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# Restorative justice and victims of terrorism

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Are there possibilities?

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# Outline of the presentation

- 1. Introduction
  - 2. Definitional issues
  - 3. RJ and terrorism
  - 4. Conclusion: possibilities and challenges
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# 1. Introduction

- My background
  - Context of the project:
    - To develop standards at the EU level
    - For aid and assistance of victims of crime
    - RJ as a specific focus
  - Focus of discussion in this workshop: one article in the draft standards
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## 2. Definitional issues

- RJ and terrorism: not well-studied
  - Definition of terrorism (focus on mass victimisation but rather rare)
  - Focus on victims of terrorism and their needs
  - Definition of RJ
  - RJ practices as examples for reflection on possibilities for terrorism
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## 3. RJ and terrorism

- 3.1. Context of RJ and terrorism
  - 3.2. RJ definition
  - 3.3. RJ practices
  - 3.4. Possibilities of RJ for victims of terrorism
  - 3.5. Lessons to be learned from RJ for victims of terrorism
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## 3.1. Context of RJ and terrorism

- New field of study: anecdotal examples
  - Definition RJ: purism/maximalism
  - Three levels (~needs of victims)
    - Micro: victim and offender
    - Meso: communities
    - Macro: societies/government/media
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## 3.2. RJ definition (1)

- Purism: Marshall (1999): *‘Restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future.’*
  - Maximalism: Bazemore and Walgrave (1999): *‘Restorative justice is every action that is primarily oriented towards doing justice by repairing the harm that has been caused by a crime.’*
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## 3.2. RJ definition (2)

- Purism: focus on restorative encounters, e.g. mediation (VOM), conferencing (FGC), circle sentencing, victim impact panels, (TRC)
  - Maximalism: focus on restorative outcomes, e.g. encounters, community service, compensation, ...
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## 3.3. RJ practices

- VOM (micro)
  - FGC (micro/meso)
  - Circles (micro/meso)
  - Victim Impact Panels (surrogate encounters - micro)
  - Symbolic reparation measures (micro/meso)
  - Restorative sanctions (unclarity)
  - TRC (macro)
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## 3.4. Possibilities of RJ for victims of terrorism: examples

- Individual meetings (micro): RJ principles, initiative of the victim
  - Community meetings (meso): victims of ongoing intergroup conflict
    - Parents Circle – Families Forum (Israel/Palestine)
    - Victim-Combatant Dialogue of the LIVE-Programme (Northern Ireland)
  - [TRC (macro)]
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## 3.5. Lessons to be learned from RJ for victims of terrorism (1)

- Mass terrorist victimisation and their impact upon tertiary/vicarious victims: importance of media (link to RJ?)
  - Comparison to victims of serious violence: importance of process rather than outcome; possibility of indirect meeting
  - Comparison to victims of hate crime (representative victims): seeing victim as 'real' person
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## 3.5. Lessons to be learned from RJ for victims of terrorism (2)

- Comparison to victims of large-scale conflicts: integrating RJ principles in transitional justice mechanisms in order to include a bottom-up approach at the macro-level (Weitekamp et al. 2008)
  - Restorative justice and the vicarious dimension of terrorism: can RJ principles build on conflict reduction mechanisms for vicarious retribution (Lickel et al. 2006)?
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### 3.5. Lessons to be learned from RJ for victims of terrorism (3)

- The involvement of the community in the RJ process: multi-victim perspective (but not forgetting primary victim)
  - Suicide terrorism: victim impact panels
  - Religious terrorism: RJ values are not met from the outset but belief in re-humanisation (Marshall 2007)
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## 4. Conclusion: possibilities and challenges

- RJ from a maximalist view broadens the scope beyond individual meetings
  - Importance of micro-, meso- and macro-perspective
  - Flexibility in approaches
  - No all-inclusive response (cf Marshall 2007)
  - Integration of punitive elements? (Rhone, Siemens)
  - Link to victim needs
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## To end: a quote (Marshall 2007)

« RJ meetings cannot, on their own, redress all the effects of terrorism. (...) But even if it is one tool in the box, RJ still has a contribution to make. (...) Terror is renounced not just in the refusal to endorse war, but in every act of human kindness and decency. »

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# Workshop on Restorative Justice, session 1

Chair: Uri Yanay

Presentation: Inge Vanfraechem

The workshop focused on the following central questions:

1. Can you apply the Restorative Justice concept to terrorism?
2. Can governments be encouraged to use Restorative Justice when it comes to terrorism?
3. What are the expected outcomes/benefits?
4. Should these recommendations be part of the standards of the conference/should standards be developed in this area?

## **Presentation**

### *Restorative Justice and Terrorism*

#### *1. Introduction*

Context of the project: developing standards at EU level for the aid and assistance to victims of terrorism; Restorative Justice was a specific focus.

The main focus of the workshop will be to gain input regarding the draft recommendations.

The report mainly focuses on mass victimisation (by terrorism); Restorative Justice might nevertheless also be an option for less seriously damaged victims. It might even be easier to introduce Restorative Justice in the case of terrorist attacks in such cases.

#### *2. Context of Restorative Justice and Terrorism*

This is a new field of study. Three levels can be discerned: the macro (society/country) level, the meso (community) level and the micro-level.

#### *3. Restorative Justice Definition*

Two main views: Purism view (focused on encounters) and maximalism view (focused on outcome).

#### *4. Restorative Justice Practises*

The following restorative practises may be an option to all victims of crime: victim-offender mediation, conferencing, circles, victim impact panels, symbolic reparation measures, restorative sanctions, truth commissions (e.g. TRC).

#### *5. Possibilities for Restorative Justice for Victims of Terrorism*

Individual meetings; often initiated by the victim

Community meetings; mediating between groups that are involved

TRC (not currently being used with cases of terrorism, but it may appear to be suitable because a) you try to involve the perpetrators, b) broad definition of who are regarded as

victims, c) involvement of the public (public broadcasting etc) and d) forward-looking orientation.

Negative elements of TRC: a) separate hearing for victims/offenders, so no meeting or exchange, b) offender is excluded from the process focused on compensation, c) no incentive for perpetrators to participate because non-participants are often not prosecuted as well.)

#### 6. *Lessons to be learned from Restorative Justice for victims of terrorism*

Remaining questions:

Role for the media: what is the link there to Restorative Justice?

What to do regarding vicarious victims/retribution

Importance of process rather than outcome: possibility of indirect meeting

It can be important to humanise the victim through the communication with the offender.

A bottom-up approach is important, that recognises programmes at the macro as well as at the meso and micro level.

Involvement of the community is important; multi-victim perspective.

Use of Victim Impact Panels?

#### 7. *Conclusion*

Restorative Justice can be used in cases of terrorism.

Addressing the macro/meso/micro-level.

Flexibility in approaches is important.

No all-inclusive response.

Including punitive elements?

Focus on victim's needs.

### **Session 1, discussion points**

- Victims of (other mass) violence have the same kinds of experience as victims of terrorism; these other victims should also be recognised;
- It is important to consider the distinction between crime, mass victimisation and terrorism;
- Not all terrorism is mass victimisation, therefore another distinction may be made: the offender is the least amenable in this respect and will justify the committing of the criminal act. Terrorism is simply a criminal act and this makes it difficult to engage such an offender in a restorative programme;
- It might help the victim to understand the offender when he learns about the environment that has 'produced' the offender;
- Victims do need to understand the motives of the offender; two working levels: 1) Macro-level: it is a governmental task to educate the public (this may also be left

- to the media), 2) micro/meso-level: bring victims in contact with certain terrorist groups who can provide information;
- Restorative Justice has nothing to do with helping victims of terrorist attacks. Victims need help, recognition, compensation and Restorative Justice does not offer this to them. Terrorist attacks cause a need for repair in society itself;
  - Restorative Justice has no priority when addressing 'points of actions' regarding terrorism, so why is it incorporated currently in the recommendations, it is at another level, so why are the recommendations so heavily focused on Restorative Justice?
  - What does Restorative Justice have to do with the direct help to victims of terrorism?
  - Miscommunication is a lack of information; there is a need for more independent information on the thoughts that live among groups in society;
  - It might be bad for victims to learn that the perpetrators do not participate because they do not gain by taking part;
  - It is wrong to assume that terrorists are not willing to communicate; then the possibility to even establish restorative practises is taken away. For victims it might also be hard to state that they desire to meet the offender, because others may disapprove;
  - What are the differences between the needs of victims of mass victimisation and the needs of victims of terrorism?
  - Victim assistance is the main priority after a terrorist attack; in the draft recommendations is only one paragraph related to Restorative Justice;
  - Restorative Justice Practises may follow terrorist attacks after years, not immediately;
  - Differentiating between mass victimisation and terrorism: add the dimension of state terrorism;
  - Restorative Justice comes from countries that did not have European justice systems that are more individually oriented. The draft recommendation does not only have to be focused at one level, so even though Restorative Justice does not take place on the primary level, it may still be incorporated in the recommendation.

### **Summarising:**

We are speaking about victim's needs. Is one of these needs meeting the perpetrator to empower the victim? Might this be the case in cases of terrorist attacks?

Yes, some victims might feel the need to meet 'their' offender, this will likely be the same regarding terrorism. It is important to also take into account the role of society due to the impact of terrorist attacks in society.

No it is no need of victims; it is a right of victims to use if they want to.

If terrorists want to meet their victims after serving (some of) their time, should the victim be encouraged to meet?

This should remain a choice of the victim that may not be pressured into taking part.

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### **Session 2, Discussion:**

- Timing is important; people might have other needs that have to be put in front of the possible need to Restorative Justice;
- It should be considered what place the Restorative Justice processes regarding terrorism should be given next to the criminal justice system and whether they lend themselves to be used as a means of diversion;
- It is important to take the different backgrounds (in terms of religion, culture etc.) between the aimed participants in Restorative Justice into account, especially now that the area of terrorism is likely to involve victims and perpetrators that come from different backgrounds. This is also important because, due to the number of victims involved, that category may also not be homogenous and have variable backgrounds;
- Victims mainly need/seek justice, deterrence and accountability (according to Ms. Basnicki, whose husband was killed in 9/11). This may nevertheless also be provided by Restorative Justice Practises (e.g. by the offender showing remorse etc);
- Victims might benefit and 'heal' from perpetrators (that do not have to be per se 'their' perpetrators) explaining why they resorted to terrorism and ultimately to violence;
- Is there enough reason to assume that victims and perpetrators want to engage themselves in Restorative Justice Processes?

## **Workshop on Restorative Justice, session 2**

### **Main focus of the workshop:**

The workshop dealt with the following central questions:

1. Can you apply the Restorative Justice concept to terrorism?
2. Can governments be encouraged to use Restorative Justice when it comes to terrorism?
3. What are the expected outcomes/benefits?
4. Should these recommendations be part of the standards of the conference/should standards be developed in this area?

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### **Main points:**

Distinction between the needs of victims of terrorism and victims of other events leading to mass victimisation.

It is important that the victim becomes aware of the motives of the offender. It might be helpful and ‘healing’ for the victim to learn how and why the (or a!) perpetrator resorted to terrorism or violence. This leaves a task for the government to educate and inform the public. At the meso/micro-level, restorative practices may furthermore come into sight.

The victim should be enabled to enter a restorative process if he desires to do so. This implies that the victim is the one to decide the priority that should be granted to the restorative procedure. The victim is the one who should make his need to meet the offender known, instead of society awarding a certain priority to the question when restorative processes should take place. If the offender announces he would like to meet the victim, the victim may be approached with this idea but should not be pressured.

It has been questioned whether Restorative Justice has a place where it comes to ‘dealing’ with victims of crimes, and whether Restorative Justice should be considered as a ‘need’ of this category. It has been proposed to speak of a ‘right’ instead of a need. Furthermore, victim assistance should remain the main focus when a terrorist attack is concerned and also the main need of the victims concerned at the time, aside from matters such as security etc.

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### **On section VII of the draft Recommendation:**

The question has been posed whether paragraph VII should be granted a place within the draft recommendation, due to the fact that Restorative Justice is not considered to be a primary need of victims and still much research is needed in the field.

However, the question should rather be not if Restorative Justice should be granted a place within the draft, but how this should be designed

The current definition of Restorative Justice in the draft is regarded as unsuitable, due to the fact that it differs from generally adopted definitions of Restorative Justice.

It is striking that aspects such as the needs of victims and matters such as ‘taking responsibility by the offender’ (a factor very common to the use of restorative practises) are furthermore being left out of paragraph VII. The problem therefore is not so much the fact that Restorative Justice is being linked to terrorism, since it may conceivably provide benefits for the persons involved, but the way the subject is currently being put into words, based on the comments above.

“(...) promote competent restorative justice programmes (...)”; what does that mean; how does that influence the voluntariness of the decision of the participants to take part, especially now that the use of restorative justice in the context of terrorism is considered as a relatively new area.

Before promoting it, it is important to address the other primary needs of victims. The question remains however who should determine whether the ‘time has come’ to enable victims to participate in Restorative Justice (see also above under ‘main points’).