

Victims and Restorative Justice

This summary refers to a research project on the needs, experience and position of victims in participating in restorative justice practices. More details on the project below. Visit www.euforumri.org for downloading the full research report.

Needs of victims after the crime

After victimisation, the victim might have different needs to restore the physical, psychological and financial harm that was done to them and also to restore their image of themselves and the world around them. Physical and psychological treatment might be needed to heal and to deal with mental health problems. Social and practical support can stimulate recovery and can be given by the social surroundings of the victim or special organisations, such as Victim Support. (Material) compensation can be received for, for example, damaged materials or physical harm. Other needs are related to safety, such as the need to prevent recurrence of crime and the need to be protected from the offender.

Needs of victims in the judicial procedure

Victims have also needs in the judicial procedure:

- *Respectful treatment / recognition*: The victim should be treated respectfully by the different actors in the judicial procedure and there should be possibilities to obtain support and assistance. Also important is the *presumption of victimhood*: the victim should be treated as if the crime indeed took place, unless it is proven to be otherwise.
- *Information*: Information concerning the victims' position, avenues to receive support and justice and concerning the ongoing criminal justice process is a highly important need for victims of crime. Lack of information is the main source of distress and dissatisfaction with criminal justice agencies.
- *Participation*: Participation in the procedure is also a need for many victims, but the benefits of participation should be balanced by the stress associated with participation. For most victims, not the influence on the sentence is an important reason for participation, but rather the mere fact that the victim is given a role and a voice in the proceedings.

Different than might be expected, retribution of the crime does not seem to be a need for most victims. Most victims seem to prefer different outcomes in the judicial procedure, for example compensation or a sincere apology from the offender.

Restorative Justice

The UN (UNODC, 2006) uses this definition for Restorative Justice (RJ): "Restorative Justice is a way of responding to criminal behaviour by balancing the needs of the community, the victim and the offender". RJ is a practice in which the parties affected by crime are prepared to meet and engage in dialogue facilitated by a RJ practitioner, either in a direct (face-to-face) or indirect form. RJ pays attention to the interpersonal

aspect of crime, by involving the victim, offender and the community. The dialogue aims to a common understanding on what has happened, what harm this created, who is responsible for that and how the harm can be restored. RJ programmes are based on the fundamental principle that criminal behaviour violates the law, but also injures victims and the community. Efforts to address the consequences of criminal behaviour should, where possible, involve the offender as well as these injured parties, while also providing the help and support the victim and offender might need. Despite different ideas of what RJ means, most scholars seem to agree that focusing on the harm is part of the essence of RJ. This focus on the harm means that RJ aims at finding ways to restore this harm. Such restoration refers to victims, offenders and the community. RJ has a problem-solving focus and sees crime in a broader context and RJ tries to restore harm or damage that has been done, as well as restoring harmed relationships.

Opportunities for victims participating in RJ

The project carried out interviews with almost 200 victims, who participated in different RJ programmes in three countries. Most victims feel comfortable with how and when a process of RJ is offered to them. The most important reasons for participation were: (a) "to let the offender know how the victim felt", (b) "to get answers from the offender" and (c) "to receive an apology".

Victims tended to be satisfied with the preparation they received, although this preparation was not always very thorough. This means that victims considered they had enough information and felt prepared to meet the offender, even when such preparation could have been short or did not involve a previous face-to face meeting with the mediator. One of the respondents on the preparation for the RJ process stated, that "(h)e received a lot of useful information and support in order to formulate his claims for financial compensation. He had further discusses with his friend who had been in mediation (is a specific kind of RJ process) earlier. He learned from him what happens in the mediation process. Also the mediators had clarified this very well."

In general, victims tended to positively assess the communication process that took place during the RJ process. This was observed among victims whose cases had been led by either a volunteer or a professional facilitator. The mediators were generally assessed positively by the victims. They were seen as supportive and objective and victims feel respected. In general, victims feel their participation in the RJ process is voluntary. Most of them are aware they can withdraw at any time. Victims are generally satisfied with and feel involved in the RJ process. One of the respondents on the RJ meeting said that "(t)aking part in mediation was a positive experience in the end. She is happy that she was able to act and function rationally in the meeting, even if she had been nervous before the meeting. She appreciated the support she got from the mediators (...)". Most victims see RJ as an appropriate way to deal with offenders. In general victims are satisfied with the agreement that is reached in the RJ process. A lot of cases conclude with apologies from the offender and in most cases victims assess them as sincere. One of the respondents on the apology she received stated: "Then he [her husband] repeated many times there [in the mediation meeting] and also earlier that he did something that he did not imagine he could do, attacked his own wife. He was very sorry about that. He even shed tears, and therefore I believe he was not faking but sincerely sorry".

It seems that the overall experience of most victims with RJ is very positive. Victims feel respected and recognized in the procedure. Moreover, the RJ process also allows victims to participate in their conflict and to get information from the offender. This last one is also an important reason for victims to participate in a RJ process. Further, the structure of RJ programmes can empower victims to take up an active role if they wish to do so. It seems that RJ, although it does not necessarily fulfil all physical, psychological and social needs of victims, it can fulfil needs victims have in the judicial procedure: the need for respectful treatment / recognition, the need for information and the need for participation.

Challenges for victims participating in RJ

Although victims are generally approving their experiences in a RJ process, they express lower levels of approvals than other participants, like the offenders or representatives of the community. This might be related to the fact that some victims are more afraid of the RJ process than other participants. Victims can also experience power imbalances or partiality and victims may feel to be 'used' in RJ as a tool for rehabilitating the offender. One of the respondents on partiality mentioned: "The suspected offender was at the time doing his military service, and the mediator who himself worked in the army, started to chat with him about the army. The interviewee felt like they had a kind of cronyism and were on the same side". Another point of criticism is that the lack of follow-up and enforceability of RJ programmes and outcome agreements may undermine their credibility and contribute to secondary victimisation. But when the process is well managed and when victims are not pushed into accepting RJ, victims generally feel safe. Another concern is the voluntariness of the participation of the victim, as victims might feel pressure to participate, especially when that decision as such can affect the consequences for the offender. Voluntariness is also a necessary precondition for parties to be committed to the RJ process and to perceive the process as fair and considerate. One of the respondents on voluntariness said: "Well, yes I did feel like that [pressure] while talking to the police officer. He used those kinds of words that it would be "really great" [...]. From the mediation office, I don't know, no, there was no such pressure. I didn't experience it there. But from the police I experienced pressure". A final challenge is the decision of whom to contact first about the RJ process. On the one hand, the victim may appreciate being contacted first, so the mediators are not influenced yet by the offender's view. But on the other hand, the refusal of the offender to participate can lead to secondary victimisation. These are all valid concerns and these challenges definitely need to be taken into account. But (as was mentioned before) a well-designed and well-executed RJ process is very valuable for victims and can fulfil the needs victims may have in the judicial procedure: the need for respectful treatment / recognition, the need for information and the need for participation.

Conclusion

Besides the needs victims may have after the crime, such as the need for treatment and social support, victims also have needs in the judicial procedure: the need for

respectful treatment / recognition, the need for information and the need for participation.

RJ is a practice in which the parties affected by crime are prepared to meet and engage in dialogue facilitated by a RJ practitioner, either in a direct (face-to-face) or indirect form. RJ programmes are based on the fundamental principle that criminal behaviour violates the law, but also injures victims and the community. The focus on this harm is the essence of RJ, RJ programmes aim to restore the harm that has been done and make the offender take responsibility and action. Such restoration refers to victims, offenders and the community.

Most victims feel comfortable with how and when a process of RJ is offered to them. Victims are usually satisfied with the preparation they receive, although this preparation may have been short or did not involve a previous face-to-face meeting with the mediator. In general, victims assessed the communication process and the work and involvement of the mediator as positive. Most victims are aware that RJ is a voluntary process, from which they can withdraw at any time. Victims usually are satisfied with the agreement that is reached in the RJ process. If there is an apology made to the victim, victims usually assess this as sincere. Overall, victims feel respected and recognized in an RJ process. RJ also allows victims to get information from the offender and to take up an active role in the RJ process, if they wish to do so. These characteristics of RJ make that RJ can fulfil needs victims may have in the judicial procedure: the need for respectful treatment / recognition, the need for information and the need for participation.

There are also some challenges or risks for victims who participate in RJ. Victims might experience power imbalances and partiality in the RJ process, or they might feel to be 'used' or be actually 'used' in RJ as a tool for rehabilitating the offender. Another concern is the voluntary participation of the victim, sometimes victims feel pressure to participate in an RJ process, especially from police or judicial authorities. Further, the lack of follow-up and enforceability of agreements might undermine the credibility of RJ programmes and contribute to secondary victimisation. These are all valid concerns, but when a RJ process is well-managed, victims are generally quite satisfied with the process. A well-designed and well-executed RJ process is very valuable for victims and can fulfil the needs victims may have in the judicial procedure.

On the project

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