



# Victims of Malta's Construction Boom

The Fatal Wait For Accountability



This report was prepared by the **Daphne Caruana Galizia Foundation** and published in June 2023.

FIRST EDITION

## About the Public Interest Litigation Network (PILN)

The Public Interest Litigation Network (PILN) is a project of The Daphne Caruana Galizia Foundation. It is Malta's first non-governmental access-to-justice initiative. The PILN is a network of lawyers who offer their legal services to victims of human rights violations, abuse of power and take on other cases in the interest of the public to ensure State and individual accountability. The network serves the public interest by spotlighting the advantages of a system based on the rule of law and respect for human rights, rather than on patronage, clientelism, and abuse of public office.

The project is funded by Iceland, Liechtenstein, and Norway through the EEA Grants Active Citizens Fund, which is operated in Malta by SOS Malta.

## About The Daphne Caruana Galizia Foundation

The team at The Daphne Caruana Galizia Foundation (“the Foundation”) is inspired by Daphne Caruana Galizia’s life, journalism, and unwavering commitment to the public interest. The Foundation works to ensure justice for her assassination and to continue her fight for press freedom and liberal democracy. The Foundation’s council set out to create a non-governmental organisation that is designed to provide a framework for the advocacy activities of those fighting for justice for Daphne. Because it is not possible to isolate her assassination from systemic corruption, institutional and state capture, and a collapse in the rule of law in Malta, the Foundation has a wide mandate to attack those diseases and fight for the principles of democracy using journalism and both legal and political mechanisms.

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## Introduction

From 2016 onwards, approved development permits in Malta increased exponentially – to double the number in the years prior<sup>1</sup>. What followed is the ongoing infiltration of construction across Malta and Gozo, dominating the everyday reality of citizens. The results and consequences of this have been various.

The Foundation, through the PILN project, began research work related to construction site fatalities in 2022, when there was a clear trend of lack of accountability linked to construction fatalities – as was then confirmed by our findings in this report. Our efforts doubled a few weeks later, following the death of Jean Paul Sofia<sup>2</sup>, the 20-year-old killed in a building collapse<sup>3</sup> in Corradino.

This report focuses on the aspect of injuries and deaths related to construction sites, and the course of justice and accountability that followed, during the 2010-2022 period.

The data shows that wall collapses and deaths have increased – in number and frequency respectively – along with the construction boom, in the same period. The findings also show how construction fatality victims have fallen victim a second time – to the lag of Malta’s excruciatingly slow justice system and questionable action or inaction against those responsible.

## Methodology

For the purposes of this research, data was collected through media sources, police press releases, freedom of information requests, documents tabled in parliament and parliamentary questions, publicly available government reports, and relevant legislation. Information was also sought from the communications desks of different public entities.

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<sup>1</sup> Zrinzo Azzopardi, S. (2022).

<sup>2</sup> Sansone, K. (2022).

<sup>3</sup> Agius, M. (2022).

The following entities were contacted for information:

- Occupational Health and Safety Authority (OHSA);
- Malta Police Force (MPF);
- Department of Social Services (DSS);
- Court Services Agency (CSA);
- Attorney General (AG)
- Ministry of Justice (MOJ);
- National Statistics Office (NSO).

For open source research, online searches were conducted with keywords “construction”, “worker”, “accident”, “injury”, “grievous”, and “Malta” in several combinations of the words. The time period was adjusted to cover one year at a time from 2014 to 2023 to give the search some structure and all news item results were scrutinised for stories involving construction accidents.

## Key Findings

- There was a rapid increase in planning permit approvals from 2016, and by 2017, approved permits more than **doubled** when compared to the prior 2010-2015 period.
- Between 2015 and 2022, there were at least 22 reported incidents of wall collapses with fatalities reported in one-fifth (18%) of these incidents. The highest number of collapses was recorded in 2019, when at least **eight occurred**.
- Between 2010 and 2022 at least 49 workers were killed whilst working on construction sites. Throughout that period, **the frequency of deaths increased**.
- Between January and April 2023, the BCA administered 250 penalties for construction site breaches - **two-thirds** of which were related to **lack of proper documentation and BCA approval**.
- Out of the 49 construction worker fatality cases, **34 remain open**, dating back to 2012, while only **15 cases were closed** – either because Court decisions were taken (five cases) or because nobody could be prosecuted (*No Action Can Be Taken*) (ten cases). The gap in ongoing cases continues to increase, causing **the number of unresolved cases to accumulate**.
- The average fine handed out by the Criminal Court for a construction worker fatality from the years between 2010 and 2022, was **€7,030**.
- **No warrants of periti** have been suspended or revoked over the past 23 years in relation to construction deaths.

## Information blackouts

While working on this research, a consistent finding was the glaring lack of existing data and ambiguity – or lack – of information provided by authorities when requested. When requesting data from the police, the OHSA and other official bodies, our requests were often turned down due to their outdated filing systems, which prevented them from being able to collate the requested information.

## Who's who on the construction site

Within the construction industry, different entities are responsible for different aspects. Some of these have been set up in a piecemeal fashion and the roles and responsibilities of the various authorities and professionals involved are at times ambiguous.

The authority bodies linked to construction are as follows:

**Table 1: Authority bodies linked to construction and their responsibilities.**

Authority	Functions
<b>The Planning Authority (PA)</b>	Established in 2016 and responsible for land use and planning. It is responsible for development planning and in determining and approving developmental permits
<b>Building and Construction Authority (BCA)</b>	Established by the Building and Construction Act of 2021. Responsible for safeguarding third-parties and safe working practices.
<b>The Occupational Health &amp; Safety Authority (OHSA)</b>	Established by The Occupation Health and Safety Authority Act of 2000. Ensures that the health and safety of all workers in all workplaces are promoted and safeguarded.

## Key players in the construction industry

There are many individuals working on, and involved in, a single construction site. The Foundation has attempted to map out some of the key players in the industry and their main responsibilities. This information was taken from the Building and Construction Authority and from legislation<sup>4</sup>. It is important to note that on some sites not all these figures are present and that there may also be other players present.

Additionally, there are a hidden number of workers who are undocumented<sup>5</sup> and whose employment, and therefore whose injuries, are not reflected in many of the publicly available statistics.

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<sup>4</sup> Work Place (Minimum Health and Safety Requirements for Work at Construction Sites) Regulations, 2018 (L.N. 88 of 2018).

<sup>5</sup> Undocumented workers refers to persons who lack the proper legal documents required to reside and work in a country.



**Table 2: Key players in the construction industry and their roles and responsibilities.**

Key Player	Functions
<b>The Developer</b>	The individual or entity in whose name the application for a development permit had been submitted. May also be the individual or entity carrying out the construction works.
<b>The Architect (Perit)</b>	A warranted professional assuming responsibility for the execution of the project approved in the development permit.
<b>The Contractor</b>	The individual/entity engaged by the Developer to execute works.
<b>The Site Technical Officer (STO)</b>	The individual nominated by the contractor and who is responsible for the implementation of the method statement which is prepared by the architect.
<b>The Site Manager</b>	The individual responsible for the management of a construction site, ensuring that any permits, certifications, or any such clearance required for any portion of the construction workers are in place. He is also responsible for the forbidding of access to sites and for reducing pollution related to noise and dust emissions.
<b>The Worker</b>	An individual working on a construction site for, or under the supervision of, either a Developer or a Contractor.
<b>The Project Supervisor</b>	An individual nominated by the Developer and is responsible for the health and safety supervision of a project. Should the

	Developer choose not to have a project supervisor they can appoint themselves as a project supervisor.
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## Increase in activity and its repercussions

### Increasing planning permits and significance

A planning permit is a development application which needs to be submitted to the Planning Authority (PA) by the architect responsible for a site prior to “commencing any structural works on a property or project”<sup>6</sup>.

Between 2016 and 2019 there was a significant increase in the number of approved planning permits. This led to a rapid rise in the gross value added (GVA) generated by the construction sector<sup>7</sup>, and an increase in the number of building-related companies that were registered<sup>8</sup>.

Between 2010 and 2015, on average, about 4,000 development applications were approved per year. However, in 2016, there was a rapid increase of nearly 2,000 more approvals and by the following year this figure doubled with 9,112 development applications approved for 2017. In 2018 approved permits increased to 10,305.

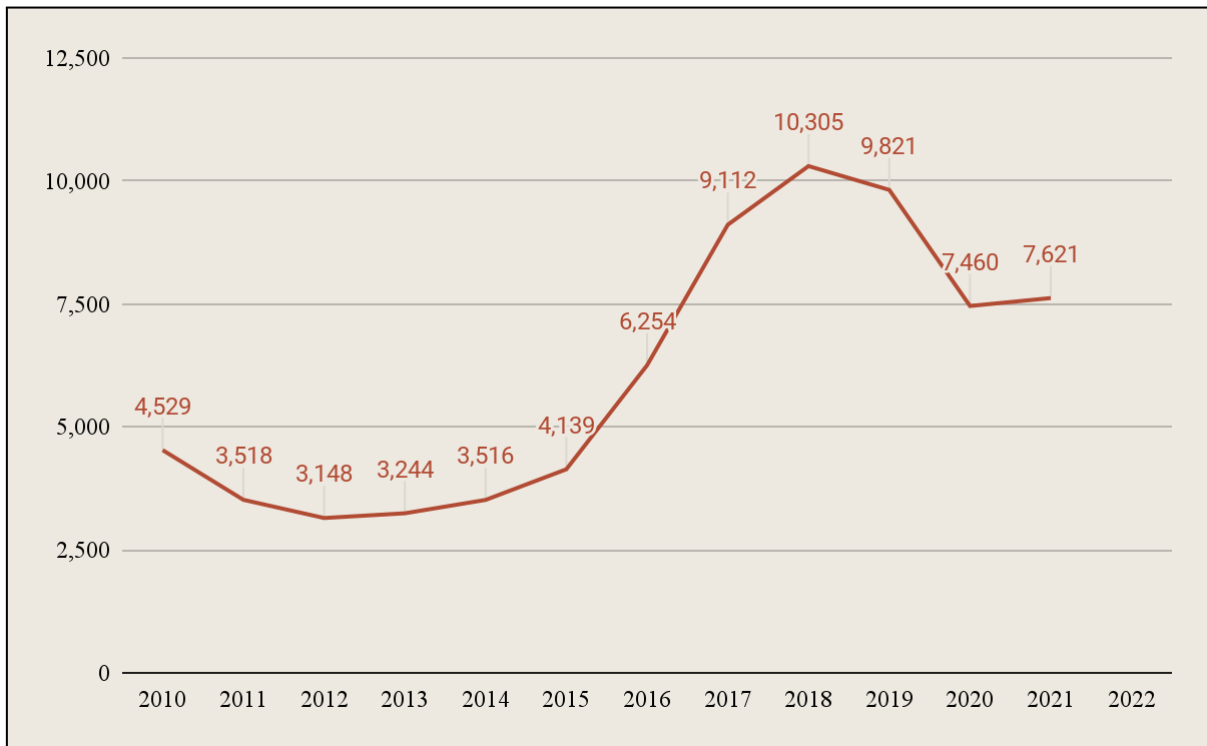
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<sup>6</sup> Planning Authority. (n.d.).

<sup>7</sup> Eurostat. (2023).

<sup>8</sup> Delia, J. (2021).

**Chart 1: Number of approved development applications by year<sup>9</sup>.**



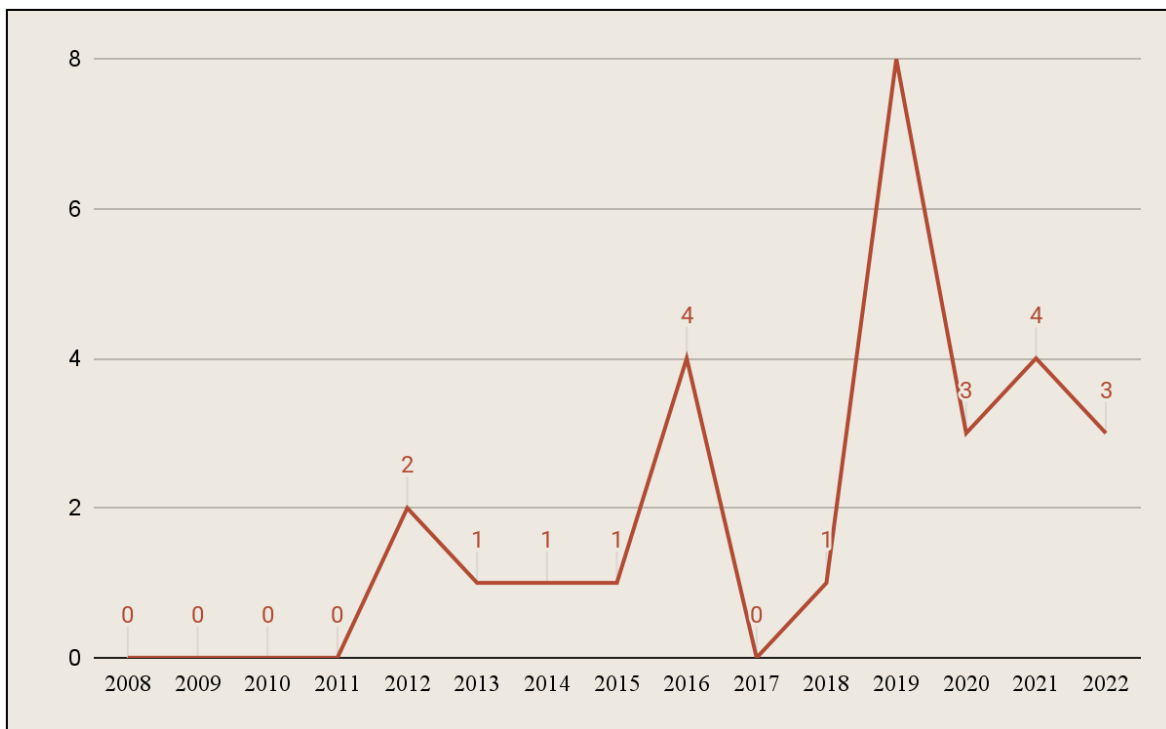
### Increase in wall collapses

As planning permit approvals increased, so did wall collapses. According to police press releases and online media reports between 2015 and 2022, there were at least 22 reported incidents of wall collapses. The highest number of collapses was recorded in 2019, where at least eight collapses occurred. In nearly one-fifth (18%) of these incidents, fatalities were reported.

Between 2010 and 2015, according to online media reports, at least four wall collapses were reported, with one resulting in a fatality. We were unable to corroborate this data with police press releases since these were only available from the year 2012 onwards.

<sup>9</sup> Zrinzo Azzopardi, S. (2022).

**Chart 2: Wall collapses by year<sup>10</sup>.**



## Deaths

According to data collated by the OHSA, between 2010 and 2022 at least 49 workers were killed while working on construction sites, with 2021 and 2022 being the most deadly years with nine and ten fatalities reported respectively.<sup>11</sup> This number only includes construction workers and does not include victims who were killed by construction activity, therefore the actual number of construction-related fatalities is higher. When looking at these years in four-year intervals, there was an increase in the frequency of deaths, coinciding with the increase of construction across Malta and Gozo.

Between 2018 and 2022 reported fatalities doubled when compared to the previous four-year periods. During this period, at least 29 construction site fatalities were reported.

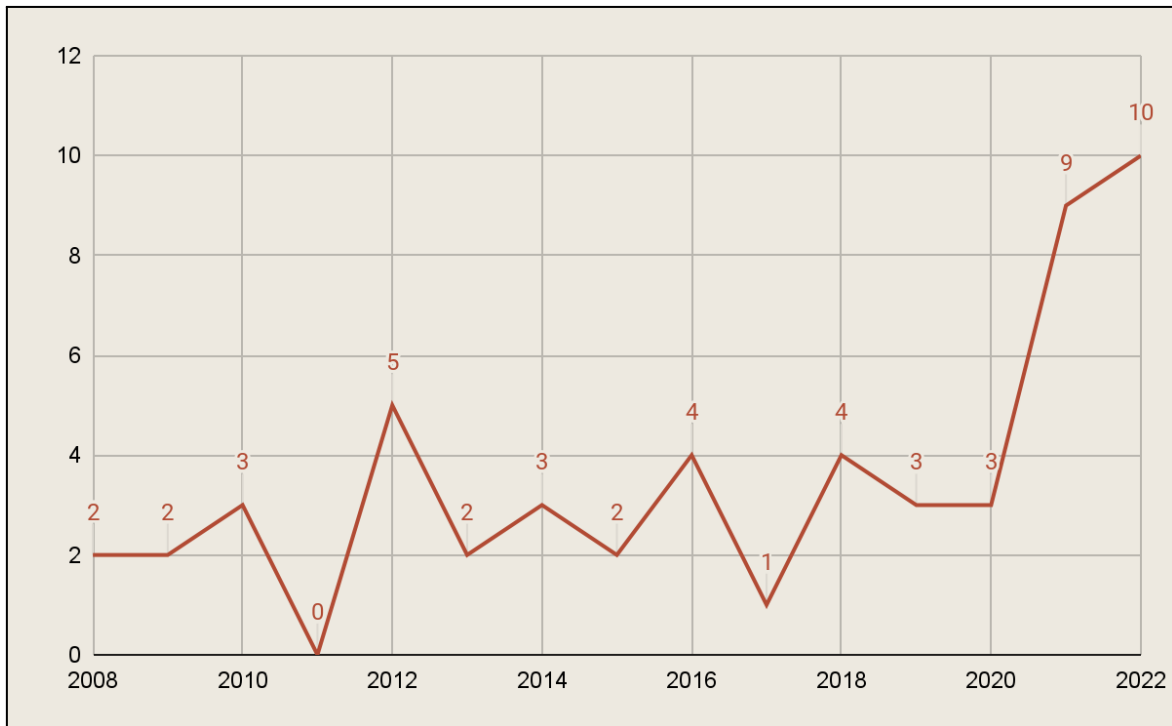
<sup>10</sup> The data was gathered through open desk research and press releases provided by the Malta Police Force.

<sup>11</sup> While data provided by OHSA showed that there were eight construction worker fatalities in 2022, open source research conducted by the Foundation showed that the number of construction-related fatalities for 2022 was ten.

**Table 3: Number of construction worker fatalities in four-year intervals<sup>12</sup>.**

Four year interval	Construction -related fatalities
2010 - 2013	10
2014 - 2017	10
2018 - 2022	29

**Chart 3: Construction worker fatalities by year.<sup>13</sup>**



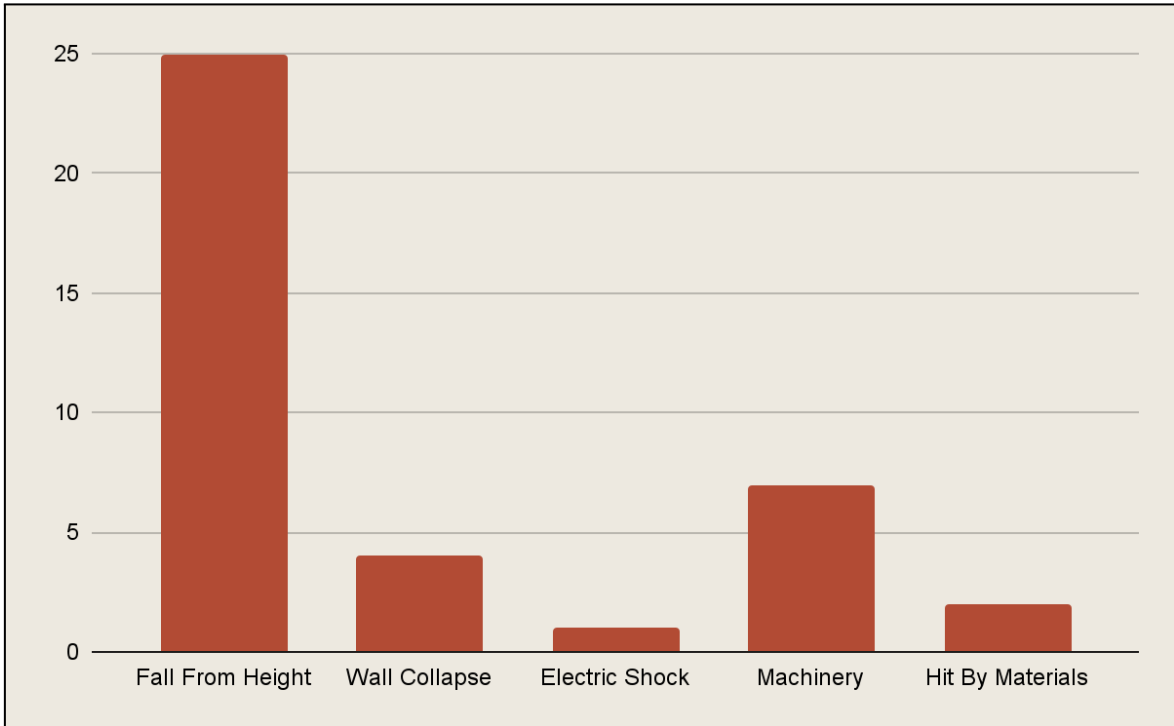
From an analysis of thirty-nine fatalities where information was publicly available, including construction-related fatalities of persons who weren't necessarily workers, two-thirds of fatalities (25 incidents) were caused when workers fell from heights. 18% (7 incidents) were caused by machinery, which included machinery crushing or hitting construction workers. Additionally, 10% of reported incidents (4 incidents) were caused by

<sup>12</sup> Figures were provided by the OHSA through a Freedom of Information request.

<sup>13</sup> *ibid.*

wall collapses, two incidents occurred when workers were hit by materials or debris, and in one incident a worker was killed after receiving an electric shock.

**Chart 4: Cause of construction fatalities from an analysis of 39 incidents<sup>14</sup>.**



From data obtained from the OHSA on construction worker fatalities, there were at least eight incidents where no publicly available information about the incident could be found, therefore the cause of deaths could not be included in these figures.

### **Injuries**

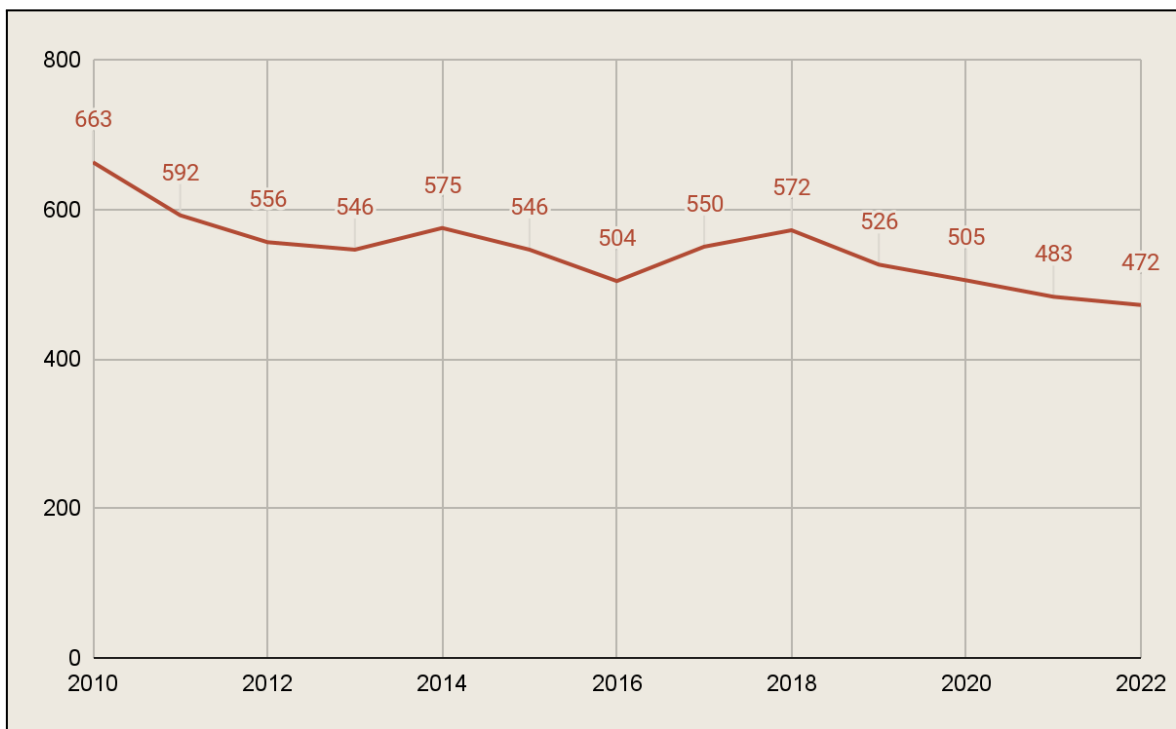
For the purposes of this report the Foundation contacted the OHSA, the MPF and the DSS for their data on non-fatal construction-related injuries. However, it was not possible to gain an accurate and real picture into this number due to lack of data and proper and systematic documentation.

The only statistics available on injuries on construction sites were available from the NSO, who, in turn, obtained their data from the DSS. The DSS only records non-fatal

<sup>14</sup> Information obtained through open-desk research.

injuries on construction sites when a claim is made for Injury Benefit.<sup>15</sup> However, these figures are not a true representation of the situation. If a worker is undocumented or does not claim Injury Benefit then any injuries they sustain would not be reflected in these official (and the only available data) on construction-related injuries. These figures also do not include individuals, such as bystanders, who were injured on or by construction sites, but were not on-site workers.

**Chart 5: Number of reported construction non-fatal injuries by year.<sup>16</sup>**



The OHSA and the MPF were also approached for their figures on non-fatal injuries on construction sites.

<sup>15</sup> A person may be awarded Injury Benefit if they are registered under the Social Security Act and suffer from a personal injury “caused by an accident arising out of, or in the course of their employment or self-occupation” and are unable to work for at least three consecutive working days. It is paid on a weekly basis (26€ per day for a single person) and deducted from the employee's wage. The employer must also fill in an Employer's Declaration and a medical doctor must complete a Report of Injury (Department of Social Security, n.d.).

<sup>16</sup> Figures obtained from the Department of Social Security through a Freedom of Information request.

The following replies were received:

**Table 4: Replies received through freedom of information and through direct communication from the OHSA and MPF, related to the number of construction-related non-fatal injuries.**

Approached Authority	Reply
<p><b>The Occupational Health &amp; Safety Authority (OHSA)</b></p>	<p>They started compiling workplace injuries as a separate data entry in 2017. Prior to that, notifications were entered into a separate paper file and the statistics were not compiled.</p> <p>Data of injuries notified to the OHSA include all notifications received by the authority and were not divided by industry. Therefore it was not possible to gain data on construction-related injuries.</p>
<p><b>The Malta Police Force (MPF)</b></p>	<p>They were unable to provide the requested data (in relation to the names and/or number of people prosecuted in relation to deaths/grievous injuries caused at construction sites) because the documents would substantially and unreasonably divert the resources of the public authority since the requested information is not kept electronically but in individual manual files held by different prosecuting officers.</p>



## Enforcement

Construction Notification Forms (CNF)<sup>17</sup> are the only documents that developers are legally required to submit to the OHSA before work begins. They must be filled in by a project supervisor and submitted to the OHSA four weeks prior to work commencing. According to Legal Notice 88 of 2018 only sites where work is longer than 30 working days and more than 20 workers are present at the same time *or* the volume of work is in excess of 500 man days require these forms, therefore, not all construction sites require CNF before work begins. However, all sites must have a health and safety file containing any relevant health and safety information which must be made available on request.

In 2011, 250 CNF forms were submitted to the OHSA and these submissions consistently increased by an average of 200 - 300 more forms per year. In 2017, 1526 CNF forms were submitted, 500 more than the previous year and, in 2019, 2450 forms were submitted. Despite this, the number of Occupational Health Service (OHS) officers has more or less remained the same since 2010 and currently stands at 13.

As part of their duties, OHS officers are there to carry out site visits to workplaces, including construction sites. There are no publically available figures on the number of construction site visits carried out by OHSA per year,<sup>18</sup> however, according to OHSA's annual reports, prior to 2018, every CNF received by OHSA resulted in a site monitoring visit by an OHS officer. This changed from 2018, where not all construction sites with a CNF form were inspected<sup>19</sup>. Instead, a sampling strategy was used to identify sites which are subject to an inspection. This coincides with the drastic increase in Construction Notification Forms from 2018 onwards.

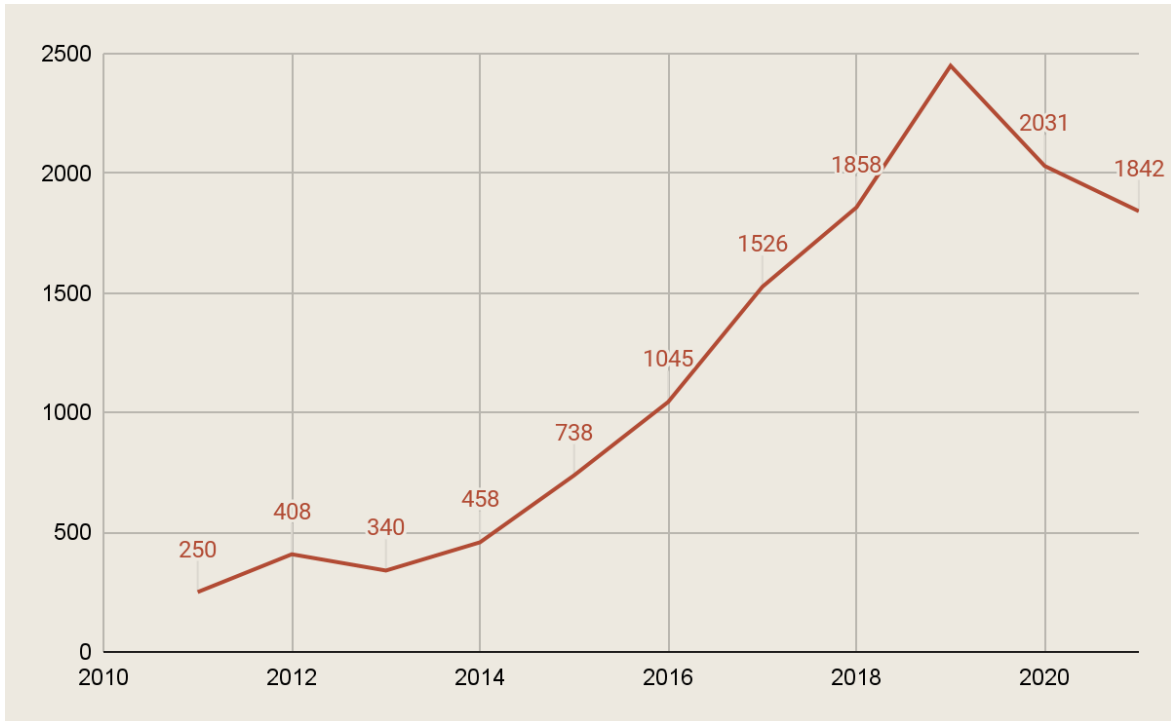
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<sup>17</sup> Work Place (Minimum Health and Safety Requirements for Work at Construction Sites Regulation, 2018 (L.N. 88 of 2018) and the Temporary or mobile construction sites Directive (Directive 92/57/EEC).

<sup>18</sup> The Foundation has repeatedly requested data on the number of construction visits carried out by OHSA per year however we were informed that this data is not digitally filed and therefore it was not possible to compile this data. Figures on CNF and all worksite visits were gathered from the authority's annual reports.

<sup>19</sup> Occupational Health and Safety Authority. (2019).

**Chart 6: Number of construction site notification forms received by the OHSA, per year<sup>20</sup>.**



## Penalties

Both the OHSA and the BCA are empowered to give administrative fines for breaches.

Between January and April 2023, the BCA administered 250 penalties for construction site breaches - two-thirds of which were related to lack of proper documentation and BCA approval<sup>21</sup>. As prescribed by Legal Notice 136 of 2019<sup>22</sup>, prior to the commencement of any type of construction works a number of documents must be submitted to and approved by the BCA. These documents include (but are not limited to) an insurance policy, a bank guarantee and a method statement and the aim of these documents is to minimise the risk

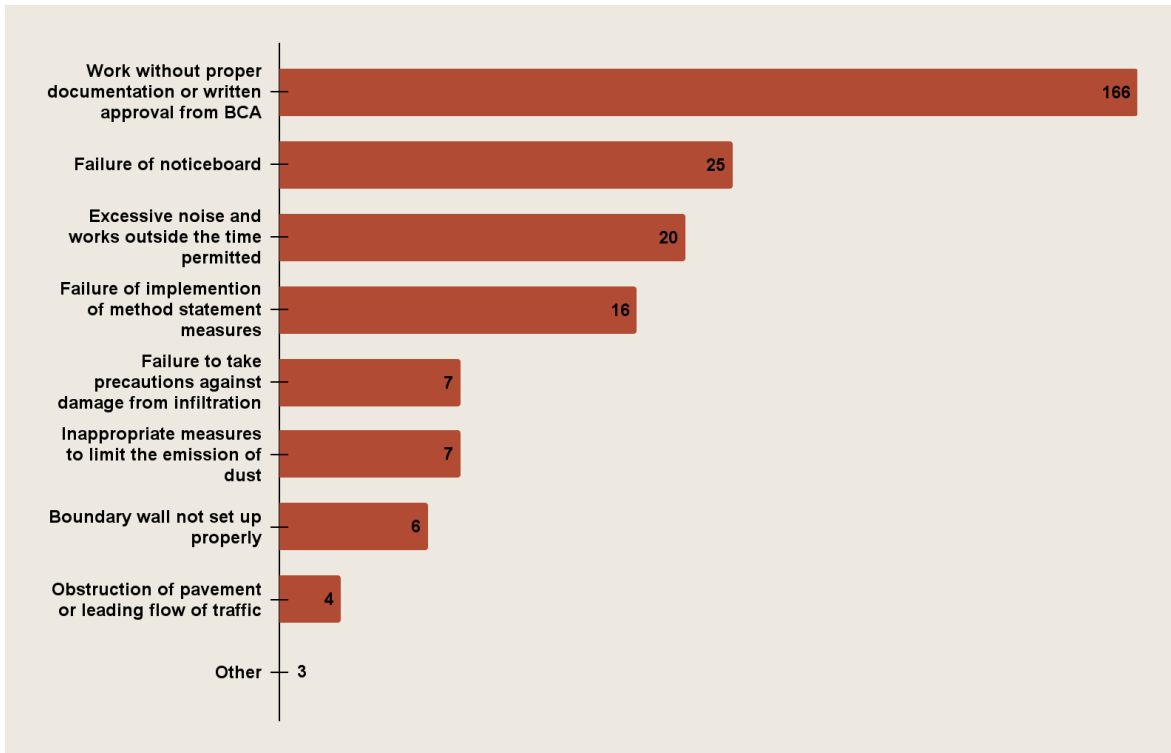
<sup>20</sup> Figures taken from construction site notification forms and workplace visits as recorded by OHSA in their annual reports. These figures do not include other construction sites which do not require construction notification forms.

<sup>21</sup> Zrinzo Azzopardi, S. (May 2023).

<sup>22</sup> Avoidance of damage to third party property regulations (L.N. 136 of 2019).

of damages to third-party property or injury to persons that may result from the proposed works.

**Chart 7: Reasons for penalties issued by the BCA between January and April 2023<sup>23</sup>.**



Although the OHSA claimed that the majority of fines issued by their authority was related to construction, they were not able to provide a breakdown by industry of the total number of administrative fines issued per year. Furthermore, the authority began imposing fines as of 2012. Since this data could not be disaggregated by sector, it was not included in this report.

## Justice and accountability

### Information blackout on *perpetrators*

In order to understand what formal action has been taken against those suspected to be responsible in construction fatalities, the Foundation requested the following information from the police:

<sup>23</sup> Zrinzo Azzopardi, S. (May 2023).

- the **names of persons** prosecuted in relation to construction deaths and injuries;
- the **number of persons** prosecuted in relation to construction deaths and injuries;
- **details of addresses** of construction sites where deaths occurred;
- **PA numbers** of construction sites where deaths occurred.

The police declined to provide any of the information points listed above, citing lack of resources and difficulty with completing the task due to the nature of the filing of the requested information – which underlines the need for the improvement of the outdated police record system.<sup>24</sup>

This means that, apart from pieces of information available to the public through sporadic media reports, there is no information given to the public about who is responsible for serious injuries and fatalities on construction sites, and what action is taken against them.

This makes it impossible for the public to hold to account those responsible for the shortcomings that have proven to be fatal time and time again.

### **Status of construction fatalities cases**

The OHSA provided the status of each construction site worker fatality case since 2010. Through open source research the Foundation identified two construction-related fatalities that occurred in 2022 which were appointed and being heard in Court in 2023.

This data further shows how accountability is lax, and how the victims of the construction industry have also fallen victim to Malta's slow justice system, with the last Court penalty for a construction fatality being handed down in 2015.

Furthermore, the findings also raise questions about *who* holds responsibility for circumstances that led to fatalities in the cases where *no action could be taken* against perpetrators by the authorities.

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<sup>24</sup> Vella, M. (2023).

**Table 5: Status of cases into worker construction deaths by year.<sup>25</sup>**

YEAR	FATAL ACCIDENTS	APPOINTED AND BEING HELD BY COURT	PENDING CLOSURE OF MI OR AWAITING PROCESS VERBAL	DECIDED	REFERRED TO POLICE BY OHSA TO COMMENCE COURT CASE	BEING PROBED BY OHSA. MI STILL OPEN	PENDING COURT APPOINTMENT	NO ACTION CAN BE TAKEN
2010	3			3				
2011	0							
2012	5		2		1			2
2013	2							2
2014	3	1		1				1
2015	2			1				1
2016	4	3			1			
2017	1							1
2018	4		2		1			1
2019	3	1	1				1	
2020	3	1	2					
2021	9	3	2			2		2
2022	10 <sup>26</sup>	2	3			5		
<b>Total</b>	<b>49</b>	<b>11</b>	<b>12</b>	<b>5</b>	<b>3</b>	<b>7</b>	<b>1</b>	<b>10</b>

<sup>25</sup> Figures provided by the OHSA.

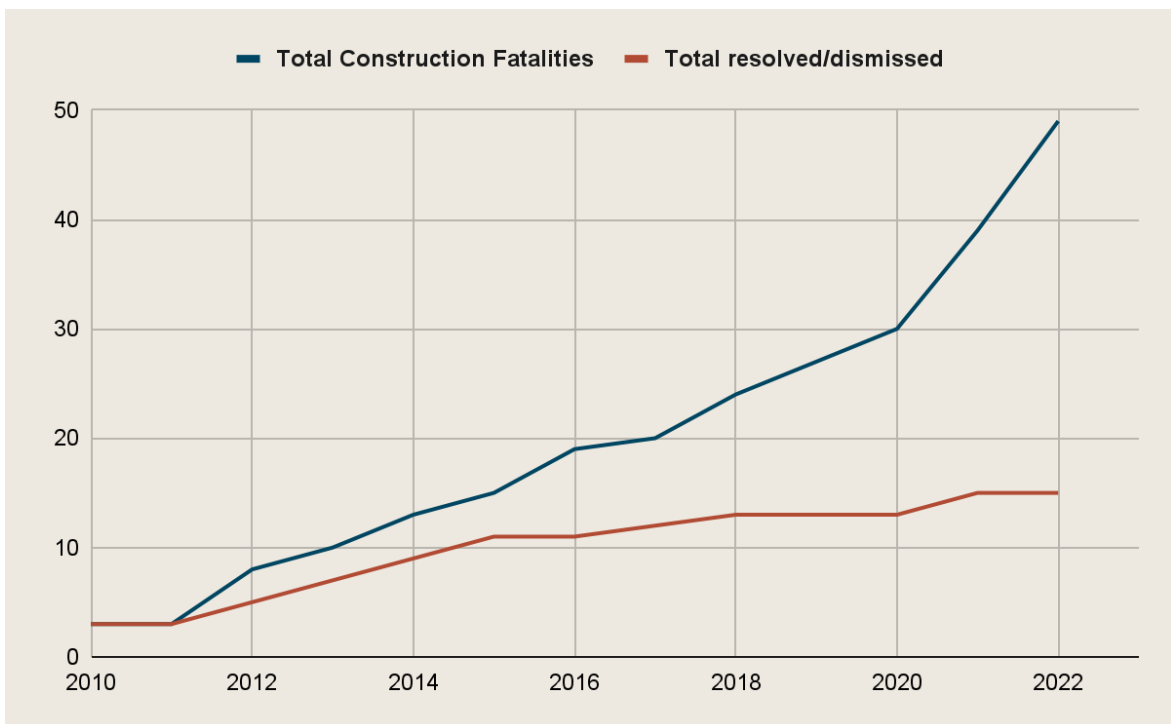
<sup>26</sup> Open-source research conducted by the Foundation showed that the number of construction-related deaths for 2022 was ten.

The table provides a breakdown of the status of the 49 cases as of March 2023, into the following categories:

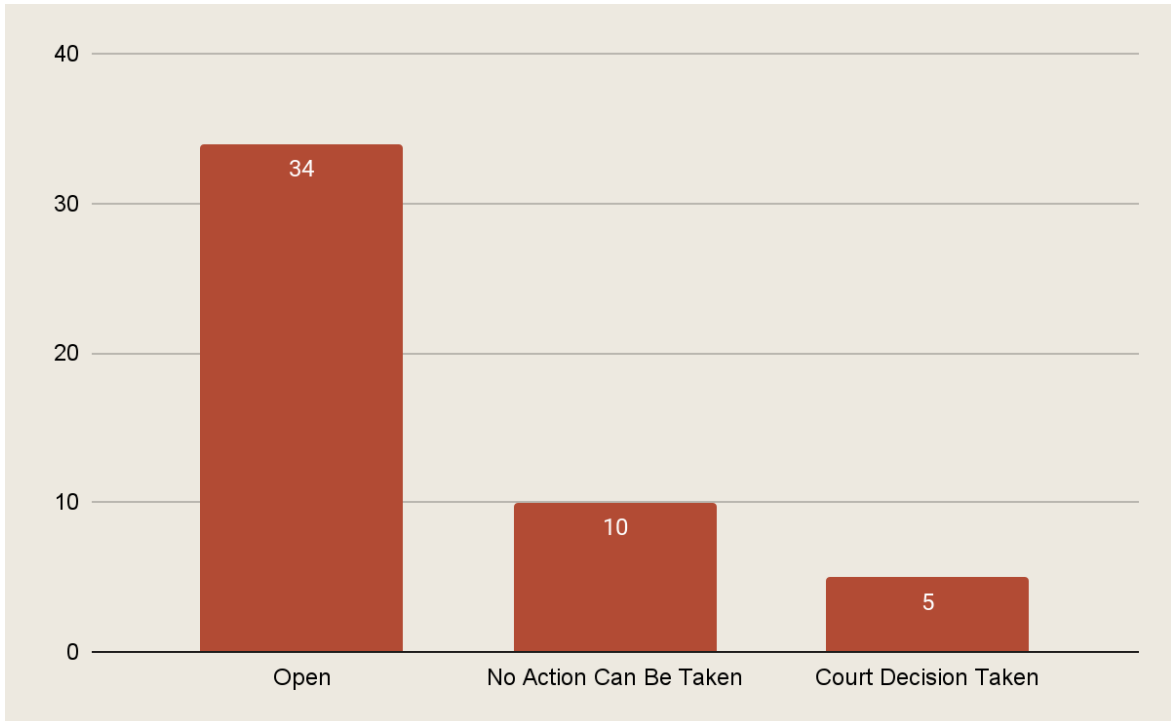
- Appointed and being heard by Court
- Pending closure of Magisterial Inquiry (MI) or awaiting the Procès Verbal
- Decided
- Referred to police by the OHSA to commence court case
- Being probed by the OHSA (MI still open)
- Pending court appointment
- No action can be taken.

### Open cases vs closed cases

**Chart 7: Total number of closed cases (resolved/dismisssed) in comparison to the total number of construction fatalities. The gap between the two lines indicates the amount of unresolved cases.**



**Chart 8: Number of open and closed construction worker fatality cases from 2010 - 2022.<sup>27</sup>**



Out of the 49 cases, 34, a large majority (69%) remain open, dating back to 2012, while only 15 cases (30%) were closed – either because Court decisions were taken (five cases) or because nobody could be prosecuted (*No Action Can Be Taken*) (ten cases).

We were unable to obtain comprehensive and detailed information on the reasons as to why no action could be taken.

The figures also show that the gap in ongoing cases increases as years go by, causing the number of unresolved cases to accumulate.

<sup>27</sup> Figures provided by the OHSA.

## Penalties ordered by Criminal Court



One of the most surprising findings from this research is that there have only been five Court decisions on construction-related fatalities out of the 49 fatalities of construction workers between 2010 and 2022, with the last decision taken in 2015. Since the last Court decision, there have been 34 *fatalities* on construction sites.

The penalties imposed on those prosecuted in the five Court cases between 2010 and 2015 were as follows:

**Case #1 in 2013:** €11,650 fine

**Case #2 in 2013:** €10,500 fine

**Case #3 in 2013:** €1,000 fine and 18 months imprisonment suspended for three years

**Case #4 in 2014:** €10,000 fine

**Case #5 in 2015:** €2,000 fine

Therefore, between 2010 and today, the maximum penalty ordered by the Court in connection to a construction fatality has been €11,650. The minimum has been just €1,000. The average fine was €7,030.



## Pending closure of Magisterial Inquiry

The category with the highest number of cases is the ‘*Pending closure of Magisterial Inquiry or awaiting the Procès Verbal*’ category with 12, or 24% of the cases. The Procès Verbal is the Court document that includes exhibits and depositions of witnesses in court proceedings and expert reports, which is signed by the Magistrate<sup>28</sup>.

## No architect (*periti*) warrants suspended or revoked

According to information provided by the Ministry of Justice to the Foundation in response to a freedom of information request, no warrants of architects’/structural engineers’ (*periti*) warrants have been suspended or revoked over the past 23 years in relation to construction-related deaths. As of April 2023, no warrants are pending evaluation for suspensions/revocation in relation to such fatalities, according to the same FOI request.

## Observations

- Without a proper and systematic documentation system, attempts to fully understand the situation and the impact of the construction industry will continue to be challenging.
- Without effective enforcement and sufficient human resources, breaches of construction regulations will continue to take place.
- There is no accountability for victims injured or killed during the construction boom. The delays in the justice system decrease the chances for justice to be delivered especially since evidence is weakened by delays and witnesses may forget information over time, or might leave the country particularly if they are third-country nationals.
- The current disciplinary action is not enough to prevent breaches and unnecessary deaths and injuries. The penalties are too low and inquiries take too long.
- There are many workers within the construction industry who are undocumented and thus almost invisible to systems that are meant to ensure safety, security, and accountability, including public scrutiny. They work in precarious conditions and

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<sup>28</sup> Camilleri, S. (2008).

are the most vulnerable. These workers are not accounted for in any of the statistics and are likely not being properly protected by authorities.

- It is unclear who holds ultimate responsibility for a worker's health and safety, especially when it comes to self-employed persons.
- The extent of the injuries occurring at construction sites is also unclear, given that many injuries are inflicted on persons who are not documented and which, therefore, go unrecorded.

## Recommendations

- Throughout our research for this report, we were consistently hindered by the weak accessibility to information and data, which was necessary to obtain an in-depth understanding of the issues in focus. For this reason, we would recommend both timely and up-to-date record-keeping, which would allow for data that is easier to collate and obtain, as well as increased transparency and accessibility.
- The data obtained with regards to construction worker fatalities and the Court system highlights the long delays that the families of victims have to go through in order to obtain justice. Underlining that justice delayed is justice denied, the Foundation strongly recommends the State acknowledges this serious shortcoming and makes sure that justice is served in a timely manner.
- Besides timely court cases, the Foundation also wishes to highlight that victims and victims' families deserve access to justice that is transparent. From our experience working with both, such access is not available. Measures must be put in place to support and assist families of victims in accessing justice. They should be involved and informed about investigations into the death of their loved ones and also given legal support.

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