know or did not want to answer about this; 53.24% were aware of the content of the judgment and did not consider it harsh or too harsh. Conversely, 57.3% thought it was

lenient or too lenient, whereas 36.6% thought it was proportional. The relationship between the recovery process and the sentence is shown in Table 4. Restorative encounters are positively valued, even though interest in participating is lower (tables 5 and 6).

| <b>Table 4</b><br><i>Even though the irreparable nature of the harm, did the sentence help you in your recovery?</i> |            |           |
|--|------------|-----------|
|  | %          | N         |
| Yes  | 36.6       | 30        |
| No   | 46.3       | 38        |
| It was indifferent   | 13.4       | 11        |
| No answer  | 3.7        | 3         |
| <b>Total</b>   | <b>100</b> | <b>82</b> |

| <b>Table 5</b><br><i>How do you value restorative encounters between victims and persons sentenced for terrorism?</i> |            |            |
|---|------------|------------|
|   | %          | N          |
| Good  | 44.8       | 69         |
| Bad   | 29.9       | 46         |
| No answer   | 25.3       | 39         |
| <b>Total</b>  | <b>100</b> | <b>154</b> |

| <b>Table 6</b><br><i>With all guarantees and information, would you like to participate in restorative encounters?</i> |            |            |
|--|------------|------------|
|  | %          | N          |
| Yes  | 28.6       | 44         |
| No   | 59.7       | 92         |
| No answer  | 11.7       | 18         |
| <b>Total</b>   | <b>100</b> | <b>154</b> |

Furthermore, 68.2% of the respondents valued judicial measures to avoid contact with indirect victims when the offender is released, but 87.8% indicated that those measures did not exist in their case or that they did not know about them.

Among the respondents, 86.6% had not been informed about the execution of the penalty, including penitentiary benefits. Of those, 81.7% stated that they would have appreciated that information. Finally, 10.8% indicated that they did not want that information and 7.3% did not know or did not answer.

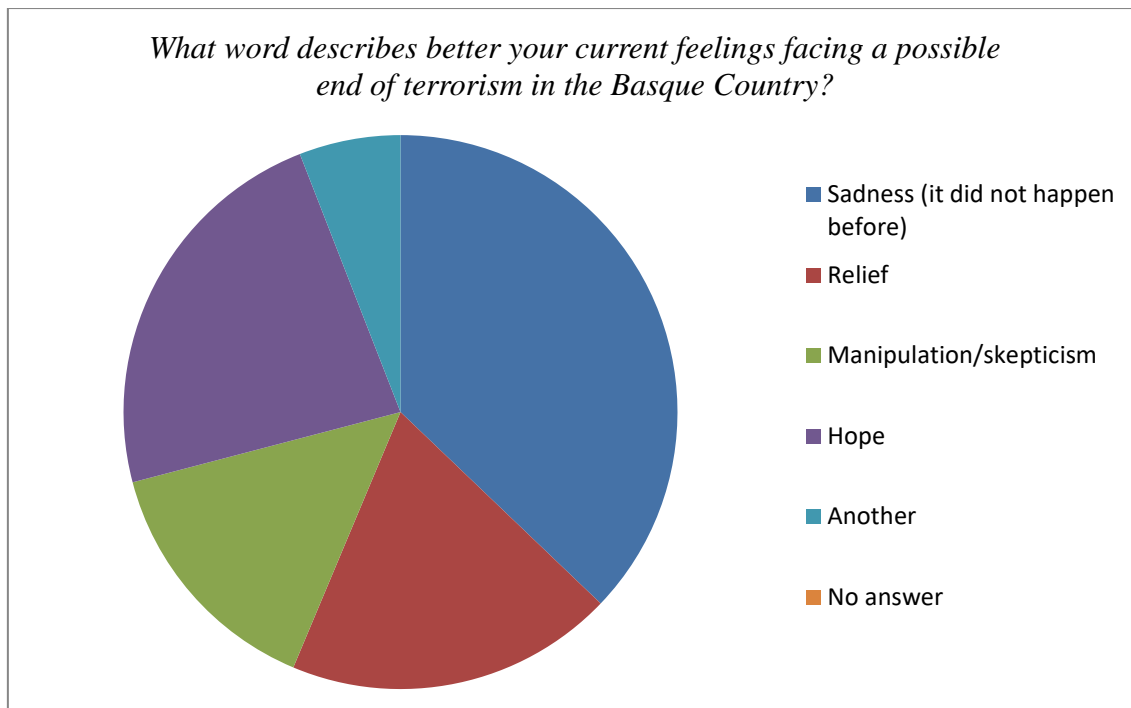
Beyond criminal justice, victims have an interest in contributing to future peace by gathering their testimonies in memorials and digital archives, giving their testimonies at schools and participating in public debates and memorialization activities (table 7).

| <b>Table 7</b><br><i>What is the best contribution of victims to the end of terrorism? (two options)</i> |   |      |    |
|--|---|------|----|
|  | %   | N    |    |
| <b>1<sup>st</sup> option</b>   | Their presence in memorialization activities. | 16.2 | 25 |
|  | Their participation in public debates.        | 17.5 | 27 |

|                              |  |            |            |
|------------------------------|--|------------|------------|
|                              | Their testimonies at schools.                        | 16.9       | 26         |
|                              | Their testimonies in memorials and digital archives. | 26.0       | 40         |
|                              | Another.   | 14.3       | 22         |
|                              | No answer.   | 9.1        | 12         |
| <b>2<sup>nd</sup> option</b> | Their presence in memorialization activities.        | 8.4        | 13         |
|                              | Their participation in public debates.               | 13.0       | 20         |
|                              | Their testimonies at schools.                        | 14.9       | 23         |
|                              | Their testimonies in memorials and digital archives. | 16.9       | 26         |
|                              | Another.   | 9.7        | 15         |
|                              | No answer.   | 37.0       | 57         |
| <b>Total</b>                 |  | <b>100</b> | <b>154</b> |

Respondents chose sadness as the word that best describes their feelings at the moment of the interview. They also mentioned hope and relief, manipulation or scepticism (Figure 1).

**Figure 1**  
**Current feelings**



The last question allowed victims to freely express their opinions about any issue dealt with in the questionnaire or any other matter of their interest. We obtained 111 answers



out of 154 questionnaires. We analysed those responses under the themes of their rights to the truth, to justice and to reparation, as they are recognized in the Spanish and Basque legislation. We also considered here the results of the focus groups.

Regarding reparation, victims' testimonies highlight the seriousness of the victimisation suffered, the spreading character of the victimisation impact in relation to their different roles in life, in time and on family members. Once again, they expressed the lack of support and/or its insufficient or delayed character. Some brothers or sisters of the murdered person indicated how legislation does not recognize them as victims when there are other closer relatives. Many victims criticize unequal political, media and social treatment among the same group of victims or among victims of different terrorist groups.

In the field of justice, most victims complained of a slow and defective administration of justice, mainly because their case has not been brought to trial or there has been a lack of information. Social impunity is considered when arguing that, after offenders have been released, they cannot return to their towns as heroes.

Many victims consider truth and memory of great relevance, mainly when they had to hide their own victimisation for so long. They are willing to offer their testimonies to the media, at schools and in memorialization projects. They relate their interest with the conscience of the unjustifiable character of terrorist violence and the need to prevent it from now on.

### *Discussion*

In light of the results, we detected the profile of the most vulnerable victims: the parents and partners of murdered victims (followed by other family members), who lack social and institutional support, live in a small town where no recognition has been granted to them and suffered victimisation in the 1970s and 1980s. In the case of the most recent victimisations, the recent character of their victimisation is also a vulnerability factor. However, there are not enough profiles to consider the dynamics and diversity of the victimisation processes (Cuesta et al., 2012).

In line with the other studies quoted (Baca et al. 2005; Echeburúa, 2007, 2010), hidden victimisation is particularly important in this field and is conditioned by at least seven groups of variables: personal characteristics, type of victimisation suffered and responsible terrorist group, victim impact extension, the date and the place of the victimisation, the psychological harm, the type of support received and the diffuse character of victimisation.

This study verifies the gap between very advanced legislation on terrorism victims' rights and its implementation as experienced by the victims themselves (Cuesta, 2014b). This could be extended to the implementation of the 2012/29/EU Directive on the rights of victims regarding a personal and individualized treatment, as transposed by the 4/2015 Spanish Act on the statute of victims of crime.

Our hypothesis of a "sorrowful relief", as a metaphor that can grasp the situation of victims facing a horizon of peace in the Basque Country, has been confirmed. Different experiences and expectations of suffering and hope have been assessed. According to our results, beyond the terrorist group responsible for the victimisation, we note the following:

- a) There are many indirect victims of terrorism in the Basque Country;
- b) Every victim holds her own opinion and different interests;
- c) Many of them were able to recover (alone or with only the help of some family members), raise their children or form a family of their own, even though recovery is described as continuing to live with pain.

- d) Many have received no or insufficient social and institutional support, including a lack of recognition or an inadequate response.
- e) Some of them have suffered secondary victimisation due to a defective and/or inhumane treatment by public administration, particularly in the justice sphere;
- f) They feel manipulated by political parties and media;
- g) Most are not vengeful;
- h) They do not believe that they should now carry the greater part of the burden in the social and political task of forgiveness and reconciliation;
- i) A relevant number holds interest in restorative encounters and in going to schools to offer their testimony to avoid future victimisation;
- j) In many cases, there was no trial or penalty;
- k) Many hide their victimisation, or aspects of it, even from their family members because they think that by revealing their victimisation they could provoke more harm;
- l) Many victims want to express their testimony in different public and private initiatives;
- m) Many victims like gathering with and listening to victims of other terrorist groups;
- o) Some want to participate in a democratic and respectful public debate on the questions that affect them, particularly the political meaning of their victimisation –as recognized by law- linked to the delegitimation of terrorism;
- p) Many feel isolated and misunderstood in some social contexts;
- q) Most value participating in activities organized by the university, although they highlight their initial resistance;
- r) Most victims demand the truth and a role in the current memorialization process.

According to Spanish and Basque legislation, as well as the 2012/29/EU Directive and the results of different victimological studies (Erez, Kilchling and Wemmers, 2011), victim policies should not be made “for the victims without the victims”. However, both internal and European legislation has been passed without considering the most relevant victimological research. The original character of the research in this specific field offers significant data for further studies and for victim policies.

Beyond measuring victims’ opinions, our study invites to reflect upon the processes of construction of victims’ opinions by different social agents, as well as upon the social meaning and public use of victims’ opinions. This confronts us with the need to respond to serious victimisation with policies informed by a balanced perspective backed by critical evidence and ethics, considering the real interests and needs of victims, offenders, and the families of both, as well as their local communities and society as a whole. Within a context of populism and punitivism, this presents itself as a deep challenge for policymakers, researchers, practitioners and human rights activists, including those working for victims’ rights.

## 2. Key concepts to recap

Counter-terrorism  
 De-humanisation  
 Direct and indirect victims  
 Justice  
 Objectification of victims  
 Political harm  
 Punitivism  
 Right to memory  
 Right to reparation  
 Right to truth  
 Role of victims in prevention and breaking the circle of violence

Terrorism  
Terrorist calculation  
Torture

### 3. Thinking Victimology

1) According to the European Commission (2021b), some examples of vulnerable groups of victims of terrorism are the following:

Refugees/migrants/asylum seekers may have experienced prior trauma and may not have been able to access help because of barriers such as: language, lack of knowledge of available health and social services, lack of social and/or family networks, and cultural differences. If interpreters are required to help overcome language barriers, confidentiality must be ensured.

The elderly and those with disabilities<sup>85</sup> may not have access to information (via devices such as computers, tablets, mobile phones), may not understand the information provided, may suffer from loneliness or be physically challenged. The provision of information in various formats will fulfil accessibility obligations.

Children can be acutely traumatised by terrorist events without fully understanding why they are affected: Why is everybody sad? Why can I not go to school? Specialist approaches to communicating with and treating children are required, especially for the very young. People with a history of mental illness or who have suffered prior traumatic experiences are more likely to suffer negative psychological consequences. Additional oversight may be needed for those who are particularly vulnerable to PTSD.

Please, reflect on other categories of victims of terrorism that might be placed in conditions of vulnerability and explain some strategies of prevention, intervention and reparation.

2) On terrorism and counter-terrorism policies, please, read the following definition of torture according to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>86</sup>

Article 1 1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Article 16 requires parties to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1” in any territory under their jurisdiction. According to this Convention, the prohibition of torture of other similar acts is absolute and non-derogable.

Taking into account the above paragraph, please, reflect on the following questions:

1. Why the prohibition of torture is considered, under international law, as “peremptory norm (*jus cogens*)<sup>87</sup> producing obligations *erga omnes*? In what sense the state has a

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<sup>85</sup> In general for any kind of crime, for victims with disabilities, particularly since 2020, see the promotion of the “facilitator” in court (Plena Inclusión España, 2020) in relation to art. 13 of the 2006 International Convention on the Rights of Persons with Disabilities.

<sup>86</sup> See also the 1987 *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* and Art. 175 of the Spanish criminal code.

positive obligation in relation to that prohibition and potential (direct, indirect and diffuse) victims of torture<sup>88</sup>?

2. How the notion of “enhanced interrogation”<sup>89</sup> by the CIA (and other intelligence agencies outside the US) can be linked to Bandura’s moral disengagement theory?

3. In relation to question 1, can “enhanced interrogation” through the use of different technologies (including chemicals) be considered legitimate defence in “ticking bomb scenarios” of terrorism?

4. Why using torture to fight against terrorism goes against terrorism victims’ rights?

#### 4. Applying Victimology

1) According to the same document above quoted (European Commission, 2021b):

Acts of terrorism target victims as symbols of state and society. In this context, commemoration shows that society, as a whole, did not forget those who lost their lives or continue to suffer physically and psychologically due to the attack. Commemorations can take various forms: spontaneous memorials, physical memorials, online memorials, formally recognised days of remembrance and informal meetings with fellow survivors.

Please, design an action research project in relation to the practices of memorialisation and the right and duty to memory, as stated in the Spanish legislation. Consider, for example, further references given in Varona (2017; 2018; 2019).

2) For victims of terrorism, see the leaflet of the Ministry of Interior on their rights in Spain and try to elaborate a better one, including an illustration or visual aid: <https://www.mjusticia.gob.es/es/Ciudadano/Victimas/Documents/D%c3%8dPTICO%20INGL%c3%89S.pdf>.

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<sup>87</sup> Peremptory norm (*jus cogens*) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted. These norms reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law and are universally applicable. Any State is entitled to invoke the responsibility of another State for a breach of a peremptory norm (peremptory norms create obligations *erga omnes*).

<sup>88</sup> On reparation and intervention with victims of torture, see <https://www.ohchr.org/en/issues/torture/unvft/pages/index.aspx>, <http://ccvt.org/>, <https://irct.org/what-we-do/rehabilitation-of-torture-victims> and <https://www.mhinnovation.net/organisations/center-victims-torture>.

<sup>89</sup> According to Human Rights First (2016, p. 1), after the attack of the 9/11 (2001), the CIA’s Detention and Interrogation Program allowed the use of so-called “enhanced interrogation techniques” on detainees between 2002 and 2009. Using that euphemism, these techniques “constituted torture or cruel, inhuman or degrading treatment —both illegal under U.S. and international law. Several detainees were waterboarded, and the CIA often used combinations of tactics such as sleep deprivation of detainees kept in stress positions, or sensory deprivation of detainees who were shackled and in solitary confinement”. See Farrell (2020).

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## X. VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

### 1. 1 International minimum standards<sup>90</sup>

In the following table, the numerous international standards in the field of violence against women and domestic violence are summarised. Although both forms of victimisation might be related, violence against women has the particularity of being concentrated only in women as victims (inside and outside family or partner relationships).

#### INTERNATIONAL STANDARDS

- [Universal Declaration of Human Rights](#)
- [International Covenant on Civil and Political Rights](#)
- [International Covenant on Economic, Social and Cultural Rights](#)
- [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#)
- [Convention on the Elimination of All Forms of Discrimination against Women](#)
- [Optional Protocol to the Convention on the Elimination of Discrimination against Women](#)
- [Committee for the Elimination of Discrimination Against Women \(CEDAW\), General recommendation No. 19](#) (1992) on violence against women
- [Committee for the Elimination of Discrimination Against Women \(CEDAW\), General recommendation No. 30](#) (2013) on women in conflict prevention, conflict and post-conflict situations
- [Committee for the Elimination of Discrimination Against Women \(CEDAW\), General recommendation No. 35](#) (2017) on gender-based violence against women, updating general recommendation No. 19
- [Declaration on the Protection of Women and Children in Emergency and Armed Conflict](#)
- [Trafficking in persons, especially women and children Protocol to The Convention against Transnational Organized Crime](#)
- [Recommended Principles and Guidelines on Human Rights and Human Trafficking: E/2002/68/Add.1](#)
- [Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others](#)
- [Declaration on the Elimination of Violence against Women](#)
- [Geneva Convention relative to the Protection of Civilian Persons in Time of War](#)
- [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts \(Protocol II\)](#)

#### REGIONAL INSTRUMENTS

- [The Council of Europe Convention on preventing and combating violence against women and domestic violence](#)
- [African Charter on Human and Peoples' Rights](#)
- [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (Maputo, Mozambique, 11 July 2003)
- [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém Do Pará"](#)

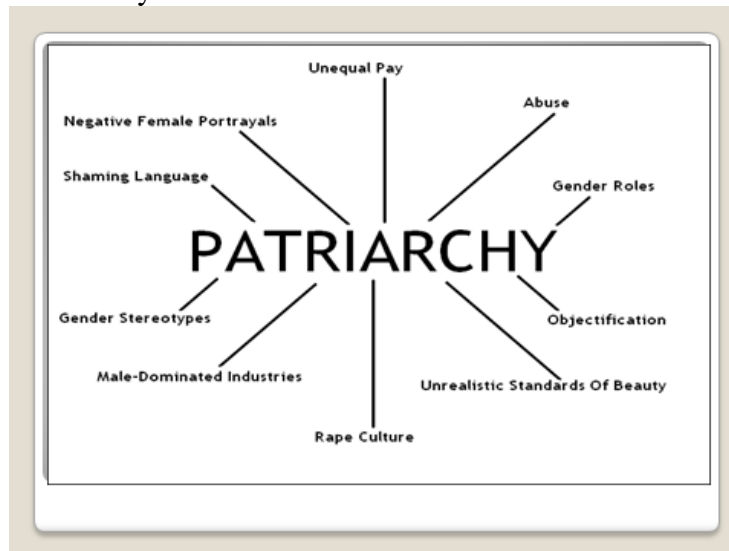
<sup>90</sup> For Spain, see the Act 1/2004 on Integrated Protection Measures against Gender Violence and its related legislation at [Delegación del Gobierno contra la Violencia de Género \(igualdad.gob.es\)](http://igualdad.gob.es) and <http://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/El-Observatorio-contra-la-violencia-domestica-y-de-genero/>. See also the different institutions at the Autonomous Communities.

## WORLD CONFERENCES

- [World Conference on Human Rights \(Vienna, 1993\)](#)
- [Vienna +5](#)
- [International Conference on Population Development \(Cairo, 1994\)](#)
- [Cairo +15](#)
- [Empowering Women](#)
- [Fourth World Conference on Women \(Beijing, 1995\)](#)
- [Beijing +5](#)
- [World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance \(Durban, 2001\)](#)
- [Durban Review Conference \(Geneva, 2009\)](#)

*Table 7: Main international standards on violence against women and domestic violence*

Most of these standards assume patriarchal structures of discrimination that favour the victimisation of women by men.



*Image 49: Expressions of patriarchy. Open source*

### **1. 2 Violence against women: A question of human rights and global public health**

Violence against women entails a variety of different victimisations. According to the 2011 Istanbul Convention of the Council of Europe on preventing and combating violence against women and domestic violence (article 3):

a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

b “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim<sup>91</sup>;

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<sup>91</sup> Domestic violence refers to family or intra-family violence when someone uses abusive behaviour to control and/or harm a member of their family, or someone with whom they have an intimate relationship. Domestic violence might entail intimate partner violence; child abuse and neglect; elder abuse; or teenage violence towards parents.

c “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men; d “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;

e “victim” shall mean any natural person who is subject to the conduct specified in points a and b;

f “women” includes girls under the age of 18.

Intimate partner violence (IPV) perpetrated by men against women, the main victimisation defined under the legal concept of gender in Spain, is a major global public health problem according to the World Health Organisation<sup>92</sup> (Crespo, Arinero and Soberón, 2021). With similar rates in Spain, the global prevalence of physical and/or sexual intimate partner violence among all ever-partnered women is 30.0%. According to Interpol global homicide studies, it is estimated that half of the women victims of homicide globally were killed by intimate partners or family members, compared to less than 6% of men killed.

In the European Union, one in three women has been a victim of physical and/or sexual violence since the age of 15; one in twenty women has been raped; over half (55%) of women have experienced sexual harassment; one in three women has experienced psychological abusive behaviour by a partner; and one in three women has experienced physical or sexual violence by an adult during childhood. Moreover, the large majority of incidents of violence against women do not come to the attention of the police. Only around 30% of victims of violence report the most serious incidents to the police.



*Image 50: Different expressions of violence against women. Source: IDB*

According to the UN, evidence suggests that certain characteristics of women, such as sexual orientation, disability status or ethnicity, and some contextual factors, such as humanitarian crises, including conflict and post-conflict situations, may increase women’s vulnerability to violence. In the majority of countries with available data, less than 40% of the women who experience violence seek help of any sort. Among women who do, most look to family and friends and very few look to formal institutions and mechanisms, such as police and health services. Less than 10 per cent of those women seeking help for an experience of violence sought help by appealing to the police.

Not reporting does not mean that the impact of the victimisation is low. As an example of the individual impact of this kind of victimisation, in concrete in IPV, according to Crespo, Arinero and Soberón (2021):

<sup>92</sup> See at <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

In their systematic review, Langdon et al. concluded that IPV can have more adverse effects on mental health in comparison to non-IPV victims and victims of other traumatic events, being Posttraumatic Stress Disorder (PTSD), depression and anxiety, which are the most consistent mental health outcomes associated with IPV across the studies. Actually, the recent WHO World Mental Health Survey posed the physical abuse by a partner as one of the traumatic events that conveys the greatest risk for PTSD. Likewise, IPV has also been associated with other relevant variables, such as suicidal ideation, alcohol and substances use, poor health status and self-perceived health, somatization, and functional impairments<sup>93</sup>.

### 1.3 A selection of victimological theories or notions about IPV as violence against women

In the following images, we will try to summarise the main victimological theories or notions about IPV and domestic violence as violence against women.

#### Risk factors for domestic violence and its recidivism according to the socio-ecological framework

Excerpted from: CoE, Enhancing the professional capacity of the Bulgarian police to deal with cases of domestic violence and violence against women, 2016, p. 39.

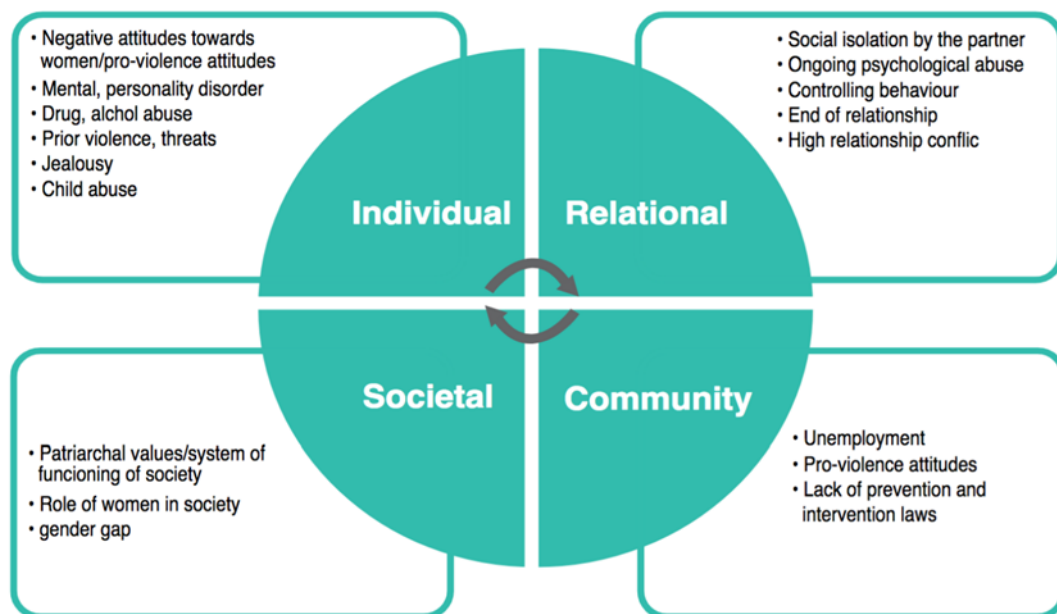


Image 51: Risk factor for domestic violence and violence against women in the socio-ecological framework

<sup>93</sup> According to Crespo, Arinero and Soberón (2021): “Regarding treatment type, largest effects sizes were found for cognitive behavioral therapies (CBT) and interpersonal therapies specifically tailored to IPV survivors. In addition, individually delivered interventions produced significantly stronger outcomes than group delivered interventions. However, authors noted that some methodological weaknesses in analysed studies could have biased their findings”. In their own research, these authors stress the potentiality of group interventions.

# Theories to Explain Dynamics of Abusive Relationships



- **Learned Helplessness Theory**

“Survival focus vs. escaping focus”

- **Traumatic Bonding Theory**

“The abuser gains power through the victims dependence on them”

- **Approach and Avoidance Theory**

“victim is likely to focus on positives to avoid abuse”

- US. Dept. of justice; US. Dept. of veteran affairs

*Image 52: Learned helplessness theory, traumatic bonding theory, approach and avoidance theory. Open source*

Intrusive recollections of the trauma event(s)

Hyperarousal and high levels of anxiety

Avoidance behavior and emotional numbing (usually expressed as depression, dissociation, minimization, repression, and denial)

Disrupted interpersonal relationships from batterer's power and control measures

Body image distortion and/or somatic or physical complaints

Sexual intimacy issues

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Adapted from Walker LE. *The Battered Woman Syndrome*. 2009.<sup>1</sup>

*Image 53: The battered woman syndrome. Open source*

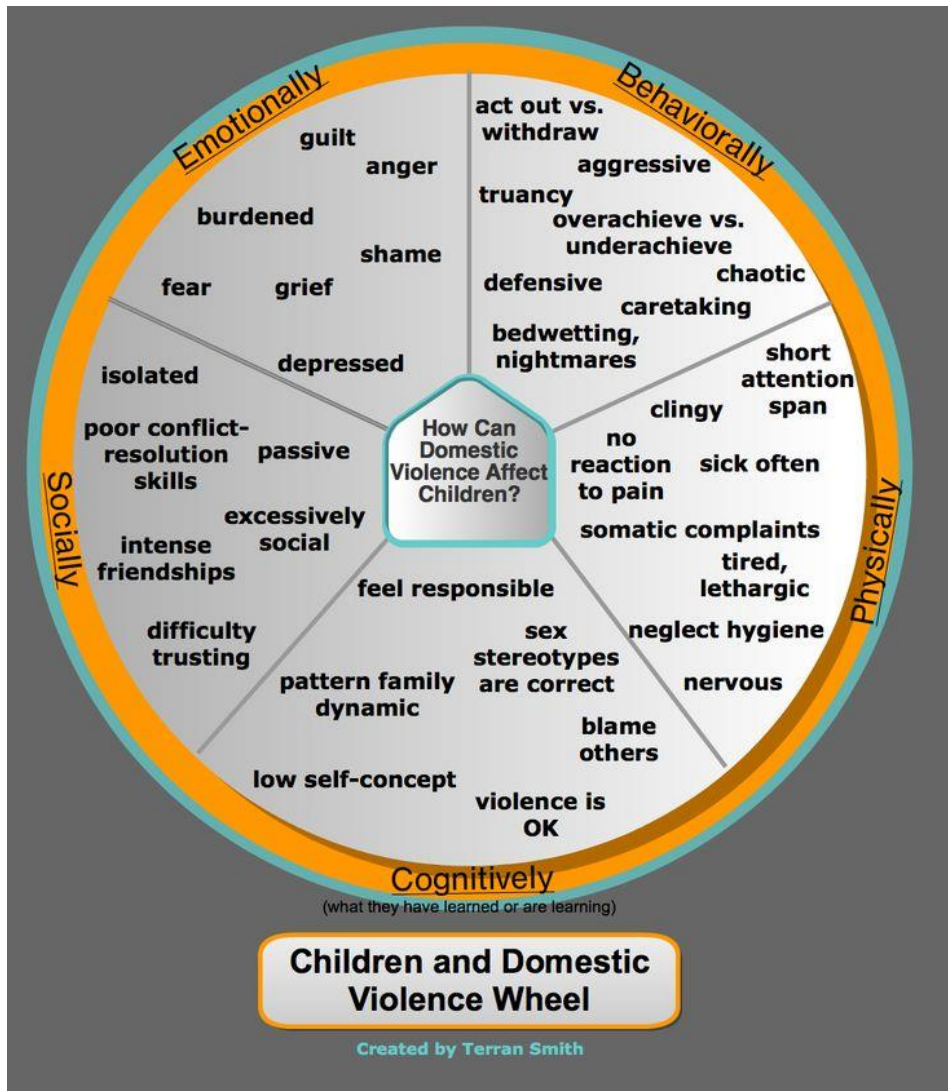


Image 54: Children and domestic violence wheel

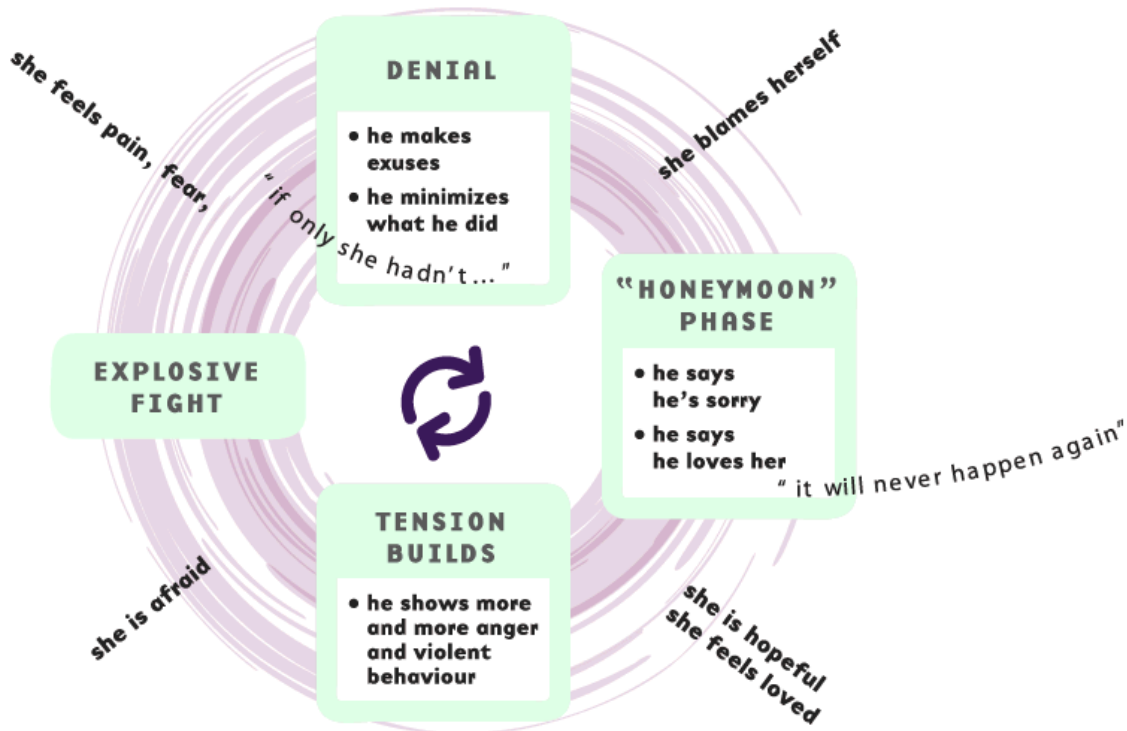


Image 55: The cycle of violence (1). Open source

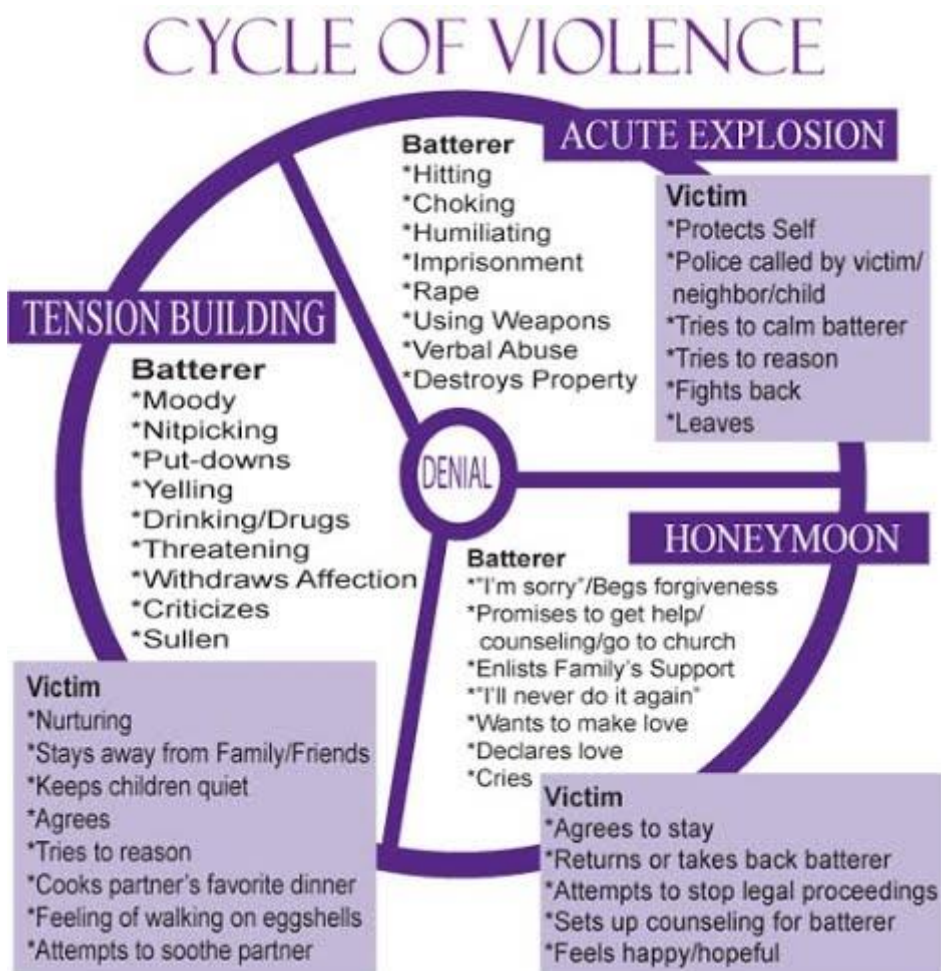


Image 56: The cycle of violence (2). Open source

## ¿Cuál es la mejor receta para combatir la violencia de género?

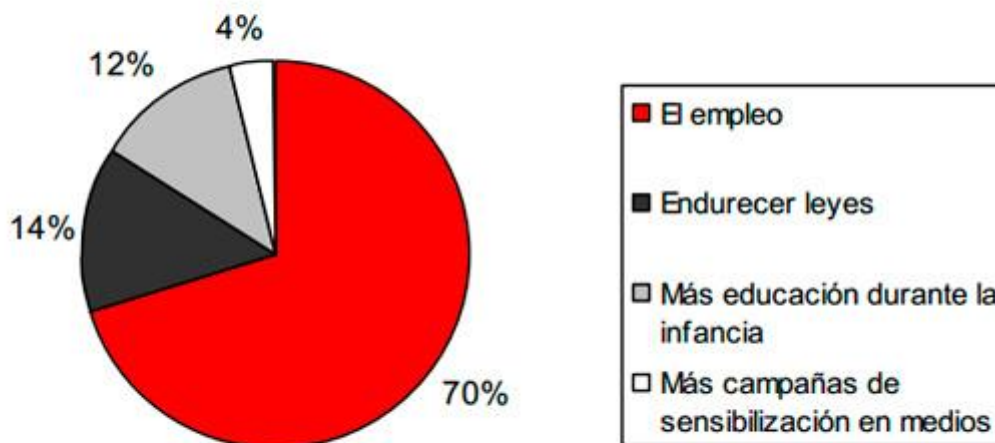


Image 57: On the preferred response by victims to combat gender violence. Source: Adecco Foundation (2014)<sup>94</sup>

### 1. 4 Spain as a model of change

|  | <b>Lifetime Physical and/or Sexual Intimate Partner Violence</b> | <b>Gender Inequality Index Rank</b> |
|--|--|-------------------------------------|
| <b>Spain</b>                               | 13%  | 15                                  |
| <b>United Kingdom and Northern Ireland</b> | 29%  | 28                                  |
| <b>Norway</b>                              | 27%  | 6                                   |
| <b>Australia</b>                           | 17%  | 24                                  |

Table 8: IPV and inequality.

Source: UN Global Database on Violence against Women

Considering the long history of machismo in Spain, affecting the legal system itself, in its first report evaluating the implementation by Spain of the Council of Europe's "Istanbul Convention", in 2020, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) acknowledged the commitment of the Spanish authorities to combat violence against women and the progress achieved, in particular in fighting intimate partner violence, but called for more attention to be paid

<sup>94</sup> 70% (in red) preferred having an employment, 14% (in black) more severe laws, 12% (in grey) more education and 4% (in white) more awareness media campaigns.



to other forms of gender-based violence (in particular sexual violence, forced marriage and female genital mutilation)<sup>95</sup>.

In the case of IPV, even if with many limitations in practice for some groups of women, the Spanish criminal justice system has tried to foster victims' rights and coordination of agencies, as the following images show.

The infographic is titled "YOU AND YOUR CHILDREN HAVE THE RIGHT:" and lists five rights for IPV victims. At the top, it features logos for "Euskadi, auzolana, bien común" (Basque Government), "EMAKUNDE" (Basque Institute for Women), and "GIPUZKOAKO GENERO INDARKERIAREN BATZORDE PROBINTZIALA" (Provincial Commission of Gender Violence of Gipuzkoa). The rights are:

- TO BE GIVEN ASSISTANCE FREE OF CHARGE FROM THE MOMENT THE COMPLAINT IS FILED BY A LEGAL AID LAWYER IN THE SPECIAL GENDER/DOMESTIC VIOLENCE COURT.
- TO BE ACCOMPANIED WHEN MAKING ALL STATEMENTS BY A LAWYER AS WELL AS A PERSON YOU HAVE CHOSEN, A FRIEND, A RELATIVE, A SOCIAL SERVICE EMPLOYEE, SUBJECT TO EXCEPTIONS ON REASONED GROUNDS WHEN THIS IS NOT PERMITTED.
- TO HAVE NO CONTACT WHATSOEVER WITH THE ACCUSED AT THE POLICE STATION OR IN THE COURTHOUSE.
- TO REQUEST THAT ANY INFORMATION THAT MAY IDENTIFY YOUR LOCATION, INCLUDING YOUR ADDRESS, TELEPHONE NUMBER AND EMAIL SHOULD REMAIN STRICTLY CONFIDENTIAL.
- TO RECEIVE SUPPORT FROM THE VICTIM ASSISTANCE SERVICE OR FROM THE MUNICIPAL SOCIAL SERVICES.

Image 58 Violence against women: IPV victims' rights. Source: Emakunde

<sup>95</sup> See also the Spanish Istanbul Shadow report and platform action at <https://rm.coe.int/spanish-istanbul-shadow-platform/1680931a77>. Worldwide, almost 750 million women and girls alive today were married before their 18th birthday. At least 200 million women and girls alive today have undergone female genital mutilation in the 30 countries with representative data on prevalence. In most of these countries, the majority of girls were cut before age 5. Adult women account for 51 per cent of all human trafficking victims detected globally. Women and girls together account for 71 per cent, with girls representing nearly three out of every four child trafficking victims. Nearly three out of every four trafficked women and girls are trafficked for the purpose of sexual exploitation. According to EIGE, 'honour crime' usually infers violence in some form against the victim, normally, but not always, a female. The common factor is the motivation of those carrying out the violence, punishment for a perceived loss of family or personal 'honour'. The perpetrators are family or community members and the victim is punished according to ideas of culturally acceptable behaviour: abduction, mutilation, beating, acid attacks, or even death.

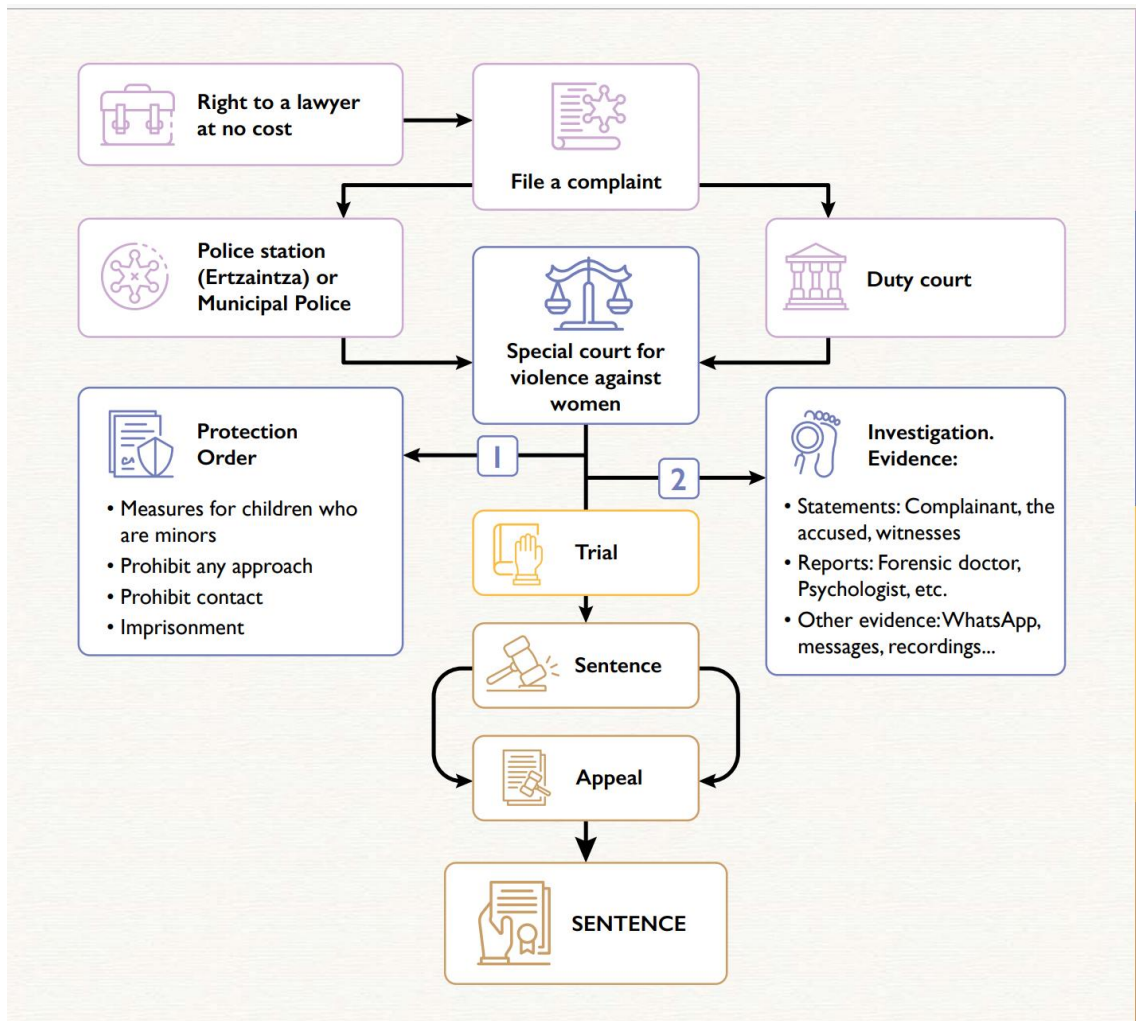


Image 59 Violence against women: Criminal process in IPV cases. Source: Emakunde



## WHAT IS A PROTECTION ORDER?

- It is a judicial order that guarantees your safety and that of your children and can include dependents who you are responsible for. It can only be granted by a judge.
- You can file for a Protection Order when you file your complaint at the police station or at the courthouse when you make your statement.
- Furthermore, the Public Prosecutor's Office or the judge can grant it to you even if it has not been filed for.

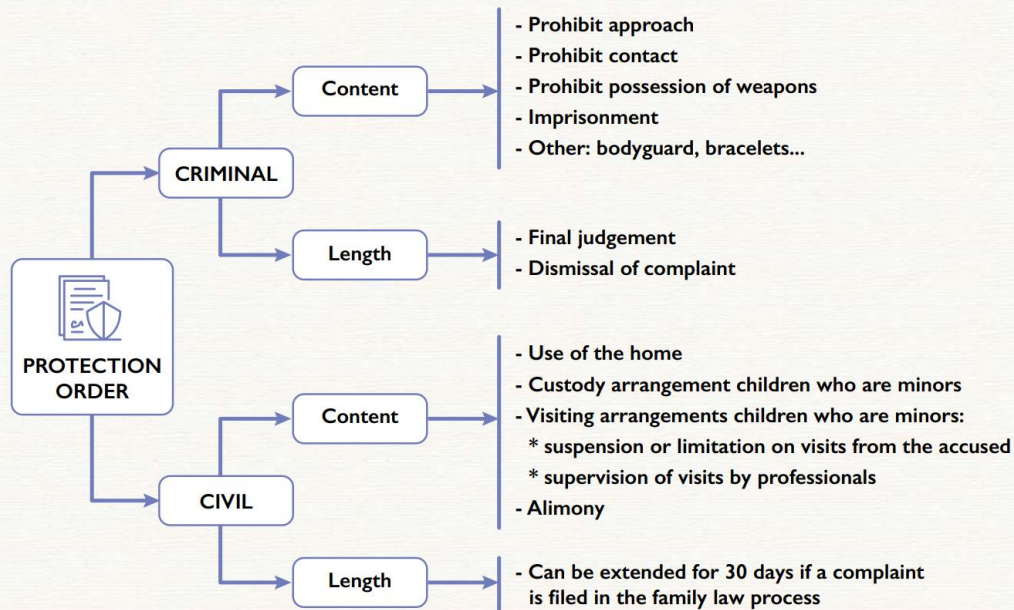


Image 60 Violence against women: IPV protection orders for victims. Source: Emakunde

Law 1/2004 provides for police, judicial, financial, protection and social measures as precautionary measures or as sanctions to be included in a criminal ruling. This Law also developed Special Courts for Violence against Women presided over by judges specially trained together with a special unit within the prosecutor's office (OSCE, 2014). These Special Courts can resolve both (family) civil and criminal matters. Judges must hear the cases within 72 hours of the complaint being filed. Victims are interviewed and "their continued risk of further harm is evaluated" by the police before going before a judge. The OSCE (2014) describes the process as follows:

The judge will dismiss the case, issue a protective order and, in appropriate cases, require the perpetrator to wear a tracking bracelet or in some cases face jail time. When the victim drops the complaint, the prosecutor will continue to go forward where he or she believes there is sufficient evidence against the perpetrator. An unintended consequence of the speedy procedure, however, is that in some situations, legitimate cases are dismissed because the proper evidence cannot be collected in the required 72 hours. This is especially true for complaints about psychological violence.

### 1. 4. 1 Intersectionality

In practice, there is also frustration with the law that affects particularly immigrant women and women of ethnic minorities who do not have much voice in the system (Varona, 2018). Like in many countries and as part of economic inequalities and

globalization, among the police and judicially registered victims there is an overrepresentation of migrant women and women of ethnic minorities with a lack of resources. Moreover, immigrant women and women of ethnic minorities do not always fit into the ideal victim envisioned by the law, professionals and society. Paradoxically, often protection becomes exclusion, and nationality and discrimination enter the managerial scheme of risks and needs assessment.

The old discussion of how law conceptualises gender violence and women as its victims shows that the rationale is ‘protection’ of the ‘vulnerable subjects’ instead of ‘pro-action’ in improving living conditions within their communities (Varona, 2018).

If immigrant women under conditions of social exclusion and cultural patterns of patriarchy find it more difficult to file criminal complaints and make their victimisation more visible in society, what can explain their overrepresentation in registered data of police and courts and the difference with gipsy women rarely present in that data?

Martinez-Roman et al. (2017) describe IPV against women as a violation of human rights and one form of discrimination “compound by other discrimination factors as migration”. In their qualitative study, by exploring the perspective of experienced social workers in the field, they conclude that the risk of violence can increase because of the legal and economic situation and the barriers immigrant women encounter to accessing information and support services. Thus, better public policies are needed to attend to the demands and needs of these women. Stigma, isolation, housing, residence and economic problems are some of the personal, family and community risks, fears and costs of entering the criminal system (Menjívar and Salcido 2009). Immigrant victims and victims of ethnic minorities have it more difficult to report due to language, lack of support, family, economic and work situation, legal or administrative status, discrimination and stereotyping, etcetera. In addition, the home country cultural and institutional practices may condition the framework to make decisions due to a lack of understanding or trust of the legal system, etc. Thus, we must presume that the women who enter that system are just the tip of the iceberg. Perhaps some immigrant women and women of ethnic minorities are more controlled, that is, the hidden part of the iceberg (particularly for non-extreme violence) is even bigger for Spanish women. This last reasoning could be supported considering that many cases of immigrant women enter via the health or social services systems and that the Spanish prosecutors cannot drop the case.

Amnesty International’s reports in 2005 and 2007 underlined the lack of legal protection of undocumented migrant women, usually dependent on their partner for documentation, under the risk of being expelled from the country (European Parliament 2016). Some immigrant women have it even harder to prove the violence. Dalli’s research concludes that:

the recognition of the right to health and public healthcare is necessary in order for healthcare personnel to detect possible cases of domestic violence, as well as for concerned individuals to be able to have the evidence required to prove the existence of gender violence before the courts (2014).

Even though the situation has improved after a 2011 reform of the immigration legislation (article 31 b), the support keeps being dependant on filing a complaint. The Government Office for Gender-based violence developed a ‘Plan of attention and prevention of gender violence in the migrant population (2009-2012)’ and some regional governments, like the Basque Country, have also adopted different specific strategies that seem to be insufficient.

As stated by different authors (Menchón 2015), victims realize, step by step, the difficulties they will face during the criminal process. At the very end they might find

that there is no sentence because the presumption of innocence prevails during the trial. In this case, the victim can be accused of a false report and be obliged to pay for the resources already given to her. Paradoxically the legislative and social measures given to women, especially immigrant women, might become against them as they are suspected to be interested in taking advantage of their situation when demanding welfare services. In some cases women are forced to prove that they are not driven by that interest (Menchón 2015; Cea-Merino & Montenegro-Martínez 2014). Moreover, statistical data in relation to granting residence permits when reporting gender violence does not show a pattern of abuse of victims. What statistical data does show is more sentences derived of the counter-reports against foreign women<sup>96</sup>, in comparison to Spanish women (Naredo 2012).

#### *1. 4. 1. 1 How to conceptualize and measure the risk of different women on an individualised basis: individual rights, community and alterity (otherness) in safety assessment*

Risk assessment is related not only to objectively checking the existence of some factors, derived from ‘consistent scientific’ studies, but also to professional attitudes, victim narratives and testimony credibility. When talking about risk we can think about the risk of women being revictimised or suffering secondary victimisation, in the terms of the 2012 European Union Directive, and the risk of the offender reoffending. To evaluate the risk of victims all recent legislation stresses the obligation of an “individualised evaluation”. However, the Spanish Statute of the Victim transposing that Directive includes a provision of austerity, that is, of implementation of this Statute without increasing the budget. The effect is that professionals have more obligations with the same or fewer resources. In practice, particularly at the level of some police and other criminal agencies, there is not such a thing as an “individualised” process of listening to the victim’s needs, but rather a standardised protocol to be applied.

As for offenders, following a global trend, the use of structured tools for violence risk assessment is growing in Spain. In the field of mental health and violence there a specific study (Arbach-Lucioni 2015) highlights the relevance of violence risk assessment (it talks about violence in general, not only gender violence) as a key requirement today in professional decision making involving prevention, intervention or reporting on human behaviour. Structured tools for violence risk assessment can “improve the accuracy of assessments based exclusively on clinical judgment or expertise in psychiatric, correctional and legal settings”. The study includes the results of the first survey about professional practices associated with tools for violence risk assessment in Spain. As in other countries, Robert Hare’s psychopathy scales (Psychopathy Checklist-Revised and Psychopathy Checklist: Screening Version) and the Historical-Clinical-Risk Management-20 are the most used tools by professional choice and institutional requirement.

According to several pieces of research (Cartuyvels 2013), there is a change in the status of criminal control expertise that can be defined from dangerousness to risk. As more and more pressure is put on judges, prosecutors and police, by media and society, risk assessment tools are seen by practitioners not only as a more scientific instrument but also as a way of sharing responsibility in decision making. The concept of dangerousness, at least in Spanish criminal policy, was based on individual evaluation and a clinical approach, whereas the concept of risk is based on aggregated data and patterns based on algorithms. It is not a social work or therapeutic approach but a systemic or managerial one within actuarial justice. In this actuarial justice risk

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<sup>96</sup> By counter-reports we mean the cases where the male partner accuses the woman of (physical or psychological) violence against him and she is brought to court in a separate proceeding.

assessment is seen as more precise and objective by comparison with the individual evaluation subjectivity of professionals; and with a more predictive value (where looking to the future is much important than looking to pre-existing discriminatory conditions). Individual evaluation is replaced by risk scales, identified with risk profiles based on probabilistic statistical data. As in many other spheres of life in the 21<sup>st</sup> century we are within an algorithmic logic of probabilities that is not the causal logic usually employed in crime control. In algorithmic logic, a concrete subject of intervention is substituted by risky populations derived from an abstract combination of statistical sets (Castel 1983, p. 123). This means a new form of surveillance economy where real presence, interpersonal contact and reciprocity between supervisor and supervised is not needed anymore.

The major problem is that, in this assessment of risk, factors like ethnic origin, migration condition, lack of resources and so on are considered to be risk factors instead of already existing inequality factors. The correlation of heterogeneous elements, where the migrant and ethnic minority condition weighs a significant portion, is presented as an objective scientific prognosis, being finally a myth of the idea of absolute security in a risk society (Beck 2006). As Castel states (1983, 123), those elements “deconstruct the concrete subject of intervention and reconstruct a combination of all the factors able to produce a risk” which brings, among other effects, an iatrogenic risk in risk management (Wiener 1998). The reason for this, according to Castel (1983, 127), is that this kind of risk management assumes that individuals are pre-assigned to a concrete place in the social geography. This favours further exclusion, stigmatisation and overlooks the interrelation of different categories of discrimination in society while, at the same time, law imagines those individuals as autonomous.

#### *The example of the instruments used in Spain*

In 2007 the Ministry of Interior began working on an Integrated System of Monitoring Cases Of Violence Against Women (VdG system) (European Union 2014). The system integrates actions of many entities (police forces -local, regional, national-, prosecutors, government delegates for violence against women, judges, penitentiary system, as well as social services). The VdG system aims at monitoring the victim’s situation, and prevention and/or protection of victims of violence against women. It uses uniform tools for risk estimation of violence attacks re-occurrence, particularly a PRE (Police Risk Evaluation) questionnaire and a PREE (Police Risk Evolution Evaluation) questionnaire.

The PRE form consists of three columns: the first is to state the source of knowledge, the second contains 16 indicators of reoffending; the third one refers to the estimated intensity of risk (low, average, high, extremely high, lack of knowledge) (Kordaczuk-Wąs & Putka 2012). When the form is complete, the system automatically estimates the degree of risk. The authors of the system have designed an additional option for agents, but only for a higher estimation. In empirical research on actuarial tools designed to estimate the risk of occurrence of further violence after a previous complaint (police recidivism), López-Ossorio et al. (2017) note that police take into account risk and protective indicators, even though they are not behavioural assessment experts. In any case, protocols indicate that in case of disagreement between judicial and police authorities, judicial authorities’ decisions prevail<sup>97</sup>.

The PREE form is filled periodically. In this case 17 indicators are used, including social situation, financial and professional situation of the perpetrator; victim support

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<sup>97</sup> Beyond police risk assessment, there is also the assessment of the psychological teams in courts and in penitentiary institutions where some specific rehabilitation programs have been developed, inside and outside prison.

from her environment; lack of application by the victim of agreed safety principles, e.g. prohibition from contacting the perpetrator, electronic supervision, showing the desire to appeal reports, changing testimonies or wanting to resign from the preventive measures; and mental or psychiatric problems and addictions. According to research 44% of perpetrators who killed their partner women previously had a conflict with the law, of which nearly 30% did not concern domestic violence. For this reason changes in the VPER form introduced the question about previous conflicts with the law as a basis for increasing risk level (Kordaczuk-Wąs & Putka 2012).

In the summer of 2016, a new risk assessment protocol for the police was approved by the Instruction 4/2016 of the Secretary of Security. The Office of the Ombudsman, which had previously demanded the update of the police risk-assessment indicators, welcomed the implementation of this new protocol which includes a guidebook with safety advice. The protocol included new questionnaires for the police which must consider:

- a) The kind of violence suffered by the victim.
- b) The relationship with the offender.
- c) Previous data on the offender and his context.
- d) Family, social, economic and labour conditions of victims and offenders.
- e) Withdrawal of files, the continuation of living together and renouncing to protection measures by the victim.

The Instruction 4/2016 included minors as victims and talks of a “personalised plan of protection” with “active participation” for every victim. Agents must inform their superiors about the resources needed. In 2019, a new protocol was established by the Spanish government<sup>98</sup>.

Beyond the gap between rhetoric and practice, part of the concern with risk assessment in this field (now including the notion of ‘needs’ in order to respond to initial criticism), is expressed by the US Council of State Government Justice Center (2016). This Center has studied risk and needs assessment in relation to bias in the criminal justice system. Something goes wrong if the assignment of risk scores and the decisions based on them rely on an assessment that is not equally accurate across all groups. When considering class, education level, employment, neighbourhood, marital status and family resources, professionals must know how to use the assessment tool and resources have to be allocated to meet the needs resulting from the assessment. Finally, this tool cannot be used as the only source to make decisions in the criminal justice system. In the same direction, even if focusing on sentencing, Monahan and Skeem (2015) have pointed out the four principal problems confronting risk assessment: conflating risk and blame, barring individual inferences based on group data, failing to distinguish risk assessment from risk reduction and ignoring the impact in racial and economic disparities.

### **1. 5 A possible discriminatory effect of the global prohibition of mediation in IPV: victim safety versus empowerment? International standards and the Spanish legal option**

#### *International standards*

Risk assessment is also considered in the 2012 EU Directive when considering the entry of victims in restorative justice programs (Varona, 2018). That Directive does not preclude these programs. However, the Spanish legislation has opted for a general

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<sup>98</sup> Secretaría de Estado de Seguridad (SES, 2019). Instrucción 4/2019 de la Secretaría de Estado de Seguridad por la que se establece un nuevo protocolo para la valoración policial del nivel de riesgo de violencia, de gestión de la seguridad de las víctimas y seguimiento de los casos a través del Sistema de Seguimiento Integral para los casos de Violencia de Género (Sistema VioGén). Ministerio del Interior de España. Vid. López-Ossorio et al. (2020).

prohibition in the case of adult women victims of IPV. Considering the overrepresentation of immigrant women as victims in IPV, we can reflect on how this prohibition affects them if restorative justice might include more collective forms of community participation (such as conferences and circles), and also on how much universal restorative programs might be in terms of culture, gender, class or other categories of discrimination.

The Recommendation No. R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters, currently under revision, and the 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters do not specifically refer to IPV. The UNODC Handbook on Restorative Justice Programmes only notes that “(t)he use of restorative justice in cases of domestic violence and sexual assault, for instance, is often controversial.” (UNODC 2006, p. 45).

However, even if it is neither hard nor soft law, the UN Handbook for Legislation on Violence against Women explicitly prohibits mediation in IPV cases. According to the Handbook, when offering mediation before and during legal proceedings, “(i)t removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability” (United Nations 2010, p. 38). Among the ‘increasing number of countries following this prohibition recommendation, Spain is mentioned in the Handbook. In the online version it is said that police and judges should not attempt to improve relations in the family by offering these services or by mediating a dispute<sup>99</sup>.

The 2011 Council of Europe’s Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) only prohibits *mandatory* alternative conflict resolution (article 48)<sup>100</sup>. The explanatory report to the Convention underlines the power imbalance and the re-privatization risk (Dorst et al. 2015). The Council of Europe Convention calls for caution when alternative dispute resolution mechanisms are applied in the field of violence against women and domestic violence and quotes the UN Women Virtual Knowledge Center to End Violence against Women and Girls when recommending guidelines on how mediation should be used in cases of violence against women, ‘including the need for training for all those involved in facilitating mediation’ (Parliamentary Assembly 2015).

The 2011 Directive on the European Protection Order does not explicitly refer to the use of restorative justice in IPV cases. As already mentioned, the 2012 European Directive on minimum standards for victims, superseding the 2001 Framework Decision on the standing of victims in criminal proceedings, does not exclude any crime from restorative justice, providing safe and competent services, but it leaves the choice to prohibit to every country (article 12). Thus, some European countries offer restorative justice for certain IPV cases.

Here we can use the concept of a “loosely coupled system” by John Hagan, John D. Hewitt and Duane F. Alwin (1979) in the sense that the principles of emancipation and protection of women friction within today Spanish legal system with regard to IPV. The old discussion of how law conceptualises gender violence and women as its victims shows that its rationale is mainly “protection by professionals”. This is especially clear in the Spanish prohibition of mediation in this field, even if with several inherent contradictions. Restorative justice, with mediation being one of its possible procedures or mechanism, can be theoretically defined as a free and participatory dialogue of those affected by a crime in order to be repaired and repair for the harm caused. Responding

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<sup>99</sup> See the electronic version at <http://www.endvawnow.org/en/articles/813-mediation-or-assisted-alternative-dispute-resolution-provisions.html>.

<sup>100</sup> Spain ratified the Istanbul Convention on 27 May 2014.



to the question of why restorative justice is dangerous for the cause of women in this field is not easy.

### *Reasons for and against*

Within the global debate on pros and contras of restorative justice, Liebmann (2016) who has a background of working with victims and offenders in the UK, defends the view that, given that restorative justice should focus on repairing harm it should be a voluntary process, safe and accessible, with impartial facilitators, and respect for all participants and so might have benefits for women in this field. Among those benefits quoted by her and Drost et al. (2015), in relation to IPV, we can list the following:

- Women can ask questions of the offenders.
- Women can express their feelings and needs after the crime.
- Women can receive an apology and/or appropriate reparation.
- Women can make clear to offenders the effects of their offences in a way of 'educating' them.
- Women can sort out any existing conflicts.
- Women can be part of the criminal justice process
- Women can put the crime behind them.

Liebmann (2016) argues that restorative justice is more suitable for 'situational couple violence' (specific events where things have escalated and violence has occurred) rather than for systematic coercive control cases -what Drost et al. (2015) name intimate terrorism. In Spain, this line of argument has been defended, among others, by Hernández (2016).

Those against the use of restorative justice in any case of IPV state that the risk of revictimisation or secondary victimisation is too high due to a structural power imbalance. In addition IPV and gender violence, in general, are too serious social problems to be dealt with by restorative justice because this might be seen as a soft and private option in responding to crime. However, restorative justice, even if defined as a flexible, problem-oriented, participatory option complementary or alternative to traditional criminal procedure (Drost et al. 2015), usually works in relation to the criminal justice system. This system will always provide the definition of crime and the general framework of the procedure to be followed at one stage or another.

Liebmann (2016) goes to list the reasons why some women might prefer restorative justice:

- the criminal justice system does not meet their needs.
- they don't want to go to court, because of the shame of a public process.
- they don't see punishment as a solution to the problem.
- they need the relationship to change.
- they want the violence to stop.
- they want to find out the reason for the violence.
- in poor communities, if the perpetrator goes to prison or is issued with a fine, it may mean less food on the table for the family, or even destitution.

In any case, among those benefits and reasons, intercultural aspects related to community involvement are not mentioned. However, they might be important and playing an ambivalent role.

### *The case of Spain*

As already explained, the Organic Act 1/2004 of 28 December 2004 on Integrated Protection Measures against Gender Violence, in its article 44 § 5, prohibits the use of the mediation in case of violence against women and it is always given as an example in international reports and the UN Handbook. By revising the parliamentary debates, we

can argue that it was the product of Spanish internal feminist groups' pressure rather than of international organisms recommendations (most of the previously commented did not exist then). In the Act 1/2004 mediation was named, for the first time in penal matters, in the Spanish legislation. It meant a unique prohibition of mediation only for adult women when they are victims of IPV by men.

At the portal of the EU on mediation in different fields in Spain<sup>101</sup>, it is stated that, despite this prohibition: "there are more and more advocates of mediation in this branch of the legal system, because it makes sense to look at individual cases in order to assess whether or not mediation would be appropriate. In this regard, the General Council of the Judiciary's 2001 Report on Gender Violence in the Family emphasized that minor offences or offences involving domestic violence should be referred to the civil courts" (something that is not possible after 2004). To illustrate the controversies of this prohibition, related to the mandatory prohibition of approaching the victim, we will comment on an EU Court of Justice decision regarding Spain. This decision deals with the mentioned prohibitions without touching cultural aspects or intersectionality (elements that will be explored later through two case studies).

EU Court of Justice Preliminary ruling under Article 35 EU asked from the Provincial Court of Tarragona (Spain) in 2011<sup>102</sup>

This preliminary ruling was asked by a Spanish Court in 2009 and the result was the judgment of the European Union Court (Fourth Chamber) 15 September 2011, in joined cases C-483/09 and C-1/10, in relation to Articles 2, 8 and 10 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. The references were made in criminal proceedings against Mr Gueye and Mr Salmerón Sánchez who were charged with failing to comply with the prohibition, imposed as an ancillary penalty, on approaching the women who were the victims of their offences of gender violence.

The legal basis for the request was the consideration that European judicial cooperation must assure an equally (high) level of protection in all EU countries. Under Article 10(1) of the Framework Decision, '[e]ach Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure'. According to the Spanish criminal code (article 48) the ancillary penalty of a prohibition on approaching the victim is mandatory. Judges cannot choose whether to impose it or not. The penalty is imposed for a period of between one and five years greater than the period of imprisonment imposed, or for a period with a minimum duration of six months and a maximum duration of five years if the penalty imposed is other than imprisonment.

Although Mr Gueye and Mr Salmerón Sánchez were aware of this, within a relatively short time after the imposition of those ancillary penalties the two offenders resumed living together with their respective victims at the request of those victims. The offenders continued to cohabit with them until they were apprehended. In the course of the appeal of the judgment that found them guilty of not fulfilling the ancillary penalty, the court heard the testimony of the victim women. They said that 'consciously and voluntarily, decided to resume cohabitation with the offenders, notwithstanding the fact that the two men had been convicted of having previously assaulted them and were consequently the subjects of criminal penalties. According to those individuals, their cohabitation with Mr Gueye and Mr Salmerón Sánchez had continued normally for several months, until the date when the two men were apprehended'. The Spanish court

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<sup>101</sup> See at [https://e-justice.europa.eu/content\\_mediation\\_in\\_member\\_states-64-es-en.do?member=1](https://e-justice.europa.eu/content_mediation_in_member_states-64-es-en.do?member=1).

<sup>102</sup> See at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0483>.

asked the EU Court whether a mandatory injunction is compatible with the Framework Decision. It considered ‘that the appropriate level of protection which should, in practice, be afforded to victims of crimes committed within the family cannot, particularly in cases of minor infringements, result in the imposition, without any exceptions, of an injunction to stay away without any prior assessment of the circumstances of each specific case’ and asks:

Should Article 2 of the Framework Decision ... be interpreted as meaning that the duty of [Member] States to recognise the rights and legitimate interests of victims creates the obligation to take into account their opinions when the penalties arising from proceedings may jeopardise fundamentally and directly the development of their right to freedom of personal development and the right to private and family life?’.

Should Article 2 of the Framework Decision ... be interpreted as meaning that the State authorities may not disregard the freely expressed wishes of victims where the imposition or maintenance in force of an injunction to stay away from the victim when the offender is a member of their family are opposed by the victim and where no objective circumstances indicating a risk of re-offending are established, where it is possible to identify a level of personal, social, cultural and emotional competence which precludes any possibility of subservience to the offender or, rather, as meaning that such an order should be held appropriate in every case in the light of the specific characteristics of such crimes?

... does Article 8 require that an assessment of each individual case be undertaken to allow the identification, on a case by case basis, of the suitable level of protection having regard to the competing interests?

Imposing a prohibition on approaching the victim, as a way to manage risk, avoids the possibility of face to face mediation or another form of restorative justice. In relation to this, and because one of the victims was particularly interested in mediation, the Spanish Court asks the European Union Court Should whether the Framework Decision can be interpreted as permitting a general exclusion of mediation in criminal proceedings relating to gender violence crimes, in the light of the specific characteristics of those crimes or, on the other hand, whether mediation should also be permitted in proceedings of that kind, assessing the competing interests on a case by case basis.

The European Court ratified that it had jurisdiction, under Article 35(1) EU, to give a preliminary ruling, as requested by the referring court, on the interpretation of the Framework Decision. The Spanish government clarified that the criminal chamber of the Spanish Supreme Court, in a ‘non-binding resolution’ of 25 November 2008, made clear that ‘the consent of the woman does not exclude liability to punishment’ in these matters.

According to the EU Court there is no provision in the Framework Decision relating to the forms of penalties and the level of penalties that Member States must enact in their legislation in order that criminal offences should be subject to punishment. The European Union Court concludes that it is not a question of victim perception of risk but a question of state *ius puniendi* and public interest, based on the risk of revictimisation:

That procedural right to be heard under the first paragraph of Article 3 of the Framework Decision does not confer on victims any rights in respect of the choice of form of penalties to be imposed on the offenders in accordance with the rules of national criminal law nor in respect of the level of those penalties. 61 In that regard, it must be borne in mind that where a Member State in the exercise of its powers to enforce the law ensures that the criminal law offers protection against acts of

domestic violence, the objective is not only to protect the interests of the victim as he or she perceives them but also other more general interests of society. According to the EU Court, if based on ‘objective criteria’, deciding to exclude the application of the mediation procedure for a particular type of offence is a legitimate choice to be made on criminal justice policy grounds in every country. Following the opinion of the EU Court Advocate General the right of victims to be heard does not mean that the court is bound by her wishes<sup>103</sup>.

The law requires individualisation of case management, that is, victim treatment, protection and (empowering) support by police, judges and social services in an individualised manner, including consideration of the seriousness of violence and victim’s opinion. This requirement has been underlined in the new 2012 Directive. However, according to the EU Court of Justice, that requirement does not seem to be an obstacle for a general prohibition of mediation.

#### *Some experiences in other countries*

The controversy in Spain is also a global one. A recent research study (Drost et al. 2015) in several European countries (Austria, Denmark, Finland, Greece, Netherlands and the UK), mostly based on minor crimes, confirms previous research in the sense that restorative justice is neither a good nor a bad response to concrete cases of IPV. It all depends on the individuals involved in every case (including children) and the competence of the facilitator for which a guide was developed by the European Forum for Restorative Justice. In the mentioned countries there have been examples of restorative processes in these cases since the 2000s, as well as in Australia, New Zealand, Canada and the United States.

On the debate of empowerment versus safety for victims, Liebmann (2016) states that:

Prioritising victim safety can perpetuate disempowerment, whereas prioritising victim choice can lead to dangerous situations. Restorative justice needs to balance these two issues in every case. There is a need for a positive Victimology in which victims are seen as capable of making their own decisions according to their circumstances.

She concludes that the requirements and safeguards provided in international standards on restorative justice must be strictly followed in these cases and referral to support services, if needed, must be guaranteed. In addition she stresses that the perpetrator is the only one to be blamed. In IPV apology can be used as manipulation in the cycle of violence, minimizing the victimisation caused.

According to Drost et al (2015) there are three main differences in IPV and other crimes that allow understanding feminist critiques:

1. The historical legal treatment of IPV as a private matter within a history of machismo and power imbalance (Daly & Stubbs, 2006) which might also be present in the restorative services.
2. In IPV, there is a victim-offender emotionally close relationship which might include parenting.
3. In IPV, the priority should be to protect women and stop violence, and not reparation.

However, Drost et al. (2015) conclude that:

some of these arguments contra VOM attribute special qualities to the formal criminal justice system which are not always achieved in practice. So the decision pro or contra the use of VOM in IPV cases may partially be ideology-based.

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<sup>103</sup> See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CC0483&from=EN>.

Expanding options for victims, considering the real limits of criminal justice system and restorative justice, might be a common ground to explore further this debate that should focus always on safety first. But in some cases:

The question is if safety measures should be part of the outcome of VOM, or if safety measures like protection orders should be part of the criminal procedure (and also the civil procedure) (Drost et al. 2015).

Regarding research carried out on restorative justice for IPV, in Austria more victims and offenders were immigrants, whereas in the Dutch sample half the respondents were immigrants (Surinam/Antillean) (Lüneman, 2013). In Finland and Denmark, none of the respondents were immigrants, whereas in Greece, the group contained Greek and Albanian nationalities. Most participants had an overall positive attitude towards using VOM in IPV cases, even though expressing the general concerns pointed out above. Lüneman concludes:

Despite the fact that in the UK the feminist movement is strongly against restorative justice and the government shows a rather punitive look at crime, the participants in the UK agreed that compared to conventional criminal justice, RJ (aiming at empowering victims through dialogue and risk assessment) has much more potential to counter the societal vulnerability which characterizes a lot of victims of IPV (2013).

## 2. Key concepts to recap

Battered woman syndrome  
Child (sexual) abuse  
Cycle of violence  
Domestic violence  
Empowerment  
Family violence  
Femicide  
Gender violence  
Learned helplessness theory  
Machist violence  
Patriarchy  
Violence against women

## 3. Thinking Victimology

- 1) The case of Ana Orantes<sup>104</sup> helped to raise awareness of an extended and invisible problem in Spanish society. What kind of terms was used in the Spanish society before talking about “gender violence” or “machist violence”? How did society react? Why did it take so long to see and understand the magnitude of the problem and the victims’ needs? Which can be the evaluation of the impact of the 2004 Organic Act? See, among other authors, Díez Ripollés, Cerezo and Benítez (2018) and Pereda and Tamarit (2019).
- 2) According to the Canadian Femicide Observatory for Justice and Accountability<sup>105</sup>:

The first documented use of the term ‘femicide’ was in a book by John Corry (1801) called *A Satirical View of London at the Commencement of the Nineteenth Century* where it was used to refer to the killing of a woman. It was not until 1976, however, that the term was reintroduced publicly in the modern age by violence against women feminist pioneer, expert and activist, Diana Russell, at the International Tribunal of Crimes Against Women to bring attention to violence and discrimination against women.

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<sup>104</sup> See at <https://www.nytimes.com/2020/01/15/obituaries/ana-orantes-overlooked.html>.

<sup>105</sup> See at <https://www.femicideincanada.ca/about/history>.

In its early iteration by Russell, femicide was defined as “the murder of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women” and “the misogynistic killings of women by men.” Most recently, this definition evolved to its most commonly-used form as “the killing of one or more females by one or more males because they are female” as stated by Russell in her introductory speech<sup>106</sup> presented to the United Nations Symposium on Femicide on November 26, 2012.

The term, as well as its accepted meaning, often varies, however, depending upon whose perspective is being examined or where it is being examined. As such, the phenomenon of femicide and its scope, content and implications continue to be the subject of discussion internationally in academia, policy and grassroots activists’ arenas as well as regional, national and other legislative processes. For example, in some world regions, such as Latin America, the term *feminicidio* (or femicide in English) is preferred to capture the way in which states or governments are often unresponsive to the killings of women.

Internationally, a broader definition of femicide is often used that includes any killings of women and girls. This is often done for ease of international comparisons, but also to acknowledge that, in some cases or types of femicide, female family members or females in other contexts may sometimes be involved. Keeping this in mind, it is still recognized that men are the primary perpetrators of femicide and that most femicides are committed by current or former male partners – a pattern that exists worldwide although proportions vary across world regions.

In relation to the above paragraph, please, comment on the main victimological aspects of the information provided at [feminicidio.net](http://feminicidio.net) in Spain.

3) On November 2019, the Ministry of Interior communicated that throughout 2019 and in line with the State Pact against Gender Violence, it incorporated improvements in the Protocol of Police Assessment of the Risk of Gender Violence, Management of Victim Safety and monitoring cases through the **VioGén System** (*Protocolo de valoración policial del riesgo de violencia de género, gestión de la seguridad de las víctimas y seguimiento de los casos a través del Sistema VioGén*) aimed at increasing the predictive capacity of police risk assessment and improving the identification of cases with vulnerable minors<sup>107</sup>.

In 2020 the National Court (*Audiencia Nacional*) condemned the Ministry of Interior because the police (*Guardia Civil*) did not provide enough protection to a woman who ended murdered by her partner: “the agents’ action against gender violence should not be limited to formal aspects in attending the reporting woman, assistance, information of their rights, and citation in proceedings, but their intervention demands priority in attention and protection for women who have been victims of violence within the family in order to prevent and avoid, as much as possible, the consequences of the maltreatment”<sup>108</sup>.

Please, comment on this judicial decision by the National Court in line with the European Court of Human Rights’ jurisprudence on state positive obligations and

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<sup>106</sup> See at <https://www.femicideincanada.ca/sites/default/files/2017-12/RUSSELL%20%282012%29%20DEFINING%20FEMICIDE.pdf>.

<sup>107</sup> Source: [https://fra.europa.eu/sites/default/files/fra\\_uploads/spain-frr2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/spain-frr2020_en.pdf). The Basque Country has developed its own monitoring system in coordination with VioGén.

<sup>108</sup> Ruling of the Administrative Division of the National Court (30/09/2020). Roj: SAN 2350/2020.

consider if the VioGén System should be improved including other items<sup>109</sup> or evaluation dynamics.

4) Please, read the following paragraph and reflect on the **notion of the victim/offender overlapping** and its circular itineraries, and propose a victimologically informed program to work with women prisoners, previously victims of violence against women. *Sermujer.es* is a program still running since 2011 to work with those convicted of gender-based violence oriented to women imprisoned<sup>110</sup>. It is a psychotherapeutic intervention to give women deprived of the freedom of freedom to improve their personal capacities, to face the difficulties of being in prison, and to teach them to detect and deal with sexist violence. Around 1,500 women have participated in the program since its implementation. On 2019 an evaluation study titled “Evaluation of the effectiveness of a treatment program for the empowerment of women in prison - Program Sermujer.es” (*Evaluación de la eficacia de un programa de tratamiento para el empoderamiento de las mujeres en prisión - Programa Sermujer.es*) was published and developed by the National University of Distance Education, (*Universidad Nacional de Educación a Distancia*, UNED in its Spanish acronym). It does analyse the effectiveness of a treatment program SerMujer.es for the empowerment of women in prison. Certain conclusions were drawn such as: approximately 70% to 75% of women entering prison have been mistreated; the percentages of abused women living in prison are very worrying and justify the development of a more extensive and intensive Action Plan; the relevance of the transformation of participants into agents of change; the effects of the Programme on other women in the same situation, in particular, to generate the link that eliminates the resistance of others to participate in this and other programmes; the positive effect on social and family networks, particularly on children; the encouragement of the programme to promote a change; and the will for change for those women to take the decision to abandon crime.

5) At the end of 2019, it was registered that more than 4,000 men are serving time for gender-based violence as the main offence. Gender violence is nowadays in Spain one of the main causes of admission to prison. The profile of the convicted person is a Spaniard (78% of the convicts) between 41 and 60 years (45%). The same characteristics were repeated when talking about alternative penalties: 74% Spanish people between the ages of 31 and 40.

According to Guerrero-Molina et al (2021), there exists an:

ambivalent sexist attitudes and distorted thoughts about women and the use of violence in a sample of Spanish aggressors found guilty of intimate partner violence (...) The instruments applied were the Ambivalent Sexism Inventory (ASI), the Inventory of Distorted Thoughts about Women and the use of Violence (IDTWV) and the Social Desirability Scale (SDS). Likewise it was realized a general structured interview to discover their personal, family and penitentiary situation. The study concludes that aggressors use violence as a resource to resolve conflicts with their intimate partner, even though they do not show hostile sexist attitudes towards women in general (...) distorted thoughts concerning women and violence predict a greater prevalence of ambivalent sexist attitudes in aggressors, and we have found a low level of education and the existence of jealousy in the relationship are related with a greater presence of sexist attitudes. However, the existence of episodes of family violence in childhood, concretely having been the victim of emotional abuse, does not necessarily lead to greater sexism in aggressors.

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<sup>109</sup> For example, including existing violence against animals. See Barrett et al. (2020). Translated by the author.

<sup>110</sup> Source: [https://fra.europa.eu/sites/default/files/fra\\_uploads/spain-frr2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/spain-frr2020_en.pdf).

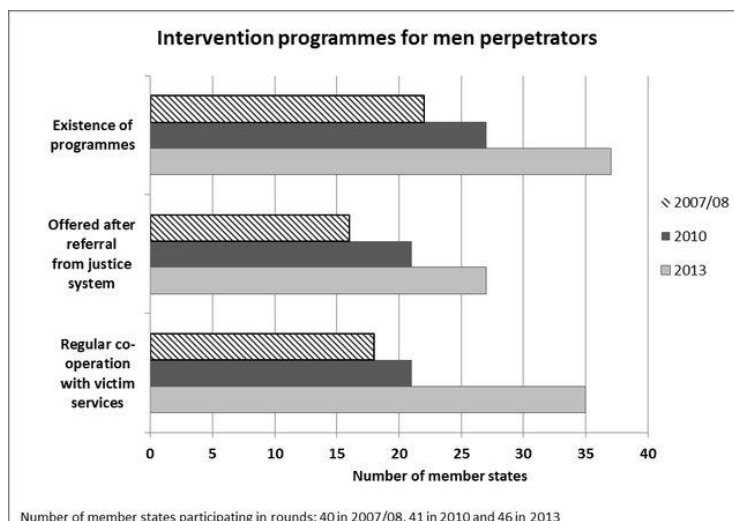


Image 61: Increasing intervention programmes for men perpetrators in 2007-2013 in Europe

Do you think that, in the victims' interest, more funding should be allocated for more treatment programs for aggressors which start expanding in the 2000 decade? Which is the legislation on this issue in Spain?

#### 4. Applying Victimology

1) Consider the following document by Eudel (2021) and propose more concrete actions at the local level, including children as victims of gender violence, according to the Spanish legislation.

#### What MUST local councils DO to apply the different reparation principles?

| PREVENTION  | INTERVENTION   | SOCIAL AND SYMBOLIC REPARATION   |   |  |  |   |               |                |  |   |
|---|--|--|---|--|--|---|---------------|----------------|--|---|
| Non-repetition  |  |  |   |  |  |   |               |                |  |   |
| <ul style="list-style-type: none"> <li>Training and awareness campaigns aimed at the general public and different professionals</li> <li>Coordinated action protocols to avoid further abuse of recognised victims</li> </ul>   |  | <ul style="list-style-type: none"> <li>Evidencing actions.</li> <li>Memory sites for social recognition and dissemination of the truth.</li> </ul> |   |  |  |   |               |                |  |   |
| DIRECT ACTION   |  | SUBSIDISING / SUPPORTING OTHER ENTITIES / SERVICES   |   |  |  |   |               |                |  |   |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="background-color: #d1ecf1;">Material Rep.</th> <th style="background-color: #d1ecf1;">Emotional Rep.</th> </tr> <tr> <td style="background-color: #d1ecf1;"> <ul style="list-style-type: none"> <li>(Compensation and rehabilitation)</li> <li>Legal support</li> <li>Work placement</li> <li>Social benefits</li> <li>Housing</li> <li>Orphan's compensation</li> </ul> </td> <td style="background-color: #d1ecf1;"> <ul style="list-style-type: none"> <li>(Rehabilitation)</li> <li>Guarantee that the services are sufficient, accessible and first-rate to avoid added stress</li> <li>Psychological care</li> <li>Family mentoring...</li> </ul> </td> </tr> </table> | Material Rep.  | Emotional Rep.   | <ul style="list-style-type: none"> <li>(Compensation and rehabilitation)</li> <li>Legal support</li> <li>Work placement</li> <li>Social benefits</li> <li>Housing</li> <li>Orphan's compensation</li> </ul> | <ul style="list-style-type: none"> <li>(Rehabilitation)</li> <li>Guarantee that the services are sufficient, accessible and first-rate to avoid added stress</li> <li>Psychological care</li> <li>Family mentoring...</li> </ul> |  | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="background-color: #d1ecf1;">Material Rep.</th> <th style="background-color: #d1ecf1;">Emotional Rep.</th> </tr> <tr> <td style="background-color: #d1ecf1;"> <ul style="list-style-type: none"> <li>(Compensation and rehabilitation)</li> <li>Payment of health care professionals, legal fees...</li> <li>Allocating areas to survivors' associations (or any other) that mentor victims</li> </ul> </td> <td style="background-color: #d1ecf1;"> <ul style="list-style-type: none"> <li>(Rehabilitation)</li> <li>Psychological care</li> <li>Emotional mentoring of victims from soror</li> </ul> </td> </tr> </table> | Material Rep. | Emotional Rep. | <ul style="list-style-type: none"> <li>(Compensation and rehabilitation)</li> <li>Payment of health care professionals, legal fees...</li> <li>Allocating areas to survivors' associations (or any other) that mentor victims</li> </ul> | <ul style="list-style-type: none"> <li>(Rehabilitation)</li> <li>Psychological care</li> <li>Emotional mentoring of victims from soror</li> </ul> |
| Material Rep.   | Emotional Rep.   |  |   |  |  |   |               |                |  |   |
| <ul style="list-style-type: none"> <li>(Compensation and rehabilitation)</li> <li>Legal support</li> <li>Work placement</li> <li>Social benefits</li> <li>Housing</li> <li>Orphan's compensation</li> </ul>   | <ul style="list-style-type: none"> <li>(Rehabilitation)</li> <li>Guarantee that the services are sufficient, accessible and first-rate to avoid added stress</li> <li>Psychological care</li> <li>Family mentoring...</li> </ul> |  |   |  |  |   |               |                |  |   |
| Material Rep.   | Emotional Rep.   |  |   |  |  |   |               |                |  |   |
| <ul style="list-style-type: none"> <li>(Compensation and rehabilitation)</li> <li>Payment of health care professionals, legal fees...</li> <li>Allocating areas to survivors' associations (or any other) that mentor victims</li> </ul>  | <ul style="list-style-type: none"> <li>(Rehabilitation)</li> <li>Psychological care</li> <li>Emotional mentoring of victims from soror</li> </ul>  |  |   |  |  |   |               |                |  |   |

#### Some examples

|  |   |
|--|---|
| <b>AIMED AT DEFENDING WOMEN'S INTEGRITY</b>      | <ul style="list-style-type: none"> <li>Facilitating access to health care</li> <li>Facilitating access to psychological care</li> <li>Preparing and approving protocols and bylaws which guarantee the principle of reparation</li> <li>Processing expeditiously shelter resources that cover victims' real needs</li> <li>Establishing re-education/awareness programmes for abusers</li> </ul>  |
| <b>AIMED AT WOMEN'S EMPOWERMENT AND AUTONOMY</b> | <ul style="list-style-type: none"> <li>Fostering associationism between women victims</li> <li>Setting up empowerment schools, Women's Centres, feminists tokos (groups), etc. to facilitate their autonomy.</li> <li>Facilitating information to exercise employment rights, access to funding and economic resources, housing, etc.</li> </ul>  |
| <b>SOCIAL AND SYMBOLIC</b>                       | <ul style="list-style-type: none"> <li>Performing urban planning actions (street names, monuments, etc) to highlight the reality of violence against women</li> <li>Organising seminars, events, etc., on key dates to remember the victims and survivals</li> <li>Establishing awareness-raising workshops with citizens, in order to work on values to combat violence against women from a feminist perspective</li> <li>Programming interventions with the community (neighbourhood, school, etc.) for the reparation of coexistence and recognition of the truth.</li> </ul> |
| <b>ECONOMIC AND EQUITY</b>                       | <ul style="list-style-type: none"> <li>Approving exceptional financial help for victims of violence against women</li> <li>Mediating between the victim and companies of the municipality or supramunicipal council to facilitate the job placement of the victims</li> <li>In those municipalities with a Lanbide (Basque Employment) office: guaranteeing job placement pathways, appropriate training, subsidies, etc., in constant contact with the work mentoring of victims of violence.</li> </ul>   |
| <b>JUDICIAL</b>                                  | <ul style="list-style-type: none"> <li>Informing women of all their rights from the legal perspective.</li> <li>Facilitating mentoring/support for the women during the legal process</li> <li>Fostering and supporting initiatives aimed at amending legislation that does not respect women's rights.</li> </ul>  |



|   |  |
|---|--|
| <b>WITH VICTIMS OF SEXUAL VIOLENCE</b>  | <ul style="list-style-type: none"> <li>• Facilitating access to specialised psychological and health care</li> <li>• Facilitating access to legal advice on the options and the way of proceeding</li> <li>• Establishing municipal or supramunicipal “crisis centres”</li> <li>• Implementing victim care protocols</li> </ul>  |
| <b>WITH VICTIMS WHO ARE MINORS</b>  | <ul style="list-style-type: none"> <li>• Establishing efficient early alert and prevention systems for violence against women and/or sexual abuse</li> <li>• Organising programmes to prevent abuse between minors at education centres, Gaztegunes, etc.</li> <li>• Creating specific physical spaces for victims who are minors that are adapted to their needs with the police, social and health system.</li> <li>• Facilitating access to health and psychological care adapted to minors</li> <li>• Processing access to accommodation and/or foster resources, adapted to the needs of minors who have been forced to abandon their usual place of residence.</li> <li>• Incorporating minors in the local protocols to care for women victims</li> </ul> |
| <b>WITH VICTIMS OF SEXUAL ABUSE AND/OR SEXUAL HARASSMENT IN THE WORKPLACE</b> | <ul style="list-style-type: none"> <li>• Encouraging the approval of sexual abuse and sexual harassment at the companies located in the municipality.</li> <li>• Facilitating access for the victims to the necessary professional care (legal advice, psychology, etc.).</li> <li>• Fostering non-discrimination at work based on gender (remuneration, promotion opportunities, training, etc.)</li> </ul>   |
| <b>WITH WOMEN VICTIMS OF TRAFFICKING</b>                                      | <ul style="list-style-type: none"> <li>• Facilitating resources to meet their basic needs immediately</li> <li>• Facilitating police protection to prevent possible reprisals</li> <li>• Facilitating access to psychological and medical care</li> <li>• Facilitating access to legal advice (prioritising their victim status over being a person in an “irregular situation”)</li> <li>• Facilitating the return to their home countries</li> </ul>   |
| <b>WITH VICTIMS OF FEMALE GENITAL MUTILATION (FGM)</b>                        | <ul style="list-style-type: none"> <li>• Establishing coordination protocols between different entities based on prevention</li> <li>• Facilitating access to psychological care</li> <li>• Facilitating access to medical care and access to reconstructive surgery</li> </ul>  |
| <b>WITH OTHER VICTIM-SURVIVORS</b>  | <ul style="list-style-type: none"> <li>• Facilitating access to psychological care</li> <li>• Facilitating access to legal advice and information</li> <li>• Encouraging the setting up for support groups for relatives and close friends of victims and survivors.</li> </ul>  |

*Image 62: Reparation obligations at the local level. Source: Eudel (2021)*

2) How would you taken into account the special needs of women victims belonging to ethnic minorities? How can you apply the notion of intersectionality? Please, read the following two interviews from Varona (2018):

*A Chinese woman’s story about being alone and asking for help*

The first interviewee was a Chinese woman who suffered gender violence and was in contact with the criminal justice system (state) and different social service systems (provincial and municipal). Aged 30 at the time of the interview, with basic education, she suffered physical and psychological abuse over several years at the hands of her Basque partner, whom she met when working in the Basque city of San Sebastián and who was the father of her child. She arrived in Spain in 2011 and spent some time working in other cities before coming to the Basque Country.

Her experience with the criminal justice system was varied. She was happy with the police but not with the judge, who seemed not to believe her. She wanted a restraining order, but it was not granted because the judge did not find enough evidence of risk:

I needed more listening by the judge; it is not only about the language problem. I felt treated like a number. The harm produced was more inside than outside. I don't usually cry, and it seems that if you don't cry, it is because you are not a real victim. ... Beyond being a man or a woman, I am a human being. ... I didn't want him to go to jail, but to stay far from me.

Finally, the case was dismissed. Today the relationship with her ex-partner is non-existent even though they share the guardianship of their son.

She considered the social services of the region to be overly paternalistic and controlling, but she had much praise for the municipal social workers and psychologists she encountered. She was especially thankful for their assistance in gaining access to psychological, housing and employment services, with a focus on the rights and empowerment of women. She was provided with free psychological treatment and legal advice. In this sense, she said that she experienced 'sorority' (sisterhood) – a feminist concept encapsulating women's solidarity – and defined herself as both Western and Oriental.

She considered the criminal justice system in Spain to be much better than that in China, even if Chinese law is changing. Still, Chinese families have a major role in dealing with IPV. She knows about Chinese women in the Basque Country who have kept silent during or after violence because they felt shame and feared their community's opinion. They were also afraid of their Chinese husband being detained and sent back to China. Filing an abuse complaint about one's husband is identified by these women as marking one as a 'bad woman' – thus blame of victims by community, family and oneself appears to be quite normal. She also spoke of similar cases of South American women and Muslim women living in the Basque Country. She expressed the view that Chinese women are not used to being alone, and that they do not know who they are without a husband, a family, a community. In this regard, perhaps because she was alone, she went to the police – if she had had family around her, they might not have let her go, thinking of the child. Even today she has not said anything about this violence to her family in China; although being divorced, as she now is, is not a problem because divorce is now more common in China.

Before she went to the police, her ex-partner used to tell her that some violence is normal in couples. For a while, she believed him because she was the foreigner, the outsider in Basque culture. The police advised her to go to the municipal social services, and there she found the help she needed because they provided her with a refuge:

I wanted to go, otherwise I was going to jump through the window one day or another. ... In the municipal social services I felt like a human being again because I was treated with respect and asked what I wanted. I felt safe, which means a lot for a foreigner. In the provincial social services, where I went first, they made me feel I was poor and without rights. They were my owners; they could control me because they were giving me social help and caring for my son as a minor. ... I wanted to get out of the violence but sometimes I felt I was pushed inside again.

This woman is one of the very few cases of Chinese women in Spain filing an abuse complaint about gender violence and maintaining the accusation throughout the criminal justice process. In her opinion:

Many Chinese women never think about what they really want but about what others expect from them. Many work like a machine in the Chinese stores of the Basque Country and they do not have another life outside work and family.

She did not want to go back to China. Life is not easy there for single mothers. She now wants to be alone, something that was not previously an option for her, and she is very

happy being a mother: 'I feel well in the Basque Country. Sometimes some people call me "Chinese" in a derogatory way, but that is what I am'.

#### A social worker supporting women in the Gypsy community

The second interview captured the opinion of an experienced social worker working in San Sebastián. She preferred to talk of 'Gypsies' because that is how they like to call themselves, rather than 'Roma'. The Gypsy community is a very closed one, and they do not understand the standard criminal justice system or non-Gypsy law in general. If there is gender violence, the whole family is involved, because social order is based on families and clans. They manage a complex system of honour that includes negotiation or mediation so that there is no violence between two clans. The mediator is usually a respected aged man called 'uncle'. There are also cultural differences between the Basque and foreign gypsies, who live more precariously. In general, even though prohibited by Spanish law, some forms of mediation are practised by Gypsy communities. Gypsy women do not feel that they are understood in the criminal justice system.

Usually, gender violence against Gypsy women is not seen by the criminal justice system. Some women stay silent, and many others try to look for solutions within the clan. Only the most serious cases enter the criminal justice system, and, of those, only a few end up with a sentence, because many Gypsy women do not want to testify. Outside their community, they feel like they are 'nothing' or lost. They also feel treated in a discriminatory way by the non-Gypsy community and the law itself.

Gender violence legislation will not force changes to these cultural differences. Gypsy women and men must change in terms of gender equality, but this will only be possible if both Gypsy women and men believe in the value of it and if society and the criminal justice system acknowledge the existence of discrimination.

When the social worker accompanies women to the police, she observes too many protocols and an overly standardised way of treating them. The police sit and type on their computers, stressing the possible factors that demonstrate violence. Often police agents (both women and men) tend to stereotype and judge Gypsy women. The Gypsy women do not feel good when they are asked whether they feel shame or blame, or if they have tried to defend themselves, and they feel judged. The police are not trained in active listening or in assessment. Empowerment programmes for women might offer them some control because many women feel that in the criminal justice system 'all criminal justice actors think, feel and act for them'.

The social worker recalled a case in which everybody was telling the woman what to do, and she was just looking forward to being called by her husband, who was a drug addict in jail. She was more worried about community rejection than her safety or wellbeing. In the opinion of the social worker interviewed:

We try to do the impossible. ... We all, professionals and practitioners, are sometimes so blind that we cannot see this simple fact. If she is not listened to, she feels there is no way out. Accompanying and listening require skills, sensitivity and time, time that differs from the time provided by the criminal justice system.

Knowing that her ability to help is limited, this social worker feels that, in the end, she is the one learning from victims. The criminal justice system is focused on making decisions based on rights and legal principles, but victims also need to be heard before opting, and professionals need to hear them before deciding on their clients' needs and the responses to them. It also needs to be recognised that some Gypsy and migrant women do not see themselves as 'victims' as defined by the law. In any case, according to the social worker, they are much more than that. Arguing that there is a power

imbalance, and that harsher and harsher legislation will solve gender violence, is not consistent with reality. For this social worker, even if it means a much more complex and long-term perspective, an intersectional and community-based focus might bring more understanding, safety and equality to Gipsy women's lives. In relation to this, social services should consider whether a risk evaluation for the protection of minors always justifies the immediate removal of the baby after being born in the hospital, when both parents are considered addicts or have other kinds of problems, especially in light of the value and meaning of children in the Gipsy community.

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## XI. SEXUAL VICTIMISATION

### 1. 1 Understanding sexual victimisation: Incidence, prevalence and diversity of criminalised behaviours and contexts

Sexual abuse, sexual assault, rape, exhibitionism, sexual harassment, sexting, grooming, forced prostitution, child pornography, etc. These are some forms of naming sexual victimisation whose prevalence<sup>111</sup> and incidence<sup>112</sup> vary across countries in a scenario of high hidden victimisation due to the sex taboo and the conditions of abuse of power which also make the victim impact greater. Influenced by the feminist movement and the more recent *Me too* movement, different reforms have been proposed to protect victims<sup>113</sup>.

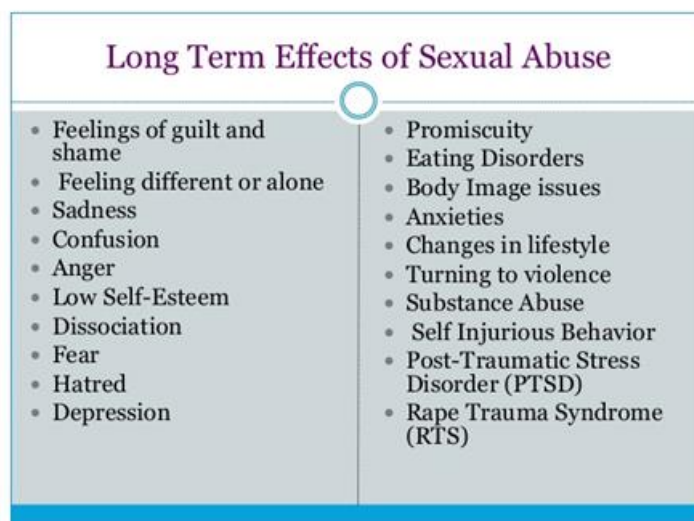


Image 62: Long term effects of sexual abuse

According to a meta-analysis in Europe by Pereda, Guilera, Forns and Gómez-Benito (2009), published in the *Clinical Psychology Review*, one in five for women have experienced sexual violence (many more in specific populations where poly-victimisation/repeat victimisation is found). Few women report these events and secondary victimisation is usually produced in and outside the criminal justice system. This ends up reinforcing the cycle of silence in this sort of victimisation.

Why do victims not report? This is a question that should be addressed to society and institutions, not mainly to victims, and has to do with several factors, such as:

- Cultural and religious taboos
- Lack of social and family awareness (also individual awareness if we talk about child victims)
- Shame, blame and solitude feelings
- Lack of family/community/social support
- Lack of institutional support (the «institutional effect» of denial, hiding, minimizing and blaming)

<sup>111</sup> Prevalence is defined by the number of persons victimised during their childhood/youth... (usually measured in cases of abuse during life time in retrospective studies).

<sup>112</sup> Incidence is defined as the number of new cases reported or detected occurring within a period of time (e.g., per month, per year). It is more meaningful when the incidence rate is reported as a fraction of the population at risk, but we might wonder what happens to hidden victimisation.

<sup>113</sup> In the case of Spain, see the *Anteproyecto de Ley Orgánica de Garantía Integral de la Libertad Sexual* and its proceedings in 2021 (<https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-CGPJ-aprueba-el-informe-al-anteproyecto-de-Ley-Organica-de-Garantia-Integral-de-la-Libertad-Sexual>).

All those factors affect revealing, reporting and testifying and many victims report being badly judged as part of secondary victimisation. In order to understand, how difficult society and the criminal justice system make it for victims, we would like to bring some victims' experiences, such as the one expressed in the following image.

## Katherine FEARFUL

I was sexually abused by my maternal grandfather from the age of five. The abuse ended when my grandfather died 11 years later.

I was born in the 1960s, raised to treat adults with respect and believed that those adults I came into contact with – family members, friends, neighbours, teachers, etc. – were trustworthy and would never cause me any harm. Ironically, I was warned about 'stranger danger' and told never to speak to strangers.

When I was 13 years old, I became more uneasy about my grandfather's advances and realised something wasn't right. I was confused – how could my grandfather who was a respected adult, do something harmful?

At this time, I went through a period of acute anxiety and broke down and told my mother what had been happening. Her initial reaction was one of disbelief. As my tears continued and I persisted with my story, she realised I was telling the truth. She did tell me that my grandfather was taking advantage of my innocence but she said so in an angry tone, as if it was also my fault. She added if he did it again, I should slap him and tell him I had told her what he was doing. Then in a very stern, angry voice, she told me that I should never stay alone in a room with a man like that, and I should always remember that sexual intercourse was only to take place between married couples. By this stage, I was very distraught, but my mother simply ended the conversation and resumed her hovering.

From that moment on, I changed. I began to feel I was a bad person and guilty of all sorts of things I shouldn't have said and done – most of which were imagined. I initially shared these thoughts with my mother, who said if I didn't stop this behaviour I would end up in a mental hospital and then I would have a reputation that would stay with me forever.

I got on with my life, still plagued with unhealthy thoughts and much anxiety. The abuse continued until my grandfather died when I was 16 years old. I was glad and relieved he had died. I finished school and went to university. There, I made some good friends but also had friends who manipulated me and treated me badly, but I was so unsure of myself that I allowed it to happen. I developed obsessive-compulsive

disorder (OCD) – endlessly washing my hands over and over again and becoming obsessed with germs, constantly cleaning because of imagined contamination. This began to take over my life, and if I didn't perform these rituals I felt plagued with anxious thoughts. Once I washed my hands or performed some cleaning ritual I felt relief from the anxiety, but it was short-lived and the whole cycle would begin again. I knew it wasn't normal behaviour, but I pushed the feelings down and coped as best as I could. I believe I was desperately trying to rid myself of the feelings of being dirty and contaminated, but no amount of washing would dispel those feelings.

When I left university and started working, the dismissing thoughts and feelings continued. I felt I should never make a mistake in a work situation and if I did, I felt full of shame. I felt inadequate unless I performed perfectly.

I met my husband when I was 24 years old and we married three years later. Apart from my mother, he was the only person I confided in about the abuse. He was shocked initially, but didn't seem to think it was a big issue.

When we married, although happy and in love, my anxieties continued. The cleaning rituals and contamination fears continued. My husband found my behaviour difficult and had to endure verbal abuse from me if he didn't play along with my obsessions. Looking back now, trying to maintain these obsessions all the time was exhausting and impossible, and my husband naturally suffered as a result.

Shortly after getting married, I expressed my anger about the abuse on one occasion to my husband. He dismissed what I said, told me my grandfather had been an old man he was 61 years old, when he started abusing me and that it had happened a long time ago, it was time I forgot about it. I decided not to bring it up again.

My depression worsened. I was constantly crying but couldn't understand why and I took little interest in anything. During a severe episode of anxiety and depression, I took sick leave from my job. I was prescribed antidepressants and once they kicked in, I began to feel better. I felt more relaxed and less anxious, although my weight soared as a side-effect. I stopped taking them to become pregnant but became anxious and depressed again, and when my son was born I suffered post-natal depression and have taken antidepressants ever since. Although delighted with my newborn, having a baby put extra pressure on me. I felt the midwives and

health visitors would judge me as an inadequate mother if everything wasn't perceived as perfect with my home and baby. I would have loved another baby but decided getting pregnant again would be responsible.

When my son was a few months old and I was staying with my mother, I started crying about the abuse again. My husband mentioned it to my mother who at first denied knowledge of it. Despite her denial, she proceeded to ask me why I was bringing it up again after so many years and told me I should put it out of my mind. I felt guilty and pathetic.

During a recurrent depressive period, I confided in my GP about the abuse. Whilst sympathetic, he said he could refer me for therapy, but in his experience people were often left in pieces after therapy and said I would have to relate exact details of what happened. I decided not to go ahead.

A few years later, I again plucked up the courage to ring a women's centre which dealt with physical and sexual abuse. The person I spoke to was quite dismissive. I decided that was it, I was not going to seek help again.

Last year, I did in fact seek help again. I found out by accident that my husband had been cheating on me and I was totally devastated – I had always trusted him completely. The sexual abuse from my past reared its ugly head again and discovering my husband's infidelity felt like being abused all over again. I knew I needed help, and this time a different GP referred me for counselling. The counsellor I saw was very helpful and as well as helping me with marriage problems, we discussed the sexual abuse and she gave me useful information into the effects of childhood abuse and insight into the behaviour of the abuser. At the same time, after an internet search, I found an organisation offering a 10-week group course for adult survivors of sexual abuse and I joined the next course.

Meeting other people who have gone through a similar ordeal and receiving information about sexual abuse have had a life-changing effect on me. I feel so much anger and distress that has burned inside me for years has been released and I now have more control over my thoughts, feelings and behaviour. My feelings of worthlessness have also lessened considerably. I don't go around telling people I have been abused, but I have told a few close friends and it doesn't seem such a dreadful secret anymore. I still feel shame even though I understand now that it is misplaced shame. I still carry the

memory of the abuse and I think about it and my abuser every day. His facial expression when he was abusing me, his body, his weight, his smell, his touch, the feel of his breath on my skin and the way his voice would change, all of these memories stay with me. I also dream regularly that my grandfather is still alive and I approach him as an adult and angrily confront him about what he did. On another positive note, my husband and I have managed to save our relationship and I believe that this is largely due to dealing with the abuse, and our greater understanding of its long-term effects.

Having met other survivors who have bravely shared their experiences, I feel it is we, the survivors, who have been punished for the crimes of our abusers and continue to be punished. I also feel that many people still believe that children are at risk from sexual abuse from strangers, that the average abuser is the social misfit who looks and behaves oddly. My abuser did not fit this picture and my family would never have dreamed that my grandfather would have been capable of such evil. Nobody wants to believe that this could happen in his or her family. I also recently learned that the commonly held belief that all abusers have themselves been abused as children is not true. By extension, does this mean that many people believe that those of us who have been abused are likely to go on and abuse other children? Surely this is another factor which would make survivors reluctant to come forward and seek help?

Based on my own experiences, I believe health professionals and society need more awareness of sexual abuse and its effects, both to prevent it happening and to encourage survivors of all ages to cast aside their misplaced shame and come forward and receive help.



“ Having met other survivors who have bravely shared their experiences, I feel it is we, the survivors, who have been punished for the crimes of our abusers and continue to be punished ”

Image 64: Testimony of victims of child sexual abuse. Source: <https://oneinfour.org.uk/> According to another victim (Miller, 2019)<sup>114</sup>:

The fact that I spelled subpoena, subpeena, may suggest I am not qualified to tell this story. But all court transcripts are at the world's disposal, all news articles online. This is not the ultimate truth, but it is mine, told to the best of my ability. If you want it through my eyes and ears, to know what it felt like inside my chest, what it's like to hide in the bathroom during trial, this is what I provide. I give what I can, you take what you need.

Furthermore, there are many social myths on sexual violence where processes of labelling and blaming the victim are reinforced.

Source: <https://rapecrisis.org.uk/get-informed/about-sexual-violence/myths-vs-realities/>

### What are rape myths?

There are many common myths about rape, sexual abuse and sexual violence. These myths can make it difficult for survivors to talk to anyone or get help. Survivors often think others will blame them or they won't be believed. This can cause [shame and self-blame](#).

These myths can also affect how survivors are treated by family and friends, services, and organisations.

Through our work, we challenge these myths and work to improve the understanding

<sup>114</sup> Excerpt of her book *Know my name* (2019), available at <https://www.chanel-miller.com/books/know-my-name-hc>. See also “an open letter to my assaulter” at <https://www.theodysseyonline.com/an-open-letter-to-my-assaulter>.

of sexual violence and abuse.

Here are a few examples of common myths about rape, sexual violence and sexual abuse.

**Myth:** If someone gets really drunk, it's their own fault if they end up getting raped. They should have kept themselves safe.

**Fact:** People have the right to drink alcohol without getting assaulted. Having sex with someone who is very drunk, drugged or unconscious is rape – and it is always the rapist's fault. [Find out more about consent.](#)

**Myth:** Women often lie about rape because they regret having sex with someone, or because they want attention.

**Fact:** Stories in the media can give the impression that women often lie about sexual violence. In fact, false allegations of rape are very rare. Most people who have been raped or experienced sexual violence or abuse never tell the police.

**Myth:** If someone didn't scream or try to fight their attacker off, then it wasn't rape.

**Fact:** There are many reasons why someone might not scream or struggle. In fact, many people find that they cannot move or speak at all – this is a [very common reaction](#). Some rapists also use manipulation or threats to intimidate or control the other person. No matter whether or not someone 'fights back', if they didn't freely consent to sex then it is rape.

**Myth:** If you are in a relationship with someone, it's always OK to have sex with them.

**Fact:** Everyone has the right to say 'no' to any type of sexual activity at any time – including with their partner. Consent must be given and received freely every time. Rape and sexual violence in a relationship are illegal.

**Myth:** People who were sexually abused as children are likely to become abusers themselves.

**Fact:** The vast majority of people who were sexually abused as children never rape or sexually abuse other people. This is a dangerous myth that is sometimes used to excuse the behaviour of people who do sexually abuse children or others. There is never any excuse for sexual violence against children or adults.

**Myth:** Women shouldn't go out alone at night as they are likely to get raped.

**Fact:** Only one in 10 rapes are committed by 'strangers'. The rest are committed by someone the survivor knows – such as a friend, neighbour, colleague, partner, or family member. People are raped in their homes, their workplaces and other settings where they previously felt safe. The risk of rape by a stranger shouldn't be used as an excuse to restrict what women can do.

**Myth:** Women provoke men to rape them by wearing revealing clothes or flirting.

**Fact:** It doesn't matter what a woman is wearing, or how she is behaving – if she doesn't consent to sex, that is rape. Only the rapist is ever responsible for rape.

**Myth:** Once a man is sexually aroused he can't help himself; he has to have sex.

**Fact:** Men can control their urges to have sex just as women can. No one needs to rape someone for sexual satisfaction. Rape is an act of violence and control. It can't be explained away and there are no excuses.

**Myth:** When it comes to sex, women and girls give out mixed signals. They sometimes 'play hard to get' and say 'no' when they mean 'yes'.

**Fact:** Everyone has the legal right to say 'no' to sex and to change their mind at any point of sexual contact. If the other person doesn't stop, they are committing sexual assault or rape. When it comes to sex, we must check in with our partners, respect their wishes, and believe what they tell us about what they do and do not want.

**Myth:** Men of certain races and backgrounds are more likely to commit sexual violence.

**Fact:** There is no typical rapist. People who commit sexual violence come from every economic, ethnic, racial, age and social group.

**Myth:** Men do not get raped.

**Fact:** Men are also raped and sexually assaulted. While Rape Crisis focuses particularly on women and girl survivors, we of course recognise that the impacts of sexual violence and abuse on men and boys are no less devastating. We believe all survivors of sexual violence and abuse deserve specialist support – find more information about [support for men and boys](#).

**Myth:** Women do not commit sexual offences.

**Fact:** The majority of sexual assaults and rapes are committed by men against women and children. However, women do perpetrate sexual violence against other women, men and children. Often people who've been sexually assaulted or abused by a woman worry they won't be believed or their experiences won't be considered 'as bad'. This can make it difficult for these survivors to access services or justice.

*Table 8: Rape myths. Source: <https://rapecrisis.org.uk>*

## 1. 2 The study case of sexual victimisation in institutional settings: Child sexual abuse in the Roman Catholic Church<sup>115</sup>

This topic is related to the above mentioned macro-victimisation processes and also the institutional effect (Varona, 2021). At the same time, when dealing with sexual abuse of children, as worded by most legal systems and the Church itself, the term 'abuse' and the understanding of a lack of physical or moral violence in that sort of victimisation might hinder the awareness about its real impact in terms of violence. Besides, following Butler (2020), as quoted before, violence, interpersonal and structural at the same time destroys certain conditions of life and livability and assaults interdependence when victimisers and the religious authorities had and still have duties and obligations because the victimisation has not been repaired and remains beyond the reach of canon and criminal law responses<sup>116</sup>.

As commented on in previous works (Varona, 2019), in recent years, child sexual abuse in the Church, like in many other institutional settings, has become a more visible and global social concern. However, unlike other countries, the Spanish Catholic Church has neither carried out inquiries nor collaborated in investigations on sexual abuse in its different institutions (Tamarit, 2018). Despite the cases brought to the attention of the media, it has not established a central specific service for victims either. Some reasons for this lack of action can be found in legal gaps, power relationships and experiences of cumulative victimisation (primary and secondary victimisation). By studying victims' testimonies in Spain (Pérez, 2018), even within their great diversity, we find similarities to victims in other countries in a sort of pattern of systematic victimisation. In previous works (Varona, 2019), it has been contended that these testimonies are an adequate source to understand the complex macro and violent dimensions of this kind of victimisation, as well as the starting point to react from a human rights perspective.

Furthermore, that perspective could take into account three central concepts of classical virtue ethics (*eudaemonia*, *phronesis* and *praxis*) that, together with the idea of heuristics, might bring a certain discovery of what we cannot see or think under current social and cultural conditions (Varona, 2019). The Greek term *eudaemonia*, beyond its

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<sup>115</sup> Notwithstanding the acknowledgment of a general problem of victimisation and abuse of power in institutional settings, and in particular in all churches and religions, because of previous research in the matter by the author, this section will concentrate on the Roman Catholic Church, particularly in Spain.

<sup>116</sup> It should be considered that many cases are under the statute of limitations and refer to historical abuses.

Aristotelian sense as a life of activity governed by reason, refers to well-being or the fulfilment of one person's true potential in the process of making sense of life. It is related to personal growth through openness to others' experiences (Ryff, 1989). This notion is important in relation to coherence in responding to victims of sexual abuse in the Church. It also relates to the longitudinal and diverse character of this victimisation. Researching *praxis* produces situated and applied *phronetic* knowledge, in contrast to abstract and universalistic theory (*episteme*) or technological knowledge (*techne*). Often quoted in the field of Victimology, Anthony Pemberton (2018b) has referred to the potentialities of the *phronetic* approach in the understanding of the processes of victimisation, recovery and restoration. By analysing concrete practices it is possible to make asymmetries of power transparent and, perhaps, open to change (Varona, 2019). In that *praxis*, victims talk about the betrayal of spiritual and institutional trust, pain, humiliation, misunderstanding, loneliness, shame, helplessness, anger and indignation. In a meaningful and courageous conference, at Vienna University in 2019, the Austrian Cardinal Christoph Schönborn (Pongratz-Lippitt, 2019) referred to the "tsunami" of sexual abuse in the Church as a "massive reality" that partly arose from the excessive power of the Church in those contexts and from the character of total or closed institutions where the abuses were produced. These statements come out of his own *praxis* of having had listened to many victims of this kind of victimisation for more than twenty years. According to him, victims were silenced first by the abuse of power of the aggressor and later by the institution itself. Forced silence reveals itself as the main explanation for the lack of reporting on the side of victims. That silence was possible due to an abuse of power that used structural and psychological violence to create confusion and fear in the victims by making them believe that it was something minor and normal or, perhaps, a lesser evil when facing denial and reprisals for themselves, their families and the Church itself if reporting was done.

In this climate, society also contributed to silencing by processes of denial, hiding, minimizing and blaming. Many victims seem in need of epistemic justice (testimonial and hermeneutical) (Fricker, 2007). Consequently, Schönborn (Pongratz-Lippitt, 2019) insisted on no questioning the victims and on the need to believe them in their narrative truth. Given the passing of time, the experienced trauma and the lack of further evidence, many victims will never have access to a judicial truth and that does not mean that they are lying. This position is related to the proposal of *in dubio pro víctima* by Professor Antonio Beristain (1989). This idea does not mean to destroy or undervalue the importance of the presumption of innocence, but it calls our attention towards the public and social duty to not create further secondary victimisation and try to support and repair as much as possible because it is better to do in excess rather than leaving victims without justice, understanding justice in a broad sense, and not only in a classical criminal justice one. Within that notion of justice, there is a public duty to look for the truth about this violent macro-victimisation, with a horizon of prevention and reparation.

Within the previous line of thought, it should be affirmed that, in the case of sexual abuse in the Church, there is violence and it is macro. Beyond current legal terminology and notwithstanding the relevance of the proportionality principle in criminal law, when victimisers take advantage of their institutional and spiritual power, there is violence, and not just mere abuse, a minor aggression. This is even clearer when the victims are minors and when they suffer other social exclusion conditions (like economic dependency or disability, as has been the case for many victims). Moreover, sexual abuse in the Church has had a systematic character, according to all recent and global empirical studies (Böhm et al, 2014; Herbert et al, 2020; Ending Clergy Abuse, w.d.).

Even if the majority of the clergy and the members of religious orders do not commit abuse, it has been a sustained macro-victimisation affecting many victims for decades and all over the world. To explain how this has been possible, it is necessary to think about the violence inherent in the own institution that provokes secondary victimisation. Even with the promised reforms on this matter, that sacrificial violence (where the reputation of the institution comes first) and those thoughts of moral superiority (trying to resolve an “internal problem”, without considering the issue of being party and judges at the same time and without informing state authorities) remain today as conditions that favour and explain this sort of macro-victimisation and abuse of power. Again, even if evident and corporeal, most victims are discarded by religious and state authorities, at least in the Spanish case, sometimes with the excuse of the victim’s supposed lack of credibility or the statute of limitations (Varona, 2019).

### **1. 3 The relevance of state compensation under the Council of Europe, the European Union and the Spanish legislation**

According to Soletto and Grané (2018), Spain is not fulfilling its duties towards victims of sexual violence. In this line, as stated by Elbers et al. (2020a; 2020b):

Victims of sexual crimes require special attention for several reasons. Firstly, the scale in which sexual violence occurs is significant: according to a report of the European Agency for Fundamental Rights (FRA), it is estimated that 3.7 million women in the EU are subjected to sexual violence every year. In total 11% of women have experienced some form of sexual violence since they were 15 years old. 5% of women have been raped since the age of 15. The FRA did not include sexual violence to men. What is known about men is that 10% of victims of violent sexual crimes are men, the majority (90%) of the victims are women. Of the perpetrators, 99% are men, 1% are women. Secondly, victims of sexual crimes need support in their search for justice. Only 14% of victims of sexual violence report their offense to the police. Sexual crimes are often associated with shame and stigma and often mentioned in relation to secondary victimisation. About 25% of victims of sexual crimes do not dare to report the crime because of shame and 12% does not report because they think they will not be believed. Victims of physical violence also do not report because of shame or not being believed but the percentages are much lower, respectively 8% and 2%. Of the victims of sexual crimes who report to the police, about 46% are not satisfied with the treatment received by the police. Reporting rates seem to vary hugely between countries. According to Eurostat, the number of sexual violence offences - relative to the population - is highest in Sweden, with 178 violent sexual crimes per 100 000 inhabitants, ahead of Scotland (163), Northern Ireland (156), England & Wales (113) and Belgium (91). For rapes, the highest rates were recorded in England & Wales (62 rapes per 100 000 inhabitants) and in Sweden (57). The rape statistics for the countries participating in the FAIRCOM project were from high to low: The Netherlands (10), Latvia (8), Spain (3), Greece (1) and Italy (0 per 100 000 inhabitants). For Italy, it should be noted that the law talks about sexual violence (*violenza sessuale*) and not rape (*stupro*), so it is more accurate to use the statistic of sexual violence reported by the Eurostat, which is 8.9 for 100.000. Eurostat specifically mentions on their website: “It should be borne in mind that the figures do not necessarily reflect the actual number of violent sexual crimes. Rather they show to what extent such crimes are reported to and recorded by police. Therefore, the variation between countries is also influenced by general awareness and attitudes to sexual violence offences”. Differences between countries can also be a consequence of different definitions of rape. Thirdly, in addition to low reporting rates, victims of sexual crimes

furthermore suffer from high attrition rates in criminal law. An international review on studies on sexual crimes showed that only three in ten victims of sexual crime will proceed past the police to the next procedural stage. Only one in ten will result in conviction. Attrition studies alert us to the fact that current police and court processes are poorly equipped to address the realities of sexual victimisation; and for a large proportion of victims, the criminal justice system is not engaged at all. Data from Spain shows less attrition but still significant: in 2017, the police registered 11.692 sexual offenses. In 8894 cases (76%), the police knew the identity of the offender, 6796 offenders (58%) were arrested and only 2270 (19%) were convicted. Finally, there are indications that victims of sexual violence do not always receive fair compensation when they are entitled to it according to the EU Compensation Directive 2004/80/EC. European legislation prescribes that victims in all European member states must be able to claim ‘fair and appropriate’ compensation if they have been the victim of (sexual) violence. In practice, however, there are major differences between member states in the extent to which victims of sexual violence can claim compensation<sup>117</sup>. This diversity leads to undesirable inequality and injustice, which can lead to secondary victimisation.

## 2. Key concepts to recap

“La Manada” case  
Betrayal of (institutional/spiritual) trust  
Feelings of guilt  
Feelings of shame  
Hidden victimisation  
Me too movement  
Revealing and reporting  
State compensation  
Stigma  
Taboo  
Victims’ narratives, needs and rights  
Victims’ silence and silencing victims

## 3. Thinking Victimology

After reading this excerpt from Palmer (2016), please, consider what makes child sexual abuse in institutional contexts so difficult to prevent, intervene and repair.

The report identifies six features of organisations that provide services to children and young people that conform to the total institution ideal type. These features make the organisations conducive to the perpetration of child abuse and resistant to the speedy detection of abuse and effective responses to abuse when it occurs. Four of these features are particularly important. First, the report discusses the tendency of total institutions to constitute alternative moral universes for their staff and inmates. In organisations that cater to children and young people, this tendency can insulate perpetrators of sexual abuse, their victims and third-party observers of abuse from structures in civil society that might otherwise inhibit the abuse, speed up its detection and enhance responses to it. Second, the report discusses the tendency of total institutions to embrace degrading assumptions about the

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<sup>117</sup> According to Elbers et al. (2020a; 2020b): “The problems that victims face include lack of information, numerous procedural obstacles, costly procedure, restrictive time limits, and insufficient allocations from national budgets”. See the FAIRCOM research project financed by The EU Justice Program (2014-2020).

fundamental nature of inmates and to follow harsh theories about how inmates can best be rehabilitated. This tendency can endorse the psychological, physical and sexual abuse of children. Third, the tendency of total institutions to extinguish the pre-institutional identities of their inmates is discussed. This tendency can empower and motivate staff to abuse the children in their care, disempower children from resisting abuse, and disempower children who are abused and third parties who are aware of the abuse from disclosing it. Fourth, the report discusses the tendency of total institutions to withhold information about the institution's operations from inmates, staff and external constituencies. This tendency can inhibit the ability of victims of child sexual abuse and third parties to respond effectively. The second part of the analysis explores the role organisational culture can play in child sexual abuse in institutional contexts, whether or not these contexts conform to the total institution ideal type. The report identifies nine types of organisational culture that can support the perpetration of child sexual abuse, slow the detection of abuse and/or impede effective responses to abuse. First, the cultures of organisations that are viewed by their members as ends in themselves, independent of the goals they were established to pursue, are discussed. In organisations that provide services to children and young people, these cultures can impede the disclosure of, and undermine responses to, child sexual abuse because they prioritise the reputation of the organisation over the welfare of the victims and the prosecution of perpetrators. Second, organisational cultures that reinforce hyper-masculine assumptions, values and beliefs, and norms regarding men and boys (referred to as 'macho cultures') are discussed. In organisations that provide services to children and young people, these cultures can facilitate the perpetration of child sexual abuse and slow the detection and impede the response to abuse when it occurs. This is because they authorise perpetrators to engage in sexually abusive behaviours and encourage victims to tolerate the abuse perpetrated against them. Third, the report discusses the cultures that support child sexual abuse, grooming behaviours and sexualised behaviours more generally. These cultures can facilitate child sexual abuse by authorising perpetrators to engage in behaviours that either constitute sexual abuse or lead to abuse. They can also impede the detection of abuse by making it difficult for victims and third parties to distinguish appropriate from inappropriate social interaction between adults and children and young people, and among children and young people. Fourth, organisational cultures that do not support the open discussion of matters relating to sex and child sexual abuse are discussed. These cultures can facilitate child sexual abuse by making it difficult for victims to recognise perpetrators' grooming behaviours. They can also make it hard for perpetrators and their victims to understand the consequences of increasingly significant boundary violations. It can also be difficult for victims and third parties to reveal abuse because these cultures inhibit victims and third parties from developing the vocabulary needed for disclosure. Fifth, cultures that inhibit and undermine children's self-expression are discussed. These cultures can make it difficult for children to disclose the abuse they experience or are aware of, and make it less likely that children will be considered credible when they disclose abuse. Sixth, the report discusses the cultures in which senior managers, especially those who are professionally trained, work. In organisations that provide services to children and young people, these cultures can undermine responses to child sexual abuse by prioritising the organisation's defence against external sanctions (such as bad publicity or legal judgments) over the welfare of victims and the prosecution of perpetrators. Finally, the report discusses three cultural currents that can indirectly



support the perpetration of child sexual abuse, slow the detection of abuse and/or impede effective responses to abuse. One intensifies the effects that the power carers typically wield over children can have on the perpetration, detection, and response to abuse in institutional contexts. Another shapes the informal group dynamics linked to perpetration and detection of child sexual abuse and responses to it. The last undermines compliance with policies and procedures designed to inhibit child sexual abuse, speed up its detection and enhance responses in institutional contexts (pp. 8-10).

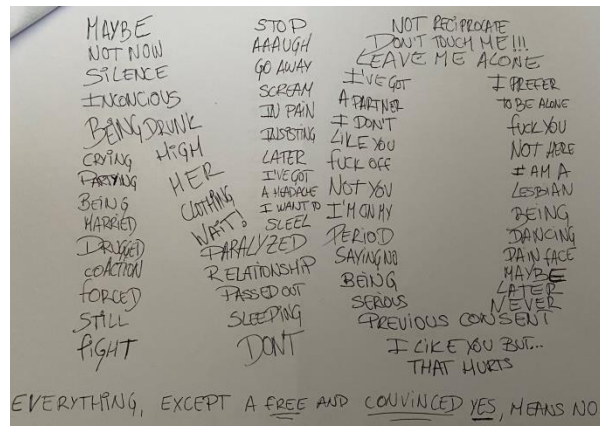
#### 4. Applying Victimology

1) Here you find a picture in braille of the presumption of innocence as coded in the Universal Declaration of Human Rights. Would it be possible to create a criminal justice system where the presumption of innocence as a human right for all is respected together with a principle of a presumption of victimisation -“in dubio pro victima” in terms of the Spanish criminologist and victimologist Antonio Beristain- (interpreted in the sense that it is better to have all alleged victims well treated and avoiding secondary victimisation than producing secondary victimisation, even if confronted with cases of false victims)? Taking into account that those cases of false victims are quite rare, according to empirical data, and that the reality is hidden victimisation, how do you think the so-called “yes is yes” 2021 Spanish reform on victims of sexual crimes can balance both principles (*in dubio pro reo* and *in dubio pro victima*)?



Image 64: Presumption of innocence. Art. 11. 1 Universal Declaration of Human Rights (Aiete Palace, Donosti/San Sebastián)

In relation to the following drawing by the Victimology student Akane Ramón (2021), how do you think that the **Me too movement** has influenced victim activism? In what sense the cultural understanding of the issue of consent is important for victims to speak, to report and to be believed, and how it can be balanced with the presumption of innocence?



2) On the **la Manada case**, to what extent do you think this case promoted a better victim policy and legislation in Spain?

**Decision date**<sup>118</sup>: 4 July 2019. Reference details Spain, Supreme Court Criminal Chamber (Tribunal Supremo, Sala de lo Penal), STS 2200/2019, 4 July 2019. **Key facts**

**of the case**: Five boys had sex with the 18-year-old victim on a housing portal in Navarra on 7 July 2016. The victim was secluded and taken into a narrow place that was chosen and desired by the defendants, with a single exit, surrounded by five males older than her and who had a strong build. They took advantage of the situation to perform with her various sexual acts. The five boys acted by mutual agreement. There were numerous anal, vaginal and oral penetrations suffered by the woman in very short periods of time, “up to ten times”. They recorded her on video and took pictures of her while the sexual acts took place. There were videos recorded by the aggressors where the woman was screaming, trapped and crouched as well as several images taken by them in which they show themselves “boasting” and with a “triumph” attitude. **Main reasoning/argumentation**: The court endorsed the motto of “only yes is yes” (*solo sí es sí*), meaning that the sexual consent must be clear and express. It cited the Istanbul Convention to define consent. The case involved clear environmental intimidation. The victim was secluded and taken into a narrow place that was chosen and desired by the defendants, with a single exit, surrounded by five males older than her and who had a strong build. She felt impressed and without responsiveness. It is defined as a behaviour that was imposed on the victim and that was denigrating to the woman. The Supreme Court argued that both sexual offences and the concept of sexual freedom are likely to be affected by the evolution of social thought. It stated that there had been clear proofs on the role of legal norms in recreating the stereotypes and social roles that defined the unequal distribution of rights and obligations, discriminating against the possibilities of women for centuries. 94 **Key issues (concepts, interpretations) clarified by the case**: The Court stressed that the presence of several individuals, even without prior agreement, already implies the existence of environmental intimidation and also greater impunity. It does reduce the responsiveness of the victim, resulting in a qualitative increase in the seriousness of the situation. Intimidation along with violence was one of the conditions to classify the crime as sexual assault. It argued a moral damage suffered by the woman, and a secondary victimisation that occurs because of the strong media coverage and because of the suffering caused by the judicial process itself. **Results (sanctions) and key consequences or implications of the case**: 15 years in prison for each of the five men for a continuing a rape crime. And a monetary compensation for the survivor victim increased up to 100,000 euros. **Key quotation in original language and translated into English with reference details**: It is not permissible to force the

<sup>118</sup> Source: [https://fra.europa.eu/sites/default/files/fra\\_uploads/spain-frr2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/spain-frr2020_en.pdf).

right to extremes demanding the victims heroic attitudes that will inexorably lead them to suffer greater damages (*No es admisible forzar el derecho hasta extremos de exigir de las víctimas actitudes heroicas que inexorablemente las conducirán a sufrir males mayores*) ... impossibility of interpreting an absence of physical resistance as a will, the will must be expressly manifested or be clearly inferred from the circumstances (*imposibilidad de interpretar una ausencia de resistencia física como tal voluntad, la misma debe manifestarse de forma expresa o deducirse claramente de las circunstancias*).

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## XII. HUMAN TRAFFICKING

### 1. 1 Historical background and ideal victims

Human trafficking is a sort of victimisation that, in relation to victimhood, shows us how seeing and not seeing some victims, independently of the seriousness of the victimisation, is a cultural and political process. The key question is not only what victims need and have to be entitled to, but also why standing before us we did not see those victims before and why there was a lack of international and internal action and social awareness on that social injustice.

Historically, moral entrepreneurs cared about “bad women” and the visibility of prostitution<sup>119</sup> (and human trafficking for sexual exploitation), particularly with migrant and excluded populations in certain urban areas. The first international action against human trafficking can be traced to the turn of the 20<sup>th</sup> century when “machista”<sup>120</sup>, biased and hypocritical concern arose because of sexual slavery of young white women and children (as ideal victims) who were imported to work in brothels in the colonies or were forced into marriage (Pliley, 2019)<sup>121</sup>. After some international congresses in which some criminologists participated<sup>122</sup>, national criminal codes were amended and the 1904 and 1910 International Agreements for the Suppression of the White Slave Traffic; the 1921 International Convention for the Suppression of the Traffic in Women and Children; and the 1933 Convention for the Suppression of the Traffic in Women of Full Age were adopted in different countries. Further action was promoted by the League of Nations.

Even if the international standards have evolved to avoid the criminalisation of women, including situations of victim/offender overlapping in human trafficking<sup>123</sup>, particularly for reasons of sexual exploitation, still, many authors criticised a patronising (and also heroic) understanding of the victims (Meyers, 2016) that leads to a further lack of visibility of their victimisation, but also secondary victimisation and revictimisation<sup>124</sup>.

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<sup>119</sup> Known as OTRAS (or “the Sex Workers’ Organisation”), this Spanish union was set up in August 2018, but was closed three months later by order of the National Court following an appeal by the socialist government that held a so-called abolitionist position. In its ruling, the National Court argued that allowing the union to exist amounted to “recognising the act of procurement as lawful”. Following an appeal, in June 2021, the Supreme Court ruled in favour of OTRAS, saying that its statutes were “in line with the law” and that sex workers “have the fundamental right to freedom of association and the right to form a union”.

<sup>120</sup> At the same time, this did not allow for seeing some men as victims.

<sup>121</sup> As this historian shows us, at least in the United States (“understandings that helped shape international perceptions of sex trafficking in the interwar period”), “marriage, slavery, and prostitution became triangulated in discourse about women’s migration, citizenship, and consent” (Pliley, 2019, p. 61). Hygienic or health reasons were also taken into account by considering venereal diseases (mainly suffered by men who transmitted them to their wives and other women). This kind of understanding was “championed by Protestant evangelicals and women’s rights activists” without questioning the unjust system of citizenship, work and migration for women (Pliley, 2019, p. 65). This led to a situation where, because the demand for prostitution was real, most “nations favoured state-based solutions that constructed a rationalized border control infrastructure that would perceive immoral women and wives as two distinct entities: one subjected to the whims of the state and the other safely contained in a male-headed household” (Pliley, 2019, p. 82).

<sup>122</sup> As Pliley (2019, p. 74) explains: “The first international meeting on the white slave traffic was held in Geneva in 1877, followed with meetings in London in 1899, Paris in 1902, Madrid in 1910, and London in 1913”.

<sup>123</sup> See the inclusion of the non-punishment principle understanding that the trafficked persons should not be subject to arrest, charge, detention, prosecution, or be penalised or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.

<sup>124</sup> Victims can be understood as overloaded with an agency that should be contextualised in its diversity, including changing contexts in time.

## 1. 2 Clarifying concepts in the Spanish legislation

### 1. 2. 1 Smuggling of immigrants

Smuggling of immigrants means favouring illegal entry into another country. Here the international standards are the Protocol on the smuggling of immigrants of the 2000 UN Palermo Convention against transnational organised crime and the EU Directive 2002/90/EU defining the facilitation of unauthorised entry, transit and residence. In this field, after the Spanish reform of the criminal code in 2015<sup>125</sup>, many scholars have criticised a trend towards criminalising solidarity in relation to the notion of crimmigration (Mainwaring and DeBono, 2020).

### 1. 2. 2 Human trafficking

Human trafficking is defined as the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Trafficking is regulated by the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Palermo Convention against Transnational Organised Crime; the 2005 Council of Europe Convention on Action against Trafficking in Human Beings; and the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA<sup>126</sup>.

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<sup>125</sup> See Art. 318 bis and 311 bis – 313 of the Spanish criminal code.

<sup>126</sup> See Art. 177 bis Spanish criminal code. For comparative victim statistical data, see the EU European Commission's Guidelines on THB (Trafficking in Human Beings) data collection: *Tools for the validation and utilization of EU statistics on trafficking in human beings* (TRAFSTAT) and <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

Through the Organic Law 5/2010 of 22 June, which adds a Title VII bis to the Criminal Code, for the first time, Article 177 bis identifies trafficking in human beings as a criminal offence and eliminates its regulation as an aggravating circumstance of the offence of smuggling of migrants of Article 318 bis. Article 177 bis provides the common agreed definition of trafficking at the international level (Palermo Protocol and Warsaw Convention). Furthermore, this reform modifies and reinforces other aspects of the Criminal Code such as the liability of the legal persons (Article 31 bis), the seizure of crime-related proceeds (Article 127 et seq.), offences related to forced prostitution, in particular, related to all forms of sexual exploitation of children. Organic Law 1/2015, of 30 March, in force since 1 July 2015, amended the Criminal Code, on the one hand, to incorporate in Article 177 bis, among the facts constituting the offence of trafficking, the exchange or transfer of control over people; among the different forms of committing the crime, the delivery or receipt of payments or benefits to obtain the consent of the person controlling the victim; and, among the purposes, the exploitation, so that the victims commit criminal acts for the people who exploit them, and the celebration of forced marriages. The concept of vulnerability is also defined, in accordance with the European Directive. Currently, pursuant to Article 177 bis of the Criminal Code, "the recruitment, transportation, transfer, harbouring or receipt of persons, including Exchange or transfer of control over those persons, by means of violence, intimidation or deceit, or there is abuse of a situation of superiority or of need or vulnerability of a victim. Either national or foreign, or when there is delivery or receipt of payments or benefits to obtain the consent of the person controlling the victim, for any of the following purposes: a) the imposition of forced labour or services, slavery or practises similar to slavery or servitude, or begging; b) sexual exploitation, including pornography; c) exploitation of criminal activities; d) the removal of body organs; e) the celebration of forced marriages. A position of vulnerability occurs when the person concerned has no real or acceptable alternative, but to submit to the abuse involved. The consent of a victim of trafficking in human beings shall be irrelevant where any of the means set forth in paragraph 1 of this article have been used. When the behaviour refers to a person under age, it shall be considered a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used. Any natural person who is suspected to have been the object of the conduct set forth in the previous paragraphs, even if the exploitation has not occurred and regardless of

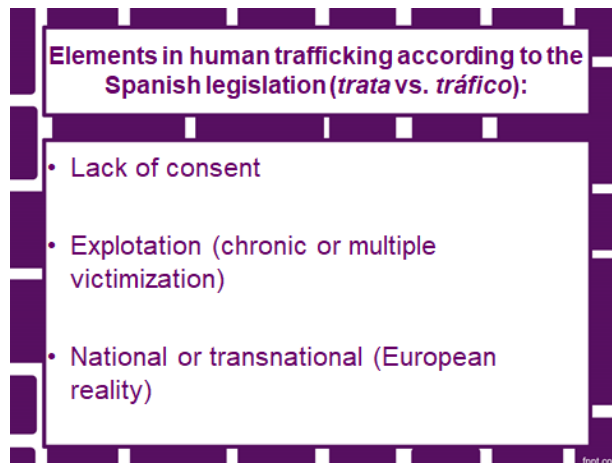


Image 65 Elements of the crime on human exploitation in the Spanish legislation



Image 66: Differences between the crimes of trafficking and smuggling

the existence of a complaint lodged by the alleged victim, shall be considered a victim of trafficking in human beings. A position of vulnerability occurs when the person concerned has no real or acceptable alternative, but to submit to the abuse involved. Minors are particularly vulnerable. Other factors to be taken into account to assess the vulnerability of the victims are “sex, gestational age, health condition and disability.” In addition to the above, it is worth highlighting, with regard to the prosecution of the crime, the review of Organic Law 1/2015, of 30 March, in relation to the regulation of the confiscation of crime-related proceeds, instrumentalities and property. Article 127 bis increases the possibilities of confiscation to other situations of cases where there is often a criminal activity sustained over time, from which can result in substantial economic benefits, such as trafficking in human beings. Source: [https://ec.europa.eu/anti-trafficking/member-states/spain\\_en](https://ec.europa.eu/anti-trafficking/member-states/spain_en).

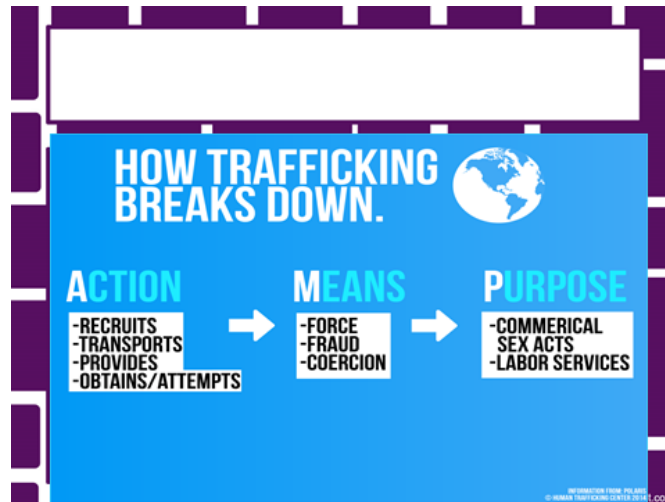


Image 67 Different elements in the international definition of human trafficking

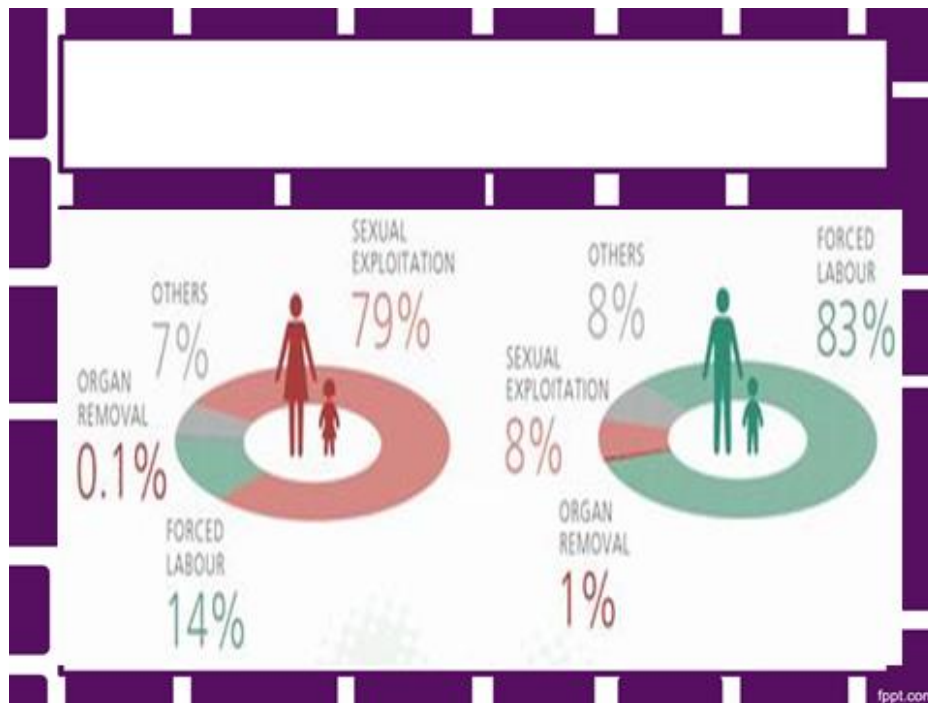


Image 68 Different gender impact of the objective of the exploitation in human trafficking



Image 69 Gender and age impact on human trafficking victimisation

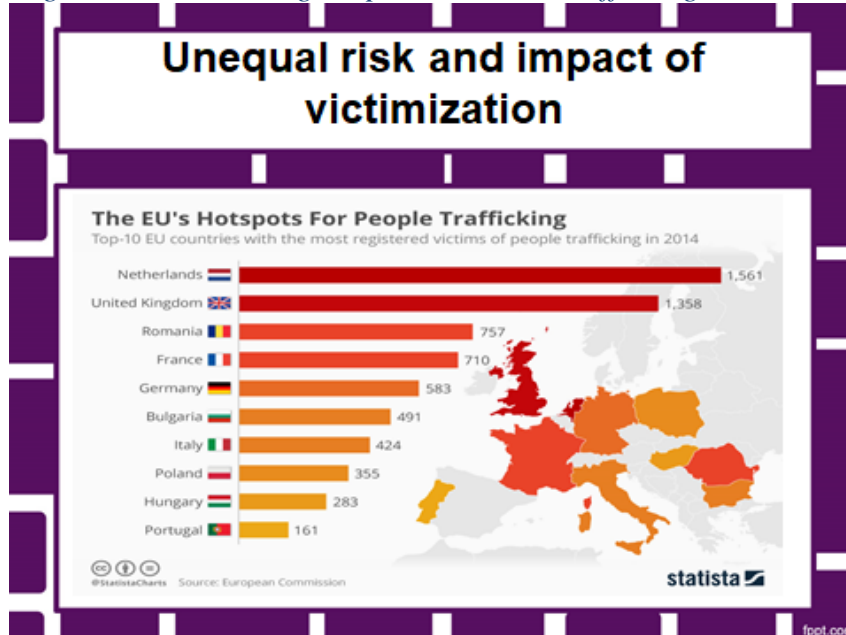


Image 70 Risk and impact of victimisation by country

According to the European Commission<sup>127</sup>, Spain is a destination country for victims mainly from Eastern Europe (in particular, Romania), Africa (mainly Nigeria), Asia (mainly China) and South America (mainly Paraguay), as well as a transit country to other destinations like France and the United Kingdom. The *modus operandi* of the groups linked to this criminal activity is structured around three processes: recruitment, transfer and exploitation. The recruiters usually belong to the criminal group specifically engaged in this work and are of the same nationality as the victims. Some cases have however been detected in which they are captured by family members, friends and even women who have already been exploited and who convince new victims to come to this country in the expectation of a better life. Some are finally

<sup>127</sup> See at [https://ec.europa.eu/anti-trafficking/member-states/spain\\_en](https://ec.europa.eu/anti-trafficking/member-states/spain_en).



forced into prostitution by threat, aggression or coercion<sup>128</sup>. They are also informed of the amount of the debt and the payment terms contracted with the group, which are generally increased by abusive accommodation and maintenance charges, including financial penalties for failure to comply with their “occupational obligations”.

### **1. 2. 3 Victim identification, protection, information and reparation**

Following the 2012 Directive, the Spanish 2015 Statute on victims underlines that the rights are not tied to a regular status<sup>129</sup>. Several authors highlight (Villacampa, Gómez and Torres, 2021) the relevance of identification and the period of reflection, however, the administrative and criminal law intersections favour exclusion<sup>130</sup>, with a lack of long-term psychological and social support, independent from the criminal justice system, during all the process of reporting and collaborating with the administration of justice. There are also many practical limitations in relation to the need for economic compensation for victims<sup>131</sup>.

According to the European Commission<sup>132</sup>, the amendment of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 2/2009, of 11 December and OL 10/2011, of 17 July), introduced Article 59 bis (subsequently amended by Organic Law 10/2011, of 17 July). A specific status for undocumented migrants who are victims of trafficking in human beings is established, from the time it is determined that there are reasonable grounds for suspecting it, so that the victim is informed of the following provisions:

1) A period for recovery and reflection of at least 90 days (awarded following the procedure laid down). This means for the victims:

- Sanctioning procedures shall not be initiated or, if they have already been initiated, they shall be suspended for the duration of the identification process and the said period for recovery and reflection.
- Authorisation of temporary stay.
- The competent administrations shall ensure that victims have the necessary resources for subsistence and, if necessary, ensure their safety and protection.
- The assistance measures shall also cover underage children or those with disabilities who are in Spain at the moment of identification, in relation with assisted return or with the authorisation of residence and, if applicable, work permit, if they are over 16 years of age, in exceptional circumstances.
- By way of exception, the safety and protection measures shall be further extended to cover people who are in Spain and have family ties with the victim or of any other kind, when it is attested that the situation of lack of protection in which they would be placed with regard to the alleged smugglers constitutes an insurmountable obstacle which prevents the victim from cooperating.

2) Once the period for recovery and reflection is over, the competent public administrations shall conduct an assessment of the personal situation of the victim for the purpose of extending that period. There exists the possibility to be exempted from administrative liability (arising from the irregular situation of the victim in the country) and for proposal of authorisation of residence and work in exceptional circumstances:

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<sup>128</sup> According to the EU portal, in the case of some African women, the migratory agreement and commitment is sealed and secured with voodoo or juju rites. With such a ritual oath, the victim is thus obliged to obey the trafficker, pay the debt and not report the traffickers.

<sup>129</sup> On the Spanish legal framework and policies, see <https://violenciagenero.igualdad.gob.es/otrasFormas/trata/home.htm>.

<sup>130</sup> See the Foreigners’ rights Spanish Act Art. 31. 3, 59 and 59 bis, and the Art. 57 and 89 of the Spanish criminal code. The international standards on international protection should be considered too.

<sup>131</sup> See the UN Fund at <https://www.unodc.org/unodc/human-trafficking-fund.html>.

<sup>132</sup> See at [https://ec.europa.eu/anti-trafficking/member-states/spain\\_en](https://ec.europa.eu/anti-trafficking/member-states/spain_en).

◦ As a result of his/her cooperation for the purposes of investigation or of the criminal proceedings.

◦ In view of his/her personal situation.

In the processing of the authorisations, the victim may be exempted from submitting those documents the obtaining of which would pose a risk for the said victim.

The victim will also be eligible for the assisted return if he or she declares his or her wish to return to his or her country.

3) Provisions of Article 59 bis shall equally apply to **foreign minors**<sup>133</sup>, always taking into account the age and maturity of the child and, in any case, the prevalence of the principle of the best interests of the child.

In addition to Article 59 bis, Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration, the 2009 reform introduced in Article 22.2 the right of victims to be given information in a language that they understand<sup>134</sup>.

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<sup>133</sup> See also the 8/2021 Act.

<sup>134</sup> See also the Regulations of the Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration by way of Royal Decree 557/2011 of 20 April, containing in Articles 140 to 146 the development of the provisions of Article 59 bis of the Aliens Act; the Royal Decree 557/2011 of 20 April, in its Sole Additional Provision, also extends the scope of application of the provisions of Article 140, relating to the Framework Protocol for the Protection of Victims of Trafficking, of all victims of trafficking, whether they are non-Community victims who are in a regular or in an irregular situation or nationals of a EU Member State; the Royal Decree-Law of 3/2013 of 22 February, which amends the rate structure in the field of the judicial administration and the free legal aid system: the right of victims of trafficking in human beings and other groups to free legal assistance is recognised, without the need to accredit that they have insufficient means to litigate, in the processes in which they have links, derive from or result from their condition of victims (amendment to Article 2 of Law 1/1996 of 10 January); the Law 42/2015 of 5 October, amending the Code of Civil Procedure, Law 1/2000 of 7 January, maintaining the recognition of the right of the victims of gender violence and of trafficking in human beings to free legal assistance, as well as that of his or her successors in the case of death of the victim, under the terms laid down in Royal Decree-Law 3/2013 of 22 February, which amends the rate structure in the field of the administration of justice and the free legal aid system and introduces a number of improvements as regards the recognition of this right (in the case of the victims of gender violence and of trafficking in human beings, it is established that free legal assistance shall include, among other benefits, free counselling and guidance services at the time immediately prior to the filing of a complaint or lawsuit and bar associations shall have a permanent on-call duty for the provision of pre litigation advisory services and legal aid for the victims of such crimes); the Law 4/2015 of 17 April on the standing of the Victim of a Crime, is indeed a catalogue of the rights, both procedural and extra procedural, of all victims of crimes, which provides a legal and social response for the victims and their families, and it also envisages specific attention to the most vulnerable people, such as victims of trafficking in human beings and underage victims. In particular, the needs for protection of the victims of trafficking in human beings shall be taken into account when conducting an individual assessment of the victims to determine their special protection needs and which measures should be taken. This translates into the access to specific protection needs aimed at avoiding secondary victimisation during the trial and pre-trial phases; the Royal Decree 1109/2015 of 11 December, implementing Law 4/2015 of 27 April on the standing of the Victim of a Crime and laying down provisions for the regulation of the Aid to Victims of Crime Offices; the Organic Law 8/2015 of 22 July, on the reform of the system for the protection of children and adolescents, and Law 26/2015 of 28 July, on the reform of the system for the protection of children and adolescents, improve the attention and protection of the children of women victims of gender violence, as well as that of underage girls who are victims of other forms of violence against women. It must be stressed that, for the first time, the protection of children from all forms of violence, including trafficking in human beings, is provided for among the guiding principles for action by the public authorities with regard to minors. Specifically, in relation to the improvement of the protection of child victims of trafficking in human beings, includes the right of foreign children who are in Spain to education, health care and to basic social services and welfare benefits, in the same conditions of Spanish children, stressing that public administrations shall ensure the rights of the most vulnerable groups, such as child victims of trafficking in human beings; establishes that, when it is not possible to determine the

## 2. Key concepts to recap

Harm reduction policies  
Irregular migration  
Minors  
Non-punishment principle  
Public health and human rights perspective  
Reflection period  
Sexual exploitation vs. prostitution  
Sex workers' right to have trade unions  
Smuggling  
Trafficking

## 3. Thinking Victimology

According to the study by Meneses-Falcón, Rúa-Vieites and Jorge Uroz-Olivares (2021):

This study reveals the difficulties Spanish judges confront while investigating and trying crimes of trafficking. Most noteworthy among them is the lack of training the judges have in dealing with this crime and the increase in work that it entails for the courts, since obtaining evidence not based on the victims' testimony is no easy task. Human trafficking is a complex, multidimensional phenomenon (involving globalization, migration, labour relations, regulation of sexuality, gender inequalities, new communication technologies and the advances in transport) and occurs in different ways or forms (sexual labour exploitation, committing of crimes, organ removal, etc.). In recent decades, the governments of Europe have become aware of their responsibility to end human trafficking both inside and outside their borders, to pursue the traffickers and to protect the victims. However, Spain has embarked on this task rather tardily, as it was not until 2010 that this crime appeared in the penal code, in accordance with the Palermo Protocol. However, it was only in 2015 that all the types of exploitation currently mentioned in the Protocol were introduced. This delay may have occurred because Spain ratified the convention in 2003 and did not take on the international commitments until they were endorsed by the European Union (EU). In other words, European directives and agreements seem to be a greater priority for Spain than their international counterparts. Until 2010, Spanish legal regulation related human trafficking to clandestine immigration, although the two phenomena are different. Thus, a vision of Europe with borders was prioritized, in which the greatest concern was controlling irregular immigration rather than preserving the rights of victims of trafficking (Villacampa, 2010). Since

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age of majority of a person, that person shall be deemed to be a minor and shall remain subject to the provisions of that Law, whilst his or her actual age is determined; it is envisaged that, to the effect that the corresponding public entity may take a child in charge by operation of law, that child is in a situation of helplessness, when he or she is identified as a victims of trafficking in human beings and there is a conflict of interest with both parents, legal guardians and guardians; and establishes as a requirement for access to, and practice of the professions, services and activities that involve regular contact with children, not having been convicted of an offence relating to prostitution, sexual exploitation and corruption of children, among others, as well as of the offence of trafficking in human beings. Moreover, these laws improve the protection that the Spanish law offers to the victims of trafficking in human beings, irrespective of age, though, on the one hand, the amendment of Article 59 bis of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, establishing the minimum duration of the period for recovery and reflection in 90 days; and, on the other hand, the inclusion in Law 43/2006, of 29 December, for improved growth and employment of reductions in employer social security contributions for companies that hire victims of trafficking in human beings. Source: [https://ec.europa.eu/anti-trafficking/member-states/spain\\_en](https://ec.europa.eu/anti-trafficking/member-states/spain_en).

then, there have been few convictions in Spain in this area compared to those related to other crimes, such as gender violence or drug trafficking. According to the *Defensor del Pueblo*, the Spanish Public Prosecutor's Office (2017), in 2017, 254 prosecution procedures were initiated for human trafficking crimes. However, among them, only 122 prosecutions had as their goal any modality of trafficking stipulated in Article 177 bis CP, with 55 criminal groups investigated; this trend is similar to that of the previous years (2209 and 439 victims of trafficking for sexual exploitation and labour exploitation, respectively, were identified between 2014 and 2017). These numbers are significantly low compared to other European countries (Eurostat, 2015), all the more so considering that Spain is a country of transit and a destination for victims coming from various countries due to its strategic location in Europe. In this context, the following questions arise: Why is there such a scant incidence of sentences for trafficking crimes compared to other criminal activities?

Please, read the whole article of the above-quoted authors and, according to it, try to respond to their last question on incidence.

#### **4. Applying Victimology**

1) What does an empowering framework for this kind of victims mean? Please, design an office for intervention with victims adopting that framework and indicate in what sense empowering, resilience and growth are related. Source: [https://www.emeraldgrouppublishing.com/archived/realworldresearch/world\\_events/empowering-survivors-of-human-trafficking.htm](https://www.emeraldgrouppublishing.com/archived/realworldresearch/world_events/empowering-survivors-of-human-trafficking.htm):

The latest research by Loomba (2017) focuses on interactions among trafficking survivors, anti-trafficking agencies and the community are examined in the form of actively and passively transformative exchanges. It presents a framework to better understand services that facilitate reintegration of trafficking survivors into society. The framework identifies several ways trafficking agencies can create a supportive community environment to offer services to trafficking survivors and to cultivate and nurture their coping skills towards reintegration into society.

Anti-trafficking agencies staff can help foster social negotiation skills and community ties among survivors of recent trafficking events. This can be accomplished by building an expectation of confidentiality, improving self-presentation and helping them overcome self-blame and self-doubt. Agencies can also work closely with their community to avoid bias, discrimination and/or stigma associated with trafficking survivors.

Survivors of past trafficking events also play a key role helping not only those who have survived trafficking but also those who are still experiencing it. Empowering women survivors of past trafficking events will help trafficked persons, majority of them being women, break out of the vicious cycle of trafficking and re-trafficking.

The most important role that anti-trafficking agencies can play in post-trafficking stages is to understand the importance of creating a supportive community environment, where the trafficking survivors and agency service providers can come together to nurture coping skills. A post-trafficking situation encompasses many different dimensions of reintegration into society; besides the question of attention to physical health, emotional trauma, security and immediate financial support for food and accommodations, it also brings up the question of human rights, and changes in social and political relationships. Livelihoods need to be revived and community ties need to be re-established for trafficking survivors to heal successfully and reintegrate in society.

To find out more about empowering human trafficking survivors, read the full paper on “Reconstructing Lives: Transformative Services for Human Trafficking Survivors” (Loomba, 2017).

2) See the section of the web page of Heuni on human trafficking ([http://heuni.education/thb\\_training](http://heuni.education/thb_training)) for reasons of labour exploitation, consider the following two images from Jokinen and Ollus (2019) and propose similar diagrams for Spain.

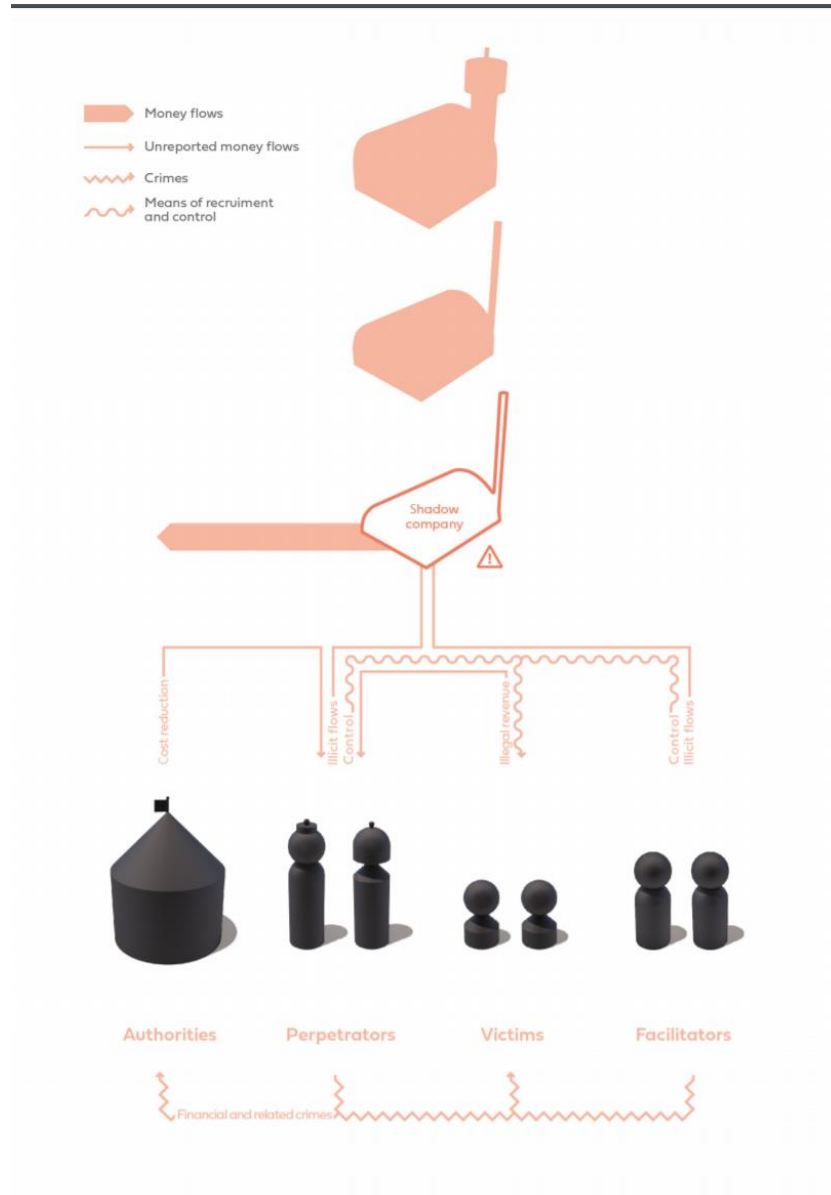


Image 71: Human trafficking for reasons of labour exploitation (1). Source: Heuni

## Action points for different actors

| Who?  | What is needed?   | Desired result   |
|---|---|--|
| EU Member States                                  | <ul style="list-style-type: none"> <li>• <b>Ensure</b> sufficient <b>legislative measures</b> are in place to tackle labour exploitation that does not amount to trafficking</li> <li>• <b>Ensure</b> their <b>own service supply chains</b> are free of labour exploitation</li> <li>• <b>Ensure</b> sufficient <b>resources for operational work</b> for public authorities as well as NGOs</li> </ul>  | <ul style="list-style-type: none"> <li>• <b>End impunity</b> and ensure labour exploitation is not a low-risk high-profit venture</li> <li>• Ensure that public authorities have <b>sufficient resources for identification and investigation</b> of relevant cases and that NGOs have resources to provide <b>assistance and advice</b> to exploited workers</li> </ul> |
| Law enforcement, labour inspectors, tax authority | <ul style="list-style-type: none"> <li>• Increase focus on <b>proactive work</b></li> <li>• <b>Target inspections</b> towards <b>high-risk sectors</b> and based on local analysis and tips</li> <li>• <b>Increase cooperation</b> between the public actors by sharing information and conducting joint inspections</li> <li>• Increase <b>awareness</b> among their <b>staff on labour exploitation and its links to trafficking and economic crimes</b></li> </ul> | <ul style="list-style-type: none"> <li>• Less severe forms of labour exploitation are detected early-on before the situation turns into trafficking</li> <li>• <b>Exploited workers have access to justice</b>, perpetrators are properly sanctioned and victims are referred to service providers and legal assistance</li> </ul>                                       |
| Civil society, including trade unions             | <ul style="list-style-type: none"> <li>• <b>Increase efforts to provide information, legal advice and services</b> to migrant workers and victims in different languages</li> </ul>   | <ul style="list-style-type: none"> <li>• <b>Migrant workers know their rights</b> and are empowered to claim them</li> </ul>   |
| Businesses  | <ul style="list-style-type: none"> <li>• Ensure they have taken sufficient measures against labour exploitation within their own organisation as well as within their own supply chains</li> <li>• Have in place <b>proper channels for their employees to report</b> possible problems <b>without repercussions</b></li> </ul>   | <ul style="list-style-type: none"> <li>• Businesses have policies against labour exploitation and take measures to ensure <b>transparency in supply chains</b></li> <li>• <b>Fair competition</b> is not distorted by businesses which make profit by exploiting workers</li> </ul>  |

Image 72 Human trafficking for reasons of labour exploitation (2). Source: Heuni

3) You have been called to help to produce a documentary film on human trafficking victims. See the example of “Sands of Silence” (<https://www.sandsofsilence.org/>) and draft your own ideas.

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### **XIII. OTHER VIOLENT VICTIMISATIONS: HOMICIDE, HATE CRIMES AND WORK HARASSMENT AS EXAMPLES OF DIVERSITY IN VIOLENT CRIME AND VICTIM IMPACT**

In this chapter, very different crimes or victimisations will be mentioned to consider their violent character and its diverse impact.

#### **1. Homicide**

##### **1. 1. Indirect victims, covictims or survivors of homicide**

Around the world, but with many differences in relation to the country and the socio-demographic profile of victims and offenders, many relatives and friends suffer the impact of the homicide of adult and child and young victims<sup>135</sup>.

Ann Margaret Gugiatti O'Neill (2010) described the experience of indirect victims of homicide (also called secondary victims in Anglo-Saxon countries) in navigating through the criminal justice system. The author, a victim herself, was the founder of *Angelhands*<sup>136</sup> in Australia. Helpful services for family members of direct victims of homicide are described by victims themselves as reparative, non-harming, confidential, on time, precise, proactive, non-judgemental, non-discriminatory, responsive or adequate for the social and cultural profiles and specific needs of victims, integral, coordinated, accessible (also economically), coherent, consistent, safe, respectful, victimologically aware, informed by the different perception of time by victims, sensitive, useful in concrete issues and practical details at different moments (during the victimisation and its aftermath), and empowering. Those services have to facilitate connection with society and allow engaging society and (re)creating new links that are felt safe and empathetic in order to integrate the event into the victims' lives (respecting their own scripts, autonomy, paths and times) and to connect with other human beings and society. The role of public services is a key issue for victims who do not have family or social support, the most relevant one according to the buffering hypothesis tested in different countries.

One of the main questions in the intervention with victims is to be aware of the need of trauma-informed interventions (in order to avoid secondary victimisation and consider procedural justice and therapeutic jurisprudence issues in relation to the mourning and the grief). In particular, training on death notification, usually done by police (Stewart et al, 2001; De Leo et al., 2020), has to be provided to avoid secondary victimisations, but also potential vicarious trauma in the police agents.

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<sup>135</sup> See the web page of UN on homicide at <https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html>. In relation to services for victims, see, for example, the ones provided at: <https://advic.ie> and, in Spain, see <https://www.victimas.org>.

<sup>136</sup> See at <https://angelhands.org.au/>.



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### **1. 2 Missing persons under the suspicion of having being kidnapped or murdered or victims of forced disappearance**

Most of the missing persons in Spain are not in that situation because of crime victimisation. However, for those indirect victims (family and friends) who are affected by this victimisation, the impact is very severe and the criminal justice system has not been aware of it until recently. Even if the Spanish Statute of the Victim recognises rights to family members of disappeared persons<sup>137</sup>, it was not until 2018 that the Spanish National Centre for Missing People was created in Spain. In November 2019, the Police Expert Network on Missing Persons (PENMP) was officially recognised by a body of the Council of the European Union. Founded by the AMBER Alert Europe foundation as an informal network of police experts, the PENMP so far consists of over 50 law enforcement missing person experts from 21 countries, including Spain. The work of PENMP includes collaboration with some universities in cold cases. After being given a theoretical introduction to the basics of cold case analysis, in particular in understanding the victim and the crime scene, four multidisciplinary teams from the participating academies and universities study one specific case<sup>138</sup>.

Only by working with indirect victims and understanding their pain, incremented by the uncertainty<sup>139</sup>, the criminal system agents can avoid secondary victimisation and provide some procedural justice in the long process of victimisation, coping and recovery for indirect victims.

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<sup>137</sup> In this field, the activism of victim support groups should be highlighted and, in particular, the meeting of the parents of the young Basque student Hodei Egiluz with the Spanish president in 2014. See Art. 2 of the Spanish 4/2015 Act on the Statute of the Victim (on indirect victims) and the 2006 UN International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>138</sup> See at <https://www.amberalert.eu/cold-case-analysis-project/>.

<sup>139</sup> See UN reports and testimonies at <https://www.un.org/es/observances/victims-enforced-disappearance> and, in Spain, <https://sosdesaparecidos.es/>.

### 1. 3 Road traffic-related violent victimisation (negligent homicide and injuries)

Even if the crimes related to road traffic represent a great percentage of the daily work by police, court and penitentiary institutions, this sort of victimisation is not mentioned in the Directive or the Statute on victims' rights<sup>140</sup>. According to the World Health Organization, approximately 1.35 million people die each year as a result of road traffic crashes. Every six minutes someone dies on the European roads. More than half of all road traffic deaths in the world are among vulnerable road users: pedestrians, cyclists, and motorcyclists. Road traffic injuries are the leading cause of death for children and young adults aged 5-29 years. The World Day of Remembrance for Road Traffic Victims (WDR)<sup>141</sup> is commemorated on the third Sunday of November each year. From 1995, road victim organisations under the umbrella of the European Federation of Road Traffic Victims (FEVR) observed this Day together – first as European Day of Remembrance, but soon as World Day when NGOs from Africa, South America and Asia joined. Ten years later, World Day was adopted by the UN General Assembly as “the appropriate acknowledgement for victims of road traffic crashes and their families”, being labelled just as accidents or (usually negligent) crimes.

In Spain, many victim support organisations criticised the decriminalisation of certain behaviours in the reform of 2015 and work for the naming of this kind of victimisation as victims of road traffic violence because of the excess of speed limits or the consumption of drugs while driving. Victim support organisations also point out to the many forms of secondary victimisation that they have to suffer in their encounter with the administration of justice and other agencies (Varona, 2018).

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### 1. 4 Work conditions related deaths, negligent homicides and corporate crime victimisation

According to Tombs (2007, p. 531): “criminological definitions of violence still fail to recognize offences against workers and the public arising out of work”. Moreover:

Exploring our virtual complete lack of any utilisable data regarding the incidence of occupational injuries and how many of these are the product of safety crimes (Tombs and Whyte, 2007) might lead us to think more imaginatively about the hidden figure of crime, to redesign victimisation surveys, and to recognize further limitations of these given the power of prevailing definitions of crime, violence and ‘accidents’. Further, following Nelken (1994) with respect to corporate crime in

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<sup>140</sup> See only the mention to “accidents” on the Art. 18, third paragraph. On their rights in Spain, see in Spanish [https://www.dgt.es/es/seguridad-vial/atencion\\_a\\_victimas/](https://www.dgt.es/es/seguridad-vial/atencion_a_victimas/).

<sup>141</sup> See at <https://worlddayofremembrance.org/#about>.

general, exposing safety crimes on the part of corporations raises an interesting question regarding labelling and criminalization—what, precisely, are the processes by which certain offences and categories of offenders evade being subjected to such processes? (Tombs, 2007, p. 546).

This reflection is particularly pertinent in the Spanish context if we consider that long ago a specific prosecutor for safety at work related crimes or “siniestralidad laboral” was appointed (Fiscalía General del Estado)<sup>142</sup>. This kind of crimes can be related to corporate crimes.

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### **1. 2 Hate crime**

According to Victim Support Europe, considering the standards of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), hate crime can be defined as “criminal acts motivated by bias or prejudice towards particular groups of people<sup>143</sup>. To be considered a hate crime, the offence must meet two criteria: First, the act must constitute an offence under criminal law; second, the act must have been motivated by bias.” Hate crimes can take the form of graffiti, property vandalism, name-calling, assault or bullying, or online abuse using social media. It can also imply murder.

Hate crimes affect the dignity of victims and provoke fear (in direct and indirect victims), particularly of repeat attacks; anger; illness including depression and physical ailments; trauma in children; restrictions in lifestyle; and substantial financial loss. Moreover, according to McDonald and Hogue (w.d.):

Several jurisdictions acknowledged that victims of hate crimes do face particular challenges due to the nature of these crimes. Firstly, the impact of a hate crime can be particularly significant because the act is directed to an individual because of a characteristic pertaining to identity (e.g., race, sexual orientation). Secondly, unlike certain other categories of crime, whole communities can be victimised when a hate crime occurs. In that respect, support and remediation programs need to consider both the individual and the community. Finally, as hate crimes are symbolic acts, the character of the crime (e.g., a violent act or a property crime) may correlate imperfectly with the degree of impact and damage to the victim and his or her community.

In response to the needs of victims of hate crimes, jurisdictions broadly identified two areas where immediate action would be warranted (McDonald and Hogue, w.d.):

1. Training - Overall, jurisdictions did not believe that specific services would be the appropriate response, given the small numbers of victims and limited capacity. More training and resources (public legal education and information, interpretation services) were identified. Improved training and increased

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<sup>142</sup> On victimisation surveys in this field, see the European Working Conditions Surveys (EWCS).

<sup>143</sup> See Art. 510 Criminal Code. Provisions for victims are specifically mentioned in the 29/2012/EU Directive and the 4/2015 Spanish Act.

coordination in the investigation and prosecution of hate crimes for all criminal justice professionals would benefit victims.

2. Recognition - Victims need the hatred behind these crimes identified and acknowledged by the criminal justice system. Materials that are directed toward police and prosecutors to assist them to identify the hatred aspect of these crimes and to make the case before the courts may be helpful. A pamphlet or brochure that outlines the provisions in the *Criminal Code* in relation to hate crimes may be a helpful tool for victim services in dealing with victims of these crimes.

On the current situation in Spain, also considering the general debate on the difficulties of providing evidence on motivations, according to Gómez et al. (2020, pp. 5-6):

The lack of time and technical training seriously affects victims' access to the judicial system, since, as the authorities in the field of investigating hate crimes indicate, the way in which statements are taken and, therefore, information obtained from victims and witnesses is essential not only for the clarification of the facts, but also for the victim to feel relaxed and be able to narrate his or her experience; without a detailed statement, it is difficult to determine the motivation of the perpetrator of crimes with a discriminatory content, resulting in many cases in a complaint processed like any other and therefore without record of the true motivation of the action. This is generating a widespread feeling among the victims that the security forces do not take the necessary action to respond to their reports, creating a distrust in the fact that their action of denouncing has a real effect and their reports get credibility; it should be noted that in many cases, discrimination is part of the victims' daily lives, to the point that they normalize and take it as something natural in their lives, generating that their experiences and impact on them are undervalued. It has been stated in the information collected that the lack of training of the actors involved increases prejudices and stereotypes, resulting in the victim of a hate crime not being given the same credibility as other victims of different crimes. It is added that the lack of knowledge of the police or legal operator who is taking the statement about the cultural, social, work or psychological situation of the victims, favours a climate of mistrust that makes it difficult to make concrete, precise and uncontradicted statements: however and paradoxically, any hesitation or contradiction that exists can be interpreted in court against the plausibility of the story and in many cases, is a basis for a dismissal of the case or an acquittal of the perpetrator. Regarding the importance of the adequate evaluation of the facts, it has been detected that frequently, the Courts do not agree on a precautionary measure of prohibition of approach and communication with the victim, if there are no injuries or a frustrated attempt against his life or health, which supposes the situation of defenselessness of the victim when the reported facts are related to threats, humiliations, coercion or mistreatment without injury, with the frequent consequence that he desists from continuing with the report. For this reason, the victims perceive difficulties from the beginning of the complaint to which it is added that a large part of these complaints, later subject to judicial proceedings, end up in an unsatisfactory manner for the victim since the judicial body does not appreciate the aggravating factors inherent in the hate crime: thus there is no reparation for the victim in the face of discriminatory actions, so feeling is that it is not worth reporting. In the case of LGTBI victims, victims of crimes related to sexual orientation and identity, they face, like the rest, the challenges mentioned in this section of the Report. It is important to note that they deal with a justice system that is not very reparative, because if a trial were to take place, it is very frequent that the seriousness of the crime or the motivation of hate in these

crimes is not sufficiently accredited and thus the corresponding aggravating factors of the Criminal Code are not applicable, which is very harmful for the victims, who feel that the system does not protect them and there is the aforementioned underestimation of the real situation.

| DELITOS DE ODIOS             | 2016         | 2017         | Var. 2017/2016  |
|------------------------------|--------------|--------------|-----------------|
| ANTISEMITISMO                | 7            | 6            | ↓ -14,3 %       |
| APOROFOBIA                   | 10           | 11           | ↑ +10 %         |
| CREENCIAS RELIGIOSAS         | 47           | 103          | ↑ +119 %        |
| DIVERSIDAD FUNCIONAL         | 282          | 23           | ↓ - 91,2 %      |
| ORIENTACIÓN ID. SEXUAL       | 230          | 271          | ↑ +17,8 %       |
| RACISMO XENOFobia            | 416          | 524          | ↑ +26 %         |
| IDEOLOGÍA                    | 259          | 446          | ↑ +72,2 %       |
| DISCRIMINACIÓN SEXO / GÉNERO | 41           | 35           | ↓ - 14,6 %      |
| <b>TOTAL</b>                 | <b>1.272</b> | <b>1.419</b> | <b>+ 11,6 %</b> |

Image 73: Spanish statistics on hate crime. Source: Ministry of Interior (2019, p. 5)<sup>144</sup>

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<sup>144</sup> According to that statistics, racism and xenophobia are followed by discrimination for disabled persons, ideology and sexual orientation. See also <https://hatecrime.osce.org/spain>, <https://www.inclusion.gob.es/oberaxe/es/ejes/delitosodio/index.htm> and <http://www.interior.gob.es/web/servicios-al-ciudadano/delitos-de-odio>.

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### 1.3 Work Harassment

In June 2019, the General Conference of the International Labour Organization adopted the Violence and Harassment Convention, which defines “violence and harassment” in the world of work as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, [including] gender-based violence and harassment”. The convention defines “gender-based violence and harassment” as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, [including] sexual harassment”. Many studies underline the important role of bystanders in relation to the prevention of work harassment and support for victims (Hellemans et al. 2017).

In Directive 2002/73/EC<sup>145</sup>, harassment is conceptualised as a situation ‘where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment’<sup>146</sup>. Sexual harassment is said to take place where any form of “unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.

According to the European Agency for Safety and Health at Work (EU-OSHA) (2010, p. 16):

Most definitions of forms of violence at work include homicide, assault, threats, mobbing and bullying; in effect, all behaviour that humiliates degrades or damages a person’s well-being, value and dignity. In addition, the definition of a ‘workplace’ is elusive as increasing numbers of people earn their living on mobile sites, in home-based offices, and by teleworking. In some definitions, the term ‘work-related violence’ refers to both physical and psychological violence directed at employees from either outside or inside the workplace. Sometimes violence or physical violence and harassment (bullying) are separated.

According to that same source (p. 22), harassment can be manifested in many forms. These have, for example, been classified as the manipulation of the victim’s reputation; performance of work tasks; communication with co-workers; social life; and physical assaults, or the threat of physical violence.

Single forms of negative acts include: isolation; withholding of necessary information; assignment of tasks with unreasonable or impossible goals or deadlines; devaluation of one’s rights and opinions; verbal abuse; slander; practical jokes; and ridicule. Threatening, by its nature, is psychological violence. It is important to notice that the negative behaviour involved in these acts is also the kind of behaviour that is common to everybody in everyday working life. However, this negative behaviour becomes

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<sup>145</sup> See also the European Union Commission Gender Equality Strategy 2020–2025 and its proposed Digital Services Act of December 2020.

<sup>146</sup> A worker is bullied and harassed when someone takes an action that he or she knew or reasonably ought to have known would cause that worker to be humiliated or intimidated. See Art. 173.1. II of the Spanish criminal code. It is required: abuse of superiority; repeated victimisation; and serious victimisation (in more serious cases, it can be considered degrading treatment).

harassment when it is systematically repeated. Hoel & Cooper (25) have grouped negative acts as follows:

- (i) work-related harassment (e.g. persistent criticism of work an effort, attempts to find fault);
- (ii) personal harassment (e.g. insulting or offensive remarks, spreading of gossip and rumours);
- (iii) organisational harassment (e.g. having key areas of responsibility removed or replaced with more trivial or unpleasant tasks, being given tasks below one's competence); and
- (iv) intimidation (e.g. threats of violence or physical abuse, and behaviour such as finger-pointing, exposure to shouting or spontaneous anger).

**THE COST OF SEXUAL HARASSMENT**

| VICTIMS   | EMPLOYERS   | SOCIETY  |
|---|---|--|
| <p>Psychological suffering including humiliation, reduced motivation, loss of self-esteem;</p> <p>Behavioural change including isolation, deterioration of relationships;</p> <p>Stress-related physical and mental illness including drugs and alcohol abuse;</p> <p>Victims foregoing career opportunities, leaving employment or committing suicide;</p> | <p>Decreased enterprise productivity, due to:</p> <ul style="list-style-type: none"> <li>• impaired judgment</li> <li>• compromised team-work</li> <li>• de-motivation</li> <li>• absenteeism</li> </ul> <p>No applicants will fill vacancies at workplace where they fear sexual harassment;</p> <p>Progress and innovation within the enterprise are hindered when the environment is deficient in trust and team spirit;</p> | <p>Long-term rehabilitation costs for the reintegration of victims;</p> <p>Unemployment welfare benefits and retraining;</p> <p>Invalidity costs for those with impaired working capacities;</p> <p>Legal and criminal justice expenses;</p> <p>Women's undermined access to high-status and well paid jobs, traditionally male-dominated;</p> |

*Image 74: The cost of sexual harassment. Source: International Labour Office (p. 3): Sexual Harassment at Work Fact Sheet*

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## 2. Key concepts to recap

Abuse of power  
Bereavement  
Bullying  
Corporate crime  
Co-victims  
Death notification  
Hate crimes  
Health public approach  
Homicide  
Indirect victims  
Labour safety-related deaths  
Mobbing  
Mobbing  
Mourning  
Murder  
Road traffic-related crimes  
Road violence  
Survivors  
Victimisation in the workplace  
Violence  
Work harassment

## 3. Thinking Victimology

Think about the diffusion of responsibility in violent crimes as a neutralisation technique explained by Sykes and Matza, in the well-known case study that follows, and relate it to the bystander effect theory underlining a victimological perspective (for example, to what extent indifference depends on the characteristics of the victim more than the situational context?).

### *Case study: Murder of Kitty Genovese*<sup>147</sup>

In the early hours of March 13, 1964, 28-year-old Kitty Genovese was stabbed outside the apartment building across the street from where she lived, in an apartment above a row of shops on Austin Street, in the Kew Gardens neighbourhood of Queens in New York City. Two weeks after the murder, The New York Times published an article claiming that 38 witnesses saw or heard the attack, and that none of them called the police or came to her aid.

The incident prompted inquiries into what became known as the bystander effect or “Genovese syndrome”, and the murder became a staple of U.S. psychology textbooks for the next four decades. However, researchers have since uncovered major inaccuracies in the New York Times article. Police interviews revealed that some witnesses had attempted to call the police.

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<sup>147</sup> Extracted from Wikipedia. See Levine et al. (2020).



Reporters at a competing news organization discovered in 1964 that the article was inconsistent with the facts, but they were unwilling at the time to challenge New York Times editor Abe Rosenthal. In 2007, an article in the American Psychologist found “no evidence for the presence of 38 witnesses, or that witnesses observed the murder, or that witnesses remained inactive”. In 2016, The New York Times called its own reporting “flawed”, stating that the original story “grossly exaggerated the number of witnesses and what they had perceived”

Winston Moseley, a 29-year-old Manhattan native, was arrested during a house burglary six days after the murder. While in custody, he confessed to killing Genovese. At his trial, Moseley was found guilty of murder and sentenced to death; this sentence was later commuted to life imprisonment. Moseley died in prison on March 28, 2016, at the age of 81, having served 52 years.

#### 4. Applying Victimology

**1) Please, before following the instructions below to design the support office for victims of hate crime, take into consideration the following victimological questions:**

How should we call victims (victims/survivor/overcomers/victimised people)? Who holds the condition of being a victim of hate crime? What about indirect victims, and diffuse victimisation? What are the needs and rights of victims? How to take into account those needs according to empirical data and how to enforce those rights according to the specific international and national legislation? Do those rights vary if the victim is considered vulnerable?

Moreover, is there a different victimisation risk to suffer a hate crime? What is the specific impact of hate crime depending on the bias motivation? What kind of harms does it produce that crime? For how long? How can secondary victimisation in different spheres and, particularly, by the media and in the criminal justice system be avoided? What happens with poly-victimisation? How do we tackle intersectionality to deal with victims? How to work with victims who do not want to report? Does that contribute to hidden victimisation? How to avoid victim labelling and blaming? How to avoid victimism? When trying to understand the processes of victimisation, how are we going to use the model of the three “Es” to understand what a traumatic event is and means for victims? And the model of the three “Fs” to try to understand the victim’s reaction to victimisation? What kind of understanding do we have about the meaning of devictimisation or recovery and the use of the model of empowerment, connection and meaning making? How can we repair these kinds of crimes considering the different harms that have been produced? What are the pros and cons of offering restorative justice in these cases?

#### *Instructions to design the office:*

- What is the purpose of your office? Why is that office relevant considering the problem as it is today?
- Who is going to work in that office? How? With which specific role? Where?
- Can you concretely describe a regular day in that office since the time it opens until it closes?

**2) Role-play exercise (victim/officer of a victim support):** Imagine you are a victim of a hate crime approaching a public office for victim support where an official tries to listen to you and understand your needs and how to help you according to the standards provided in the Spanish Statute for Victims of crime.

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<sup>148</sup> See every section for specific references in this chapter.

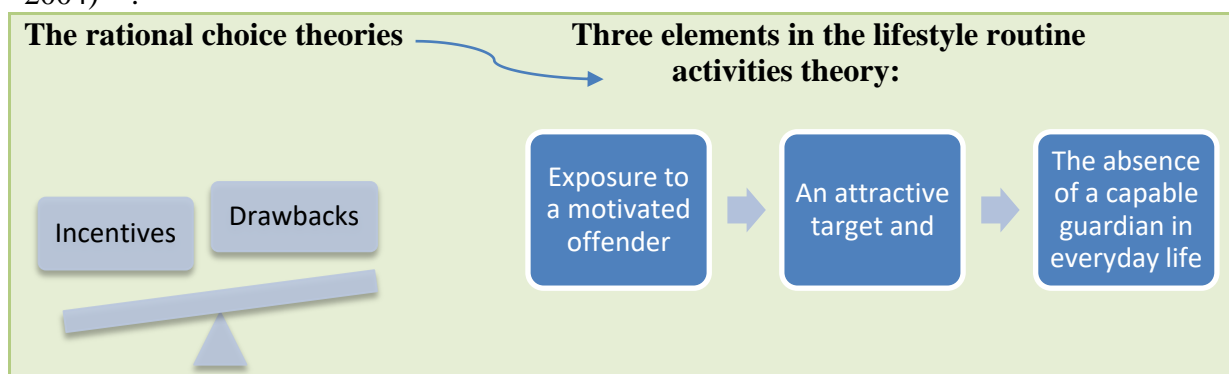
## XIV. CYBER VICTIMISATION

### 1. Virtual and non-virtual spaces of victimisation and reparation

In our digital world, cyber victimisation is growing. For example, one in 10 women in the European Union report having experienced cyber-harassment since the age of 15 (including having received unwanted, offensive sexually explicit emails or SMS messages, or offensive, inappropriate advances on social networking sites). The risk is highest among young women between 18 and 29 years of age.

Despite its increasing importance neither the Directive nor the Spanish Statute refers to cyber victimisation. There are many kinds of cyber victimisation: cybersex crimes (child pornography, internet child sexual exploitation, stalking, sexting, grooming), fraud, hacking, criminal copyright infringement, spam, cyber bullying, voyeurism, and electronic money laundering, among others.

According to León (2015, pp. 16-17), cybercrime is the term used in the Council of Europe Convention on Cybercrime (Council of Europe, 2001) and should be understood as digital crime, a crime committed in or through cyberspace. Thus, cybercrime implies another possible scenario for traditional and new crime types where some authors (Agustina, 2015) apply the routine activity theory (Cohen and Felson, 1979) and the lifestyle theory (Hindelang, Gottfredson and Garofalo, 1978) to explain some victimisation processes including also the so-called online disinhibition effect (Suler, 2004)<sup>149</sup>.



*Image 75: Rational choice theories and lifestyle routine activities theories in cyber-victimisation. Source: León (2015)*

In this chapter we will briefly concentrate on the case of cyber-bullying<sup>150</sup>, as an example of cyber victimisation, to underline how the victimisation (and also the processes of recovery/reparation<sup>151</sup>) might take into account the particularities of cyberspace as the scenario of the victimisation<sup>152</sup>. In cybercrime, some researchers also concentrated on the age variable and study the low perception of risk, the “genius” myth and the age-victimisation curve (Turanovic and Pratt, 2019).

<sup>149</sup> In cyber space there is also the so-called Proteus effect. This underlines the fact that an individual's behavior conforms to their digital self-representation independent of how others perceive them.

<sup>150</sup> See Art. 172 ter and Art. 173. 1 of the Spanish criminal code.

<sup>151</sup> Including restorative justice initiatives, see Roberts (2020).

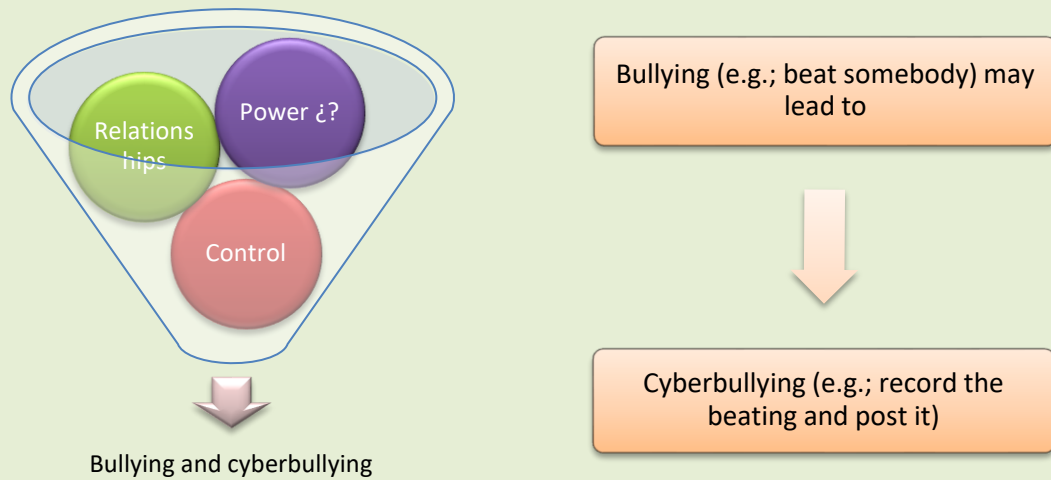
<sup>152</sup> On the severe victimological impact of a sexual aggression via Internet and its consideration as such, despite the physical distance, see the ruling of May, 2021 of the Supreme Court (<https://elpais.com/sociedad/2021-05-31/el-supremo-sentencia-que-obtener-videos-sexuales-de-una-menor-bajo-intimidacion-es-una-agresion-sexual.html>).

**Cyberspace as victimization (and reparation) context.** Some specific features:

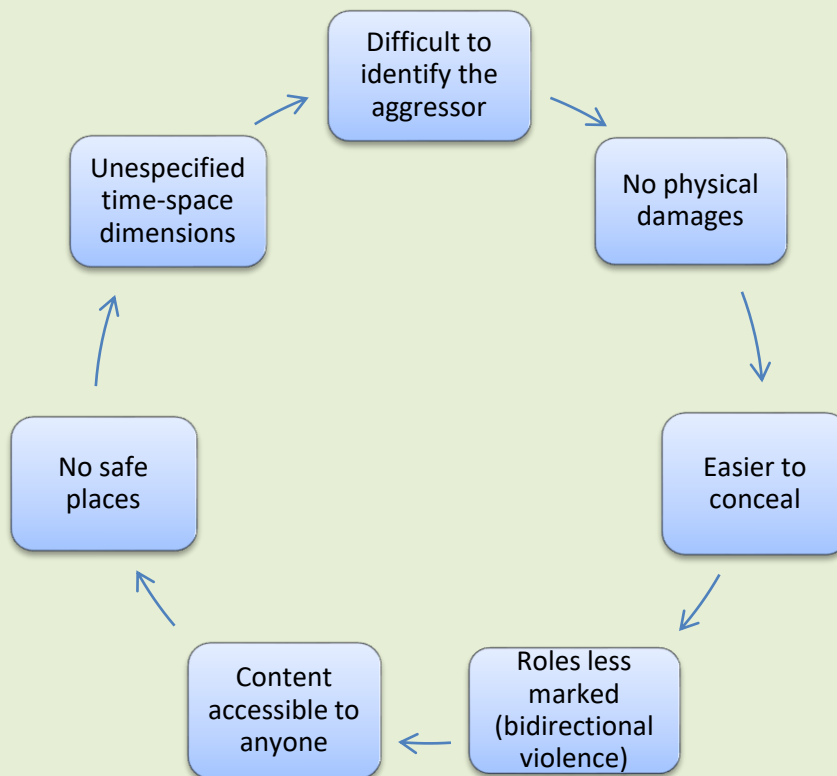
- permanent, global and immediate harm (no safe place)
- caused anonymously and through fictitious roles
- with lower perception of risk and harm by potential victims
- obstacles for reporting: fear of perception of vulnerability and lost of trust by users (in the case of companies)

*Image 76: Some peculiar characteristics of cyber-victimisation*

➤ **Relationship between bullying and cyberbullying**



➤ **Particularities of cyberbullying**



*Image 77: Relationship between bullying and cyberbullying. Source: León (2015)*

Even if the legal definition of bullying takes into account some basic behaviour, being online or offline, the consequences of cyber-bullying might be greater for some victims.

| Normal Peer Conflict               | Bullying  |
|------------------------------------|---|
| Equal power between friends        | <b>Imbalance</b> or power between friends   |
| Individuals often play together    | Individuals rarely play together  |
| Happens occasionally               | <b>Repeated</b> negative actions  |
| Accidental                         | On <b>purpose</b>   |
| Not serious                        | <b>Serious</b> with <b>threat</b> of physical or emotional harm                             |
| Equal emotional reactions          | Strong emotional <b>reaction from victim</b> and little or no emotional reaction from bully |
| Not seeking power or attention     | Seeking <b>power, control, or material things</b>   |
| Not trying to get something        | Attempt to gain material things/power   |
| Remorse – will take responsibility | <b>No remorse</b> – blame victim  |
| Effort to solve problem            | <b>No effort to solve problem</b>   |

Image 78: Difference between everyday peer conflicts and bullying. Open source

## Psychological Effects

- ⊗ Stress
- ⊗ Severe anxiety
- ⊗ Mood swings
- ⊗ Irritability
- ⊗ Panic attacks
- ⊗ Loss of self-esteem
- ⊗ Depression
- ⊗ Suicidal thoughts

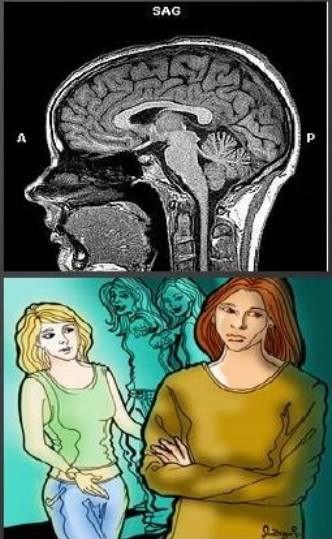


Image 79: Psychological effects of bullying. Open source

According to León (2015), six elements comprise the online disinhibition effect that she recounts in her research to cyber-bullying: dissociative anonymity, physical invisibility, asynchronicity, solipsistic introjection, dissociative imagination, and minimization of status and authority.

1. With reference to dissociative anonymity, it is generally shared the idea that the internet provides enough anonymity to develop misbehaviours related to cyberbullying.

2. They also agree unanimously on the physical invisibility which makes people pluck up the courage to say things they would not normally dare to say in face-to-face contact.
3. Asynchronicity is assessed depending on the nature of the message and on their relationship with the receiver. If the message is relevant or negative, or if the receiver is a significant one, a quick response is wanted; otherwise feelings of annoyance arise.
4. As far as solipsistic introjection is concerned, some survey respondents try to imagine how the other looks like on the basis of the prejudices built during the interaction. For others, by contrast, there is no need to do that, since normally a picture of the other person is displayed online.
5. In response to the question relative to the dissociative imagination, almost all of the participants agree on the fact that social norms in the physical world do not work in cyberspace. The sense of shame and politeness existing offline are not experienced online. Only and exclusively one of the participants considers the network as an extension of social and offline life.
6. Finally, the perception about the minimization of status and authority shifts back and forth between two rival directions. Namely, some participants perceive everybody as equals in online communication. The reasoning is that they interact with their peers with whom they feel in a situation of equity. For others, it depends on the “category” of the person you are talking to”.

## 2. Key concepts to recap

Cyber attack  
 Cyber space  
 Cybervictimisation  
 Digital rights  
 Grooming  
 Hacker  
 Harm evaluation  
 Hater  
 Personal data  
 Revenge porn  
 Right to be forgotten  
 Right to privacy  
 Risk perception  
 Sexting  
 Troll  
 Victim impact  
 Virtual space

## 3. Thinking Victimology

Please, read the article titled “When bullying lasts beyond the school gates: “Now there’s no respite for victims”, from J. J. Gálvez (2018), and reflect on the victim impact of this sort of victimisation.

Ana’s life became a living hell when she was 12 years old. First, it was a case of whispered insults and furtive shoves at her school in Pamplona, in northern Spain. Then the campaign really took off. “You disgusting whore. You’re so easy. You’re a slut,” shouted the ringleader. “Why don’t you just die! I don’t want to breathe the same air as you!” The campaign lasted four long years, during which time Ana found herself entirely alone as the bullies prevented other students from approaching her. One humiliating episode involved Ana’s

gym clothes being pulled from her rucksack and thrown in the air. “Watch out! The virus is contagious!” came the accompanying cry. Insults became a daily reality for Ana, who was persecuted even within the safety of her own home by text and on social networks.

Cyber-bullying among minors has increased by 65% in the last five years in Spain. Just 842 cases were reported in 2012 compared to 1,364 between January and October, 2017, according to data from the Interior Ministry’s Crime Statistics System. In total, the government has 6,500 cases on record from the last five years.

“Children are gaining access from an increasingly young age to very powerful weapons and a world without rules: the internet,” says Carmena del Moral, legal analyst for Save the Children, who insists that the extent of the problem is greater than the statistics suggest. “Many cases are not reported and remain under wraps. The extrapolation of the data implies that some 82,000 minors are being targeted.”

Del Moral published a study based on the personal accounts of 21,500 students between the ages of 12 and 16, in which 6.9% of young people admitted to having been cyber-bullied. According to her research, 4.2% of the victims believe they were victimised for their sexual orientation; 5% said it was due to the color of their skin or their religion; and 16% said it was down to their physical attributes. WhatsApp, internet forums, social networks and emails are all useful tools for the cyber-bully and victimisation has risen in direct proportion to their popularity. Cellphones have become the cyber-bully’s partner in crime.

According to a report titled “Digital Society in Spain 2017,” 86% of young people between the ages of 15 and 24 have a cellphone and use it for messaging (81.7%) and access to social networks (77.5%). “Compared to traditional bullying where children are in a safe environment when they get home, we are now up against a phenomenon that carries on 24 hours a day and seven days a week. There’s no respite for the victims,” says Del Moral. Bullying, both virtual and in person, drove 16-year-old Arancha to commit suicide in Usera, Madrid in 2015, in a case that hit the headlines. “You slut, what are you saying about me? Fuck you! Give me €50 or I’m going to bring my cousins and more people to beat you up,” said one of the many messages she received from her tormentor.

“The cellphone is the most common tool for telematic bullying and WhatsApp is the most commonly used app, affecting 81% of victims,” according to a study carried out by the Anar Foundation, which also states that bullying on social networks accounts for 36.2% of cases and is a growing trend. “Incidents of bullying happen more outside the classroom than in them, if that’s possible,” says the most recent report from the Attorney General’s Office, which expresses its concern over the escalation of the problem and the fact that many of the bullies are under 14 and too young to be penalized. “This is because access to new technology is happening at an increasingly early age.”

Researchers have found that cyber-bullying is also used to establish controlling relationships. “The most common incidents among Secondary [ESO] students are from anonymous people with false profiles who start to bully minors by asking for intimate photos of them,” says Diego Lucena, coordinator of a bullying-prevention project functioning in 10 High Schools and 18 Junior Schools in the Madrid region in collaboration with the Spanish Footballer’s



Association (AFE). In 2016, Ana was no longer able to cope with her situation at her school in Pamplona and left. The insults and attacks from her classmates had made her so anxious and depressed, she needed both therapy and drugs to overcome the trauma, according to the statement read out in court as her principal tormentor was sentenced to 14 months of probation and ordered to comply with a 300-meter restraining order.

#### 4. Applying Victimology

You have been contracted as part of the cyber safety team of a very well-known company to audit the digital safety of that company and promote “cyber resilience”. During your work, the company suffers a severe cyber-attack and some private data of clients is stolen. You have to inform those clients of the harm produced. When and how would you do that and what kind of information should you provide them?

On cyber resilience and companies as victims, see at <https://www.consilium.europa.eu/en/policies/cybersecurity/>.

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## XV. VICTIMS OF CRIMES AGAINST PROPERTY AND VICTIM PREVENTION IN RELATION TO ENVIRONMENTAL CRIMINOLOGY

### 1. 1 Property crime, fear of crime and victim prevention

According to Victim Support Europe, property crime, usually involving items belonging to an individual, is a blanket term that covers several other crimes, including:

- Burglary – illegally entering a building to commit an offence, usually that of theft
- Larceny – unlawful taking or theft of personal property
- Robbery – done with force or threat of force
- Theft – taking another person’s property or services without permission, consent, or payment
- Motor vehicle theft – stealing or attempting to steal a motor vehicle
- Arson – wilfully or maliciously setting fire to someone’s property, usually buildings or vehicles
- Shoplifting – stealing goods from a retail store
- Vandalism – deliberate destruction of any kind of property

Property crime, with or without violence or force, might mean acts by individual criminals, but also by organised crime. For more than a century criminologists (and later victim surveys) have usually concentrated on common property crime in relation to the public alarm and fear of crime produced in urban areas. Nowadays, rational choice theories are usually applied in connection with hot spot maps and predictive policing<sup>153</sup>. At the same time, situational and victim prevention measures are proposed with a risk of forgetting about social prevention (and the displacement effects of any prevention measure) and blaming the “negligent” or less prudent victim.

Different levels of prevention (with diverse victims’ roles) can be considered according to the following table.

|   | <b>Primary prevention (general public)</b>           | <b>Secondary prevention (risk groups and situations)</b>                                       | <b>Tertiary prevention (concrete groups and situations to avoid further crime and favour desistance or resistance)</b> |
|---|--|--|--|
| Focused on potential <b>victimizers</b> | e. g.: educational measures                          | e.g.: measures in relation to juvenile leisure spaces and activities in certain neighbourhoods | e.g.: rehabilitation programs  |
| Focused on <b>places and contexts</b>   | e. g.: building and urbanism design and architecture | e.g.: private security   | e.g.: identifying and improving risky zones or hot spots   |
| Focused on <b>victims</b>               | e.g.: information campaigns                          | e.g.: protection measures  | e.g.: compensation and support schemes   |

<sup>153</sup> See also the web of CPTED at <http://www.cpted.net/>. The trend on property crime in rural areas can also be considered under rural Criminology (Meško, 2020).

*Table 8: Primary, secondary and tertiary prevention focused on offenders, contexts and victims. Source: adapted from Jan J. M. van Dijk and Jaap de Waard*

Coherent victim prevention in line with human rights cannot be understood without social prevention. The *UN Guidelines for the Prevention of Crime* (UN, 2010) set out eight basic principles underlying the development of crime prevention strategies that, when applied to property crime, also involve social prevention:

1. Government leadership. All levels of government should play a leadership role in developing effective and humane crime prevention strategies and in creating and maintaining institutional frameworks for their implementation and review.
2. Socio-economic development and inclusion. Crime prevention considerations should be integrated into all relevant social and economic policies and programmes, including those addressing employment, education, health, housing and urban planning, poverty, social marginalization and exclusion. Particular emphasis should be placed on communities, families, children and youth at risk.
3. Cooperation/partnerships. Cooperation/partnerships should be an integral part of effective crime prevention, given the wide-ranging nature of the causes of crime and the skills and responsibilities required to address them. This includes partnerships working across ministries and between authorities, community organizations, non-governmental organizations, the business sector and private citizens.
4. Sustainability/accountability Crime prevention requires adequate resources, including funding for structures and activities, in order to be sustained. There should be clear accountability for funding, implementation and evaluation and for the achievement of planned results.
5. Knowledge base. Crime prevention strategies, policies, programmes and actions should be based on a broad, multidisciplinary foundation of knowledge about crime problems, their multiple causes and promising and proven practices.
6. Human rights/rule of law/culture of lawfulness. The rule of law and those human rights which are recognized in international instruments to which Member States are parties must be respected in all aspects of crime prevention. A culture of lawfulness should be actively promoted in crime prevention.
7. Interdependency. National crime prevention diagnoses and strategies should, where appropriate, take account of links between local criminal problems and international organized crime.
8. Differentiation. Crime prevention strategies should, when appropriate, pay due regard to the different needs of men and women and consider the special needs of vulnerable members of society.

In essence, the principles laid out in the *Guidelines for the Prevention of Crime and the Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention* (1995) establish the normative basis, stressing the importance of the rule of law and respect for human rights, of the social and economic inclusion of populations, whatever their status and background, and the importance of ensuring that the particular needs of vulnerable minorities, as well as gender differences, are taken into account. They also emphasize that crime prevention action should focus on local communities and that it should be conducted through partnerships across government sectors and with civil society and the participation of communities. It should also be sustained and accountable, rather than short-term, and based on sound, evidence-based practice.

## 1. 2 The model of the local safety audits for any kind of crime: In particular women safety audits

A local safety audit is a local, inclusive and participatory action evaluation of a certain space where victimisation might take place (being property crime or other kinds of crime). Any local safety audit will consider the following factors:

- 1) Environment: Size of city/space, land use, economic structure, political situation.
- 2) Demography: Total population, gender balance, age structure, ethno-cultural diversity, employment/unemployment.
- 3) Crime and disorder: Offence types, occurrences, offenders, victims, targets, distribution.
- 4) Impact and economic costs of crime: On individuals and communities (such as violence-related injuries), demand on hospital emergency services, value of property stolen, cost of security and justice.
- 5) Perceptions: Of risk, vulnerability, police, justice, and other services. Among risk factors, we can find relative poverty, violence, growing up in care, dropping out of school and mental illness.
- 6) Services: Providers, range, quality, access, usage.
- 7) Initiatives: Existing projects and programmes, effective practices.
- 8) Stakeholders: Interests, capacities, resources.

In particular women's safety audits will be examined as a model for property crime prevention that entails social prevention and avoids stigmatising neighbourhoods and populations, usually because of fear of crime, caused by general petty property crime, but also physical and sexual violence<sup>154</sup>.

### 1. 2. 1 Introduction: Framing objectives within interdisciplinary critical victimological theory

*Women's Safety Audits* (WSA) are a participatory tool that enable women to assess the safety of a place from their own perspective (FVI 2010a, p. 13). In the Basque Country, activists prefer the terms "fear maps" or "maps of the forbidden city" (Aldasoro and Sanz del Pozo 2002), as well as *Local Safety Audits* (LSA) or local security diagnosis with a gender perspective (Jauregi 2012). A critical account of the recent political, social and academic interests in measuring women's insecurity in Basque cities and towns is presented by connecting the concept of intersectionality to critical Victimology. We contend that some of those interests might result in managerialism as a set of techniques and practices which realign relations of power within the penal system in an era of inequalities in a smaller state (McLaughlin 2001, p. 169).

The global use of the term *intersectionality* constitutes an attempt to capture "the interdependency of different categories of inequality" (Kron and zur Nieden 2003, p. 5)<sup>155</sup>. One of those categories is gender, but many others relate to additional concepts and disciplines beyond gender studies. We argue here for an interdisciplinary approach - coming from critical Victimology (Walklate 2007)-, in order to understand the interdependency of inequalities in relation to security at the local level.

In WSA women are conceived as potential victims but victim is not a value-free concept. Critical victimologists warn us about the risk of taking victims as a monolithic and uniform category as opposed to considering the offender category. What critical victimologists call *concurrency of vulnerability factors* can be related to the term *intersectionality* in gender studies (DeKeseredy 2015). What critical victimologists refer to as *recovery and resilience factors* can be translated as *empowerment contexts* in

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<sup>154</sup> This section reproduces Varona (2015).

<sup>155</sup> These authors quote the work of Kimberlé Crenshaw (1991), *i. a.*, and value the earlier debate on different race power relations in the United States and Europe.

gender studies. Among these contexts, social prevention is important (Slocum et al. 2013). By contrast, increasing pressure for spatiotemporal computer analysis of crime can be observed in police management and criminological research. This kind of analysis focuses on situational crime prevention ignoring the unequal distribution of security in time and space. Critical Victimology tries to approach this inequality by examining the concepts of fear, victimisation and space<sup>156</sup>.

Different social categories can be seen “as tools to describe and make visible the production and reproduction of (power) relations and asymmetries, as well as their interdependencies” (Kron and zur Nieden 2003, p. 6)<sup>157</sup>. Micro, meso, and macro contextualization is needed to understand how victimisation inequalities are linked to criminalisation and crime control stigmatization (Walklate 2007). This view could avoid contributing to the naturalization of so-called hot spots and their correlated victimisation maps where fear can be seen as an anticipated form of victimisation.

Maps of fear of crime in the Basque Country might not well represent the plurality of women’s perceptions and experiences because they take for granted the concepts of ‘crime’ and ‘victim’ without integrating other social data. Despite their deficiencies, these maps are being promoted by local authorities of different political parties in what can be called merely symbolic participation. Our line of argument takes into consideration previous studies based on literature review and empirical research on fear of crime, WSA and LSA within the context of the Basque Country (Author 2011, 2012a, 2012b, 2013). There we used a broader content analysis of fear maps elaborated in the Basque Country, focus groups with local police members, and interviews of experts in the criminal justice system, along with activists of the local community<sup>158</sup>.

### **1. 2. 2 Background of Women’s Safety Audits: Connecting theory with women’s grassroots movements in the city**

Current developments of Community or Local Safety Audits (LSA) (Cavanaugh 1998) originates from the Canadian Women Safety Audits (WSA), initiated at the end of the 1980s by the Metropolitan Action Committee on Violence Against Women and Children (METRAC) in Toronto. WSA makes use of a more participatory and an apparently less technological methodology than LSA when making maps relevant to women’s safety in concrete urban areas.

The pioneering work of METRAC (1987; 1992; 2006; Michaud and Chappaz 2001; Whitzman 2007) was based on three assumptions:

- a) women are experts on their own security,
- b) local actions are needed,
- c) partnership between local governments and women’s organizations should be promoted.

Women safety audits were envisaged as a way to diagnose women’s safety in a specific town or neighbourhood. The final product should be a report with the results analysing focus groups and exploratory walks. Exploratory walks in the city aim at gathering

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<sup>156</sup> Critical cartography is also helpful in conceptualizing space. Cartography is the science and art of map making to represent reality. More and more digital cartography seems closer to reality, but “the menu is not the food.” Given the enchantments of the digital visual culture, it is easy to overlook this fact (Harley 2001). This is particularly true regarding maps which claim to reflect fear of crime or unsafety in cities and towns. The maps contain different notions and assumptions of gender, equality, crime and/or victimisation.

<sup>157</sup> Kron and zur Nieden refer to (post-)colonial entanglements and propose working with the concept of diaspora as developed by different authors (2013, p. 9). In the case of Angela Davis (1981), she “demonstrates how taking into account different and multiple perspectives can result in a diasporic form of alternative and non-essentialised history writing”.

<sup>158</sup> Details on the methodology can be found in the quoted works of the author.

women's everyday experiences regarding insecurity. Thus certain places prone to aggressions or harassment can be identified. The final objective is women's inclusion and equality in public spaces.

WSA have been promoted in different countries by networks like *Femmes et villes international (FVI)/Women in cities international (WICI)*. WICI is a not-for-profit network founded in Montreal in 2002 (FVI 2003; 2006; 2007; 2008; 2009; 2010a; 2010b). The Organization for Economic Co-operation and Development (OECD) and UN-Habitat conferences in Paris (1994) and Istanbul (1996) have favoured a network of researchers, activists and practitioners beyond Canada. Women's safety audits have been used as a tool for empowerment and change in the city. WICI has collaborated with the *International Union of Local Authorities* and has organized international conferences on the safety of women since 2002.

Throughout time, WICI "has also embraced a broader concept of women's safety beyond safety in public space, extending its focus to work with girls, and on a range of issues including diversity and disability, and women's access to water and sanitation"<sup>159</sup>.

*Femmes et villes international* has fostered training sessions, materials and publications on WSA (2012a; 2012b). Different United Nations agencies, such as the United Nations Human Settlements Programme (UN-HABITAT 2007)<sup>160</sup>, the United Nations Development Programme (UNDP) and the United Nations Development Fund for Women (UNIFEM)<sup>161</sup>, have also promoted general and women's safety audits in different parts of the world (Massolo 2005).

In terms of managerialism, the gender perspective has dissolved in relation to other related local police led initiatives focused on situational crime prevention through environmental design (CPTED). In connection with the broken windows theory, CPTED theory born in the USA in the 1970s and has also taken root in the Basque Country and Europe overall with greater emphasis recently<sup>162</sup>. Following rational choice and opportunity theories in criminology, CPTED seems more centred on a technological approach rather than gender<sup>163</sup>.

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<sup>159</sup> Extracted from <http://www.femmesetvilles.org/index.php/en/about-us/mission>. One of the latest *main projects developed by WICI is the "Gender Inclusive Cities: Increasing Women's Safety by Identifying and Disseminating Effective and Promising Approaches to Promote Women's Equal Access to Public Spaces" (2009 – 2012)*. Funded by the UN Trust Fund in Support of Actions to Eliminate Violence Against Women, it has been administrated by Women in Cities International (WICI) and has been implemented by four project partners: International Centre and Network for Information on Crime in Dar es Salaam, Tanzania; *Jagori* in Delhi, India; *Information Centre of the Independent Women's Forum* in Petrozavodsk, Russia; and *Red Mujer y Habitat de América Latina* in Rosario, Argentina.

"Gender Inclusive Cities seeks to identify the factors that cause and perpetuate inequalities and exclusion, as well as the policies and programme approaches that enhance women's inclusion and right to the city" (extracted from [http://www.wikigender.org/index.php/Women\\_in\\_Cities](http://www.wikigender.org/index.php/Women_in_Cities)). See also Haniff-Cleofas and Khedr 2005).

<sup>160</sup> UN-Habitat took into account the work developed by governmental and private agencies such as the US National Council for Crime Prevention, International Centre for the Prevention of Crime in Montreal, the European Forum for Urban Safety and Crime Concern in England. See Bodson (2008) and European Forum for Urban Safety (2000; 2007).

<sup>161</sup> Now United Nations Entity for Gender Equality and Empowerment of Women (UN-Women). See Zonta International Foundation and UNIFEM (2008).

<sup>162</sup> On the impact in EU standardisation regulations, see the technical requirements for urban planning and buildings of the EU Committee for standardisation. According to this view urban planning should include a reflection on hot spots and specific requirements on design that prevents crime.

<sup>163</sup> Cfr. Shaw and Andrew (2006); Vargas (2007); Whitzman (2008a; 2008b); Shrader (2011); and Naredo and Praxágora Cooperativa (2010). According to the web page of its international association (see at <http://www.cpted.net/>), Crime Prevention Through Environmental Design (CPTED) is defined as "a

### 1. 2. 3 Development and impact of the so-called maps of fear in the Basque Country within a climate of managerialism and punitivism

Since the 1980s a gender perspective in urbanism has been present in Spain via different NGOs activities, political agencies and academic research (Sánchez, Bruquetas and Ruiz 2004). This perspective grew from urbanism as a new theory and practice of planning and living which originated in the USA, as expressed by Jane Jacobs' "eyes on the street"<sup>164</sup>. All these initiatives have come from local equality for women and urban planning departments rather than the local police.

In 2010 the Housing Department of the Basque Government edited a methodological handbook of urban analysis with a gender perspective<sup>165</sup>. In order to approach this perspective, it was key to have some local women participate. The handbook synthesized the local experience of fear maps in the Basque Country starting in the nineties.

The handbook was also meant as part of a public drive to use exploratory walks and participatory processes to evaluate "the actual quality of the public space" (Albeniz et al. 2010). Partnerships were encouraged through the collaboration of women, politicians and public officials in the municipal areas of equality and urbanism.

Basque women's fear maps were developed following the Canadian experience of women's safety audits and the non-binding international declarations on women's rights to the city (Harvey 2003)<sup>166</sup>. This trend can be related to the guides and tools of different UN agencies and NGOs listed previously. They contribute to the analysis of multiple data on safety for designing and implementing concrete local policies for women's empowerment.

All fear maps in the Basque Country have included women's walks to identify places of insecurity or vulnerability areas with the help of photographs, paper records, or digital maps of their community<sup>167</sup>. Most of those areas refer to streets with insufficient street lights; untidy and lonely places; spaces with a lack of visibility; or places where social groups meet, usually related to bars, drug dealing and sex trafficking. Mobility, family care, and other issues concerning street order also arise. Perceived problems are discussed with other professionals and practitioners. Finally, a report is delivered in order to influence the political agenda on urban planning and design.

### 1. 2. 4 Fear maps uneasy relationship with victimisation and fear surveys

Any study on insecurity should consider whether gender is a main or another demographic characteristic (Henson *et al.* 2010)<sup>168</sup>. Until now there has not been a clear

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multi-disciplinary approach to deterring criminal behavior through environmental design. CPTED strategies rely upon the ability to influence offender decisions that precede criminal acts by affecting the built, social and administrative environment". Cfr. the European Designing Out Crime Association (e-doca) on situational crime reduction in partnership theory (SCRIPT). This perspective proposes that competence on crime prevention should engage urban planning and design, as well as the media.

<sup>164</sup> The author of the classical *The Death and Life of Great American Cities* (1961) referred to the need of visibility and diversity in the use of public space as well as the promotion of inclusive social cohesion. These three elements should be related. Visibility is not enough if we recall the indifference shown in the New York Kitty Genovese case. Cfr. Decoin (2010).

<sup>165</sup> *Manual metodológico para la realización de mapas de análisis urbanístico desde la perspectiva de género y vida cotidiana de la ciudadanía* (Albeniz *et al.* 2010).

<sup>166</sup> This international influence on Basque projects has been effective nevertheless the small-sized and rural character of the villages and towns developing fear maps.

<sup>167</sup> See an example in annex. In the case of digital maps, due to anonymity, it cannot be verified the participant's gender.

<sup>168</sup> According to their empirical study with students, gender's effects worked largely through delinquent lifestyle. These results allow the authors to discuss the possibilities of an age-graded and gendered routine activity theory. Following Henson *et al.* (2010, pp. 307-308):



link between Basque maps of fear and victimisation surveys<sup>169</sup>. This can be explained because of the divergent development and approaches of each tool. This is an uneasy relationship. The maps of fear hold a different origin and perspective compared to the few victimisation and fear of crime surveys that have been mainly undertaken for the general population in the Basque Country. Notwithstanding the diversity of maps of fear, we have structured those differences in the following table.

|   | <b>Maps of fear</b>  | <b>Victimisation and fear of crime surveys</b>             |
|---|--|--|
| <b>Objective</b>                              | -Intervention through empowerment regarding women's insecurity/fear in a concrete city or town                           | -Quantify mostly general population perceptions            |
| <b>Key stakeholders</b>                       | -Women's associations in the community, local department on gender equality, Housing Department of the Basque Government | -Universities, National Institute for Statistics, Eurostat |
| <b>The concept of crime and victimisation</b> | -Mainly violent aggressions on the street  | -Interpersonal crime in the public sphere                  |
| <b>Perspective</b>                            | -Feminist perspective within urban planning and design (new urbanism)  | -Victimology and Environmental Criminology                 |
| <b>Main methodology</b>                       | -Participatory action research   | -Quantitative studies, with                                |

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*“Thinking about gender specifically, scholars have drawn upon the principle of homogamy in suggesting that women (girls) are at lower risk of victimisation because they engage in lifestyles with less risky (i.e., lower-offending) groups, namely those consisting disproportionately of other females (Cohen et al., 1981; Jensen & Brownfield, 1986; Lauritsen et al., 1991) ... On the one hand, there have been several studies of European adolescents suggesting that risk factors for victimisation—unstructured leisure, aggression, and alcohol use, in particular—are similar for males and females (Bjarnason et al., 1998; Pederson, 2001). On the other hand, several studies of U.S. adolescents and young adults have challenged the notion of nongendered, generalizable applicability of routine activity theory”.*

Drawing on feminist and routine activities perspectives, the findings of Xie, Heimer and Lauritsen (2012) show that “changes in the status of women have both positive and negative associations with violence victimisation, and that comparative analyses of different types of violence are necessary for clarifying the sources of violence against women”.

<sup>169</sup> Cfr. some security surveys developed by the Interior Department of the Basque Country and the fear studies developed through personal interviews in 2003 in Bilbao, Vitoria-Gasteiz and Donostia-San Sebastián by San Juan, Vergara and Germán (2005) and in Donostia-San Sebastián by San Juan and Vozmediano (2009). These authors related personal fear with neighbourhood issues and point out how risk perceptions are lower at the cyberspace.

|                       |   |  |
|-----------------------|---|--|
| <b>and techniques</b> | -Exploratory walks<br>-Use of photography and paper and digital cartography   | representative samples, via telephone or personal questionnaires<br>-crime or fear of crime mapping through GIS for computer spatiotemporal crime analysis<br>-maps are not open to public participation or consultation |
| <b>Impact</b>         | -The results have to do with other issues beyond crime<br>-Political impact and media coverage<br>-Looking for public participation<br>-Follow-up relevance | -Scarcity of surveys and studies<br>-Inconsistent results<br>-Limited political impact and media coverage  |

*Table 9: Map fears and victim surveys*

Thus we have different tools to measure security that should be related in order to broaden the academic and public debates. However, integration is difficult due to the divergent assumptions in understanding the concept of security. These considerations include the stakeholders' role and the methodology. Many victimisation and fear surveys neglect to consider the relevance of women's participation through a qualitative methodology. General local safety audits also risk losing a true gender perspective.

### **1. 2. 5 Critiques of fear maps through the apparent fear paradox in two case studies: Contrasting maps of fear with police data and other social surveys on urban vulnerability**

Fear maps cannot represent the broad plurality of women's perceptions and experiences including simultaneous, previous, or successive offending and victimisation experiences<sup>170</sup>. They cannot visualize domestic violence, organized or white-collar crime (Szockyj and J.G. Fox 1996), cyber violence<sup>171</sup> or victimisation in custodial

<sup>170</sup> According to some research:

- "Women in prison have high rates of sexual abuse victimisation histories...
- Penal environments are designed and built with an ethos of power and control and are often retraumatising for female offenders with a sexual abuse victimisation history...
- Further research is required to test how the implementation of the key frameworks of trauma-informed care and practice, and gender-responsive frameworks would occur" (Stathopoulos *et al.* 2012, p. 1).

Cfr. the link between the sexual exploitation of young women and their offending behaviours in order "to develop new child-oriented strategies considering these girls primarily as victims rather than as criminals", as studied by Phoenix (2012).

<sup>171</sup> Even though there are studies concluding the opposite (Adam 2005), in the study of Hinduja and Patchin (2008), no statistically significant difference was found in victimisation by cyber bullying in relation to gender. They consider:

settings and other kinds of total institutions. Some maps might even exacerbate crime or victimisation stereotypes and stigmatize certain neighbourhoods and populations. This is also the case for other emerging social minority safety audits.

In theory, participation and social trust appear as key elements for current governance in the European context of crisis. Nevertheless, there is a risk of rhetoric use for political purposes. Politics is more related to fear of crime maps for reasons including:

- a) their promotion comes from local governments,
- b) they are designed for public participation, visibility, follow-up and impact. All political groups are in favour of any gender-friendly perspective and maps obtain media coverage<sup>172</sup>.

Because of the political and media manipulation of fear of crime and victimisation, there is a risk that the emerging women's right to the city is expressed as a right against others. There is also a risk of naturalization of hot spots through an ontology of place instead of emphasizing social relationships at different levels, which include power unbalances and inequalities<sup>173</sup>. Finally, by concentrating on street crime or domestic violence, many forms of white-collar crime are underestimated.

Inclusive urbanism, as the reinterpretation of Jane Jacobs' new urbanism, is a concept that can alert us to those risks. Inclusiveness understood as interdependent and indivisible human rights makes it easier to view the right to the city as a right along with others, especially with different populations. The right to the city refers to public/private and offline/on line human relationships.

Fear maps from a gender perspective have to face different dimensions and elements of the complex, and more frequently political concepts of "fear of crime", insecurity and victimisation<sup>174</sup>. Critical views should include that women's interests and expectations are not just the opposite of men's and that women's interests themselves are very diverse and dynamic. Insecurity is a much broader concept beyond fear of crime, which considers equality in local or urban security that entails gender, ethnic, employment, housing, social and political issues. Finally, victimisation refers to the actual process of having suffered a crime.

Most of the Basque projects focus on the fear of crime, but they do not tell us much about insecurity and/or victimisation. Some try to combine local and global scales and triangulation of quantitative and qualitative participatory techniques. However, they are instruments entailing some questionable assumptions within the socio-legal construction of crime, the current context of passive social unrest, racism, xenophobia and punitive security policies in Europe (Sessar et al. 2004; Sessar, Stangl and van Swaaningen 2007; European Union 2010). Thus political, media and market use of insecurity is translated into punitivism.

The gender variable does not appear determinant in actual victimisation according to international victimisation survey results, which usually concern property crimes in public spaces<sup>175</sup>. However, gender is thought a predictive variable for the fear of crime.

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*"that certain demographic characteristics such as race and gender are rendered less relevant in an environment where interpersonal communication occurs predominantly through electronic text. An alternative explanation is that historically less powerful groups may be more powerful (or at least not disadvantaged) when on-line in offending or victimisation by gender or race".*

<sup>172</sup> There was a political and public limited debate in the case of the city of Vitoria-Gasteiz when choosing between a general local audit with a gender perspective or a specific fear of crime map for women. See media coverage related to politics in the case of Irun in *Bidasoaldia.com* 27.11.12.

<sup>173</sup> Cfr. Weisburd, Groff and Yang (2012) and Zimring (2012).

<sup>174</sup> Including hidden, indirect, secondary, collective victimisation...

<sup>175</sup> There are specific local, state and international victimisation surveys on concrete crimes including violence against women, as well as specific locations surveys, taking into account ethnic variables.

It is considered irrational by some that people fear victimisation compared to the actual victimisation experiences (the so-called fear paradox). However, some maintain that neither official statistics nor victimisation surveys, which are patriarchal, and lack a gender perspective, reflect the extension of women's victimisation (Falu and Segovia 2007, Stanko 1990). Other researchers point out the relevance of the so-called altruistic fear of crime, that is, women's fear for relatives' victimisation (Chadee, Austen and Ditton 2007).

In any case, men and women are educated differently in terms of fear from childhood. Moreover, women tend to express fear more openly than men. This is especially remarkable when the sources of fear are different, e.g., women fear men and sexualized violence (DeKeseredy 2015).

Despite extensive global research on the fear of crime paradox, we lack consistent theories explaining it. In part, this is because there are numerous variables. Also, methodological tools to measure objective and subjective security have many limitations. Moreover, the critique of Narváez of the fear paradox concept must be considered (2009). She points out that it may be a paradox because some of its premises and/or derived conclusions are invalid. According to her, most research has focused on beliefs about crime rather than on the emotion of fear. The questions used in surveys to measure fear could reinforce classical notions of crime.

The case studies derived from the results of our research in two LSAs. They were developed in the Basque cities of Barakaldo and Irun in 2011 and 2012, respectively (Autor 2012a, 2013)<sup>176</sup>. We used a qualitative methodology. Our data sources came from interviews and focus groups to different criminal justice stakeholders, including some victims of gender violence, police observation, and secondary data analysis (such as police records, social surveys, fear maps and Internet news on crime in those cities).

Even though there are limitations with our LSA, some results can be underlined in relation to our argument. Despite an increasing interest in measuring violence against women, promoted by different international agencies, available scientific and reliable data on objective and subjective insecurity is lacking in the Basque Country. By analysing Basque autonomous police data, around 10% of registered crimes cannot be located on a map. This percentage is higher if we consider cyber and transnational crime together with hidden victimisation for all sorts of criminality<sup>177</sup>.

According to social surveys, insecurity or fear related to crime is not a major concern in the Basque Country, but it is a social concern in certain neighbourhoods. As in other countries, immigrant women are over-represented in Basque official statistics as victims of partner or former partner violence. This is particularly the case of women coming from Latin America. Obviously and again, hidden victimisation of women is high, especially for certain crimes –including white-collar crime and transnational crime- and for certain women, in public and private spheres.

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Combining different data sources, including victimisation surveys, the HBCU-CSA Study (Black College and University Campus Sexual Assault) was the first to generate prevalence estimates of sexual assault on a collection of HBCU campuses. The study included the responses to sexual assault by campus law enforcement and service providers (Krebs, Lindquist and Barrick 2010).

<sup>176</sup> In the case of Irun, we will not consider the aggressions, sometimes by women against women, in relation to the *Alarde*, the major festivity in the city with controversy on gender equality in its parade.

<sup>177</sup> According to the Basque Government Unit on Gender Violence 2012 study, *La violencia machista contra las mujeres en la CAPV: Percepciones, incidencia y seguridad*, 75% of interviewed women declaring having suffered gender violence did not report it. 9 out of 10 interviewed women defined their neighbourhood as very or quite safe, but 22.4% felt unsafe walking alone at night. Following that study, insecurity perception seems to increase in big cities and with young women.

As in other countries too, men who commit violent and sexual crimes against women, usually have relationships with the victims<sup>178</sup>. In the process of victimisation, the men normally take advantage of the victims' various vulnerability factors.

Fear maps focused on women in Barakaldo and Irun (Basque Country) are a good example of the complexity of partnerships among different stakeholders: municipal political units of urbanism, equality and security, women's groups, etcetera. Moreover the social legitimacy of fear maps stems from participation and empowerment, terms used in the Basque to describe gender equality law.

Fear maps in Barakaldo and Irun have been described by women activists as a way of empowering women in the city, but no external evaluations verified this description. They are also limitations in maintaining the diversity of women's interests. Despite the theoretical origin –considering structural factors and inclusiveness-, the final recommendations are centred on basic situational crime prevention.

In general, and considering the two cities, fear maps, social surveys on urban vulnerability –fostered by the EU<sup>179</sup>- and police statistics, do not completely explain the so-called hot spots or problematic neighbourhoods. This is in part due to the lack of adequate consideration of the density and mobility of the population in those neighbourhoods.

Fear maps in Barakaldo and Irun show certain stigmatized neighbourhoods, mainly associated with the presence of some ethnic minorities, and certain activities of drug dealing and sex trafficking, as LSA specific surveys with stakeholders demonstrate.

LSA specific surveys with stakeholders show that insecurity is not a major problem in the analysed cities and that the concept of insecurity is more related to other issues, such as unemployment and the economic crisis in general, rather than crime. Regarding victimisation prevention, LSA specific surveys with stakeholders show that many of them trust technology (e.g.: video surveillance) beyond the possible violation of individual rights. However, fear maps in the Basque Country have underlined their more inclusive option more related to Jane Jacobs' "eyes on the streets" -that foster social capital integrating the gender perspective- rather than the CCTV surveillance. In any case, we might need democratically engaged eyes, not just eyes.

Finally, even though the current European trend of criminalization of "the other", both analysed Basque cities show factors of democratic social cohesion and resilience linked to their history of Spanish and foreign immigration in their area. However, the risk of political manipulation of fears is also present. This is particularly true concerning the fear of sexual assault by reinforcing criminal stereotypes (corresponding to young male immigrants coming from North Africa who lack resources).

### **1. 2. 6 Final remarks**

According to Seymour (2011):

it is crucial to move beyond a focus on the gendered nature of violence, to instead think about the ways in which understandings of violence reflect, embed, and reinforce gendered discourses and the implications this has for the ways in which 'violence' is—and isn't—defined, identified, explained and addressed. This demands the (re)gendering of men; a particularly pressing issue for criminology which, in its relative neglect of men's experiences of violence, has failed to theorise men's overwhelming involvement in violence, other than to say it is so. As was observed some time ago by Stanko and Hobdell, the 'image of the invulnerable man is embedded within criminology theory' (Stanko and Hobdell 1993, p. 401): it seems that little has changed in this regard".

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<sup>178</sup> On the culturally constructed rape myths, see Bourke (2007).

<sup>179</sup> See Tecnalía (2012).

Fear is an emotion transformed into a social concern easily manipulated by media and politics. What might seem a gender perspective might in fact be the opposite. Diffuse fears can be communicated as external ones by identifying scapegoats (Bourke 2005). Cross perspectives<sup>180</sup> on security do not have to mean women's invisibility. A right to security is an interdependent and limited right of complex dimensions. Women's interests expressed as formal and real equality, within the right to the city, should not be constructed or implemented as a right against other groups. Interdependence is connected to a vulnerability which is inherent to the human condition. Understanding its diversity, dynamism, and intersections with multiple factors is important in the task of empowerment beyond paternalism.

There are examples of emerging issues in gender violence research where better explanations of the intersection of issues and contexts are required (Bartels 2011). The best contribution of Basque fear maps, WSA and LSA, in contrast to complementary quantitative victimisation and fear surveys, lies in *participatory action research*, which seems a promising option in relation to "responsive nodal governance" (Braithwaite 2008)<sup>181</sup>. It also opens the debate on the intersections of responsibility, and competence for community crime prevention (Tilley 2013) beyond privatization in times of xenophobia and imposed austerity.

Participatory action research in local security issues, related to women's rights, together with theory triangulation, might offer a methodology that could mean a translational project (aimed at local and global action and the construction of a common knowledge fund). Here many apparently insignificant gestures and attitudes that we can observe through police and other agencies observation or ethnographic work, are relevant. This can contribute to critical and creative thinking of the concept of "local public space", always defined by conflicts. Triangulation of sources and methodology is possible by considering micro, meso, and macro factors preventing crime, and influencing victims' recovery and healing. This is true too for victimisers' reintegration and on community inclusive needs for safety. This will help us to test theoretical operational concepts (e.g.: trust) and frameworks to explain the relationship between the current economic and social crisis and crime/victimisation/social control trends that might be different for diverse groups of women.

Potentialities of integral WSA face difficulties such as the lack of scientific rigour in relation to research independence; the absence of coordination among all participants regarding resources, timing and interpretation of results; the sustainability of primary and secondary resources; the inability of explaining contexts by focusing only on symptoms; the use of indicators or criteria on safety, which do not reflect social interests beyond material ones; the mere appearance of participatory and inclusive focus; the imbalances in the interdisciplinary work; the tensions and power struggles or competition brought about by that kind of work at the local level<sup>182</sup>; and the difficulties in overcoming political correctness in relation to ethnic minorities and violence against women.

The example of *Femmes et villes international* make us believe that is possible to work together from an activist participatory approach, and a scientific one, even though there

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<sup>180</sup> *Transversalidad* in Spanish.

<sup>181</sup> On the democracy deficit at the intersection of crime, race, and poverty, cfr. Moore (2012).

<sup>182</sup> "Every police or institution is interested in how to sell to the public positive and immediate results in its competence area" (excerpt from an interviewed policeman in the LSA of Irun in 2012). There are four different police corps working in the Basque Country. French police collaboration should be considered in border areas as well.

will always be ways to improve. The international network resulted from the *Gender Inclusive Cities Programme* (FVI 2011a; 2012a; 2012b) determined gender violence should be approached from an equal right to the city perspective,<sup>183</sup> which includes free access and enjoyment of public spaces and participation in decision-making around public space. According to its quoted publications, FVI proposes participatory action research to explore “the everyday experiences of a diversity of women and girls and the community through street surveys, focus group discussion and women’s safety audits” in order “to obtain comprehensive and reliable, context-specific data on gender inclusion and exclusion regarding gender-based violence”.

We live with an increased emphasis on crime mapping, mainly by the police. Problems arise with the data that informs the crime maps, due to the hidden victimisation and datasets<sup>184</sup>. Additionally, the assumptions in what the maps represent and the reality of our digital world as representing objective and precise information is questionable. Some legitimacy arises from public participation, from the science of criminology and/or the technology of digital cartography<sup>185</sup>.

We have to analyse that legitimacy. We need to promote interdisciplinary knowledge and practices to better understand the complex issue of mapping women’s perceptions and experiences of a lack of safety in cities and towns, which is ultimately linked to global insecurity. As said at the beginning, our thesis is that maps of fear of crime in the Basque Country do not represent well the plurality of women’s perceptions and experiences. However, all political parties at the local level seem to promote them without any epistemological and phenomenological reflection. We cannot obtain consistent results from the analysis of the conclusions by urban designers, architects, geographers, computer analysts, criminologists, victimologists, feminist activists, criminal justice practitioners, etc.<sup>186</sup>. The use of different expertise language might create the impression of scientific knowledge, but there are a lot of questions currently that need to be answered with a humble “we don’t know and we might not ever know”. Maybe we have compartmentalized the multidimensional experience of women under theories and disciplines that have nothing to do with their real lives.

We can conclude that fear of crime is an imposed concept coming from the Anglo-Saxon criminological discipline influenced by a social and political moment. Talking of

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<sup>183</sup> This concept was developed by French sociologist Lefebvre (1968) in relation to a critique to increasing privatisation of urban spaces. This right was recognised in the 1995 European Charter for Women in the City, promoted by the European Union. As it has been mentioned before, international organisations fostering a gender perspective regarding security have also employed this term.

<sup>184</sup> In the case of sexual violence against women in the EU, the report by the European Institute for Gender Equality (EIGE) (2012) concludes that:

“▪ There is a lack of available and systematically collected data referring specifically to sexual violence.  
▪ Most often, criminal statistics are not sex-disaggregated, or separated by types of sexual violence, making it impossible to discern the cases of sexual violence committed against women...  
▪ Official criminal statistics on sexual violence are not easily accessible, centrally stored or published in the countries, but rather scattered among various state actors...”. See [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Crime\\_statistics/es](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Crime_statistics/es). Cfr. data from the US in Planty *et al.* (2013), with reference to urban, rural and suburban victimisation contexts. According to McIlwaine (2013): “the existing data on gender-based violence makes it extremely difficult to make any accurate comparison between cities and the countryside and therefore it is more helpful to focus on the relationships between urbanization and gender-based violence”. According to her findings, cities might have greater opportunities for reducing violence. Cfr. Jiménez (2008), and Gracia *et al.* (2013) on partner violence in the Spanish city of Valencia.

<sup>185</sup> On the concentration of cyber cartography research in technical developments, rather than in theory, see Peterson (2003). For an example in the field of crime analysis, see, *i.a.*, Thangavelu *et al.* (2012).

<sup>186</sup> On the impact of evidence-based policing, see Sherman (2013). Cfr. Ekblom (2011).

insecurity seems more adequate in relation to victimological knowledge. Insecurity is growing, for women, and for the general population, but it is in reality more related to other issues than crime.

Theoretical and methodological pluralism and debate should be welcomed by acknowledging the impossible task of correctly quantifying fear and insecurity. By considering the possibilities and limitations of qualitative studies through participatory action research we could correct the misinformation. Researchers should move beyond paternalism in the use of the concept of fear of crime by bringing in the concept of resilience<sup>187</sup> within the scope of social relations ecology or public health where gender is considered related to other socio-demographic variables including age, disability or functional diversity, ethnicity, sexual orientation, economic position or any other factor for exclusion.

## 2. Key concepts to recap

(Women) safety audits  
CPTED  
Crime script analysis  
Diffusion effect  
Displacement effect  
Lifestyle theory  
Relative deprivation  
Situational/environmental prevention  
Victim prevention

## 3. Thinking Victimology

Watch the following video where restorative justice was applied to a property crime ([https://www.youtube.com/watch?v=6ih\\_IQ2MOpU](https://www.youtube.com/watch?v=6ih_IQ2MOpU)). After that, take a look to the following image (one of the first appearing if you google property crime) and apply the given tool box for a visual victimological analysis by considering the objective and subjective dimensions of victimisation:



*Image 80: Property crime. Source: <https://eu.usatoday.com/picture-gallery/money/2019/02/22/the-city-with-the-most-property-crime-in-every-state/39088973/>*

### *An open toolbox for a preliminary visual victimological analysis*

1. Where does this image come from? Who made it? When, where, why, how?
2. Where is it spread/broadcast? Is it part of more information in writing? Is it contextualised?
3. Which is its audience? How does that audience react? What impact does it have?
4. What kind of victimisation/suffering/harm/trauma portraits or tells us about? Is it an individual or a collective one? Who are the protagonists, main and secondary actors? In what landscape, scenario or context?
5. Does the image refer to or make us think about who is accountable or responsible for that victimisation? Who must felt concerned?
6. What kind of needs might be derived from that victimisation and for whom?

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<sup>187</sup> On the concept of resilient cities in relation to human security, see [Humansecurity-cites.org](http://Humansecurity-cites.org).



7. Who might be the victims? Are they (those victims, if any) expressing vulnerability, resilience, empowerment, recovery...?
8. What kind of fears are mobilised, if any? Who has the power or is in control, over whom or over what?
9. What is the observer's role (your, our role)?
10. Other possible questions to avoid blind spots?

#### 4. Applying Victimology

Use the following format to draft a research proposal on any aspect of property crime victimisation that might be of interest to you.

##### 1. Title

- Clear indication of your proposed research approach or key question

##### 2. Background and rationale

- the background and issues of your proposed research
- identify your discipline
- a short literature review
- a summary of key debates and developments in the field

##### 3. Research questions

Formulate them clearly, explaining as to what problems and issues are to be explored and why they are worth exploring

##### 4. Research methodology

Outline of:

- the theoretical resources to be drawn on
- the research approach (theoretical framework)
- the research methods appropriate for the proposed research
- a discussion of advantages as well as limits of particular approaches and methods

##### 5. Plan of work and time schedule

Outline of the various stages and corresponding timelines for developing and implementing the research, including writing up your research report.

##### 6. Bibliography

- a list of references to key articles and texts discussed within your research proposal
- a selection of sources appropriate to the proposed research

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## XVI. HIDDEN VICTIMISATION AND SOCIAL EXCLUSION: HOMELESS PERSONS AS VICTIMS

### 1. 1 Homelessness and victimisation: Micro, meso and macro perspectives



*Image 81: Homeless people as non-ideal victims*

Although aporophobia has been included within the aggravating circumstances of the Spanish criminal code, homeless people's victimisation keeps being a hidden one. Even if they suffer property crimes and violent victimisation, including hate crime, they are not ideal victims. Moreover, they are discarded in today's city centres, because they are spaces mainly for tourism. However, many studies point out the relationship of homelessness with child sexual abuse, domestic violence, gender violence, LGTBI discrimination (Arrels Fundació, w.d.), trauma and adverse situations. Homelessness seems related more to poly-victimisation (Cusimano et al, 2021; Novac et al., 2009; Nilsson et al., 2020) rather than to criminality and, yet, as we will see in the following sections, most local policies foster the vision of homelessness as a risk to the order in the city. Moreover, most homeless people that are victims of crime choose not to report it to the police,

### 1. 2 Homeless persons as victims of defensive urbanism policies<sup>188</sup>

#### 1. 2. 1 Glocalised order politics for socio-spatial struggles: Transnational security agendas, fear of crime and exclusion of "antisocial" populations in the tourist city

Security is an elusive notion created by different political, economic and moral entrepreneurs in given geographies and times of history. Let us take, for example, the case of Alan Turing, the British mathematician, a pioneer in computer science who, among other achievements, helped to shorten World War II by breaking Nazi codes. Later he was prosecuted for homosexual acts, labelled as a crime of "gross indecency"

<sup>188</sup> This section is taken from Varona (2021).

and obliged to accept chemical castration treatment to avoid prison. The consequences of this treatment have been related to his death, before turning forty-two (Copeland, 2004). In 2013 Turing was retroactively pardoned by Queen Elisabeth in a confusing application of the idea of pardon to someone who saved millions of lives and was later a victim of the abuse of state power. This might be an example of how important it is to reflect on who uses the notion of security, in what sense, against whom, and with what aims, so that the real meaning of security and its dynamics might become clearer from a critical standpoint on social control (Melossi, 2004; Garland, 2012).

In this contribution, we want to make more visible how local powers, influenced by globalised policies of zero tolerance (De Giorgi, 2005) and marginalisation of poverty, use the vocabularies of security to justify certain politics of abuse of power that end up causing more harm and insecurity against specific groups of human beings.

In this chapter we hold that the visual display of defensive urbanism or hostile architecture offers some access to observe a glocalised politics of inclusion and exclusion in the city centres of the Western world (Young, 1999). More specifically, this contribution argues, first, that macro-political economic trends, global migration and transnational environmental harm have glocalised consequences for the governance of the cities. In this way, inter-scales of socio-spatial struggles manifest themselves in cities, particularly in the tourist ones. Secondly, local governance seems to be informed by the broken windows theory and the zero-tolerance politics. This kind of politics is increasingly deployed in today's polarised societies where punitive populism is used in criminal and administrative law. Third, the concept of defensive urbanism encapsulates some of those ideas and can be analysed both from an architectural and a legal perspective reflected in some local ordinances. Finally, defensive urbanism can be contrasted with the idea of inclusive urbanism proposed by Jane Jacobs and applied in the context of the Basque Country in the so-called safety audits for women (Varona, 2015). Jacobs' legacy might help us to find some alternatives to the present politics where some segments of the population are thought of as disposable and erasable in the public space. Throughout this chapter, we try to move the topic of spaces understood as relationships (of authoritarian power or solidarity) from the margins of criminology to a place of centrality. Moreover, by re-zoning the category of space we want to make room for more critical views beyond mainstream situational prevention criminology (Jain, 2019)

About the general context of glocalisation, according to Swyngedouw,

'Glocalisation' refers to the twin process whereby, firstly, institutional/regulatory arrangements shift from the national scale both upwards to supra-national or global scales and downwards to the scale of the individual body or to local, urban or regional configurations and, secondly, economic activities and inter-firm networks are becoming simultaneously more localised/regionalised and transnational (2004, p. 1).

Thus, "both the scales of economic flows and networks and those of territorial governance are rescaled through a process of 'glocalisation'" (Swyngedouw, 2004, p. 1). The dramatic results of predatory capitalism (Mazzucato, 2018), provoking environmental harm, are unequally experienced at the local level. Many local and migrant populations cannot find a fair way of living together in the urban space. This process is accelerated in tourist locations under pressure to be presented as safe and clean. That notion of safety expels people labelled as dangerous or just disturbing and it expands the idea of growing antisocial behaviour or crime.

Today's main fears (economic inequalities, wars, forced mass migration and environmental devastation) are exploited by political and economic powers in what

Zygmunt Bauman (2013) called ‘liquid fears’<sup>189</sup>. Fear of crime can be understood within those liquid fears when some priorities in the security agenda of the European Union countries are considered (Prins, 2016). The European Union’s internal security strategy seems to be focused on terrorism and radicalisation, organised crime and cybercrime. The strategy is composed of the Council Conclusions of 4-5 December 2014 and the Council Conclusions of 16 June 2015, with the principles it outlines based on the Commission’s Communication *European Agenda on Security*, taking into account the European Parliament views. However, focusing on these crimes seems to leave minor crimes traditionally important for public opinion out of sight. There is a lack of a comprehensive democratic strategy for this kind of property and interpersonal crimes that keep filling the prison system in many countries. This leaves space for emerging extreme right parties to manipulate fears and myths among abandoned populations who have suffered in the recent economic crisis (Varona, Paz and Zuloaga, 2019) and keep living with its effects accentuated by the digital revolution.

Most proposals that appear for dealing with petty crime in cities can be considered short-sighted if they regard space only as a location for situational prevention techniques based on rational choice theories. As an example, the Cutting Crime Impact (CCI) Project wants to include “high impact petty crime and associated feelings of insecurity” as citizens’ priorities in security. This project is being delivered by the University of Salford (UK) in partnership with Law Enforcement Agencies (LEAs) and Security Policymakers from across Europe. Cutting Crime Impact (CCI) is a 3-year project (2018-2020) funded by the European Commission’s Horizon 2020 Programme. As is explained on its web page, the project works in the arenas of predictive policing, community policing, crime prevention through urban design and planning (CP-UDP), and measuring and mitigating citizens’ feelings of insecurity. CP-UDP seeks to embed “protective physical features and encourage pro-social behaviours through the design of a location”.

In the perspective of CP-UDP or CPTED (crime prevention through environmental design), we can find the idea of making products “crime proof” or secured by design as part of an actuarial and managerial vision (Scheerer, 2000) that includes a so-called multi-agency approach and vertical governance cooperation. In this realm of thought about crime, the concept of defensive urbanism has emerged informed by the broken windows theory developed in the 1980s in the US and the politics of zero tolerance deployed since then in many places in Europe. This trend has brought an increasing concern among critical scholars about the privatisation of security (Crawford, 2011).

### **1. 2. 2 Urban securitisation informed by broken windows theory and zero tolerance**

In this section, we will identify urban security, broken windows theory, zero-tolerance politics, and popular punitivism as practices of local governance in current European cities. As mention at the beginning of this chapter, the concept of security has traditionally oscillated between democratic and authoritarian states. However, we can find hybrids of authoritarian uses legally justified in democratic states. In principle, in democratic states, security means individual security, integrity or liberty from state abuses, particularly by police. By contrast, in authoritarian states security is more identified with public security or order in a more (exclusionary) collective and moralising sense. The adjective *national*, *military* or *public* is easily found before the word *security* and many times used, particularly in today’s counterterrorism (Human

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<sup>189</sup> Even if some differences exist in English between the words security (in principle, more related to the notion of crime) and safety, in this chapter we use these words as synonymous under that paradigm of liquid fear (Bauman, 2013).

Rights Watch, w.d.) and the fight against organised crime, in order to justify limitations (or violations) of human rights.

Recently, the United Nations Human Development Programme has shown an increasing interest in categorising security as *human*. This adjective encompasses globalised economic and environmental conditions. According to the United Nations, the human development approach was drawn up by the economist Mahbub Ul Haq and anchored in Amartya Sen's work on human capabilities. It is about,

...expanding the richness of human life, rather than simply the richness of the economy in which human beings live. It is an approach that is focused on creating fair opportunities and choices for all people (United Nations, w.d.).

Despite the appearance of the notion of human security as an alternative to authoritarian or private uses, the mainstream trend that we can observe in relation to urban securitisation, at least in Spanish cities, is a policy informed by the theory of broken windows and zero-tolerance approaches. These seem to grow an atmosphere of growing punitive populism fostering what has been called by Wolin (2010) as "inverted totalitarianism".

Broken windows can be defined as "a criminological theory which asserts that visible signs of crime and civil disorder, such as a broken window, snowball into an urban environment that encourages more serious crime" (Bell, 2019, p. 4). The interpretation and real implementation of the famous article by Wilson and Kelling (1982) on broken windows theory has been that aggressive policing against minor crimes, incivilities, and antisocial behaviour can prevent more serious crimes from occurring. Despite its controversial empirical test (O'Brien, Farrell and Welsh, 2019; Moskos, 2012), particularly in terms of racial and class disparity, this theory has been applied in many American large cities and also in Europe. Paradoxically, this theory served to integrate "an aggressive order maintenance focus from previous eras into community policing" (Bell, 2019, p. 6).

According to the Merriam Webster Dictionary, zero tolerance can be defined as "a policy of giving the most severe punishment possible to every person who commits a crime or breaks a rule". If we combine this policy with the theory of broken windows the result is an inflation of repressive criminal law that seems to betray the foundational principle of minimum intervention as stated in modern penal policy following Beccaria's Enlightenment thoughts (Redondo, 2009). Notwithstanding the consequences of this policy in terms of human rights, some authors have studied how residents of neighbourhoods with high rates of crime resist and construct their own strategies beyond zero tolerance politics (Walklate and Evans, 2019).

The quantitative and qualitative expansion of this policy, despite those consequences, can be partially explained because of the *milieu* of popular punitivism, born in some countries in the sixties and expanded in the post-9/11 world (Campbell, 2015, Makin, 2013). Popular punitivism creates and manipulates fear in relation to crime to justify an authoritarian response to victimisation where empirical research is devalued to sell to the public what is presented as an effective, tough and quick answer to social anxieties.

That atmosphere of popular punitivism has also promoted some elements fostering inverted totalitarianism (Wolin, 2010) defined as an emerging form of government where the accumulative process of discrediting democratic institutions leaves the citizenry politically apathetic in the face of potential abuses of power. Among the elements of this form of governance we can highlight fear, depoliticisation of solidarity and presentism, to be related to the concept of defensive urbanism explained in the following section.

Fear of certain global problems such as migration produces feelings of helplessness and fuels defensive individualism and social distance by creating scapegoats (Moser, 2004). Fear appears in part as a reaction to the reality of super-diversity understood as the dynamic interaction of “differential legal statuses and their concomitant conditions, divergent labour market experiences, discrete configurations of gender and age, patterns of spatial distribution, and mixed local area responses by service providers and residents” (Vertovec, 2007, p. 1025). Exclusionary identity politics flourish in the context of indifference in times of austerity (Berg, Gidley and Krausova, 2019).

In addition, charity or humanitarianism as a substitute for solidarity is sometimes used as a technique to depoliticise the public space (Rieff, 2003). At the same time, from managerial and actuarial ideologies of social work, technical words of empowerment itineraries are imported to social work in punitive and patronizing systems of social control (Hyde and Galpern, 2019). Thus, neoliberal individual enterprising projects for marginalised groups of the population appear as state responses complemented by the work of humanitarian organisations.

Finally, presentism in extreme capitalism favours not thinking about the consequences of gated communities and excluded populations; a short-sighted way of doing politics that does not take into account the middle and long-run perspectives (Crawford, 2011, Secchi, 2015, Ávila and García, 2015).

### **1. 2. 3 The notion of defensive urbanism from an architectural standpoint**

Defensive urbanism can be defined as a design strategy to exclude and remove a certain section of a community from a public space. In 1961 Pasolini’s movie *Accattone* presented the poor in the suburbs physically apart from the city centre making inequality evident despite the spatial urban distance. However, defensive urbanism is part of the aesthetics of zero tolerance policies (Arnold, 2019) in the city centre itself. It can be understood as local politics not for the ghetto or the suburbs (Wacquant, 2007), but for the city centre as a display for mass tourism.

From the ghetto to the inner-city, the periphery comes to the heart of the city. Part of the reaction to this is the so-called defensive urbanism or repressive architecture (Wagner, 2011). In 2018, Stuart Semple, a British artist, launched a global campaign against hostile design after his local council placed bars across benches to stop homeless sleepers lying on them. According to Semple, these actions are a way of policing public space. Moreover, “These designs legitimise the point of view that homeless people are the enemy. Instead, they need support, often with addiction or mental health.” (Shaw, 2018, p. 1).

According to Semple’s web page, an archive of photographs to denounce the use of hostile design all over the world by raising awareness,

Hostile designs are designs against humanity. They are made specifically to exclude, harm or otherwise hinder the freedom of a human being ... Ultimately the idea is that through awareness we can dissolve prejudice, influence planners and city councils and create a more inclusive welcoming public space for everyone (w.d.).

Examples of hostile design or defensive urbanism are urban furniture design to force people without homes out of the city centre, but it can also be addressed to young people, ethnic or cultural minorities (Selmini, 2016), and prostitutes or sex workers (Iglesias-Lucía, 2018, Sobrino, 2018). On Semple’s web page some photographs show us spikes attached to a doorway or ledge to prevent people from sleeping there. As Semple explains, defensive urbanism might take the form of bars or dividers on benches, to stop sleepers, wetting down areas susceptible to being occupied, or the use of annoying music in public space to prevent loitering.

Semple indicates how this practice of hostile design or defensive urbanism deploys prejudice and means investing public money in urbanism based on an exclusionary ideology. This practice has an unequal impact on poor people sending a visible message that they are unwanted. The result is “brutal looking public spaces” that hide the real causes of social problems and injustice. According to Semple (w.d.), “Those involved in designing against humanity, or funding designs against humanity are committing the worst possible design crime”.

In a parallel, Swain comments on a modern bench commissioned by the London authorities:

the Camden Bench has a special coating that makes it impervious to graffiti and vandalism. The squat, featureless surface gives drug dealers nowhere to hide their secret caches. The angled sides repel skateboarders and fly posters, litter and rain. The cambered top throws off rough sleepers. In fact, it is specially crafted to make sure that it is not used as anything *except* a bench. This makes it a strange artefact, defined far more by what it *is not* than what it *is*. The Camden Bench is a concerted effort to create a non-object ... I worry that the Camden Bench is a symbol of the freedom we've lost in our public spaces — the freedom to use these spaces as we wish. I also fear that it is an ominous symbol of the future of Britain, a world where contrarianism — whether it be sleeping, skateboarding, scribbling — is made not just illegal, but impossible. (2013, p. 1).

Defensive urbanism appears as an embodiment of aporophobic discourses (Cortina, 2000) against the poor, in the heart of the city, in a sort of shaming ceremonies for people stigmatised as infrahumans. The right to the city as expressed by Henry Lefebvre (1968) and used today as a critique to neoliberal urbanism is unclear about how to address problems of disenfranchisement (Purcell, 2014). However, in the context of this chapter, the right to the city of poor and marginalised populations is denied by the injustice of spatial and social exclusion that can be connected to the proposals for an urban revolution by David Harvey (2012) and Saskia Sassen (2010).

#### **1. 2. 4 Defensive urbanism in law: categorizing local order through ordinances**

Defensive urbanism can be pictured not only as a design practice but also as a legal one. As Spanish cities do not have legislative power in the realm of criminal law, local administrative law is being used to sanction what they define as subjects against local order. This legal practice can be connected to issues of human rights. Despite some constitutional jurisprudence correcting abuses in local regulations (Spanish Constitutional judicial decision 90/2012), administrative law does not have the same level of juridical guarantees as criminal law (Larrauri, 2007, Díez-Ripollés, 2014, Lasagabaster, 2018, Guillén, 2018).

In addition, local ordinances in times of extreme right parties governing some municipalities accentuate the problem of the merging of administrative and criminal law, mostly studied in the field of crimmigration (Stumpf, 2006), with the use of legal ambiguities in the definition, of prohibitions theoretically justified to fight against organised crime. Activities, like sex work or prostitution, are usually sanctioned with administrative fines but there can be an escalation to the crime of disobedience of authority. In any case, before the extreme right party VOX emerged in Spain, the prohibition of adults from begging could be found in the ordinances of Madrid, Barcelona, Seville, Malaga, Granada or Valladolid, under the rule of different political parties. This means that the use of ordinances to manage local social order has been general.

Focusing now on the Basque Country, together with the use of benches and spikes in the capital cities of the provinces of the Basque Country (Vitoria/Gasteiz, Donostia/San

Sebastián, and Bilbao), we can comment on the kind of legal exclusions done in some of their local ordinances. Even though there is no mention of tourism, their prohibitions have to be understood in the context of the increasing touristification in these cities.

In the case of Vitoria/Gasteiz, we can mention the ordinance restricting alcohol consumption (1989, 2010). Based on reasons of public health, unless expressly authorised, this ordinance prohibits the consumption of alcoholic drinks in public space (Article 12). The 2006 ordinance on street selling also sanctions begging in general in relation to street selling. In a certain way, this seems like a new version of the 1933 Spanish Vagrancy Act (*Ley de Vagos y Maleantes*) which referred to “professional beggars” as a category of “danger”. This kind of prohibition can also be found in different countries throughout history (Chambliss, 1964), and also today in countries like Italy, with its proposed criminal bill of March 2019, which harked back to notions of past centuries when vagrancy was criminalized.

In Donostia/San Sebastián the 2004 ordinance, with later reforms from 2011 to 2018, on civic behaviour, the use and cleanness of streets and protection of urban landscapes can be mentioned. There is an insistence in the “shared responsibility” to avoid the “inappropriate use of public spaces”. Thus, it is said that citizens share “the collective task to construct the city and to do so with the idea of improving the conditions of living together”. For example, in Article 4. 5 begging in public streets is defined and Article 16 sanctions it if minors are used<sup>190</sup> or if begging is done in a “disturbing way”. It includes the so-called “hidden begging” by using the selling of certain objects or services in the public streets.

Article 12 of the Donostia/San Sebastián ordinance prohibits damaging or staining benches and Article 14. 3 prohibits staying in parks outside the allowed timetables.

In cases of reoffending the offence can be considered as serious or very serious. Thus the escalation of the sanction can also be merged with the crime of disobedience of authority. This is particularly dangerous in terms of human rights if we consider the use of ambiguous concepts in that ordinance.

In Bilbao, the expression, “inappropriate use of public space and its elements” is also found in the 2010 ordinance regulating public space. Its Article 24 “inadequate use of public space and of its elements” covers sleeping during the day or the night in public spaces or public urban furniture; using benches for uses different to the assigned ones; “using part of it with a continuous or intensive character so that it is perceived as inaccessible” and washing clothes in public fountains.

In connection to these prohibitions in the three Basque cities, notwithstanding their welfare politics, what it is perturbing is how policymakers, technicians of public security and many voters see homeless and poor people more as dangerous subjects than as victims of injustice. It could be concluded that they are not seen as victims because their social and individual suffering is not recognised as such and, if it were, it would be thought of as being justified (with common expressions: like poor or homeless people have not done anything to improve their situation; they don’t want to work; they drink; they are aggressive; they don’t want to go to the shelters).

As part of a cultural process of stigmatisation hate crimes against and harassment of homeless and beggars, both by locals and tourists, seem to be increasing. There are quite notorious recent cases in Spanish cities, like the throwing of coins to them by followers of the PSV Eindhoven in Madrid (El País, 2016); the Tomek case, a homeless man of Polish origin paid by British tourists to have his face tattooed in Benidorm in 2018 (Marín, 2018) and the Kanghua case, a Youtuber who gave cookies with

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<sup>190</sup> Article 232 of the Spanish criminal law only criminalizes using or allowing using minors or disabled people for begging.

toothpaste inside to a homeless man of Rumanian origin in Barcelona. He filmed it and uploaded it to his channel. He was condemned for a crime against moral integrity and forbidden to go to the virtual crime scene (YouTube) for five years (Minder, 2019).

To recap, Anthony Hernandez's photography projects help us to rethink the traces of homelessness in American cities linking our fears and assumptions to the causation of social harm, and connecting issues of agency, culture and power structures (Hernandez and Baltz, 1995). In this regard, local ordinances and hate crime are also legal traces of broken windows and zero-tolerance local policies fostering popular punitivism, urban revanchism (Aramayona, 2020) and harassment.

### **1. 2. 5 Inclusive versus defensive urbanism: Recovering the legacy of Jane Jacobs**

According to van Soomeren,

Public safety and security policies are like a clockwork pendulum: in the 60 and 70 is was mainly a reactive and repressive approach to crime, in the 80 and 90 it was more crime prevention and it shifted back in the new millennium. I have the impression that prevention is becoming more 'en vogue' again (2019, p. 1).

However, it is not clear what kind of prevention we are talking about. The idea of prevention is not inherently good (Stoneman, 2011). Some forms of current prevention strategies are done at the cost of criminalizing certain groups of people, not just their behaviours. Those practices criminalize poverty and place social inequality out of the public debate (Wacquant, 2007).

At this point, beyond securitarian dreams or nightmares, depending on the perspective, the realistic and strategic view of Jane Jacobs (2019) should be mentioned. Her writing emphasizes a community design approach that advocates dense, walkable and mixed urban settings, underlining the importance of diversity, mix, compactness, visibility, and connectedness (Grant, 2017). Despite its limitations (Andersson, 2015), Jacobs' legacy has been almost eclipsed, particularly in criminology, in favour of the writings of Newman (1972). Newman formulated his theory of *defensible space*, ten years after Jacobs' writings, as a response to growing populations in the city that generated anonymity and reduced social control.

One explanation of the oblivion to which Jane Jacobs' works has been consigned might lie in the fact that her legacy cannot be limited to today's mainstream environmental criminology (Cozens and Hillier, 2012), mainly informed by rational choice theories applied to situational crime prevention. However, according to Sennet (2019b), Jane Jacobs should be recognised as the greatest urbanist of the last century.

Within the so-called new urbanism in the US and Canada, Jane Jacobs' phrase "eyes on the street" has become relevant because she proposes a realistic alternative of inclusive social control that is not a vigilante or indifferent one. Within multiple uses of urban space, she proposes open and diverse eyes to embrace people who are disturbingly different in order to live together, regarding conflicts as inherent to human life (Sennet, 2019a). Her proposal is a critical one because she underlines that the incapacity to deal with difference in today's capitalism favours apathy (Wolin, 2010) in gated cities versus open or porous cities (Bianchini and Bloomfield, 2012).

More emphasis on social prevention beyond situational crime prevention is needed. This is particularly pertinent in issues related to the human rights of homeless people. As Housing Rights Watch and the European Federation of National Organisations Working with the Homeless (FEANTSA) (Knutagård and Kristiansen, 2013) remind us, "poverty is not a crime, it is a scandal". In times of popular punitivism it is important to signal that there are alternatives to the politics of zero tolerance and defensive urbanism. For example, the project *Housing First* for homeless people in municipalities tries to provide them with a home instead of first trying to treat their addictions or mental health



problems (Basque Government, 2018). This project is being implemented with success in many countries and also in Basque cities. One of the important ideas behind this project is that obligations for the homeless people who are provided with a house, in principle, do not amount to punitive, restrictive or paternalistic social work control, but focus on the autonomy of concerned people within the community where they live.

Social prevention focused on the causes of social injustices can demystify misleading adjectives in relation to the notion of space such as safe spaces, resilient cities, friendly access, or destinations for quality tourism. Safe spaces are being produced under false promises of total security in identity politics that look for sameness instead of common values in the context of diversity. The origin of the term of safe spaces comes from the political correctness at universities and its relationship to victimism (Giglioli, 2014).

Not only have cities to be safe, in technocrat managerialist terms, they also have to be smart, sustainable, green, circular and resilient. These vague adjectives are hiding a sort of vampire technology-driven market which makes cities more and more dependent on private companies. Apart from all that, spaces have to be friendly. However, according to Sennet,

Opening up urban spaces can result in ugly and difficult sites, but inclusion is more important than beauty. A city should not be user-friendly. It should be a place where you learn to deal with a difficult situation and with other people (2019b).

If we add to that the notion of cities attracting quality tourism, which in the end is actually gentrification and touristification (Mínguez, Piñeira, and Fernández-Tabales, 2019), a sort of new colonialism appears where inequality and poverty can be seen as a relational phenomenon (Ray and Tillman, 2018).

Facing those apparently innocuous adjectives full of neoliberal ideology, we must be aware of the current political atmosphere of polarised identities (EFUS, 2019) as politics of friends versus enemies, that is, of fragmentation of society into antagonistic collectives perceived as opponents in existential questions with a sharp division between us and them. Local resistances to managerial and actuarial cost-benefit views - based on short and myopic quantitative indicators - and responses to inverted totalitarianism in urbanism and local order can come from some initiatives delineated by Jane Jacobs and projects like *Housing First*. We need different paradigms for different concepts of conflicting and very diverse communities. One of those paradigms can be that one of the third space proposed by Oldenburg (1989). The third space can be understood as a public space beyond the home or workplace where people can meet and interact voluntarily and informally for public life. The notes of public and interpersonal interaction, beyond mere virtual communities, are thus fundamental and “central to the political processes of a democracy” where political talk can emerge in the everyday conversation among people who are not considered to be discarded because of their lack of economic capacity (Oldenburg, 1989, p. 67, Wright, Graham, and Jackson, 2015).

Nonetheless, by criminalizing homelessness and inadequate uses of urban space in many ordinances, like the ones quoted in the Basque Country and like many others in globalised cities (Laurenson and Collins, 2007), scapegoats for our liquid fear are identified and placed within a tangible framework of punitive public security where the causes of the social problems seem not to matter anymore while, at the same time, reasons of austerity offered to cut social services or transform them into punitive and disperse social control mechanisms (Cohen, 1979, Wacquant, 2008). In fact, people presented in ordinances as threatening can be also protagonists of social cohesion. For example, after fieldwork of five years in New York, Duneier (1999) argues that, contrary to the opinion of various city officials, poor black men who make their livelihoods on the sidewalks, selling second-hand goods, panhandling, and scavenging

books and magazines, contribute significantly to the complex order and well-being of the Greenwich Village. Notwithstanding the conflicts of race and class, Duneier also discovers the opportunities for empathy among strangers and reveals the complexity of urban life. This is a line of research that deserves to be explored in the future in order to break binary lines of thought (Walklate and Evans, 2019) in times of glocalisation processes.

## 2. Key concepts to recap

- Adiophoriasation
- Aporophobia
- Discrimination
- Ethics of care
- Hate crimes
- Hate discourses
- Homelessness
- Human rights
- Multiple victimisation
- Poly-victimisation
- Public space
- Resonance box
- Right to the city
- Social injustice
- Social networks
- Urban Victimology

## 3. Thinking Victimology

What do you think about the sentence for the following case in relation to the prohibition of entering the space (YouTube) where the victimisation was committed? Do you think another more victim-centred sanction could have been applied?

A YouTuber in Spain was sentenced to 15 months in jail and 20,000 euros for posting a video in which he offered a homeless man biscuits stuffed with toothpaste, a court said Friday. Kan-Hua Ren, known as ReSet, was found guilty of an offence against moral integrity in his video published in January 2017 on his channel and since removed, the Barcelona court said. He was sentenced to 15 months in jail, which he won't likely have to serve. Sentences of up to two years are generally not implemented in Spain for first-time offenders in non-violent crimes. Ren was also ordered to pay 20,000 euros in compensation to the victim and his channels will be closed down for five years. "Challenged" by one of his followers, Ren, who was 19 at the time, filmed himself removing cream from inside biscuits and replacing it with toothpaste. Then he gave them to a Romanian beggar along with a 20-euro bill. "Maybe I went a little far, but let's look at the positive side, it will help him clean his teeth, I don't think he has often brushed his teeth since he became poor," Ren told his followers, according to a court document. The homeless man threw up, wrote the judge in her verdict dated May 29. The video sparked an outcry, so Ren posted a new one in which he went back to see the man and gave him another 20 euros. "If I had done this with a normal person, no-one would have said a thing, but as he is a beggar people are complaining," he said in a message accompanying the video, according to the court document. Among the 200 most influential Spanish-speaking personalities on YouTube at the time, police said he then tried to stop the victim making a complaint in exchange for 300 euros and yet another video in which he would spend the night with him. Police added he targeted other vulnerable people in other videos on his channel, where he earned money through advertising.

“I do things for showmanship, people like anything morbid,” he told the court. The Judge ruled that the video was “a clear and unambiguous act of humiliating content” which caused “physical suffering” to the victim. After learning that ReSet earned €2,000 in advertising revenue from the video, she ordered him to pay ten times that amount in compensation to the victim. “[ReSet] humiliated and vexed a vulnerable person, homeless, of a much older age, which does not speak the official languages and has deteriorated due to street life and alcoholism,” she said<sup>191</sup>.

#### 4. Applying Victimology

Please, participate in a role-play to later comment on what kind of agreement (if any) you have reached about this issue, trying to use a preventive and problem-solving approach.

1. You are one of the young people living in apartments for the youth subsidized by the Donostia municipality (Social Services + Housing Department). Some homeless people have been given a house in apartments where you are their neighbour. You (and the rest of the young inhabitants) don't really like living nearby homeless people. You are afraid.

One day, one of the homeless men gets out of his home with a knife. People panic and call the police.

The homeless man explains later that he only wanted to fix something of his door with the knife. In any case, young people file a complaint with the City Municipality.

2. You are the homeless man with some problems with alcohol who wants to have some kind of engagement with people (young neighbours) because you feel alone (that is the reason why you also want to have your dogs with you in the house).

3. You are a criminologist working for the Project “Housing First” (<https://hogarsi.org/en/>) in the municipality of Donostia/San Sebastián. You want to try to calm down the youth, make them understand that homeless people are entitled to social rights, just as young people are being entitled to social housing, and try to explain why homeless people are usually seen more as victimisers rather than victims.

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<sup>191</sup> Source: <https://www.thelocal.es/20190601/spanish-youtuber-found-guilty-of-humiliating-beggar/>.

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## XVII. INNOVATIVE INCLUSIVE FORMS OF JUSTICE FOR VICTIMS: RESTORATIVE JUSTICE AS TRANSFORMATIVE JUSTICE WITH A PROCEDURAL AND THERAPEUTIC PERSPECTIVE OF INTEGRATIVE LAW

### 1. 1 What is restorative justice?

According to the second edition of the Handbook on Restorative Justice Programmes (United Nations, 2020), restorative justice is defined as an approach to crime and its impact (also questioning the very notion of crime itself), though of as a:

participatory process defined as “any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator”.<sup>3</sup> The individuals involved in that process are referred to as the “parties”. That process takes many forms, based on different techniques and types of dialogue. In Europe, for example, the process is more commonly known as “mediation”, as distinct from legal adjudication. In other parts of the world it may be referred to as “conferencing”, “dialogue”, “circle sentencing” or “peacemaking”. According to the Basic Principles, a restorative outcome is an “agreement reached as a result of a restorative process aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender (United Nations, 2020, p. 5).

Figure I. Restorative justice programmes and the criminal justice system

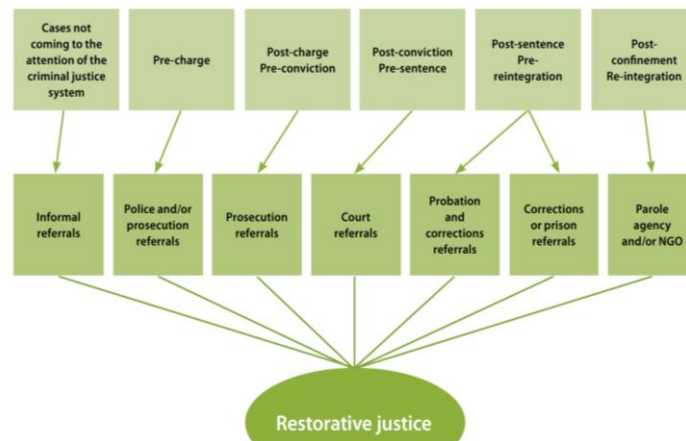
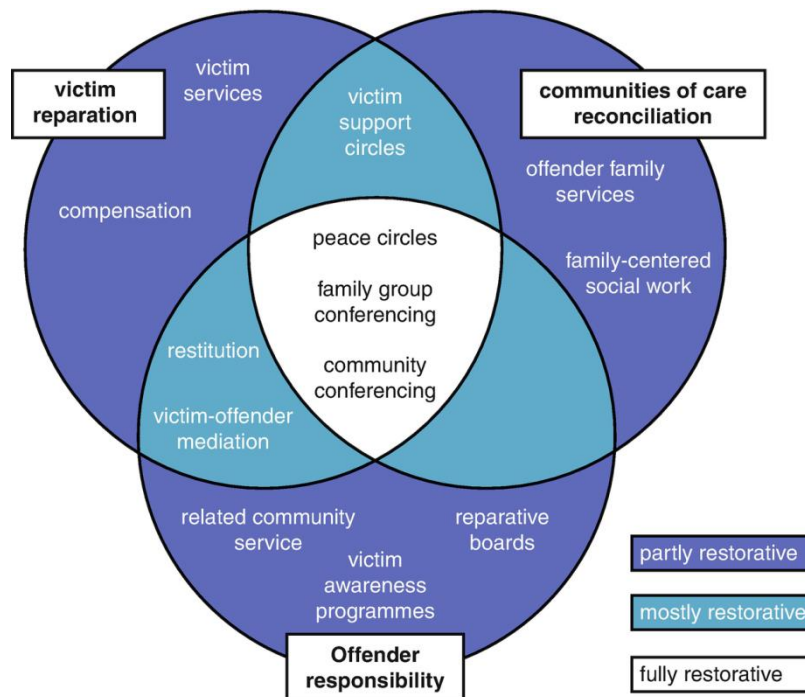


Image 82: Restorative justice and the criminal justice system. Source: UN (2020)





*Image 83: Modalities of restorative justice. Source: McCold and Wachtel (2003, p. 3)*

The previous definition of restorative justice finds a parallel with the one used in the Recommendation CM/Rec(2018)8 of the Council of Europe on restorative justice for penal matters, as well as in article 12 of the 2012/29/EU Directive on victims' rights and article 15 of the Spanish Statute of the victim (Varona, 2018).

There is also an interesting definition of restorative justice in Appendix II containing the glossary of terms of the Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules:

Restorative justice includes approaches and programmes based on several underlying assumptions: *a.* that the response to crime should repair as much as possible the harm suffered by the victim; *b.* that offenders should be brought to understand that their behaviour is not acceptable and that it has had some real consequences for the victim and the community; *c.* that offenders can and should accept responsibility for their action; *d.* that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and *e.* that the community has a responsibility to contribute to this process.

In relation to more general and recent trends in law and justice movements, restorative justice can be related to the integrative law movement<sup>192</sup> or comprehensive law which refers to the possibility of articulating juridical systems that can consider not causing more harm to stakeholders and be preventive, reparative and problem solving oriented to taking into account psychological, legal, social and therapeutic needs, in their own voice and transforming the conditions where problems arise (in line with some ideas coming from transitional justice, community justice, therapeutical jurisprudence, procedural justice, collaborative law, comprehensive law, etcetera).

### 1.2 Which are the values guiding restorative justice practice?

According to the United Nations (2020, p. 6<sup>193</sup>), the values guiding restorative justice practice are:

<sup>192</sup> See at <https://www.cuttingedgelaw.com/page/integrative-law-movement-introduction> and <https://integrativelaw.com/what-is-integrative-law/>.

<sup>193</sup> Source: Department of Justice Canada (2018).

- 1) **Reparation:** Focus on acknowledging and repairing the physical, emotional and financial harm caused by crime and meeting the needs of those affected.
- 2) **Respect:** Treat all participants with dignity, compassion and equal consideration.
- 3) **Voluntariness:** Ensure the participation of victims, offenders and community members is voluntary, and based on free, informed and ongoing consent.
- 4) **Inclusion (Participation):** Foster and support the meaningful participation of those affected, including victims, offenders, their friends, their families and their communities.
- 5) **Empowerment:** Enable participants to communicate openly and honestly and to have an active role in determining how to address their needs, as they see them.
- 6) **Safety:** Attend to the physical, emotional, cultural and spiritual safety and well-being of all participants. Participation in restorative justice should not result in further harm to any participant.
- 7) **Accountability:** Assist those who have caused harm to acknowledge and take responsibility for harm and reparation.
- 8) **Transformation:** Provide opportunities for understanding, healing and change, and contribute to the restoration and reintegration of victims and offenders.

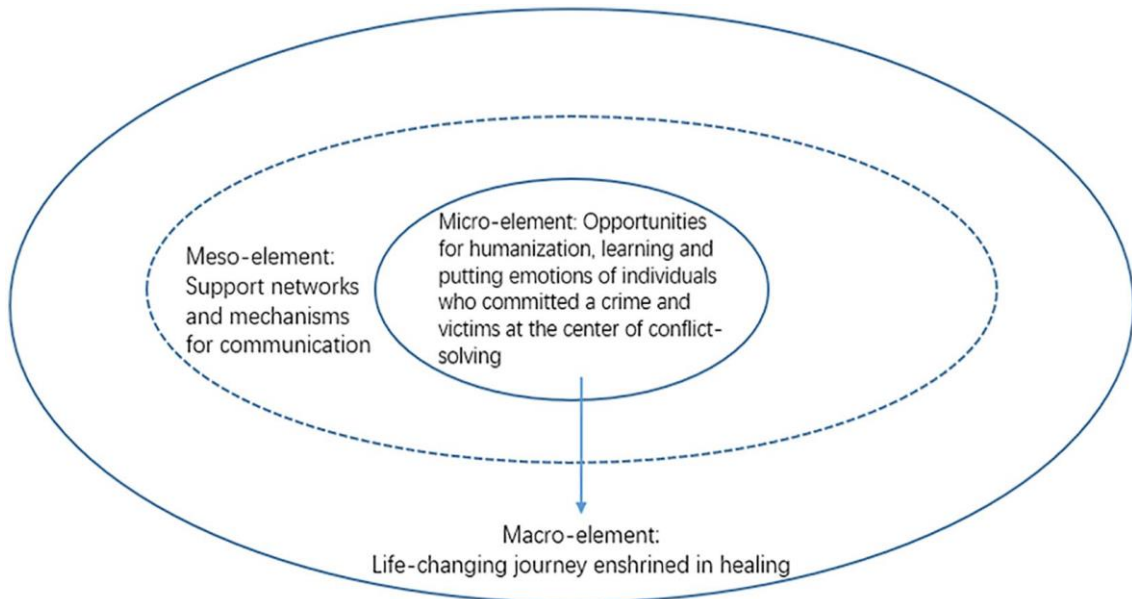
Taking into account these values, the contradictory perspectives of “victim satisfaction” (expressed somehow as a market measurement for clients or users of the criminal system) and “healing” as mere therapy for suffering victims (Jorge, 2021) might not be enough if we do not include their need for justice (Walklate, 2016). In its aboriginal understanding, healing could involve holistic or integrative responses, at the individual and collective level, of the conditions provoking the harm where different agents might hold different forms of accountability. However, in many Western conceptualisations and usages, the word “healing” might entail banalisation, therapeutisation and privatisation of complex social problems (Daly, 2002; Blagg and Anthony, 2019).

### **1.3 What are the potential benefits of restorative justice programmes?**

Restorative justice programmes can (United Nations, 2020, p. 10):

- 1) Provide wider and more timely access to justice for victims of crime and offenders.
- 2) Provide victims with a voice, an opportunity to be heard and an opportunity to understand the offender.
- 3) Provide victims and the community with answers, their right to know and their right to the truth.
- 4) Provide victims with an opportunity for material and symbolic reparation.
- 5) Facilitate victims’ recovery and alleviating the emotional and sometimes traumatic effects of crime on victims.
- 6) Provide a viable alternative to criminal proceedings.
- 7) Reduce the frequency and the severity of reoffending, particularly when it is part of a broader rehabilitative approach
- 8) Avoid the further stigmatization of offenders and contribute to their effective reintegration into the community.
- 9) Improve public participation and public confidence in the criminal justice system in the communities where they exist.
- 10) Increase community engagement.
- 11) Lead to more effective local crime prevention initiatives.
- 12) Improve police (criminal justice agents)-community relations.
- 13) Reduce costs and delays across the criminal justice system.

In order to consider significant outcomes in line with the necessary involvement of the community and transformative justice (Kim, 2020), macro, meso and micro elements have to be considered.



*Image 84: Macro, meso and micro elements in RJ. Source: Suzuki and Yuan (2021)*

In relation to the above-mentioned potential benefits, through the following images by the European Forum for Restorative Justice (2020), we can consider the different motivations and outcomes for victims and offenders, particularly in serious crimes that might entail a certain period of deprivation of liberty before an encounter might take place.






# Motivations to participate

*Why do*

| VICTIMS   |   | OFFENDERS  |
|---|---|--|
|  → to meet the offender                          |  |  → to offer reparation                                      |
|  → have questions to the offender                |   |  → to express their responsibility and remorse              |
|  → to look for reparation (emotional, financial) |   |  → are concerned about the victim                           |
|  → are concerned about the offender              |   |  → (in some cases) benefits in the criminal justice process |

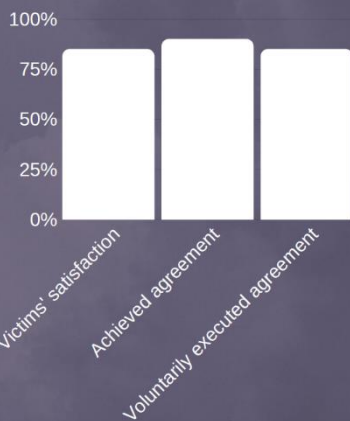
# What is it like for victims?





## THE RESTORATIVE JUSTICE PROCESS

-  • feeling of involvement and empowerment
-  • fair process
-  • apology or other symbolic reparation can be more essential than material compensation
-  • faster than the traditional justice system
-  • financially attractive (lower judicial and medical costs)

# The outcomes

## OF RESTORATIVE JUSTICE PRACTICES



-  • victims receive material and symbolic restitution
-  • victims' reduced anxiety about further harm by the offender
-  • reoffending rates are lower
-  • offenders appreciate to actively express remorse
-  • when community members are involved, it reinforces social bonds

Images 85-87: Defining RJ. Source: EFRJ (2020)



Solidus labyrinth drawing, Clair Aldington, 2017



*Image 88: Restorative justice labyrinths. Source: Aldington et al. (2020)*

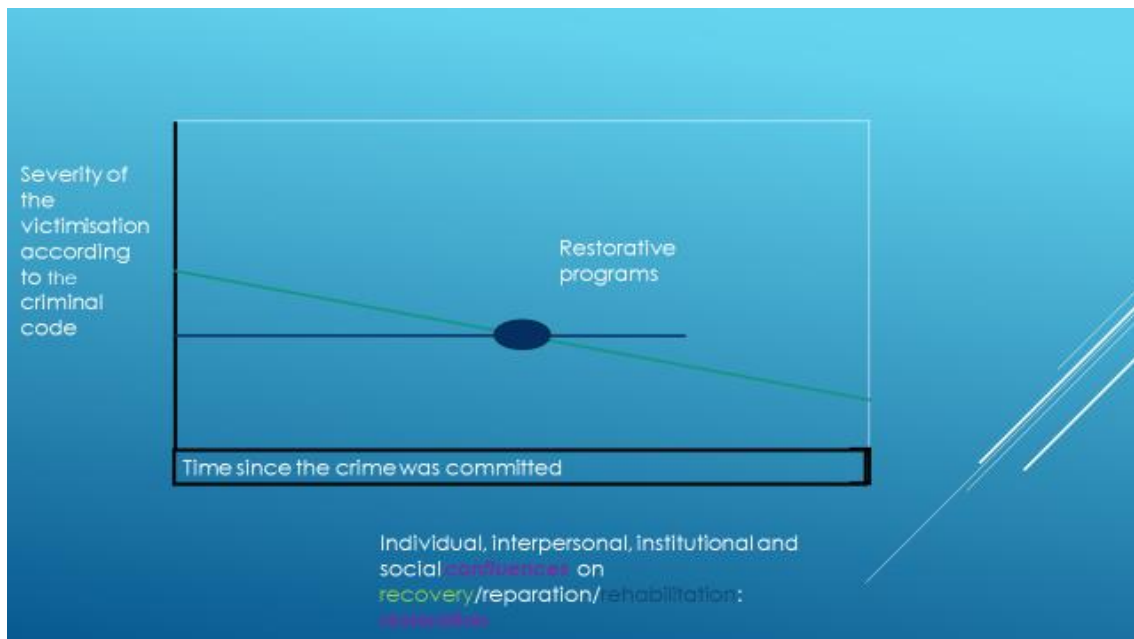


Image 89: Restorative justice as a crossroad for society, victims and responsible persons to reconnect

Restorative justice programs in prison might take different approaches<sup>194</sup>. Based on the North American Sycamore tree project, one of the most extended in Europe is the project *Building Bridges*<sup>195</sup>.

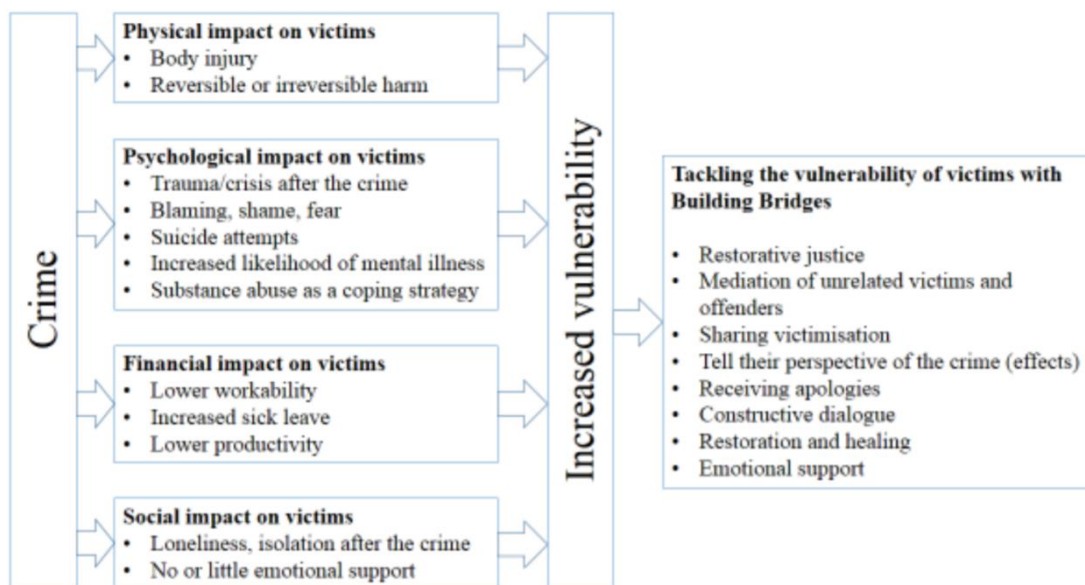


Image 90: Logic model for Building Bridges in Johnstone and Klaasen (2015, p. 11)

The above line of argument obliges us to rethink two moments in criminalisation. First, if according to the democratic principles of minimum intervention and *ultima ratio*, criminal law can only be used to protect the most important public goods when other less harm-provoking mechanisms of social control have failed, we need to reconsider the use of criminal law in cases of macro-victimisation and abuse of power where

<sup>194</sup> See also the restorative justice references in the international standards on prisons by the Council of Europe at <https://www.coe.int/en/web/prison.f>.

<sup>195</sup> See at <http://restorative-justice.eu/bb/es/>.

structural violence of any kind is present (with economic or institutional abuses promoting hidden victimisation). Second, according to the humanity principle of non-violence and harm minimization in responding to crime and victimisation, sanctioning in criminal law could be open to restorative justice where a more reparative and preventive response could be achieved (Braithwaite, 2012) to make unseen cultural and structural violence more visible.

## 2. Key concepts to recap

Agency  
Circles  
Collaborative law  
Community  
Conferences  
Conversation  
Dialogue  
Encounter  
Facilitator  
Forgiveness  
Healing  
Injustice  
Integrative law  
Justice  
Mediation  
Panels  
Participation  
Prevention  
Procedural justice  
Reintegrative shaming  
Reparation  
Restoration  
Therapeutical Jurisprudence  
Transformative justice  
Transitional justice

## 3. Thinking Victimology

1) On the origin of restorative justice<sup>197</sup>, please read the following excerpt:

In 1974, two intoxicated teenagers embarked on a destructive rampage damaging numerous properties in the quiet town of Elmira, Ontario. Ordinarily, the prospect of prison lay ahead. But a pair of young probation officers had other ideas. They asked the presiding judge, rather than prison, what if the youths actually met their victims face to face?

This, they suggested, would allow the youths to apologize directly to the victims and pay for damages. The judge agreed, the subsequent meetings profoundly impacted both the teenagers and their victims, and Victim Offender Reconciliation Program (VORP) was born.

Although Aboriginal cultures have long used similar conflict resolution practices, this broke new ground within our established Canadian Justice system. *Community Justice Initiatives* (CJI) was founded to boldly apply such Restorative Justice principles in response to all kinds of crime and conflict. Since CJI's beginning in

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<sup>196</sup> Source: <https://cjiwr.com/the-elmira-case-story/>. See also at <https://mcccanada.ca/centennial/100-stories/birthplace-restorative-justice>.

<sup>197</sup> See also at <https://mcccanada.ca/centennial/100-stories/birthplace-restorative-justice>.

1974 a Restorative Justice movement has spread to more than 50 countries. CJI continues to lead the way, its cornerstone Restorative Justice philosophy inspiring a host of pioneering programs and applications.

CJI envisions connected, peaceful communities where all conflict is resolved in a restorative way. We have helped people find peace and reconciliation in thousands of conflict situations. We dare to believe that restorative justice should be the first response when responding to individual, community, family and institutional conflict. By applying restorative justice responses, we can address root causes of conflict in our community, creating a lasting, positive impact as people move forward with their lives and relationships.

Do you agree with the assumptions/principles of CJI? How do you think restorative justice has evolved by taking a look to the web page of the European Forum of Restorative Justice at <https://www.euforumrj.org/en><sup>198</sup>?

2) According to Maglione (2017, p. 412):

The ‘ideal victim’ is likely to be used as a reference point by RJ practitioners, shaping their expectations towards participants. In turn, by guiding practitioners’ work, it will also impact on participants’ experiences. We could namely foresee a ‘restraining’ effect (Van Dijk, 2009) of this victim’s model on RJ participants in terms of pressure towards adjusting to it. This model may also influence lawmakers by informing their legal and policy documents (as indeed already seen).

How do you think that the ideal victim can be described from the standpoint of the Spanish programs of restorative justice? Visit, for example, the public services in the Basque Country at [www.justizia.eus](http://www.justizia.eus).

#### 4. Applying Victimology

1) Please, draft an evaluation proposal on the qualitative (usually intangible) impact of restorative justice for a restorative justice program for serious crimes in your city. Take a victimological standpoint by considering the 2019/12/EU Directive and also the notion of “emotional energy” developed by Rossner (2019)<sup>199</sup>:

Art. 1 d of the 2012 Directive: ‘restorative justice’ means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

Article 12 of the 2012 Directive: Right to safeguards in the context of restorative justice services. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions: (a) the

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<sup>198</sup> In the European Forum for Restorative Justice (EFRJ) (2020) leaflet document on the European Union Strategy on Victims’ Rights (2020-2024), the EFRJ defines itself as the leading European network for supporting the development of restorative justice in Europe. Founded in 2000 at the KU Leuven Institute of Criminology, the EFRJ is a membership organization that currently comprises around 500 members (either individual or organisational), from Europe and beyond. The EFRJ brings together researchers, practitioners and policy makers interested in restorative justice, particularly in the criminal justice system, but also in the areas of community, school, institutional and family mediation. The EFRJ collaborates with other European networks, such as Victim Support Europe (VSE), and is part of the Criminal Justice Platform Europe (CJPE) together with other two organisations, Europris and CEP (Confederation of European Probation).

<sup>199</sup> An emotional energy drawn from the restorative justice “ability to harness anger into a deliberative ritual for victims and offenders, its focus on symbolic reparations, and its ability to engender a form of forward-looking forgiveness that promotes civility” (Rosner, 2019, p. 368).



restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time; (b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement; (c) the offender has acknowledged the basic facts of the case; (d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings; (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest. 2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

2) Try to apply the following restorative questions in a restorative circle by imagining a community conflict or a victimisation and reflecting on the difficulties of restorative justice and being a facilitator.

Restorative Circles (RC) (as developed by Dominic Barter in Brazil) "empowers conflicted groups to meet in a way that creates mutual understanding; invites self responsibility; and supports shared agreements. The dialogue process enables each person in the circle to be deeply heard leading to discovery of the shared meaning held within the conflict dynamic of the community" (Duchscherer, 2020). The basis is non-violent communication.

The following three phases can be identified in restorative circles:

Pre-circle. Through individual or group meeting, the facilitator will try to help building a restorative system and to get the communication on the basic information for a basic understanding by identifying how protagonists describe what happened and its underlying meaning.

Circle. Guiding questions: (a) "How are you right now as you think about the act and its consequences? Who would you like to hear this?"; (b) "What was important that motivated you to act/respond as you did in this conflict?" Who would you like to hear this?"; (c) "How can we move forward from here in a way that works for everyone?"

Post-circle to monitor agreements or compromises.

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