



## **Truth, reparation and social justice: Victims' and academic perspectives on the harms caused by asbestos companies**

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### **Abstract:**

This short piece stems from personal experience about the environmental harm caused by one of the biggest former asbestos facilities, Eternit, located in the small Belgian rural village of Kapelle-op-den-Bos. Combined with an academic perspective, this piece highlights the relevance of environmental restorative justice in addressing the violations and harms experienced by asbestos victims. It brings to light the struggles of victim associations to challenge the power, and complete lack of accountability of (former) asbestos producing companies worldwide and offers an understanding of strategies used to promote immunity to the powerful.

## Introduction

“One person dies here at a time. [...] Instead, one by one they become many, if you count them, they are really many. And then it’s very sad when you hear someone still getting sick, and you say ‘but damn, it’s a massacre that continues, very quietly, continues in this silent way, you understand that it is not something that is told on television when one dies and instead look how many there are ...’<sup>1</sup>.

These words were spoken by a woman in Italy who lost her 33 year-old brother 7 months after he was diagnosed with mesothelioma (Budó, 2016). They provide important insights into corporate crime and environmental victimisation. Day after day the areas contaminated by factories that use(d) asbestos register new cases of many diseases, such as asbestosis, lung cancer and mesothelioma (WHO, 2014).

In this short piece, we would like to address the case of the use of asbestos and its harms in Belgium. Although the factory Eternit (now Etex Group) stopped asbestos use at the beginning of the 21st century, the company has never acknowledged the awareness they had about asbestos risks’ exposure for the workers and citizens in the regions where the factories were located. One of the biggest asbestos facilities in Belgium is located in Kapelle-op-den-Bos, a small rural village<sup>2</sup> in the province of Flemish Brabant. Many of Eternit’s factory workers (professional victims), their spouses and children (para-professional victims) as well as inhabitants of the village (environmental victims) died due to a mortal asbestos exposure at work or in the area, making this subject of interest for the field of rural criminology.

One of the authors, Marijke Van Buggenhout, grew up in this area and will provide a testimonial on the harm her family faced and continues to face as her father, an Eternit factory worker, became an asbestos victim. The other author, Marília de Nardin Budó is an academic based in Brazil who studies asbestos cases worldwide, in the research field of corporate environmental harm and victimization. By bringing together personal testimonials with academic perspectives, this article raises awareness that asbestos is not just a problem from the past. We find relevance in the theoretical framework of environmental restorative justice to address the violations experienced by the victims and to enhance the opportunity for social justice in the case of serious harm and the complete lack of accountability expressed by (former) asbestos companies worldwide.

## The Belgian case

In Europe asbestos was most commonly used in factories throughout the 20<sup>th</sup> century. Since the early 1900s there has been scientific evidence about the relationship between exposure to asbestos and various diseases (Mendes, 2001). Asbestos is flexible, incombustible, indestructible, and cheap. The insistence on the use of this mineral is based on its characteristics, which made the industry consider it a “magic mineral”. A Belgian giant company, Eternit, was the first to understand how the mixture between cement and asbestos could produce what the former director affirmed to be the “perfect marriage”<sup>3</sup>: roofs that would last an ‘eternity’. Eternit spread subsidiaries to all continents

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1 “Qui muore una persona per volta. [...] Invece uno per uno sono tanti, se li conti sono veramente tanti. E poi è molto triste quando senti qualcuno che si ammala ancora, e dici ‘ma cavolo, è una strage che continua, molto silenziosa, continua in questo modo silenzioso, capisci che non è una cosa che viene detta alla televisione quando muore uno e invece guarda quanti sono’...”

2 Kapelle-op-den-Bos has a population of less than 10 000 inhabitants

3 Two recently presented documentaries provide information about asbestos in Europe (Le Tombeau de L’Amiante, 2021) and also in other parts of the world (Breathless, 2022).

in the world. Etienne van der Rest, former president of Eternit who, after the danger of asbestos was already surfacing, said: "Cement and asbestos is the best combination and it would be an act of stupidity to restrict its uses in any which way" (Jonckheere, 2017:32). Many other companies and governments supported the use of this mineral throughout the past century, and today, many countries still mine, produce and commercialise the fibre and its products.

Since 2005, all types of asbestos have been banned in Europe, and nowadays more than 60 countries in the world have also prohibited its extraction and commercialisation because of its hazardous effects on human health. In the USA, despite the absence of a legally mandated ban on asbestos, there has been a decline in its use, because of the millions of dollars in worker compensation lawsuits (Lemen and Landingan, 2017). However, the theory of asbestos differentiation – a theory elaborated in the 1980s – supported the idea that chrysotile, one of the asbestos types, would be less harmful. The thesis of asbestos differentiation is still delaying the ban in most parts of the world (Tweedale and McCulloch, 2004). Although global asbestos production fell from 2.1 million tons in 2012 to 1.4 million tons in 2015, more than 2 million tons of asbestos are currently consumed each year throughout the world (Asbestos.com, 2020).

The World Health Organization (2014) calculates that at least 107,000 people die every year in the world because of asbestos-related diseases (ARD), provoked by the aspiration of small particles of the fibre. Furuya et al. (2018) claim that this number is underestimated and offer another one: 255,000 deaths a year. Algranti et al. (2019) inform that approximately 80% of the global population lives in countries where asbestos has not been banned, mainly in Asia. And even if the use of the fibre were to cease today, the incidence of ARD would start decreasing only 20 years from now, based on current use (Collegium Ramazzini, 2016).

Research published in the last 30 years in different parts of the world has shown that the main concern about the discovery of asbestos-related diseases shared by the companies who profited from the mineral, was the that it would increase costs of production (Budó, 2021). Because of court cases against the companies, once-secret documents have been revealed, showing that the industry found a way out of the controversy by funding researchers to create methodologies and theories for supporting the continued use of asbestos and avoiding liability (Lillienfeld, 1999; Rosner and Markowitz, 2017)<sup>4</sup>. This was not an isolated case (Chowkwanyun, Markowitz and Rosner, 2018), as various lobbying organisations were also created to influence both politicians in (de)regulation, and judges in court cases, such as, amongst others, *International Chrysotile Institute*, *Canadian Chrysotile Institute*, and *Brazilian Chrysotile Institute* (Bocking, 2004).

Between the dialectical process of awareness and denial about asbestos harms in the public discourse, asbestos victims have organised themselves in a global movement to dispute not only industry claims about asbestos and its impacts but also to demand reparation, acknowledgement and justice. The global asbestos ban is also one of the central demands of the movement, considering that most of the exposures and denial that people in the global north experienced in the '70s and '80s are being currently experienced in the global south (BanAsbestos, 2022). But the trajectory of these movements has been difficult, as the diseases are all long-term, with symptoms of ARD showing up 30 to 40 years after exposure. Therefore, people affected do not always recognise themselves as victims (Natali and Budó, 2019; Silveira and Budó, 2021). As Friedrichs notes, "victimisation caused by the different forms of white-collar, occupational, and organisational crime is hard to estimate. While violent consequences, for instance in the environment or people's lives, may be

<sup>4</sup> Recently it was found that the strategies for avoiding liability are far from merely paying scientists. In 2016, one of the greatest global asbestos victims' movements was being object of espionage by industry. For details, see Kazan-Allen (2019).

easy to assess, many other harms are not” (Friedrichs, 2010). This aligns with the most well-known literature in green criminology and white-collar crime (Hall, 2018; Natali, 2015). Ambiguities are permanently found in such studies that relate for example to the workplace (Tombs, 2005: 41) and living spaces (Böhm, 2020; Natali and Budó, 2019). In addition, there are several characteristics of these harms that make victimhood difficult to prove. Firstly, victimization in these cases is not the direct result of interpersonal violence. And secondly, the harms experiences are often temporally and spatially distant from their source (Whyte, 2018; Budó 2021).

Even if the scientific consensus about the harms caused by asbestos was reached decades ago, its long-standing denial has had many repercussions depending on the region in which the harms have emerged.

### **An injustice from the past, injustice in the present: A testimony**

My father and grandfather were factory workers at Eternit. My family was born and raised in Tiselt, a small village near Kapelle-op-den-Bos. At every graveyard, we know people who have died from asbestos-related diseases, often decades after they were first exposed to the deadly fibre. Just like many people in the area, we have seen neighbours, family members and friends die. Some have died almost immediately after diagnoses, some six months to a year after apprehending that they too, were not left untouched by this toxic substance.

Just as the fibre hides for years as a lurking danger deep in the lungs to then suddenly strike with unrelenting force, so do we also know that the disease, for years invisible and dormant, could sooner or later spread to our family and turn our world upside down. What we knew was possible, but hoped never to experience, eventually happened. After having enjoyed his early retirement with lots of extra time with his 4 young grandchildren, my father received the diagnosis of mesothelioma as a bolt from the blue in January 2021, at the age of 61. Mesothelioma is an aggressive and terminal cancer that affects the lung tissue (pleura) and for which there is no cure. My father was exposed to asbestos during almost half of his career at Eternit. He started working for the company in 1976 at the age of 17. He jumped on his bicycle and rode kilometers next to the highway to search for a company that would hire him at a young age. Eternit turned out to be the only company in the area that would employ a teenager, who was also compelled to undertake mandatory military service. My father was very happy that he could follow my grandfather’s footsteps and start earning some money in the biggest factory in the area before going to the army. Knowing what we know now, we wish my father would have ridden his bike several kilometers further.

In 1976 Eternit already knew the dangers of the product. The first study relating pulmonary fibrosis to the exposure of a worker to asbestos dust was published by Murray in 1907, and the term “asbestosis” originated in 1924 in a study published by Cooke (Mendes, 2001). In 1943 the first study relating asbestos exposure to mesothelioma was published by Wedler. Since the 1950s, studies have repeatedly proved that both workplace and environmental exposures to asbestos cause lung cancer and mesothelioma (Doll, 1955; Wagner et al., 1960). The finding that mesothelioma is caused by asbestos was communicated to the world by Selikoff et al. in 1965. Eternit tried everything in its enormous power to prevent and slow down every attempt towards restrictive legislation. It paid off scientists, doctors and lobbyists who had (and still have) a large influence in the political landscape. Up until a year before the official prohibition of this product and its applications, the company kept its production up. After the prohibition in Europe, Eternit continued its original course by opening subsidiaries in the global south.

After having received the diagnosis of mesothelioma, my father, like many others, applied for finan-

cial support from the Asbestos Fund. This fund provides financial compensation for professional and non-professional asbestos victims under a bitter and dishonest condition: a person who chooses to receive this compensation must agree not to bring any legal action against the perpetrator, this has been called “the immunity clause”. With escalating medical costs and often too little time left in their lives, victims often choose the compensation over uncertain legal action, which renders the all-powerful company Etex Group immune and effectively untouchable.

### **Resisting the injustice: the Belgium movement of asbestos victims**

The Belgian Association of Asbestos Victims (ABeVA or ‘the Association’) was created in 2000 by relatives of victims and sympathisers with the main objectives of “improving the current situation of the asbestos victims in Belgium and to prevent new dramas by avoiding future contaminations” (ABeVA, 2022). Because many victims remain silent or are not even aware of the origin of their illnesses, the main objective is the protection of asbestos victims. The association has achieved many outcomes during this struggle.

One of the central outcomes has been the establishment, in 2007, of the AFA (Asbestos Fund), as noted above. The Association considers the fund for asbestos victims as “an unquestionably partial and incomplete realisation, but a huge step already in the right direction” (ABeVA, 2022). However, the AFA generates several criticisms. The main issue with the fund relates to the lack of liability which is embedded in the immunity clause; once the victim accepts the compensation, (s)he cannot sue the company anymore. Furthermore, the fund is financed by the state and all Belgian companies, whether or not they ever used asbestos. This means that a company like Eternit does not need to acknowledge the harm they caused, neither financially nor in front of the courts.

However, as Eternit already knew about the risks and continued exposing workers, the environment and the citizens to asbestos, a new law suit was recently proposed by members of the Association. In the press release that announced this new case, by Eric Jonckheere and his lawyer Jan Fermon, explain that the idea is mostly to try to achieve a real sense of justice:

“By introducing this action, in addition to obtaining a complementary compensation, Eric Jonckheere and his lawyer intend to raise the debate on immunity, which has been blocked so far. They don’t want to change a compensation system that is globally effective and useful for many victims, but however wish to improve it by allowing, when it seems necessary and justified, to circumvent the principle of immunity by mobilising the notion of intentional fault. In addition they wish to insure that the polluter-pays principle is respected” (ABeVA, 2022).

The core aim of this new lawsuit is to allow victims to get full compensation, beyond the lump sum compensation provided by the Asbestos Fund. Companies like Eternit, which intentionally deceived the public and the authorities for decades by hiding the dangers of asbestos should be held fully accountable. Yet, Eternit, which carries a heavy historical responsibility for the damage, finances the fund no different from all Belgian companies. As such, this “socialisation of the damage” through a fund financed by the public authorities and all employers deviates from ‘the polluter pays’ principle. In addition, limiting the right of victims to seek compensation for the activities of profit-driven multinational companies with similar behaviour, results in intentional harm to individuals and society, and is even more problematic. In raising public awareness, and calling for other victims to do the same, the case also contributes to a wider reflection on justice. The meaning of what could be called justice in this case, is challenging, as the economic compensation by a state fund is not enough.

## Epilogue: Truth, justice, and reparation

From what we addressed in this short article, it is clear that the current justice system is not paying sufficient attention to the claims and experiences of victims. Research has been conducted in Europe and other continents, such as Latin America, in order to understand what “justice” would mean when seen from the perspective of asbestos victims’ (Natali and Budó, 2019; Budó and Silveira, 2021).

From debates around the limitations of the current justice system, other proposals about ways of approaching justice have been developed in the last decades. This includes the notion of *environmental restorative justice*. As Pali and Aertsen (2021: 6) write, ‘essentially, a restorative ethos and praxis to environmental harms calls attention a) to the necessity to repair the harms that have been done to the environment, to its human and other-than-human inhabitants and to communities, their infrastructure and future generations, and b) to build different relational and ethical systems that prevent future harm’.

The environmental restorative justice perspective is driven by the principles of harm reparation, restoration and healing. In the case of asbestos in Belgium, and many others like it, we can see how *reparation* must be perceived as more than simply a monetary indemnity, as it is impossible to give a price to life. Reparation processes need also to refer to a guarantee of non-occurrence and find ways to avoid harms being repeated in the future. Victims’ testimonies are crucial here to avoid the erasure and silencing of their experiences and demands. This is also why it is important to bring the community together in this search for justice, understanding that it is possible to construct bridges, using the dialogue between victims, institutions and civil society as a means to promote transgenerational responsibility, and avoiding future harm.. Testimonies are also important in order to resist denialism and the lack of liability, as we often see in such cases. At the same time, these testimonies can be meaningful in building public awareness about toxic substances and corporate violence more broadly. For this, it is important to involve the community and the mass media.

In this short article, mostly intended as a testimony, we wish also to provoke readers to join both the struggle of the movements of victims that are trying to challenge the power of the corporations, and to join this field of research, to go further in understanding the strategies that are used to promote immunity to the powerful, and to think, together with victims, about another form of imagination that aims to build a solid project of justice.

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