

UNIVERSITY OF KWAZULU-NATAL

**RESTORATIVE JUSTICE AS A TOOL FOR PEACEBUILDING: A
SOUTH AFRICAN STUDY**

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DECLARATION

I, SARAH ROSALINE HENKEMAN declare that:

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ABSTRACT

In this study a component of long-term peacebuilding practice - restorative justice processing - was examined in South Africa's unequal, transitional context. Based on multidisciplinary literature, Galtung's (1996) notion of cultural-structural-direct violence, Cohen's (2001) theory of denial, and empirical data, a conceptual argument was made that a conspiracy of silence (cultural violence) exists about the interaction of growing inequality (structural violence) and the levels of crime/social harm (direct violence).

Victim offender mediation, as a form of restorative justice processing, was an embedded, (Yin, 1994) instrumental (Stake, 1995) case which provided micro level information about peacebuilding practice. Peace studies was chosen as the core discipline in this multi-perspectival study, as it allowed micro-macro linkages to be made deductively and inductively. Empirical data was generated by a 360° formation of six sub-units comprised of victims, offenders, practitioners, prosecutors, key experts, a Norwegian external sub-unit (which provided a keyhole comparison of activities inside the 'black box' of victim offender mediation), and observation.

The research discovered four interlinked gaps in restorative justice processing. These gaps are contextual, conceptual, training and practice related. Patterns of denial - that manifested as procedural blindness, substantive deafness and a complicit silence about the interaction of cultural, structural and direct violence - resulted from the combined effects of these interlinked gaps. Recommendations for education, training and coaching, based on the conceptual argument and comprehensive model of findings, were developed to fill the interlinked gaps, so that restorative justice practitioners can be better placed to contribute to long-term peacebuilding in a structurally responsive way. A caveat applies: ultimately, society *and* individuals must change and restorative justice processing on its own can only take society part of the way towards social justice.

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PART I: INTRODUCTION

Part 1 introduces the broader research topic and sets out the research focus and overall approach to the thesis.

Chapter 1 uses a peacebuilding lens to provide an introductory overview of the political and economic early transitional phase when restorative justice was introduced to South Africa. The overall research approach, overall objective, specific aims and limitations of the research are discussed, and an overview of the thesis chapters is provided.

CHAPTER ONE: SOUTH AFRICA'S TRANSITION TO DEMOCRACY

[B]lack scholars [...] have been seduced by the false assumption that the goal of academic freedom is best served by postures of political neutrality, by ... methods that belie the reality that our very choice of subject matter, manner, and style of presentation embodies ideological and political signifiers. [...] Academic freedom is most fully and truly realized when there is diversity of intellectual representation and perspective. (hooks¹, 1989:64-65).

1. Introduction: Long-term peacebuilding and trans-historical inequality

Compromises made during peace negotiations can, if not managed strategically, come back to avenge itself on a society where the achievement of short-term 'negative peace' is not balanced with the need to put the building blocks for long-term 'positive peace' in place (cf. Galtung, 1996:3). Long-term peace can also be threatened if the material and psychological wounds of the past and their consequences, are eclipsed and ignored. South Africa's peace settlement was negotiated via compromise in line with conflict situations that move from direct and counter-violence (Gil, 2006:509) towards initial cessation of hostilities (negative peace); and presumably thereafter various co-ordinated micro and macro peacebuilding strategies for transition towards the creation of all forms of justice (positive peace).

Compromises are made in the context of 'war weariness' and stalemate, and have to be lived out in its detail during times of rising expectations by those who have sacrificed and fought for a particular view of freedom (usually the direct opposite of the status quo ante). However in South Africa, adoption of neo-liberal economic policies resulted in the elites and those who benefitted from the status quo ante, to maximise their privilege once the society democratized along the lines of 'global solutions' crafted by 'Western lawyers, legal academics, economists and political scientists' (cf. Chua, 2003:145). Marais (2001:123), Alexander (2002:44), Terreblanche (2002:424), Gumede, (2007:84), Klein, 2007:214 and Miller (2008:266) confirm that post-apartheid economic solutions were crafted 'in the West'. As Chua (2003:145) argues, these solutions were driven by the twin goals of marketization for the minority and democratization for the majority. According to her, the solutions were to become the 'common sense solution' for countries undergoing social change.

¹ Not capitalised by hooks' own choice.

In the same vein, Miller (2008:266) draws attention to the role of 'transitional justice instruments' in constructing and being constituted by 'new regimes in the aftermath of significant social change'. She argues that '[t]rials, truth commissions and other transitional 'tools' are utilized explicitly to enforce the norms of a new liberal state (the rule of law, the defeat of impunity, the strengthening of democratic institutions) and to memorialize a violent past in the service of creating a peaceful future'. In the process, she argues, this 'definitional project' is responsible for the 'constructed invisibility' of the role of historic economic arrangements on 'inequality and structural violence' (cf. Miller, 2008:266-291).

The combination of these 'common sense global solutions' and the 'definitional project' of transitional justice, suggest that the trans-historical *links and content* of mutually reinforcing cultural-structural-direct violence (cf. Galtung, 1996:2) and counter-violence (Gil, 2006:509) from the colonial and apartheid past, are not clearly understood and dealt with during the era of market democracy. This is particularly so where there are no *co-ordinated* attempts between state and civil society to build long-term peace (as discussed in chapter two) as the absence and neglect of different forms of justice (particularly economic and symbolic justice) pose a threat to negative *and* positive peace in the long-term. It also renders wider global and trans-historical links to non-achievement of positive peace invisible. As Galtung, (1996:viii) argues, 'mainstream economics is mainly seen as cultural violence, concealing and mystifying what happens when people produce, distribute, and consume.' This thesis shows that the effects of the neo-liberal free market economic system, which was superimposed onto South Africa's trans-historical and growing inequality, plays a significant role in *maintaining* criminogenic conditions *created* in South Africa's violent past (as discussed in chapter three). The focus of this study, on the link between trans-historical inequality and present crime/social harm, is regarded as pivotal to understanding the role of restorative justice processing in contributing to or detracting from long-term peacebuilding.

In addition, the hidden, divisive and structurally violent role that the free market economic system plays, leaves little to no place for the wounds inflicted by multiple and simultaneous forms of violence *and* its 'intergenerational and lifespan' consequences, to be acknowledged and responded to in the course of building peace. The master narrative of the 'miracle nation' causes maladaptive behaviours (which include many acts of crime/social harm) that arise as a

result of trans-historical cultural-structural-direct violence and counter violence to be delinked from history, and to be racialised and individualised.

Based on the work of Brave Heart, Chase, Elkins & Altschul (2011), Sotera (2006), Volkan (2006), Liem, 2007, Zolkos (2009) and other scholars cited throughout this thesis on the subject of historical trauma, I argue that trans-historical patterns of violent behaviour and experience, and the attitudes and perceptions which accompany it, were passed down inter-generationally and will continue in this way until it is confronted in its various denied latent and manifest forms. A failure to confront these patterns, or the tendency to confine remedies to its individual manifestations only (as with dispositional notions of crime), perpetuate and compound historical injustices, and allow historical trauma to wreak havoc unchecked and denied. Cultural-structural-direct violence and counter-violence cannot be addressed adequately, unless the existence of its deep and wide patterns of interaction and compounded effects are understood, acknowledged and dealt with by society, groups and individuals. Judging by South Africa's prison statistics in figures 9.1 and 9.2, acts of 'crime' *appear* to be perpetrated by mainly black (diverse) *individuals*, as mostly African - and a disproportionate percentage of coloured - males are detected, detained and incarcerated by the criminal justice system. White males are under-represented according to these statistics. The links between trans-historical inequality and race based constructions of crime and the criminal were explored in the rest of the thesis insofar as it answered the research question. This thesis used various theories of violence and denial and various arguments made in multi-disciplinary literature, to build a complex understanding of the role that restorative justice processing plays in either maintaining or confronting the complex intergenerational and lifespan cultural-structural-direct correlates of ahistorical, racially constructed 'crime' in South Africa.

1.1 Background: South Africa's peace process

In South Africa, regime change provided the context, and the Truth and Reconciliation Commission *started* a process of confronting 'the [political] past'. In many cases after the Cold War, transitions to democracy (styled as governance by the people) are deemed to be complete once a new government is installed via elections, a new constitution is completed, and the free market system is embraced – regardless of context. The trans-generational and lifespan consequences of cultural-structural-direct violence and counter-violence are denied by the majority in society (rich and poor, black and white) who

simply want to get on with enjoying their newfound perceived freedom as defined by the elites who negotiated on their behalf. Besides the vote and trickle-down economics for poor people, the main characteristic of market democracy as it pertains to the majority, is to encourage conspicuous consumption and the aspiration to consume conspicuously. More insidiously, the free market system encourages and thrives on the notion of ‘winners and losers’ as suggested by Cohen (2001:293). The ‘winners’ can cross borders and have access to the spoils of the global village. The ‘losers’ are democratically excluded by overt and subtle means mainly based on their ability to project an image buttressed by conspicuous consumption and their ability to pay for entry into the ‘enclaves of winners’ (2001:293). In South Africa, the majority of ‘losers’ (according to market logic), are black (diverse) – regardless of whether they were dispossessed and systematically underdeveloped over centuries by the minority of ‘winners’. Cohen (2001:293) ascribes the notion of ‘winners’ and ‘losers’ to the many contemporary ills of the free market system and a psychology of denial, by arguing that:

The free market of late capitalism – by definition a system that denies its immorality – generates its own cultures of denial. People are made superfluous and marginal; the deskilled, unskilled and sinking poor; the old who no longer work; the young man who cannot find work; the massive shifting populations of migrants, asylum seekers and refugees. (Cohen, 2001:293).

The situation therefore exists, where many people deny the cultural-structural-direct and counter-violence nexus of the violent reality they live with, by escaping into conspicuous consumption and/or other maladaptive behaviours. This resonates with Cohen’s (2001:293) contention that the free market system itself denies its immorality and ‘generates its own cultures of denial’. It has also been suggested that society is geared to ‘hypnotise’ people to consume, and sometimes those who cannot afford to buy, resort to maladaptive means of attaining societal acceptance, by stealing.² Denial happens via various mechanisms described by Cohen (2001) in his book *States of Denial: knowing about atrocities and suffering*; by Zerubavel, (2010:32) in a chapter titled *The social sound of silence: Toward a sociology of denial*; and in an article by Liem (2007:153) titled *Silencing historical trauma: The politics and psychology of memory and voice*.

² Paraphrase of the account of a Norwegian participant who quoted Nils Christie, the Norwegian criminologist.

These perspectives on denial, silence and silencing by Cohen (2001:25), Zerubavel (2010:32) and Liem (2007:153) provide a deeper and broader understanding of the limitations placed on long-term peacebuilding in the South African context.

1.1.1 Historic compromise/negotiated revolution

Similar to other peace processes, consequences of the compromises made during South Africa's peace negotiations, were not always foreseen or controlled for by negotiating parties. Each negotiating party attempted to get the most gains for its constituency. In the end, the ANC took over the levers of state through which it believed it could deliver 'a better life' for all those who were dispossessed, oppressed and historically disadvantaged. When parts of the Freedom Charter, particularly nationalisation was abandoned, the Reconstruction and Development Programme became the 'touchstone' by which equality, social justice and fundamental human rights would be measured (cf. Gumede, 2007:96; Ntsebeza, 2007:125-129; Hemson & O'Donovan, 2006:11).

According to Gumede, (2007:96) '[f]or a party that openly espoused nationalisation as late as 1993, submitting the centrepiece of its economic policy to the captains of South African industry and foreign governments for approval' suggested that the ANC was taking 'a dramatic departure from the Freedom Charter's unambiguous call for public ownership' (p.96). In a complete turnabout during 1996, the South African state adopted the Growth, Employment and Redistribution (GEAR) plan as a macro-economic strategy which elicited sharp criticism from trade unions, activists and scholars, amongst others (Marais, (2001), Alexander, (2002), Gumede (2007), Gentle (2012), Bond, (2004), Seekings, (2007), who warned against neoliberal economic orthodoxy. The commanding heights of South Africa's economy, which remained in the hands of beneficiaries of apartheid, were amongst other 'discontents' (cf. Stiglitz, 2003) related to 'global solutions' (Alexander, 2002:44, Chua, 2003:145). In a chapter titled *The African Renaissance and the Struggle for Mental Health in the African Diaspora*, Hickling (2005:234) points out that 'without control of the commanding heights of the economy, black people are destined to eke out an existence [...] in a social reality that relegates them to an economic second class. He argues that '[e]ven in countries where blacks are in the majority and are in political control of the society, the tangible elements of the racist delusional system still control the reality for black people.' Paradoxically, the new South African state has made some inroads (albeit limited), with regard to basic services

like water, sanitation, housing, electrification, health and education for historically oppressed people. However, from the perspective of many poor people, and judging by the number of ‘service delivery protests’, these services are below par, unaffordable (since the economy is also shedding jobs) or non-existent in many instances. In a *Mail & Guardian* article titled ‘*A massive rebellion of the poor*’ Alexander (2012) argues that the ‘South African Police Service’s crowd management statistics show that South Africa really is the protest capital of the world’ (web reference 1).

It has been suggested that democratization for the majority and marketization for the minority might be mutually exclusive in a developing country (Chua, 2003:145). The added challenge for South Africa is that the minority, who benefit from marketization during democracy, consist largely of corporations, white beneficiaries of apartheid, and a sprinkling of the new black political elite. The black majority have political freedom in the form of the vote and the carrot of trickle-down economics. The black middle class, who mainly achieve their class status based on property ownership (at post apartheid prices) and senior employment positions (many as a result of post apartheid affirmative action), are vicariously placed as they do not have the benefit of intergenerational wealth to act as a buffer if they should become unemployed for a prolonged period. This was echoed by Abrahams (2000) who argued that the black middle class are ‘three pay cheques away from the street’³ as many also provide for less fortunate extended families and their mortgages are higher than those of the beneficiaries of apartheid who gained from economic liberalisation. The aftermath of the ‘historic compromise’ is a society in which inequality and its consequences have grown.

1.1.2 Constitutional goals

The outcome of peace negotiations led to South Africa’s interim Constitution (1993) and the final Constitution (1996) which set the tone for transition from different forms of

³ A paraphrase of comments made by Dr Yvette Abrahams in a workshop facilitated by her in early 2000 at the Centre for Conflict Resolution, during its organisational ‘Africanisation’ process which I attended as a part-time staff member.

violence. The Constitution provides clear goals for South Africa's future. These goals, that contain restorative principles, are contained in its preamble which reads:

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to –

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

The South African Constitution is widely respected, particularly for the 'inclusion of socio-economic rights as justiciable rights on the same basis as civil and political rights' (Mbazira, 2007:4). Democratic values of human dignity, equality and freedom form the foundation for the Bill of Rights enshrined in the Constitution. As with other transitions around the world, the 'Nunca Mas' (never again) ethos and commitment to positive peace seemed rock solid. So solid that the majority of the oppressed valued their political freedom to the extent that people waited patiently during the first decade of democracy for the rest of the peace dividends to arrive in their neighbourhoods and lives. Many have lost their patience with the slow pace of change and with corruption that constrain those changes that were made.

1.1.3 Negative peace and the pursuit of 'national unity'

Seen through Galtung's (1996:2) cultural-structural-direct violence and Gil's (2006:509) counter-violence lenses, the Truth and Reconciliation Commission (TRC), as a temporal institution mandated with a specific task, was limited in what it could achieve. Instead of bringing the *culture* of violence which legitimised and justified colonialism and apartheid's *structural* violence into its frame of analysis, the TRC pursued individuals who engaged in *direct violence* on behalf of the apartheid state and individuals who engaged in *counter-violence* in the course of the struggle for liberation (cf. Galtung 1996

for a discussion of cultural-structural-direct violence). Both direct and counter-violence were framed as violence for ‘political purposes’ and the crimes against humanity - colonialism and apartheid - were separated with the one being obscured and the other serving as background information to explain individual actions. As Magnussen (2005:20) argues, discovery and deciphering of ‘real-time interaction patterns within human social systems ...hold limitless promises such as a better understanding of the mechanisms behind ...social problems of inequality, injustice, and violence’. Despite the fact that reconciliation was one of its key objectives, the TRC did not seek to understand the mechanisms behind the continuity of South Africa’s social problems. Instead, the TRC’s focus on gross manifestations of direct violence perpetrated by the apartheid state and liberation movements conferred moral equivalence on cultural-structural-direct violence and counter-violence. On this view, acknowledgement of the system behind the atrocities was reduced to framing gross violations of human rights within a political context rather than a multi-perspectival political, social, psychological, spiritual and economic frame.

The constructed invisibility of colonialism and apartheid had consequences that play out in a variety of visible and invisible ways during the era of market democracy. With regard to the economic question for example, Miller (2008:266) argues that the ‘constructed invisibility of economic questions’ during transition leads to ‘(1) an incomplete understanding of the origins of conflict; (2) an inability to imagine structural change due to a focus on reparations; and (3) the possibility of renewed violence due to a failure to address the role of inequality in conflict.’ South Africa’s adoption of neoliberal orthodox economics after apartheid, was overlaid onto trans-historical inequality and thus resulted in the latent culture of violence and structural violence to manifest in several direct ways. The main examples are increased structural violence in the form of uninterrupted *and* growing inequality and its link to increased crime/social harm and other social ills. I argue that by paying scant attention to the trans-generational and day to day lifespan effects of cultural-structural-direct violence of the colonial and apartheid eras on ordinary South Africans, the society exhibits a culture of denial as defined by Cohen (2001). This collective denial blinds the society to the links between past and present violence(s). The individualisation of societal problems, by exclusively ‘responsibilising’ (Strang & Braithwaite, 2001:6; Pavlich, 2005:10) those who commit

direct violence in the form of crime/social harm, does not raise an eyebrow. As Ho (2007:9) points out, '[t]he social location of the individual is crucial to determining how the individual's agency is constrained, and how that makes an individual vulnerable to human rights violations.' She suggests that an examination of the location of poor people 'illuminates the unequal suffering of human rights violations that are the result of power differentials as exercised through global economic as well as social structures (p.5).' Thus, when a poor individual commits crime/social harm, the prior and ongoing violations of his/her human rights are not taken into account as Criminal Law defines crime based on disposition rather than on structure. As Stevens, Seedat & van Niekerk (2003:358) state, '*individualistic* approaches tended to view violence as having an essentially intra-psychic basis'. They suggest that:

In South Africa, from as early as the 1890s through until the 1960s, psycho-dynamic approaches (with strong 'racialised' overtones) dominated understandings of violence (Butchart et al, 2000). Common to psycho-dynamic approaches violence was viewed as the conscious manifestation of unconscious wishes drives and fantasies due to poor defence mechanisms within the personality structure and an inability to repress these unconscious impulses (Freud, 1938). At other points violence was viewed as a specific deficit within the psychological constitution of individuals who were unable to control aggressive impulses due to heightened levels of frustration. (Stevens, Seedat & van Niekerk, 2003:358).

On this view, the tacit and explicit acceptance of individualism by the TRC, given South Africa's history of colonialism and apartheid, is echoed by the partial analyses and unintentional but inherently racist responses to crime/social harm by both the criminal justice system and its civil society partners. Stevens, Seedat & van Niekerk (2003:358) argue that an individualistic approach ignores the fact that 'violence occurs as a relational phenomenon in a specific time, space and context', and that the personal experiences and actions of individuals interact with temporal, spatial and contextual events and processes that are in turn shaped by broader historical, ideological and material conditions. This argument resonates with the underlying theme of this research – that there *is* an interaction between individual and structural factors that produce crime. However, unlike Stevens, Seedat & van Niekerk, I do not believe that violence is *only* a relational phenomenon, I concur with Galtung's (1996:2) notion of cultural-structural-direct violence which includes symbolic, institutional *and* relational forms of violence.

Continuation and extension of the work started by the TRC as a temporal institution had, by implication, to be taken up by trans-temporal institutions, organisations, communities, groups and individuals within South Africa. It could be argued that there is no clear continuity of the TRC's work save for a handful of NGO's working in silos, competing for foreign funds and therefore subject to the agendas of foreign states, their country strategies, funding cycles and circuitous routes to 'building a more just world' as they all claim to do. Miller (2008:266) suggests that truth commissions, as an example of transitional justice, are part of a global enterprise that shares 'the constructed invisibility of economic questions in the literature and institutions, suggesting that exclusion derives from particular patterns'. These patterns, according to Miller, are: 'ignoring the issues altogether, treating inequality and structural violence as contextual background rather than central issues in transition, or reducing economic concerns to a narrowed discussion of reparations'(2008:266). The picture that emerges, from the issues that get attention and those that are ignored, is that ordinary people do not matter in the global village of 'winners' who have organised the world to keep poor people excluded and out of sight. An example of ghettoising poor people in South Africa is the transit camp on the Cape Flats – Blikkiesdorp - where unwanted people were moved to 'clean up the city' before the Fifa world cup in 2010. There are as yet no plans to provide proper housing for people who have been removed. The removal had the tacit approval of the National government and citizens, who maintained a silence about attaining the achievement of 'international standards' during the Fifa world cup period. This is a snapshot of South Africa in transition to neoliberal nirvana for its 'enclaves of winners in their guarded shopping malls, gated communities and retirement villages' as stated by Cohen (2001: 293). Except, poor people will not stand for it – as is evidenced by the 'massive rebellion of the poor' referred to by Alexander (2012). Poor people are paying with their lives while the primary beneficiaries of democracy (black and white) and those who have enjoyed uninterrupted intergenerational privilege (mainly white) appear to be in denial about the seriousness of the situation – judging by the near total silence from those quarters.

1.1.4 Micro-macro linkages

After 18 years of democracy and growing inequality in South Africa, the micro-macro linkages that constitute peace- (Galtung, 1998:401) or nation-building, are not

immediately visible, despite the fact that South Africa's constitutional goals are compatible with the notion of positive peace. The state, NGOs and many individuals, separately and in partnership, attempt to achieve the goals of the Constitution (1996) for a united and democratic South Africa. Despite these compatible goals, these entities use a variety of means that are not always open to scrutiny and aggregation, as their activities happen at different levels of action and within the 'black boxes' of different specialisations. The majority of peacebuilding initiatives that flourished during the apartheid and early transition eras have been reduced over time. After apartheid, foreign donors effectively cut the main artery that kept many civil society initiatives alive, and diverted most of their funding and technical support directly to government on a bilateral basis. During apartheid, multiple factors caused NGOs to develop and maintain the inherently asymmetrical relationship later known as 'partnerships' with foreign donors. Many of these organisation could not exist without their primary and sometimes only, source of income. Many of the newer NGOs collapsed shortly after apartheid, and during the past few years, many of the more established and strongest organisations have stopped important projects and services, and retrenched key staff. It can safely be argued that the NGO sector is in crisis at a time when South Africa is experiencing a serious 'sticking point' (Ramsbotham, Woodhouse & Miall, 2011:186) in its trajectory towards long-term peace. In the criminal justice sector, many of the new initiatives that the state implemented have been introduced by NGOs, who played an important role in mitigating some of the effects of apartheid policies. Whether by accident or design, the independence of NGOs has been dealt a blow and they are increasingly partnering with government in an asymmetrical partnership, where government does the *steering* and NGOs the *rowing* (cf. Shearing 2001:18 in a chapter titled *Transforming Security: A South African Experiment*).

1.1.5 Conflict Resolution methods and restorative justice

Contemporary notions of restorative justice were introduced to South Africa from Canada, by a staff member of the National Institute for Crime prevention and Rehabilitation of Offenders (NICRO) at a time when the logic of peace was at its peak during the early 1990s. It was a period during which apartheid was drawing to a close and conflict resolution, peacemaking and non-adversarial means of dealing with crime and violence were welcomed from all quarters. The introduction of restorative justice

principles and processes at the local level, also coincided with the national multi-party peace process and constitution-making period prior to and after the country's first democratic elections in 1994. A 'logic of compromise' was slowly inserted to challenge the 'logic of conflict' (cf. Bertram, 1995: 405) in the country, and many ordinary people worked side by side with members of various political entities in the various structures set up to propel the society towards a 'logic of peace'.

1.1.6 Examples of structural violence

As stated before, South Africa's adoption of neoliberal economic policies caused the inequality gap(s) between race groups and within formerly oppressed groups to increase (cf. Bond, 2004:8, Seekings, 2007:4). The consequences of this growth in inequality coupled with uninterrupted inequality from the colonial and apartheid eras, are largely invisible as more affluent people disappear behind high walls, guarded by private security. Poor black people in general, but particularly black young men are criminalised and become the targets of private security operators in middle class streets and malls. Many poor people are humiliated daily as they beg at street corners or offer some service for a few rands, or the most menial 'jobs' such as parking attendants and car guards, in a situation where 'youth constitute 70% of the unemployed in South Africa, according to the official statistics' (Report of the Youth Employment Summit, 2012:12). It has been suggested that:

The liberal political agenda has rarely included the powerless, the destitute, the truly disadvantaged. It has never concerned itself with those popularly classified as the "undeserving" poor: drug addicts, sex workers, illegal "aliens," welfare recipients, or the homeless, to name a few. (Farmer, 2005:5)

Despite good intentions during early transition, the reality in 2012 is that South Africa is one of the most unequal, and therefore one of the most structurally violent, countries in the world. Those perpetually at the receiving end of this cultural-structural-direct violence, which continues uninterrupted from the colonial and apartheid periods, are black and poor people whose counter-violence is dealt with via the re-militarised criminal justice system. The massacre of striking Lonmin mineworkers at Marikana on 16 August 2012 is, according to Gentle (2012) in the mould of 'the odious history of a method of capital accumulation based on violence' (web reference 2). From the perspective of the

state, 'lawlessness' and crime/social harm cannot be tolerated. From the perspectives of those who want to enjoy their freedom to consume, no one has the right to confiscate their goods and threaten their lives. These views are impossible to argue against. However, these manifestations are not analyzed in historical context, nor through economic, psychological, social, spiritual and other important lenses to see how these phenomena intersect and interact to produce crime/social harm.

The justified preoccupation with political freedom during the years of struggle has rendered the need for an equivalent struggle on the economic and other fronts largely invisible. South Africa too became caught up with those who 'have been called upon to help restructure the fundamental institutions of the developing world, to an extent unprecedented since decolonization after the Second World War' (Chua, 2003:145). This is confirmed by Marais (2001:123) who states that these groups and 'foreign experts' schooled ANC leaders in the 'realities of the world'. Alexander (2002:44) confirms that mostly political and economic consultants and academics from the United States of America acted as 'directors of the new order'. He describes the pattern of 'global solutions' as follows:

[B]eginning with stern and unconditional demands for submission by both sides in the conflict, leading on to informal contacts at quasi-governmental level, mediation by 'honest brokers', proximity talks, suspension of armed conflict, negotiations and pacting between the old and the new elites, various types of truth commissions, and culminating in the inauguration of the new leaders, usually in the presence of one of the highest representatives of the United States president. (Alexander, 2002:44).

The interplay of internal and external influences suggests that 'global solutions' exerted a more powerful influence on the shape of the new South Africa, with local actors leaning heavily on the expertise of western experts. As Miller concedes, international consultants, (termed 'transitionologists' by Klein, 2007:214), might not be driven by a 'conspiracy of interests'; but rather a 'coherence of blindness' with regard to inequality, structural violence and economic aspects during transition (Miller, 2008:266, 272). This blindness, the inability to 'see' obvious or dissonant data is a 'state of denial' as argued by Cohen

2001).⁴ I argue that it filters down to different levels of society to become a shared blindness/culture of denial. Some examples of structural violence are discussed hereunder. These examples and summaries were drawn from the National Planning Commission's Development indicators (2010):

Unemployment rate	Unemployment (strict sense) increased from 2 million in 1995 to 4,4 million in 2003, has decreased to 3,9 million in 2007 and increased to 4,1 million in second quarter of 2009.
Per capita income	The mean income for an African at R775.46, the median at R406.95 whilst for white the mean is R7,645.58 and median at R5,331.61, with coloureds and Asian a distant in-between.
Living standards measure	Monthly real income of the poorest 10% of population increased from R742 in 1995 to R1386 in 2008/09. Whilst for the richest 10 % it almost doubled increasing from R13 416 to R26 602.
Poverty and Inequality	Using the gini-coefficient, inequality worsened from 0.64 to 0.66 in 2008. The driver of the increase in inequality has been between-group inequality.
Life expectancy	Life expectancy which is heavily influenced by infant mortality seems to have declined mainly because of HIV/AIDS.
Infant and child mortality rates	South Africa is unlikely to reduce infant mortality to the MDG target of 18 deaths per 1000 live births. There are three major killers of children under five years of age in South Africa: HIV & AIDS, neonatal causes and childhood infections such as pneumonia and diarrhoea
Murder rate	37.3% //100000. Research links the high levels of crime to the high levels of inequality.

⁴ Cohen's theory of denial is referred to in chapter 8 and 9.

In light of these examples of structural violence, I agree with scholars (Habib, 2003, Ntsebeza and others, 2007), who argue that South Africa's effective abandonment of the Reconstruction and Development Programme (RDP)⁵ and embrace of the Growth, Employment and Redistribution (GEAR) plan was ill advised. According to Habib, (2003:8) the adoption of GEAR resulted in 'the realization of the state's deficit targets, but at the cost of employment, poverty and inequality'. In addition to 'massive job losses', he argues that 'tighter fiscal constraints have compromised the state's poverty alleviation and development programs' despite state officials 'claiming credit for having met RDP targets in the areas of water, sanitation, telephony and electricity'. He suggests that economic liberalization 'benefited the upper classes' and had a devastating effect on the 'lives of millions of poor and low income families' (p.9). Direct and counter violence are exemplified by the Lonmin strike and killings, increasing service delivery protests and high levels of crime.

1.1.7 Some manifestations of direct violence

During the second decade of democracy, patience began to run out to the extent that protests have increased dramatically. Alexander reports that during the period 2009 to 2012, an average of 2.9 incidents of unrest occurred per day, and that it is 'an increase of 40% over the average of 2.1 unrest incidents a day recorded for 2004-2009'. Many of the activities that individuals engage in during these protests are criminalised. The already overburdened criminal justice system is left to hold individuals responsible for their violent and (at times) seemingly maladaptive responses to social structural problems. State President Zuma referred to the 'triple challenge of unemployment, inequality and poverty' in his 2012 State of the Nation address. In a response to this characterisation of the challenges in South Africa, Gumede (2012) suggests that 'recent policy choices – on the economy, the labour market and social development – could be largely responsible for slow progress in addressing the tyrannies that the president terms the 'triple challenge' for South Africa. In recent years, the phrase, 'a ticking time bomb' has crept into South African discourse, and the tension is mounting (Hassen, 2011, web reference

⁵ According to the White Paper on Reconstruction and Development (1994, 'The Reconstruction and Development Programme is the policy instrument which will direct the progress of the transformation strategy [...] to bring about renewal, peace, prosperity, reconciliation and stability'.

3; Oppelt, 2012 web reference 4; Gumede, 2010, web reference 5). The xenophobic related violence of 2008, the pitched battles between police and residents of an informal settlement, the killing of a protestor, Mr. Tatane, by police in 2011, the murder of 10 people by Lonmin mineworkers and massacre of 34 mineworkers by police in 2012, coupled with the ‘massive rebellion of the poor’, are all indicators that South Africa is on a trajectory towards more direct violence.

South Africa’s transition and transformation process is beset by losses and gains as evidenced from this background sketch dating from the early 1990s. Ramsbotham, Woodhouse & Miall (2011:186) suggest that peace processes are characterised by ‘sticking points and turning points’. The same seems to hold true for South Africa’s transition and transformation process – the outcome of its own peace process. However, trans-historical and growing inequality and its hidden consequences, juxtaposed with uninterrupted privilege, conspicuous consumption and exclusivity, have come back to avenge itself on the society. The interplay between historically ascribed and nested inequality (structural violence), trans-generational trauma (psychological violence) and direct violence (crime/social harm) has not been subjected to systematic study in the South African context. However a link can be made in abstracto based on the piecing together of research done elsewhere and a close reading of South African history. Based on multidisciplinary literature, this research takes account of the historical antecedents of inequality (as examples of structural violence), as well as the link with crime/social harm (as a manifestation of direct violence), in an attempt to understand more clearly whether and how restorative justice processing responds to South Africa’s complex context.

1.1.8 Taking a deeper and wider view

This thesis proceeded from the understanding that social science is socially constructed. By combining deductive and inductive approaches and multiple perspectives in this research, I attempted to avoid the ‘fragmenting impulse that moves [social science] to fold its methodologies and the knowledge they produce neatly into disciplinary drawers’ (Kincheloe, 2001:681). Peace studies, (with its emphasis on micro-macro linkages and its openly utopian orientation), rather than Criminology, was chosen as the core discipline, as it provided a solid academic platform for the trans-disciplinary approach taken in this research. According to MacGregor & Rubio Correa (1994:43), when the Peace Research

Institute in Oslo (PRIO) began its activities in 1959, peace research was conceptualised as an approach ‘rather than a discipline, as committed social science with no respect for any disciplinary or scholastic borderline in social science’. As Davies-Vengoechea (2004:13) explains, Peace Studies is concerned with individual *and* societal level processes and dynamics and is not only concerned with the absence of violence (negative peace), but also the presence of social justice (positive peace). He contends that:

Structural forms of violence – inequalities, asymmetries, domination and exploitative systems – also became a concern in Peace Studies. Peace researchers devoted more attention to intrasocietal processes and dynamics affecting a human being’s self-realization. Accordingly, the mere lack of confrontational physical behaviour between human groups or individuals could no longer satisfy the necessity for “peace”, for peace became *absentia belli* and social justice. (Davies-Vengoechea, 2004:13).

According to Galtung, (1996:1) ‘[t]he peace researcher must look for causes, conditions, and contexts in various spaces – Nature, Human, Social, World, Time, Culture.’ He argues that this ‘transdisciplinary spectrum makes peace studies both challenging, difficult intellectually, and problematic in praxis.’ The conceptual framework of this research, constructed in chapters two, three and four formed the basis for the conceptual argument arrived at in chapter four and discussed in chapters eight and nine. This argument showed that restorative justice and peacebuilding converge on six key points which are discussed in chapter four section 4.8 and elsewhere in this thesis. The Peace Research paradigm used in this study thus maximised the possibility of taking a deeper and wider view of restorative justice processing, than a single criminological lens could. As Galtung (1996:1) stated, ‘a narrow focus is doomed in advance’ which resonates with Dunn’s (2005:84) contention that ‘if Peace Research has not been responsive, adaptive and receptive of inputs from elsewhere, it has been nothing’. He argues that if ‘relevance is the guiding watchword, then adaptation is the life-blood of the enterprise.’ This thesis breaks free of what Mamdani terms ‘intellectual claustrophobia’ (2001:viii) by historicising crime/social harm. Galtung’s (1996:2) notion of cultural-structural-direct violence bolsters the conceptual argument and it in turn illuminates the empirical data to make sense of the interaction between trans-historical and trans-national inequality and crime/social harm, to understand the restorative justice response to it more clearly.

1.2 Immediate background to the research question

[M]inds shaped by disciplines lose their natural aptitude to contextualise knowledge and integrate it into its natural entities, a weakened perception of the global leads to a weakened sense of responsibility (each individual tends to be responsible solely for his specialised task) and weakened solidarity (every individual loses the feeling of his ties to fellow citizens). (Morin, 2001:33).

This research was conducted from my standpoint as a reflective practitioner and the thesis is written from a subjugated perspective. According to van Wormer (2009:109), standpoint feminist values embody reliance on ‘personal narrative for truth telling; acceptance of a holistic, nondichotomized view of reality including a merging of the personal and political.’ To this I add that there are also race, class and other aspects to power relations in society. I attempted to infuse the writing of this thesis with the values embodied in standpoint theory, which flows from intersectional theory as discussed in section 1.3. To minimise the effects of my own and some of the blind spots of mainstream scholarship, I added the voices of more marginal scholars and analysts to the dominant voices. The combination of these expert opinions provided a more balanced picture of the context within which restorative justice processing (as a sub-process of long-term peacebuilding) is conducted in South Africa.

The research question was born out of the growing dissonance I started to experience in the early 2000s and a dilemma I experienced as a practitioner in the South African context in 2005, as I facilitated mediation processes that were defined and presented as ‘relationship problems’ by clients. On further investigation many of these ‘relationship problems’, were found to be rooted in ascribed inequality, internalised inferiority and internalised superiority that flow directly from South Africa’s history of colonialism, apartheid and market democracy (Henkeman, 2010: 731-733). During these processes, my own memories and emotions of past oppression were constantly triggered by the present ‘matrix of domination’ (Hill Collins, 2000:3) in post apartheid South Africa. The mandate for conducting facilitation of these events was usually limited and limiting. Mediation requests were usually framed in narrow terms which many times narrowed conflict resolution remedies to ‘resolution’ of the presenting problem, while leaving lingering structural violence out of the frame of analysis and action.

As time passed I deepened my understanding of rhetoric and reality. It became impossible for me to continue mediating conflicts that were ‘defined, limited and controlled by powerful parties to the conflict’ (Henkeman, 2010:733). I realised that I needed to learn what exactly it is about us as peacebuilders and our practices that render us so ineffective, even as committed and idealistic people, in South Africa’s present unequal, transitional context.

1.2.1 Victim offender mediation – embedded/instrumental case

Two restorative justice scholars (Daly, 2002) and (Gavrielides, 2007) have already drawn attention to the gap between restorative justice theory and practice. Daly (2000) made reference to restorative justice in unequal societies, but she did not examine the link between inequality and crime, nor the restorative justice response to inequality in the way crime and the criminal is constructed (this research is discussed in more detail in chapters two and nine). Miers (2001) conducted international research in which he focused on the legal base, scope, implementation and evaluation of restorative justice. Other scholars (Latimer, Dowden & Muise, 2005 and Sherman & Strang, 2007) have conducted meta-analyses on the effectiveness of restorative justice. Of interest in the South African context given its history of trans-historical inequality and crime/social harm, is whether the interaction of individual and structural factors that *produce* crime are taken into account during restorative justice processing, and what the implications are for long-term peacebuilding. It has been suggested, with regard to economic factors that:

[i]f there is still far too much violence of a more ‘ordinary’ kind in any country in the world (including South Africa), a discernment of its causal connections must call for a serious integration of political, social and cultural analysis with investigations of the hard realities of economic deprivation. (Sen, 2008:10).

According to the literature, inequality is an example of structural violence and crime/social harm is a manifestation of direct violence (Schirch, 2008:6). As Darby argues, there is an inverse relationship between political violence and crime (2007:333). Paradoxically both structural violence, in the form of trans-historical inequality; and the constitutional pursuit of social justice (structural peace), are woven into the social fabric of contemporary South African society. The systematic study of restorative justice processing as an instrumental case, specifically pre-trial and pre-sentencing victim

offender mediation, was thus chosen to deepen understanding about the broader case of long-term peacebuilding practice in the South African case. Victim offender mediation provided an opportunity to examine an instance of state/civil society partnership through various disciplinary lenses and from a variety of perspectives, as meticulous records are kept by organisations, most clients are contactable, and a stable cohort of mediators facilitate these processes. These mediation processes deal with the contested notion of 'crime' as defined by Criminal Law. This immediately puts it in conflict with the impulse by some criminologists - variously termed 'abolitionist', 'radical', 'peacemaking' and 'unorthodox' - who embrace restorative justice principles as a break away from 'the orthodox construction of crime' (Friedrichs, 2006: 441-445).

1.2.2 Clarification of terms

Cultural-structural-direct violence (Galtung, 1996:2) is used in this thesis to signify what McCutcheon (2006), terms a triad of 'mutually reinforcing and reciprocating' violence.

Culture is a legitimiser of peace and violence (Galtung, 1996:6).

Cultural violence (aspects of which are 'exemplified by religion and ideology, language and art, empirical science and formal science') is *symbolic* and it *legitimises or delegitimizes* and *justifies* structural and direct violence (Galtung 1996:2). In this thesis, in addition to mainstream economics (cf. Galtung, (1996:viii)), 'conspiracy of silence' and 'culture of denial' are regarded as aspects of cultural/symbolic violence as it legitimises and justifies or allows people to turn a blind eye to the link between structural and direct violence thereby *delegitimising* (p.2) the relationship.

Conspiracy of silence is an example of how the *culture of denial* manifests.

Structural violence is, according to Galtung (1996:2), an institutional form of violence. In this thesis inequality is an example of structural violence. Poverty, unemployment and exclusion are regarded as consequences of structural violence.

Direct violence is a manifestation of the cultural-structural-direct triad. In this thesis crime and social harm are regarded as manifestations (direct violence) of inequality

(structural violence) which is enabled by cultural violence of which the conspiracy of silence and culture of denial are examples.

Counter-violence is used in the sense suggested by Gil, (2006:509) and is understood to be the response to cultural-structural-direct violence.

The term *orthodox* is used to indicate individual level constructions of crime; and the notion of *unorthodox* is used to indicate structural and integrated (interaction of structural and individual) constructions of crime.

1.3 Overall research approach: 'bricolage'

While it is generally accepted that a single perspective might 'yield more brilliant insights for the study of some phenomena' (Kellner, 1995:99), this research required a flexible approach to capture multiple perspectives, micro-macro, conceptual and empirical aspects of the research data. An approach is:

[W]ider than theory or methodology. It includes epistemology or questions about the theory of knowledge; the purposes of research, whether understanding, explanation or normative evaluations; and the 'meta-theories' within which particular theories are located. It takes in basic assumptions about human behaviour; whether the unit of analysis is the individual or the social group; and the role of ideas and interests. (Porta & Keating, 2008:1).

The primary priority in this research was to answer the research question which takes South Africa's ground truth, exemplified by its history of violence and attempts at peacebuilding, into account. The research approach taken in this study combined theories and methods from multiple disciplines to support the interrelated aspects of the study, which are best understood by reference to the term '*bricolage*' as discussed by Kincheloe, McLaren & Steinberg (2011) and Denzin & Lincoln (2011). It has been suggested that in its contemporary sense, bricolage involves the process of using methodological processes as needed 'in the unfolding context of the research situation'. In addition the bricolage can be described as the 'process of getting down to the nuts and bolts of multidisciplinary research [... to] move beyond the blinders of particular disciplines' (Kincheloe, McLaren & Steinberg (2011:168). As Denzin & Lincoln

(2011:4) stated, the qualitative researcher may be viewed as a '*bricoleur*, a maker of quilts, or in filmmaking, a person who assembles images into montages'.

The bricolage approach enabled me to add and remove different methods and theories as needed, which allowed me to take account of 'a full range of perspectives to dissect, interpret and critique' phenomena (Kellner, 1995:99). Kellner contends that a variety of critical methods improve the chances of producing reflexive and 'many-sided, illuminating and critical' readings (1995:99) in a way that a single lens is not able to do. In addition, the multi-perspectival approach allowed this research to examine the instrumental case from 360° angles. These many-sided critical readings of (i) the literature, (ii) empirical data on restorative justice processing, and (iii) unbroken structural (inequality), and direct violence (crime/social harm), deepened understanding of long-term peacebuilding practice in the South African context. As Yin contends with regard to case study research:

[t]he in-depth focus on the case(s), as well as the desire to cover a broader range of contextual and other complex conditions, produce a wide range of topics to be covered by any given case study... the case study goes beyond the study of isolated variables [...] relevant case study data are likely to come from multiple and not singular sources of evidence. (Yin, 2010:4).

Wikström & Sampson (2006:1) provide a caution from the perspective of criminologists. They argue that the lack of a consensus approach on integrative models makes it hard 'to identify concrete new discoveries or significant breakthroughs in criminology that have been made in the name of integration' as 'the task is enormously difficult'. By choosing Peace Studies as the core discipline and combining the bricolage approach with the case study research method, the difficulties associated with trans-disciplinary research were largely overcome. In line with standpoint theory, I was enabled to combine (for normative and utopian reasons) my practical experience and accumulated knowledge from studying in various disciplines. As Boulding (2003:451-452:) states, '[p]eace researchers study the dynamics of how conflicts are handled, and especially the structures and dynamics of peaceful conflict resolution and problem-solving processes, using the tool of social sciences'. The dynamics referred to by Boulding are present in the practice of victim offender mediation, as the three phase, four stage model of mediation used in

this form of restorative justice processing, is indistinguishable from the dominant mediation model used in peacebuilding processes and described in its literature.

The flexibility of the bricolage approach allowed the inclusion of critical social theory which provided a way of theorising about the social in a way that promotes positive peace. Critical social theory confronts an established system of domination, and struggles for a more democratic and egalitarian social order (Kellner, 1995:99-100). Specifically intersectionality, as a social theory allowed for the combination of peacebuilding, restorative justice and social justice in a conceptual framework. The framework served as a heuristic device to generate relevant themes for analysis ‘within a context of discovery’ (Hill Collins, 1998:120). Standpoint theory, which is located within intersectional theory, was used to bring my own intersectional location (standpoint) into the frame of the study, and to bring an understanding of other intersections in the ‘matrix of domination’ embedded in society (Hill Collins, 2000:3). In addition, the Standpoint/Intersectional approach was chosen because my own location resonates with that of black feminist scholars who regard themselves as ‘insider/outsidiers’ to ‘dominant academic discourse’ (Hill Collins, 1998:121, 2000:7, Bowell, 2011, web reference 6). By making my constructed identities as a black (classified coloured under apartheid), female, educated-proletariat, and peacebuilding practitioner-scholar in South Africa’s unequal, transitional context explicit, I reveal the epistemic process by which I arrived at my standpoint. As Drake & Heath (2011:2) argue, ‘new knowledge’ required from practitioners as doctoral researchers, comes ‘not from a single research domain but from combining understandings from professional practice, higher education practice and the researcher’s individual reflexive project’. They suggest that ‘new knowledge is generated in the relations between these three domains’. This consciousness about my own standpoint and the understandings from different domains helped me to be aware that participants to the study arrived at their personal perspectives as ‘knowing subjects’ (Bowell, 2011). In an entry titled *Feminist Standpoint theory* in the Internet Encyclopaedia of Philosophy, Bowell, (2011) suggests that:

[T]he epistemic process by which a standpoint emerges enables the occupants of that standpoint to gain an element of power and control over knowledge about their lives. In becoming occupants of a standpoint, they also become knowing subjects in their own right, rather than merely objects that are known by others. (Bowell, 2011 web reference 6).

Feminist standpoint theory makes several contributions to scholarship; amongst these are epistemology, methodological debates, philosophy of science and political activism, according to *Bowell (2011)*.

Standpoint intersectional theorists emphasise the ‘epistemic advantage’ (*Hill Collins, 1998:121, Narayan, 2004:220, Bowell, 2011*) of social location and bringing about more just societies. *Kellner’s* perspective takes account of socio-historical contexts; and *Porta & Keating* take human behaviour at the individual and social levels into account. These theories however do not include more complex patterns of interaction between people as described by *Morin*, whose argument gives depth to the bricolage approach:

Complex unities such as human beings or societies are multidimensional: a human being is a biological, psychological, social, emotional, rational being. Society includes historical, economic, sociological, religious dimensions. Pertinent knowledge must recognise this multidimensionality and insert its data within it. Not only should a part not be isolated from the whole, the parts should not be isolated from each other. The economic dimension for example is in permanent inter-retroaction with all other human dimensions; moreover, human passions, needs and desires that go beyond solely economic interests are carried ...within the economic. (*Morin, 2001:31*).

Taken together, the combination of theories and methods contributed to a deeper and broader understanding of complex individual, societal and global phenomena involved in the construction of crime/social harm and its desired opposite - positive peace. *Figure 1.1* provides a visual display of the research approach to depict the multidimensionality and complexity of the vertical, horizontal and cross-cutting linkages made in this research. It also shows that while the analysis is complex, it is contained by the overarching theme of peacebuilding at the macro level and an examination of the black box of victim offender mediation as a form of restorative justice processing, at the micro level.

Each of the horizontal lines in *figure 1.1* depict historical time, transition, transformation, the goal of social justice and other trans-temporal issues and how these intersect with vertical and cross-cutting phenomena. Each vertical line depicts a level of analysis from the (intra- and inter-) personal, pairs, family, group, community, national and global levels and how these intersect with horizontal and cross-cutting phenomena. The cross-cutting lines depict how social structural and personal phenomena (e.g. economics,

history, politics, psychology, biology, spirituality and other social and individual phenomena) intersect with horizontal and vertical phenomena. The darker cross-cutting lines ‘pie slices’ depict both multiple disciplinary lenses around individual and society; and the 360° vantage points around victim offender mediation. Taken together, the display reveals the intricate and detailed nature of the ‘quilt’ woven by the bricolage approach to this research *and* it attempts to show how various micro and macro, personal and social phenomena intersect and interact to produce behaviours that result in either social harm or social harmony that require multi-dimensional peacebuilding.

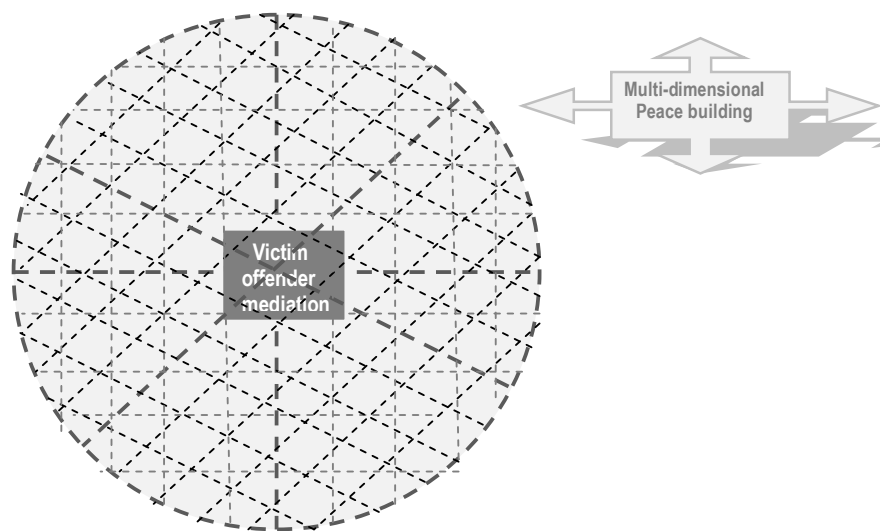


Figure 1.1 Multiple intersections and dimensions of the research bricolage

The bricolage approach enabled me to examine the micro practices within the ‘black box’ of victim offender mediation, from different perspectives, to bring multidimensionality and ‘inter-retroaction’ of human and social dimensions into the research frame, as suggested by Morin (2001:31). The empirical data collected, analysed and interpreted in this study were ‘inserted’ into the theoretical and empirical knowledge gained from recognising the multi-dimensionality of human beings and society. Specifically, the findings about the four interlinked gaps and the denial it generated, as described in chapters seven and eight were rendered visible as a result of the overall research approach. Different aspects of the bricolage approach used in this study, is depicted in chapter four figure 4.2 which places the conceptual framework within the South African

context. Warnat's (2012) model in chapter four figure 4.3, illustrates standpointism, intersectionality and the multi-perspectival approach. Taken together these displays illustrate the complex, systematic nature of this study. The specific theories and methods that were added at different stages of the research as they were needed are discussed in relevant chapters.

In sum, the bricolage could be applied in a variety of ways at different stages of the research. Its flexibility enabled me to bring together in this study a conceptual framework to provide: parameters and guide the study; a conceptual argument to reveal the convergences between peacebuilding, restorative justice and social justice; a multi-perspectival approach to data collection and analysis; a comprehensive model to depict and discuss findings; and a boundary within which to reach conclusions and make recommendations. The empirical study was conducted within the boundaries of the conceptual framework. Empirical data in turn provided the ground truth on which the conceptual argument (which inform the recommendations) are built, to fill out what is already known about victim offender mediation, as a form of restorative justice processing. The approach thus theoretically grounded the empirical evidence produced by this research, *and* located it within South Africa's history of cultural, structural and direct violence, and peacebuilding attempts.

1.4 Overall Objective and Specific Aims

The overall objective of this research is to examine victim offender mediation as a contemporary form of restorative justice, to assess whether it contributes to peacebuilding in South Africa's unequal, transitional context.

1.4.1 Macro level:

To construct a conceptual framework based on a close reading of South Africa's history of inequality, its transition to democracy and future goals, as contained in the Constitution of 1996 and relevant multi-disciplinary literature.

1.4.2 Micro level:

Using the conceptual framework to investigate victim offender mediation in micro detail; to understand if and how it contributes to social justice in South Africa's unequal, transitional society by examining:

- The theoretical and practical process frameworks, strategies, techniques and tactics used by restorative justice practitioners and to what end.
- The perspectives of South African victims and offenders on their experience of victim offender mediation and their views on crime in the South African context.
- The perspectives of South African Criminal Justice officials concerning victim offender mediation in particular and crime and restorative justice in the South African context, more generally.
- The perspectives of restorative justice organisation and programme leaders in South Africa and Norway concerning their perspectives of victim offender mediation in particular and crime and restorative justice in general;
- The perspectives of victim offender mediators in South Africa and Norway of their knowledge and experience of victim offender mediation in particular and restorative justice and crime in their contexts.
- The perspectives of key experts in South Africa and Norway of crime and restorative justice in their contexts and more generally.

1.4.3 Process:

To use the conceptual framework as a guiding structure in all aspects of this research and to refine it progressively during the literature review, data collection, data analysis, conclusion and recommendation stages, as new information emerges and becomes knowledge.

1.4.4 Integration:

To use the knowledge that emerges from an overview of the concepts of the conceptual framework, empirical findings and relevant literature to:

- In the event of a positive finding to the overall research question, to draft appropriate conclusions to the study.
- In the event of a negative or qualified finding, to use the conceptual framework that revealed the gaps, as well as the findings to make recommendations to close the gaps.

1.5 Limitations

My ultimate concern is for a more just world order where we take account of the complex interaction of individual and structural factors that produce different behaviours in

different people at different times. These intersections and interactions yield behaviours on a continuum of helpful to harmful in its consequences.

The significance of this study is however limited to peacebuilding practices in South Africa's unequal, transitional context. Peacebuilding practitioners in general and mediators and facilitators of micro processes in particular, are in a position to act collectively as change agents who contribute to transformation in society (Freed, 2009:12) by observing, recording, sharing and acting on patterns they observe in the course of their own work, thereby attempting to overcome their limitations.

Following Freed, I concede that my abilities as a scholar and researcher may be considered a limitation beyond the disciplines in which I have qualifications (2009:83). On this view, whether we have qualifications in particular disciplines or not, subject matters are interlinked in this study – as humans we make them analytically distinct and specialised. These shortcomings can be mitigated by the fact that newcomers to a field can often illuminate issues that may be invisible to seasoned scholars within a particular domain (2009:203).

A further limitation of the research could be that the research question results in the study straddling too many disciplines and making it too complex. My response to this is that because we shy away from crafting complex ways of understanding complex problems, our simple solutions can sometimes be more harmful. In this regard, Mporu argues that 'the conceptual failure of conflict analysis has presaged the normative failure of conflict resolution.[...] The analysis of the resolution of conflict is impossible without a wide ranging, or interdisciplinary framework, making use of the insights provided by other social sciences' (2011:217). To overcome the limitations of a single discipline, I have devised a multi-perspectival approach to the overall research, and a conceptual framework that draws on intersectional and contrapuntal theories for the empirical study.

Finally, the clear boundaries of this research mean that the study is confined to examining victim offender mediation, one form of restorative justice processing, as it is practiced at the pre-trial and pre-sentencing phases within the criminal justice system. Diversion after arrest and restorative justice processing in the context of imprisonment and release, fall outside the scope of this research but the principles are the same, and processes are

similar. This thesis does not examine with non-criminal restorative justice processing as practiced in schools, communities and other areas outside of the criminal justice system, as the focus is on social harms defined as crime and the cultural-structural-direct violence link. Structural violence is not always implicated in purely relationship level harms and if it is, it is not always expedient for every process to deal with it as a substantive issue.

1 6 Overview of chapters

South Africa is a country of contradictions and complexity. It is difficult to render an account of this complex society without doing an injustice to issues that others might deem important. The content and sequencing of each chapter is intended to convey as much breadth and depth as is possible. Part one orients the reader to South Africa's unequal, transitional context and the overall research approach that responded to its complexity, from my standpoint as a reflective peacebuilding practitioner. Chapter one locates South Africa within the 'post-conflict' peacebuilding paradigm and provides a brief introduction to the historical time during which restorative justice principles and practices were (re)introduced into South African society - when in-country peacebuilding was at its peak. The multi-perspectival research approach adopted to take account of the society's complexity, has been explained, some limitations of the overall research project were identified and an overview of thesis chapters are summarised.

In part two, chapters two, three and four, the concepts peacebuilding, restorative justice, social justice, and related sub-concepts of the conceptual framework were discussed according to the overview of perspectives from various literature sources. Together these chapters provide a clearer understanding of South Africa's unequal, transitional context and how peacebuilding and restorative justice are constructed and practiced in this context. The conceptual framework was constructed based on the overview of concepts, to set the boundary outline for this study.

In part three the empirical research approach is described. Chapter five describes the research philosophy that underpinned the research design, methodology, and research journey. Triangulation in the form of the 360° research method and the choice of the instrumental case study method are explained. The choice of six sub-units and an external

‘keyhole’ lens (provided by the Norwegian konfliktråd) through which to view the practice of victim-offender mediation in South Africa is discussed. Chapter six explains the *process* of data management and analysis and sets out the methods used to collect, manage, reduce and analyse data to reveal underlying patterns, themes and ideas. The process of recording, transcribing and multiple methods of data analysis are described.

Part four contains the findings, discussion and conclusion chapters. Chapters seven and eight together present a comprehensive model of findings. The model reveals the *products* of analysis through description and displays to show how minor and supportive findings were linked to build the comprehensive model of findings embedded in the data. Two broad sub-themes (i) knowledge about crime in context, and (ii) knowledge and restorative justice practice, which are linked to the broader peacebuilding theme of the study, are discussed in chapter seven. This chapter reveals the four interlinked gaps found in victim offender mediation as a form of restorative justice processing. In chapter eight the two sub-themes of the comprehensive model of findings are juxtaposed to reveal the interplay findings – several interlinked manifestations of denial which arise from the four interlinked gaps. The manifestations are summarised as patterns of denial consisting of procedural blindness, substantive deafness and complicit silence.

Chapter nine reports an interpretation of the meaning and possible alternative readings of the comprehensive model of findings which revealed four interlinked gaps in restorative justice practice. The manifestations and patterns of denial which arose out of the gap study are discussed according to Cohen’s theory of denial.

Part five concludes the study. Chapter ten draws conclusions and makes recommendations to close the interlinked gaps revealed by the findings so that restorative justice processing can contribute to long-term peacebuilding in a structurally responsive way.

PART II: UNEQUAL, TRANSITIONAL CONTEXT

Part two provides an overview of three key concepts and sub-concepts and an outline and display of the conceptual framework to explain South Africa's unequal, transitional context. This resonates with Mamdani's (2001:9) contention that 'it is not possible to define the scope - and not the limits - of action without taking into account historical legacies'. The overview is therefore a multi-perspectival, descriptive analysis which provides the historical and theoretical underpinning of the conceptual framework, in line with specific aim 1.4.1. The concepts are located in multi-disciplinary literature to make sense of the blurred lines between them. A working conception of each concept is discussed in chapters two, three and four.

Chapter two provides a brief account of the impulse behind construction of the conceptual framework for this study. A simple display depicted in chapter four figure 4.2 of the conceptual framework (long-term peacebuilding, restorative justice and social justice); is super-imposed on a background display of horizontal, vertical and crosscutting analyses of South Africa's unequal, transitional context. The immediate background to the overall research question, as well as the questions that constitute the underlying hypothesis and focus of this research are discussed. Wider conceptions of peacebuilding are deconstructed, and relevant aspects are reconstructed to provide context for a deeper and broader analysis of restorative justice in the South African context.

Chapter three focuses on different conceptions of restorative justice. It begins by deconstructing notions of crime and harms. This casts light on modest and expansive views and applications of restorative justice. It also provides a clear understanding of why the adoption of an expansive view of restorative justice is logical in the South African context.

In chapter four the concept social justice is deconstructed. By inverting the notion of social justice, a descriptive analysis of unbroken inequality (as an example of structural violence) in South Africa is explored. Key pre-colonial, colonial, apartheid and contemporary contributing factors are described. An understanding of what would constitute social justice in the South African context is distilled. Links with the shared key concerns of long-term peacebuilding and expansive restorative justice are made.

CHAPTER TWO: OVERVIEW OF CONCEPTS

The shape of the physical and social world depends on the smallest part. The part, in a sense, is the whole, for via the action of any particular part, the whole in the form of transformative change may be seen. To exclude such considerations is to miss the nature of the interactions that constitute reality (Kincheloe, 2008a:41).

2. Introduction: ‘The whole is more than the sum of its parts’

In this chapter the circumstances behind construction of the conceptual framework are explained and the framework is displayed and described in line with specific aim 1.4.1. The immediate background to the overall research question is discussed. The study is then located in research literature by providing summaries of a study by Daly (2002) and a seven year international study by Gavrielides (2007), which have a degree of resonance with this research. While this chapter deals with the concept peacebuilding which is one of three concepts of the conceptual framework, there is inevitable blurring as the themes of these three concepts intersect. Different conceptions of peacebuilding are discussed. The micro-macro linkages between cultural-structural-direct violence (cf. Galtung, 1996:2) form the basis for a conceptual argument with regard to inequality as an example of structural violence and crime/social harm as a manifestation of direct violence, as well as the silences that surround this linkage in restorative justice practice. The second concept, restorative justice will be discussed in chapter three and the third concept, social justice in chapter four.

2.1 Concept-centric, multi-perspectival approach to literature

This research is driven first and foremost by a quest to answer the research question from the standpoint of a practitioner and insider/outsider to academia who seeks to adapt *practice* to the context in which it arises. A second priority is to add to the body of knowledge on peacebuilding and restorative justice *scholarship*. A third priority is to advance the bricolage *research approach* advanced by Denzin & Lincoln (2011:5) and Kincheloe, McClaren & Steinberg (2011:168) as it allows the researcher-as-bricoleur to use their accumulated knowledge. The bricolage suits researchers who are:

Pushing to a new conceptual terrain...to maintain theoretical coherence and epistemological innovation. [... A]s one labors to expose the various structures that covertly shape our own and other scholars' research narratives, the bricolage highlights the relationship between a researcher's ways of seeing and the social location of his or her personal history. (Kincheloe, McClaren & Steinberg, 2011:168)

Specifically with regard to the work of other researchers, Kincheloe, McClaren & Steinberg (2011:168) argue that research is a power-driven act and that the 'critical researcher-as-bricoleur abandons the quest for some naïve concept of realism, focusing instead on the clarification of his or her position in the web of reality and the social locations of other researchers and the ways they shape the production and interpretation of knowledge'.

For this overview of concepts, I therefore combine and blend elements of two approaches to construct the conceptual framework in line with the notion that the bricolage is grounded in an 'epistemology of complexity' (Kincheloe, McClaren & Steinberg 2011:168). One approach to literature was proposed by Metcalfe (2003) and the other by Webster & Watson (2002). Following Metcalfe, I use the courtroom as a root metaphor, in which authors are regarded as expert witnesses, based on their theoretical knowledge or knowledge they possess 'through their research findings or other experiences' (p.14). Metcalfe (2003) distinguishes between literature reviews that support experiments on the natural world and research that requires interpretations. Where interpretations are sought - as in this research - he argues that literature should be regarded 'as a supply of expert witnesses that can be used as ...evidence in support of an argument' (p.15). As this research is both deductive and inductive in nature, I combine and adapt positivist and grounded theory approaches to answer the research question.

To construct the conceptual framework based on the opinions of experts, I combined and blended Metcalfe's approach with that of Webster & Watson's (2002), who promote a concept-centric rather than an author centric approach (2002:xvi). Opinion was specifically sought on the three main concepts and sub concepts which related to constructions of crime and the criminal in the context of inequality and transition in South Africa. Taken together, Galtung's notions of micro-macro linkages (1998:401), cultural-structural-direct violence (1996:2) and negative peace/positive peace (1996:3)

provide the bridge that brings this study of peacebuilding and restorative justice within a peace research frame.

2.2 Intersectional foundations of the conceptual framework

According to Lederach (1997:21) conceptual frameworks offer a boundary outline to provide focus and meaning, as well as limits within which to raise questions and consider a particular course of action. By implication, it is part of the research process pertaining to the quest for perspectives that are relevant, to guide the study and to contribute to an answer to the research question. Used as a heuristic device which generated multiple themes for exploration, the conceptual framework laid bare relevant issues that require attention over an extended period of peacebuilding.

Following Maxwell, *relevance* was the primary goal in the construction of this conceptual framework. He suggested that:

[R]elevant works are those that have important implications for the design, conduct or interpretation of the study, not simply those that deal with the topic, or in the defined field or substantive area, of the research ... relevance in this sense, ... is the most essential characteristic of a good dissertation literature review'. (Maxwell, 2006:28).

This thinking informed the way in which the concepts were derived from the research question, and then linked to provide the conceptual parameters for this study. The research question arose from the underlying hypothesis of this research – that a perceived gap exists between restorative justice as a sub-process of long-term peacebuilding on the one hand; and the strategies, techniques and tactics used during restorative justice processing in South Africa's unequal, transitional context, on the other hand.

2.2.1 Resonance with existing research

This study has some resonance with a seven year study by Gavrielides whose 'underlying hypothesis and focus of investigation was that there is a gap between the way restorative justice's theory and practice have developed since the 1970s' (2007:15). Gavrielides' hypothesis arose from 'talking with several practitioners in the restorative justice field at home [UK] and abroad' and realising that 'restorative justice practitioners are often left without state support, guidance or coordination, striving to find the means to continue practising'. He cites the self-critique and appraisal of the rapidly growing literature on

restorative justice by the restorative justice movement as a second source. The concern centred on his own and the fears of ‘many who have been associated with restorative justice’s development from its earliest days’ who are now suspicious of its growth, and the ‘growing diversity of opinions in what constitutes restorative justice theory and practice’, amid other concerns. Gavrielides’ hypothesis mainly refers to ‘a discrepancy that seems to exist between the priorities, outcome, and processes of the various practices that are labelled ‘restorative justice’ and the abstract theoretical norms and principles that constitute restorative justice’s normative and historical notion’ (2007:14-15).

The following questions constituted Gavrielides’ underlying hypothesis and focus of investigation with regard to the gap between restorative justice theory and practice (2007:15):

1. ‘How is this discrepancy interpreted in practical terms?’
2. What does it mean for restorative practices?’
3. What are the exact practical areas that are affected by it?’
4. Are practitioners aware of the many writings in the field?’
5. And if they are, then why are they not using them?’
6. How can the normative work be used to overcome this pitfall?’
7. What about the restorative justice Standards and Principles that have been produced at both national and international levels?’

Gavrielides conducted four surveys with a sample that consisted of 40 practitioners from around the world; in depth face-to-face interviews with 13 organisations in England and Wales; 22 face-to-face interviews organisations with direct experience of restorative justice and hate crime; and an international survey with an unnumbered sample who used restorative justice for sexual offences (p.17). Gavrielides’ findings consisted of a discrepancy with regard to the use and meaning of restorative justice (p.133), issues in training, education and accreditation (p.133), and problems with the way restorative justice work is funded (p.40). This study is referred to in more detail in chapter 9. Daly’s (2002) analysis focused on conference process, its legal context, conference outcome and compliance, and conference effects (p.2). Her study was conducted in South Australia and consisted of observations of a sample of 89 conferences with participants under 18. Her sample was chosen by offence category. These were property offences and

violent crimes, excluding shoplifting, drug, and public order offences (p.3). This study is referred to in more detail in chapter 9.

This research consisted of both a conceptual argument and an empirical study. The conceptual argument took account of micro-macro linkages between cultural, structural and direct violence, and the empirical study focused on examining the process of victim offender mediation and what happens within its 'black box', from multiple perspectives. In contrast, Gavrielides' participants consisted only of practitioners, and Daly's participants consisted of victims and offenders. In addition, restorative justice processing was an instrumental case, to obtain a clear understanding of the way in which it is conceptualised and practiced contributes to long-term peacebuilding within South Africa's unequal, transitional context. The Norwegian konfliktråd was used as a keyhole lens to compare what happens in the black box of victim offender mediation practice in an egalitarian society, to examine restorative justice processing in an unequal and an egalitarian context.

Gavrielides' study was international. His research did not focus on a specific national criminal justice system as he intended to acquire a detailed understanding of the practical development of restorative justice and how this links to the broader restorative justice movement (2007:17). Like this study, Daly's study was national. My interest was to assess whether restorative justice processing as applied in South Africa, is responsive to its unequal, transitional context and if it contributes to long-term peacebuilding. This was achieved by embedding the study within a deeper and broader analysis of the South African context, and conceptualising the study within a broader peacebuilding frame, of which restorative justice is a sub-process and social justice a goal.

The overall research question is: *'Does victim offender mediation, as a contemporary form of restorative justice advance long-term peacebuilding in unequal, transitional contexts like South Africa'*. Following Daly (2002) and Gavrielides (2007) in part, this research refers to a 'discrepancy that seems to exist between the priorities, outcomes and processes' of restorative justice practices and the 'abstract theoretical norms and principles' (Gavrielides, 2007:15) exemplified by equality and social justice, amongst others. These goals constitute some of the normative underpinnings which peacebuilding and restorative justice have in common with South Africa's Constitution (1996).

Gavrielides suggests that observations by practitioners need to be validated and that assumptions made by some scholars about the gap between theory and practice were never tested with empirical evidence and thus their suggestions to address the gap can only be valued as ideas ‘in abstracto’ (2007:15-16). Instead of focusing only on the perspectives of practitioners, this study sought to validate the experiences and observations of victims, offenders and prosecutors in South Africa; and mediators, restorative justice practitioners and key experts in South Africa and Norway as discussed more fully in chapter seven. In addition, this research examined victim offender mediation in the context of South Africa’s unequal, transitional society.

2.3 Constructing the conceptual framework

The three main concepts of the conceptual framework are drawn from the research question. Two explicit concepts in the research question, *long-term peacebuilding* and *restorative justice*, as well as one implicit concept, *social justice* (the implied opposite of inequality) were linked to create the boundary outline within which to conduct intersectional (horizontal, vertical and cross cutting) analyses of South Africa’s unequal, transitional context. This multi-perspectival approach also enabled me to examine empirical and secondary data on the (instrumental) case of restorative justice processing, to get a clearer understanding of peacebuilding practice, as exemplified in victim offender mediation.

The relationship between long-term peacebuilding, restorative justice and social justice is now explored to show the relevance of making a conceptual link between these concepts.

2.4 In-country, long-term Peacebuilding

In this research a distinction is made between international regimes (Evans, 1993:40) and in-country peacebuilding (Evans, 1993:40, Keating & Knight, 2004: xli). Lederach, Neufeldt & Cuthbertson (2007) contend that reflective peacebuilders need to be systemic. They suggest that peace researchers should:

Go beyond cause-and-effect to look at the wider context and history. Cause-and-effect thinking predicts that action A will produce result B; systemic thinking not only observes that, in a particular setting, A, B, and C tend to be present when a particular pattern emerges, but also asks, “What else is going on in this context?” “What visible and invisible factors are combining

in the overall system to produce this result?" (Lederach, Neufeldt & Cuthbertson, 2007:12).

This research went beyond cause-and-effect thinking and, facilitated by the bricolage approach, it looked at the wider context and history to bring as many dimensions of long-term peacebuilding into the frame of analysis as is possible. Long-term peacebuilding, as referred to in the research question, is by implication in-country peacebuilding and is concerned with human rather than state security. While there is little difference between the concerns and activities of 'international regimes' and 'in-country' peacebuilding it has been noted with regard to peacebuilding in South Africa that:

the 'just noticeable' difference favours 'in-country peace-building' since it is clear that peace-building is a long-term and ongoing process with a distinct preventative focus which requires the continued presence of peace-builders'. (Henkeman, 1998:36).

More than the presence of local peace-builders, long-term peacebuilding requires a trans-temporal understanding of the conditions that gave rise to nested and ascribed inequality, as well as an understanding of why inequality is growing in the post apartheid era. The very notion of long-term peace is expansive, and suggests that local people, at all levels of society, should understand and be involved in the broader post-apartheid peacebuilding process, wherever they find themselves, if long-term peace is to be achieved and sustained. This resonates with Keating & Knight's statement that:

In-country peacebuilding refers to national and local level efforts, involving both governmental and civil society actors that are aimed at economic development, institution building and, more generally, the creation or restoration within countries of the conditions necessary to bring about stability and sustain peace. (Keating & Knight, 2004: xli).

Keating and Knight however limit involvement to civil society actors. Civil society actors are ordinarily understood to mean organised formations of civil society. I believe that ordinary people within a country can and should play a role as they are not constitutionally debarred from doing so. I argue that long-term peacebuilding is not the exclusive domain of elites, organised civil society and citizens, as the 2008 xenophobia related murder and violence in South Africa exemplified. I therefore avoid using the term 'citizens' as this excludes foreign nationals whereas the South African constitution is welcoming of everyone who dwells *in* the land regardless of their origin. This is

particularly relevant with regard to creation or restoration of the ‘conditions necessary to bring about stability and sustain peace’ as suggested by Keating & Knight.

A further distinction is made between South Africa’s peacebuilding role on the African continent which, according to Saunders, Dzinesa & Nagar, is intended to contribute to consolidation of peace, promotion of reconciliation, and development of the sub-region (2012: 303). This research takes account of their conclusion that ‘[p]eace-building in one country cannot take place in isolation, and regional considerations often have a major bearing on whether or not peace-building efforts succeed’ (p.299). However, due to the scope of this research, this study is delimited to long-term in-country peacebuilding practice as exemplified in victim offender mediation in South Africa’s unequal, transitional context.

Short-termism and related problems of what, Mani (1997:5 cited in Henkeman, 1998) refers to as waste, duplication, ignoring of the political context, and exclusion of the local population (all features of international regimes) strengthen the case for in-country peacebuilding. As Lambourne contends, ‘short-term pragmatism is not a recipe for long-term peace and stability’ (2004:5). This statement holds true for the South African context, where arguably un- and under-diagnosed trans-generational trauma and its effects; coupled with growing and nested forms of inequality and its consequences, silently wreak havoc in the lives of many ordinary people.

During the period of ‘in-country peacebuilding’ and early transition post-1994, it was commonly accepted that South Africa’s transition from apartheid to a constitutional democracy is one of nation building, although the rhetoric about nation building has died down in recent years. Nation building is alternately understood to be state building, peacebuilding, or post-conflict reconstruction in Peace and Conflict Studies literature. South Africa’s process of change is also referred to as ‘the transition’ or ‘transformation of society’. There is to date no neat definition of long-term peacebuilding that captures its complexity within different contexts. The terms peacebuilding, conflict transformation and conflict resolution are also used interchangeably in the literature.

The following discussion attempts to privilege one discursive category out of many, to conceptually frame South Africa’s all encompassing recovery, transition and

transformation process; and to provide analytical clarity as to why this study on restorative justice is located within a peace studies as opposed to a criminological paradigm.

2.4.1 Peacebuilding as concept

The term peacebuilding has its roots in post-cold war peacekeeping. In a critique of Boutros Boutros-Ghali's 'Agenda for Peace' (1992), it has been suggested 'that the aftermath of the Cold War has seen a shift in UN peacekeeping' and that 'change in the nature of UN operations can be located within the 'post-cold war generation of peacekeeping', which, 'reflects two departures from the original concept' (Bertram, 1995:388 cited in Henkeman, 1998). Bertram suggested that 'one aspect is enforcement and the other, building of the political conditions for a sustainable, democratic peace, generally in countries long divided by social strife. She argues that the parameters of peacebuilding were ill defined in UN doctrine and that full-scale peacebuilding efforts are nothing short of attempts at nation building since they seek to 'remake a state's political institutions, security forces and economic arrangements' (1995:388 cited in Henkeman, 1998). This is however only part of the picture in the South African context. Kumar, 1997:2-3 cited in Henkeman, 1998) adds some of the often neglected horizontal, vertical and cross-cutting aspects of positive peace by suggesting that peacebuilding should include:

[T]he redefinition and reorientation of relationships between political authority and citizenry, revisiting relationships between different ethnic and social groups, creating a civil society in its broadest sense, promoting psychosocial healing and reconciliation and reforming economic policies and institutions. (Kumar, 1997:2-3).

The aspects mentioned by Kumar are particularly relevant in the South African context, but does not specifically refer to different forms of justice, although it is implied.

2.4.2 Peacebuilding and Justice

Mani makes the case for including justice in the course of constructing peace because, she suggests, the process of dealing with the past is important for the re-establishment of the rule of law and 'puts it to the test'. She asserts that if justice is given appropriate weight in the peacebuilding process, it could strengthen rule of law principles and

institutions, prove the new government's fairness and commitment to justice, and assure citizens that they are equal before the law (1997:25 cited in Henkeman, 1998). While Mani places more emphasis on legal forms of justice at an early stage of peacebuilding, Lambourne (2004:2) widens the scope considerably by including substantive and symbolic forms of justice which, she argues, together with reconciliation, 'are fundamentally significant goals that need to be addressed in the design of successful post-conflict peacebuilding processes and mechanisms'. Taking these nuanced perspectives into account this research assumes that the notions of substantive and symbolic forms of justice should necessarily be included in the notion of equality before the law, particularly in the context of unequal societies.

2.4.3 Peacebuilding and Transitional Justice

South Africa provides an interesting opportunity to examine the contribution of restorative justice to peacebuilding, as restorative justice principles and practices permeated the nationally and internationally celebrated (and criticised) Truth and Reconciliation Commission. South Africa's Promotion of National Unity and Reconciliation Act, No 34 of 1995 placed the TRC squarely within the process of nation building.

Chapter 15 of the interim Constitution of the Republic of South Africa Act 200 of 1993 refers to 'ubuntu', 'understanding' and 'reparation' as opposed to 'vengeance', 'retaliation' and 'victimisation' with reference to national unity. An extract from the constitution reads:

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation. (S A Interim Constitution, 1993).

Ubuntu has been referred to as 'the nexus between peacebuilding and restorative justice' (Muruthi, 2009:150). Zehr argues that restorative justice provides a framework that is

‘consistent with the values and principles of conflict transformation’ and that it ‘might be viewed as a peacebuilding or conflict transformation approach to justice’ (2004:308).

While truth commissions are intended to deal with historical trauma, it does so in a limited way and favours the state level over the individual level. Truth commissions are temporal institutions, and in the case of South Africa, its mandate was limited to a short historic period and dealt only with gross violations of human rights. It is interesting to note that the period from the 1960s to the 1990s is the period of armed conflict by liberation movements. This indicates that the TRC’s mandate had more to do with negative peace (a focus on combat and its consequences) than positive peace (a focus on cultural-structural-direct violence). Individual victims, according to the narrow definition of ‘victim’ had a role to play in helping the commission get ‘as complete a picture as is possible’ as stated by Archbishop Tutu. After several years it was decided that victims would be paid an amount of R30 000.00 (President’s Fund Annual Report (2011/12:6). In the main, most victims are left to their own devices. The politically more prominent victims become participants in research projects, or are featured in one off documentaries, whereafter they are forgotten. Many people join Khulumani, ‘a social movement for the Human Rights of survivors of Apartheid-era gross rights violations’ who, amongst other actions, have brought a lawsuit against ‘23 foreign banks and multinational corporations’. ‘Khulumani filed the suit in November 2002 in a District Court of New York on the basis that they have aided and abetted the Apartheid government in enabling the said government to commit acts of gross human rights violations’. This action was brought under the Alien Tort Statute and the Torture Victim Protection Act. The movement has an estimated membership in excess of 50 000 survivors. A t-shirt worn by a survivor on their website summarises their stance ‘No reconciliation without truth, reparation and redress’ (web reference 7).

Despite the rhetoric of restorative justice being victim centred, this is not the case in South Africa. The logic of compromise and pragmatism that is required for a peace pact to hold at the national level, inevitably leads to unresolved issues on the part of most primary and secondary victims, particularly when the state does not prioritise radical equality. In South Africa, the master narrative within which the elite pact was framed, is that a civil war was averted and that a miracle has happened. In reality, the civil war that

was averted was one between black and white South Africans. Political violence during the early 1990s – (unofficially regarded as civil war by many South Africans and dubbed ‘black on black violence’ in the media) - claimed the lives of thousands of mainly black South Africans. The TRC later found that a ‘third force’ was involved in stoking the so-called ‘black-on-black violence’. Added to this, the combination of cultural, structural and direct violence killed millions of black lives since the 1600s. Academic definitions of what constitutes ‘war’, ‘just war’, ‘civil war’, ‘political violence’ and ‘crime’ have helped to render black lives insignificant, as the power to define does not rest with those who are victimised. The ‘miracle nation’ and ‘rainbow people of God’ metaphors similarly serve to silence ordinary South Africans who have been defined out of the notion of ‘victims of gross violations of Human Rights’. I argue that as a result of this political pragmatism, what can be described as a conspiracy of silence about the psychological, spiritual, economic and social effects of trans-historical inequality has developed in South Africa. There is a difference between developing a victim mentality and acknowledging victimisation. Those who choose to bury the past with political correctness, conflate the two and in the process add to the culture of denial in South Africa. However growing inequality and its violent effects in the era of market democracy and conspicuous consumption, have caused the veneer of political correctness to crack. People are taking to the streets in protest, and the state is responding with violence. The criminal justice system is left to deal with what lies in the shadow of the master narrative of the ‘miracle nation’.

In a documentary (that is framed by the death of Amy Biehl - the young American woman who was stabbed to death in Guguletu during 1993)⁶ - a truth commissioner recounts how the mothers of the ‘Guguletu seven’ told her that after police ambushed and killed their seven sons, no one came to speak to them.⁷ At a conference held in 2000

⁶ ‘Long Night’s Journey into Day’ A documentary about four truth commission sessions is framed through the lens of Amy Biehl’s unfortunate death. Seen through an intersectional framework, on the one hand it is a gut-wrenching documentary of human suffering. On the other hand, the matrix of domination is clear. A white American life provides an angle to the black South African story of oppression, brutalisation and marginalisation. Even in death the matrix of domination functions to assign everyone their ‘place’.

⁷ The Guguletu seven were young men who, according to testimony at the TRC, were infiltrated, trained and armed by the security police, led into a trap, shot to death and their dead bodies were televised. Parents were not immediately advised of their death and saw their bodies being pulled around with ropes on

where the ‘unfinished business’ of the truth commission was discussed, another commissioner confessed: ‘I am ashamed to say that we did not have the capacity to go back to individual victims and report on the progress of their cases.’ She also admits that the TRC failed to engage ‘those who benefitted from the previous government’ and suggests that the ‘beneficiaries of apartheid have hardly had to change their lifestyles at all ... and said they did not know’ about the horrible deeds that perpetrators confessed to. She also fingers business, and ‘those governments with their multinationals and banks who made millions out of South Africa’ and admits that the TRC ‘did not look properly at these groups and that [it]... should do so’. Unfortunately, by the time its work ended, the TRC did not get around to ‘doing so’.

While the intentions behind a truth and reconciliation commission will always be contested in a divided society, the intention was, according to Archbishop Desmond Tutu, to ‘start’ a process of reconciliation. ‘The state’ and ‘the nation’ take precedence over individual and collective victims.

From Volkan’s (2006:1) perspective the TRC facilitated *large group mourning* without which, he suggests, the ‘derivatives of aggression that have been turned inward ... might have caused unimaginable tragedies without the work of the Truth and Reconciliation Commission’. Inability to mourn, according to him, can initiate new tragic events even centuries after the original traumatizing period is over. In this conception, the TRC stopped the derivatives of aggression from being turned against the external adversary, while helping with large group mourning.

While the TRC’s contribution remains in dispute, many people found answers to questions about their disappeared relatives, bodies were exhumed, a token form of reparation was made, and amnesty was given and refused on merit. However, the TRC’s limited mandate caused it not to acknowledge or deal with the continuity of colonial and apartheid trauma in the lives of ordinary people within the society, particularly those who were systematically dispossessed and dehumanised. Nor did it deal appropriately with

television. The truth commissioner recounts that she enquired if anyone even a church minister came to see the mothers after the political funeral; they replied that no-one came to see them until they were contacted to give testimony at the TRC.

naming - even for the purposes of analysis and future peacebuilding action - the unearned privileges by beneficiaries of apartheid (Mamdani, 1996:1; and Carrier (1997:20), cited in Henkeman, 1998:29), that arguably contribute to the wide inequality gap and its consequences in the present. However, nation building through racial reconciliation and societal psychological healing were held up as the highest priorities – which reveal the political-symbolic as opposed to the historical-substantive agenda of the TRC. This means that continuity of the work that the TRC has begun, and inclusion of historical trauma as a factor in long-term peacebuilding, must be taken up in various ways in the society by people who are trained to recognise its manifestations.

Thus, for the purpose of this thesis, the concept long-term peacebuilding is understood to be a trans-temporal, multi-level, cross-cutting, intersectional process as illustrated in figures 1.1, 4.2 and 4.3. Long-term peacebuilding as a concept, subsumes the terms nation building, post-conflict reconstruction, post conflict reconciliation, transition, and transformation, unless specific reference to individual terms are required in the text. The overall goal of long-term peacebuilding is assumed to be a comprehensive peace where the minimum objective is that the basic needs of all people within the country are met as envisaged in South Africa's Constitution, 1996.

Specifically with regard to the intersection of peacebuilding and restorative justice, it is assumed that the link between ascribed and nested intergenerational inequality and crime/social harms; and intergenerational trauma and its consequences, is understood as part of overall peacebuilding. Where this is not the case, it is assumed that this aspect should to be taken into account by the state and particularly the Criminal justice system when people fall foul of the law, before it can be assumed that everyone enjoys equality before the law and equal access to healing and justice.

2.4.4 Peacebuilding and unorthodox criminology

Unorthodox criminologists remove the obfuscation around crime, social harm and war making or peacemaking approaches to it. According to Wozniak (2002:204) the themes of peacemaking criminology are 'types of crimes/social harms embedded in current social structure, types of theoretical frameworks/perspectives guiding peacemaking criminology, and types of peacemaking alternatives to confront the social injustices

underlying crimes/social harms in today's society'. Zinn's definition of crime includes imperialism, poverty, white collar crime, anti-immigrant policies, oppression and war among others (Welsch, 2009:487)⁸. Unorthodox criminology is thus not only defined by street crime and policing. The themes that unorthodox criminologists are interested in resonate in large part with the conception of peacebuilding taken in this study.

2.5 Existing multiple conceptions and definitions of Peacebuilding

Several definitions of peacebuilding exist and it appears that the term is flexible enough to cover a variety of activities on the continuum of negative (reduction of violence) and positive peace (presence of all forms of justice) - paraphrased from Galtung (1967:12). To work within the limitations of this study, I have sought out articles that reviewed definitions and notions of peacebuilding within the last seven years (2005 – 2011). Schirch (2008), and Barnett, Kim, O'Donnell & Sitea (2007) separately set out to seek clarity on how peacebuilding is conceptualised and defined. In the case of Barnett and others, they also set out to understand how peacebuilding is operationalised and 'institutionalised in various settings including at the UN's Peacebuilding Commission' (p.35).

The definition of peacebuilding suggested by Schirch (2008:11) resonates in part with the broad conception of peacebuilding in 2.4, as she makes specific reference to structural violence – which suggests that macro and micro level social, political, legal, cultural and other structural forms of violence will be addressed. In addition, she includes restorative justice in her broader conception of peacebuilding as illustrated in figure 2.2. She defines peacebuilding as follows:

Peacebuilding seeks to prevent, reduce, transform, and help people recover from violence in all forms, even structural violence that has not yet led to massive civil unrest. At the same time it empowers people to foster relationships that sustain people and their environment. (Schirch, 2008:11).

In a wide review of definitions used in the 'broad field of peacebuilding', Schirch (2008) states that peacebuilding is most often used as an 'umbrella' or 'meta-term' (p.3). This is

⁸ Not all countries have anti-immigrant policies. In many instances 'just wars' to end oppression or an injustice do not qualify as 'crime', but it does inflict harm.

borne out by Barnett, Kim, O' Donnell & Sitea (2007:44) whose observation suggests that peacebuilding is a flexible concept which can and has been applied to suit different agendas. They argue that:

There is widespread agreement ...that peacebuilding means more than stability promotion; it is designed to create a positive peace, to eliminate the root causes of conflict, to allow states and societies to develop stable expectations of peaceful change. Consensus breaks down... over the substance behind the symbol of peacebuilding. Arguably when the Bush administration thinks of peacebuilding it imagines building market-oriented democracies, while UNDP imagines creating economic development and strong civil societies committed to a culture of nonviolent dispute resolution. (Barnett, Kim, O' Donnell & Sitea, 2007:44).

Barnett, Kim, O' Donnell & Sitea's conception, as with many external conceptions of peacebuilding, are concentrated at the macro level which render intra- and interpersonal, intra- and intergroup 'issue complexes' Cohen (2001:217) invisible. These micro level issue complexes, in addition to macro level issue complexes such as structural violence, naturally fall within the domain of long-term and by definition, 'in-country' peacebuilding.

2.5.1 Peacebuilding and Structural Violence

Galtung (1996:2) suggests that 'the major causal direction for violence is from cultural via structural to direct violence. He argues that cultural violence is symbolic 'in religion and ideology, in language and art, in science and law, in media and education ... the function is ... to legitimize direct and structural violence.' He suggests that 'we are dealing with violence in culture, in politics and in economics, and then with direct violence' (p.2). Schirch asserts that there is a debate about whether the term peacebuilding refers to ending direct violence or whether it addresses structural violence (p.5). A second debate, according to her, revolves around what types of activities peacebuilding includes (p.7). She includes restorative justice as a category of peacebuilding, and suggests that the unique goal of restorative justice is to 'transform relationships'. Her model is reproduced in figure 2.2, and shows different categories of peacebuilding headed by what she suggests are the unique goals of each category.

Schirch's conception of restorative justice, based on her broad review of the state of the field of peacebuilding, confines it to the relationship level (p.9). This has resonance with

the orthodox criminological view that limits restorative justice to the individual level. It encourages restorative justice responses that ignore the structural factors which contribute to crime. On the one hand she depicts crime as a consequence of structural violence in figure 2.1. On the other hand, she does not connect the peacebuilding remedy - restorative justice - to the structural level in the categories of peacebuilding displayed in figure 2.2.

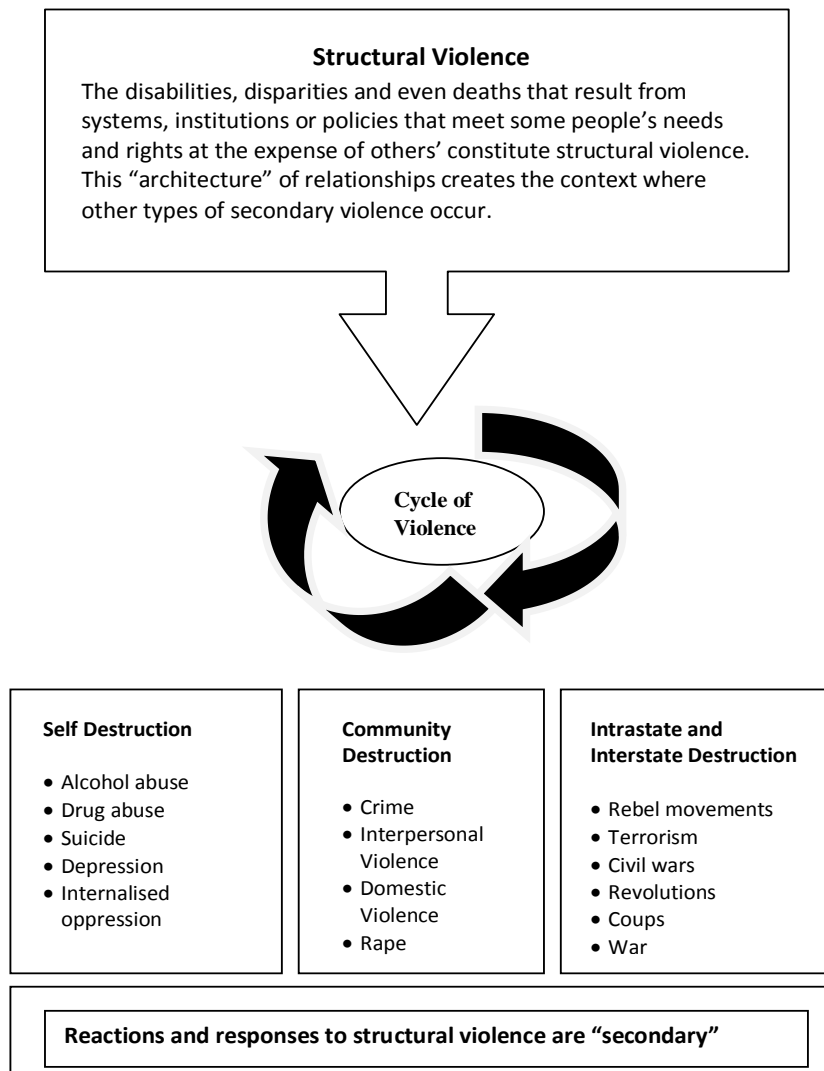


Figure 2.1 Schirch's cycle of violence diagram (2008:6)

According to Adebajo, Landman & Adedeji (2007:19), any strategy for dealing with South Africa's long-term progress must of necessity deal with its political and socio-

economic structural problems'. They suggest that if these issues are not addressed, South Africa will not have much room to manoeuvre, nor will it be able to play the role they envisage for themselves in Africa (p.20).

Categories of Peacebuilding

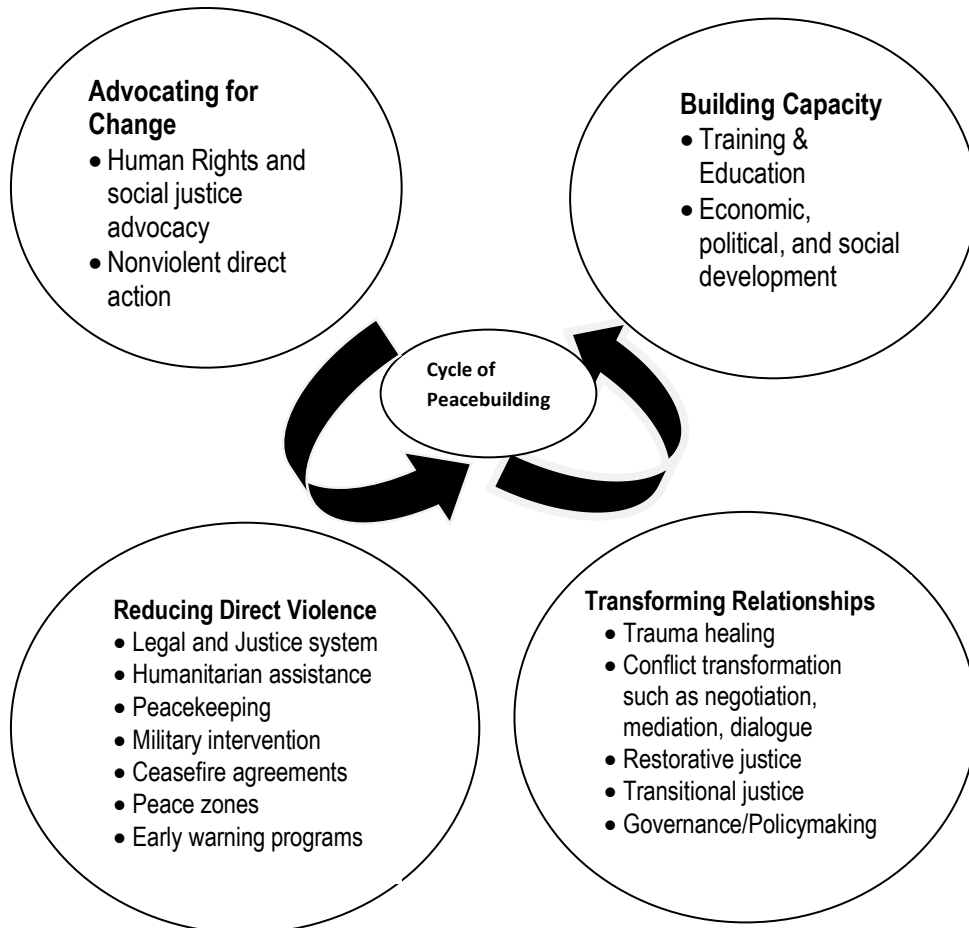


Figure 2.2 Schirch's categories of peacebuilding diagram

2.5.2 Peacebuilding and Silence

There are many silences in peacebuilding discourse (what Galtung, 1996: viii refers to as causes and effects that are rendered invisible as 'externalities'). These silences centre mainly on the exclusion of the voices of ordinary people who have suffered the intergenerational effects of structural, direct and symbolic violence in its masked forms on the one hand, and the continuity of pervasive inequality on the other hand. Curle & Dugan (1982) referred to 'emotional, social, or educational deprivation' as 'unpeaceful'

and suggested that ‘social injustice, economic deprivation and political impotence tend to lead to physical violence’ (p.19). They refer to the ‘death-wielding impact of systemic, non-physical violence’ and cited apartheid South Africa as an example by arguing that:

[I]t is not only that the freedom of the black population is curtailed in a myriad of ways ranging from limited access to education and income from the forced separation of families, but that their actual physical lives are limited in just as real a way as planned execution. [...] These early deaths are the result of a systematic discriminatory distribution of social goods (medical care, sanitary conditions, subsistence, incomes, etc.) that contribute to longevity. (Curle & Dugan, 1982:20).

Another linked but unacknowledged consequence that accompanies colonialism and oppression, is *historical trauma* (Brave Heart, et al 2011:283) and the near total silence about how it intersects and interacts with inequality and its effects in the present. It begs the question with regard to who sets the agenda about what is included and what is excluded from the conception and definition of peacebuilding and why for example, racial reconciliation is higher on the agenda of civil society peacebuilders in a country where the most visible cause of the quest for that reconciliation - nested inequality - is growing. The programmes that are offered by most NGOs favour talk therapy and dialogue; alternatively, workshops, conferences and publications about distributive justice, but not structural action to deal with individual and collective ‘still present pasts’ (Liem, 2007:170). In proposing a ‘multi-layered model of the silencing of historical memories’ which takes ‘political, social, and psychological mechanisms’ that operate at state, community, family, and individual levels, Liem (2007:153-154) draws attention to the intersectional nature of conspiracies of silence. This thesis argues that the intersections of silence in South Africa, constitute a ‘conspiracy of silence’ and a ‘culture of denial’ as discussed throughout the thesis.

Manifestations of historical trauma and how to recognise and deal with it and its consequences; is the most neglected part of state level conceptions of peacebuilding and indeed of civil society peacebuilding in general. Brave Heart et al (2011:283) define historical trauma as ‘cumulative emotional and psychological wounding across generations, including the lifespan, which emanates from massive group trauma’. It has also been suggested that ‘there is significant variation in how people experience, emplot and intergenerationally transmit trauma experiences’ (Denham, 2008:391). Sotera’s

(2006:99) conceptual model of historical trauma consists of the following elements: ‘(1) overwhelming physical and psychological violence, (2) segregation and/or displacement, (3) economic deprivation, and (4) cultural dispossession.’ As Sotera argues:

Though overt legitimization of subjugation may be rescinded over time, its legacy remains in the form of racism, discrimination and social and economic disadvantage [...] Second and subsequent generations are affected by the original trauma through various means. Extreme trauma may lead to subsequent impairments in the capacity for parenting. Physical and emotional trauma can impair genetic function and expression, which may in turn affect offspring genetically, through in utero biological adaptations, or environmentally. Evidence suggests that disorders such as mental illness depression and PTSD can be genetically transmitted to secondary and subsequent generations. (Sotera, 2006:99).

This suggests that the effects of intergenerational and lifespan discrimination, dispossession and oppression are compounded and if shrouded in silence and denial, direct violence in the form of crime/social harm can and has been individualised. The implication of this argument is that even those individuals who ‘act out’ in the form of crime/social harm, are also unaware of the determinants and triggers of their actions. As Volkan, (2006, 6-7) contends, when people become a deliberate target of the aggression of ‘*others*’, the victimized group have to cope with ‘five interrelated psychological phenomena and others related to them’. These are:

- a shared sense of shame, humiliation, dehumanization and guilt;
- a shared inability to be assertive;
- a shared identification with the oppressor;
- a shared difficulty or even inability to mourn losses;
- a shared transgenerational transmission of trauma.

He argues that these psychological phenomena ‘attach themselves to real-world issues in the affected societies, such as continuing poverty, inexperience in the democratic way of life, corruption in the new political system, and international manipulations’(p.6). I interpret this to mean that a two way relationship is implied here. Firstly, where the traumatised person is re-traumatised by the continuities of the traumatising event, and secondly, where traumatised people become the perpetrators of similar or other offences. Either way, a parasitic relationship is implied here by the use of the word ‘attach’.

According to Volkan ‘even when political and legal systems change and traumatizing elements within the society are removed, individual and societal responses to the previously existing and devastating political system do not disappear overnight.’ This is an important aspect to take into account in assessing how long-term peacebuilding is conceptualised since he argues that ‘[d]epending on the severity of the traumatizing events and how long they lasted, the influence of the shared trauma on the victimised group and their descendants may continue for decades’ (p.6). In chapter four, this thesis traces the continuity of shared trauma in South Africa from the colonial period starting in the 1600s, the 48 years of apartheid and 18 years of market democracy to provide context for this research.

It has been suggested that historical trauma can also be understood from the standpoint of victims as:

[T]emporal immobility or *the impossibility of passing through* [...] in trauma theory, the traumatized person experiences the traumatic event as if it had a spectral quality of a continuous appearance after it had come to pass. Trauma complicates the relation between past and future in which what seems to belong to the realms of the past carries ontological weight in the present. (Zolkos, 2009:270-271).

This suggests that historical trauma is not an event, but a series of lived and relived events over time – a process that requires systemic rather than only individual intervention. By focusing on the work of Celan (1920-1970), a Jewish-Romanian-German poet and Holocaust survivor, Zolkos (2009:269) presents her argument as an intervention in ‘the project of theorizing the politics of reconciliation and transitional justice’. She argues that (a) more attention must be given to ‘subjective experiences and discursive sensitivities affected/shaped by the trauma of historical violence and injustice’, and that (b) the ‘constitutive as well as potentially subversive working of these experiences and sensitivities’ must be recognized.

I argue that individual and collective historical trauma and the ways in which it manifests in the present, are largely ignored in conceptions and definitions of peacebuilding. Because of the masked ways in which it manifests, and the discrete responses to these manifestations (which includes positive resilience), peacebuilders do not ordinarily view historical trauma, nor lifespan trauma as part of their sphere of activity. The result is that

many crimes/social harms obscure the contributing role that historical and lifespan trauma plays in its production, and the state's response to it is through an individualised, largely criminal justice approach. The introduction of restorative justice into the criminal justice system seems to suggest otherwise and thus an examination of restorative justice processing, through the lens of long-term peacebuilding, as conducted in this study, is justified.

2.6 Peacebuilding and the goal of Structural Peace

Schirch's models are descriptive as they are based on an empirical review of peacebuilding. The contexts she writes about cannot be generalised to a society like South Africa with its historical, transitional, social structural, cross-cutting and individual level elements that interact to produce crime. It therefore begs the question: if crime is structurally generated, how would restorative justice, confined to the relationship level as depicted in figure 2.1, contribute to structural peace? This suggests that there is a gap in the thinking applied by scholars and practitioners who do not always apply consequential and converse thinking with regard to crime/social harm, nor do they consider structural solutions for crime/social harm, which many acknowledge is a consequence of structural violence. An example of converse thinking in the context of crime is 'the individual is a threat to society' and the converse in the South African context is 'an unequal society is a threat to the individual'.

From my standpoint, *complete* equitable horizontal relations between different race groups in South Africa, does not seem possible if denial persists about crime/social harm and other social ills; and its relationship to historical and contemporary correlates and facilitators of inequality, which are exacerbated by the market democracy⁹. It requires a searingly honest dialogue about action to deal with redress *and* healing, not the politically correct language that shies away from confronting the interaction of individual and trans-temporal effects of colonialism, apartheid and market democracy. This distinguishes grounded utopianism from utopianism, because unless South Africans of all races, together confront the present compounded consequences of its past, and together devise a

⁹ The term 'market democracy' was used by Noam Chomsky during the T.B. Davie Memorial Lecture at the University of Cape Town during May 1997.

way towards structural peace, it will not happen. What is happening is that issues are either driven underground and/or they are internalised, become individualised and manifest as internalised inferiority and internalised superiority. This convenient invisibility is reflected by most external experts (in the literature on peacebuilding), who fail to appreciate the complex interaction of the discrete interactions and consequences of ‘cultural-structural-direct’ violence, and the masked forms in which they manifest.

2.7 An intersectional conception of long-term peacebuilding

Braithwaite (1979:8) distinguishes between nominalist and realist definitions. According to him ‘[n]ominalist definitions consist of objective indicators ... whereas realist definitions incorporate the meaning of the definition for those to whom it is applied. He concedes that realist definitions depict a ‘more meaningful sociological category, and thus facilitates a clearer understanding of the phenomenon’. However he suggests that definitions should be linked to one’s purposes. Following Braithwaite, I do not seek ‘maximum understanding’ of long-term peacebuilding, but I seek to understand whether restorative justice contributes to it by taking cultural violence, which justifies and legitimates trans-historical inequality (structural violence) and its relationship to crime (direct violence) into account (p.8). As Ricigliano (2003:449) argues ‘the imperative for academics and practitioners in the field of peacebuilding is to develop a mechanism to push the field in the direction of better understanding and using integrated approaches.’

Drawing on Yellow Horse Brave Heart’s (2011) notion of the historical trauma (the soul wound)¹⁰ of colonised people; Fanon’s notion of internalised oppression (1967) and its opposite internalised superiority; Volkan’s notion of ‘derivatives of aggression’ (2006:6) Galtung’s notions of negative and positive peace (1967:12) and cultural-structural-direct violence (1996:2); and Lambourne’s typology of substantive and symbolic justice (particularly economic and social justice) in the context of long-term peacebuilding (2004:22), I conceptualise long-term peacebuilding in South Africa in intersectional and practical terms from my subjugated standpoint as:

¹⁰ The concept ‘soul wound’ is ascribed to Duran (2006).

Appropriate pacing and sequencing of multiple political, economic, social, psycho-social, psycho-dynamic *action* underpinned by substantive and symbolic justice. These include an honest appraisal of the history of cultural, structural and direct violence associated with material dispossession, intergenerational and lifespan trauma and its present consequences, as exhibited by colonised and oppressed people, beyond the limited mandate of the TRC. Acknowledgement (and not denial (Cohen, 2001:293) of how this history intersects with present nested inequality and racialised constructions of crime/social harm and the criminal. In short, cultural-structural-direct violence (Galtung, 1996:2), counter-violence (Gil, 2006:502) and individual propensity for both ‘good’ and ‘evil’ (Zimbardo, (2007:289) must be *understood* and/or *addressed* for structural peace to be achieved.

This is not a pragmatic definition. This conception embraces within it an understanding of long-term peacebuilding that does not replace one set of asymmetries with another, nor does it privilege symbolic over substantive justice or white over black. It is normative in nature, as it takes human dignity, equality (of all human beings) and material equity as its point of departure. Whether long-term peacebuilding activities can be monitored and evaluated and therefore limited and confined to funding criteria and funding cycles of the international community and the state, is secondary. This conception seeks to move from a pre-occupation with relationship focused reconciliation by the compassionate privileged (which leaves dispossession intact) to a multidimensional focus on substantive and symbolic justice that will deal with cultural, structural, relationship and individual issues.

Such a grounded utopian conceptualisation of long-term peacebuilding would facilitate a process whereby black South Africans confront their socialised and internalised inferiority rooted in the past, and understand the correlates of uninterrupted and growing inequality in the present, despite the few that are deemed to have deracialised the middle class. It would also facilitate a process whereby white South Africans confront their socialised and internalised superiority and uninterrupted privilege based on a past that favoured them, regardless of political orientation. In this conception long-term peacebuilding is process *and* product, which allows for multiple macro and micro-processes consisting of inter- and intra-personal, inter and intra-group and inter and intra-national work. This resonates with Mamdani’s (2001:18) study of the genocide in Rwanda which was conducted in part to understand ‘what it can tell us about ourselves as political beings, as agents with a capacity to tap both the destructive and the creative potential in politics’. It is also to learn about interaction of the creative and destructive

potential within individuals (beyond constructions of race, class gender and other categories) and how this human duality interacts with social, economic, political, legal and other social phenomena that Zimbardo (2007:289) draws attention to. It is based on grounded, concrete utopianism and not a fanciful utopian ideal.

De Gruchy's words about a utopian vision for South Africa resonate. Speaking from a theological perspective at a 1992 conference about South Africa's proposed TRC, De Gruchy (cf. Boraine, Levy & Scheffer, 1997:142) suggests that theological discourse is needed to keep alive Karl Mannheim's notion of "concrete Utopian vision". He argues that the debate about how to deal with the past 'should not be allowed to avoid the greater issues in terms of transformation in the process of transition'. He argues that in South Africa, 'there is an ongoing pressure that is not only moral but also theological'. For him, 'the theological goes beyond the moral. The moral says there must be justice; the theological concurs, but adds that justice must lead to reconciliation and that reconciliation must acknowledge the need for justice'. There is, according to him, 'more at stake than morality'. At the same conference Heribert Adam (cf. Boraine, Levy & Scheffer, 1997:144), draws attention to the fact that South Africa did not only have a criminal regime, it was also a criminal society. On this view, South Africans need to confront the biased constructions of who the criminal is, what constitutes crime, and the fact that the past is implicated in many of the crimes/social harms that are perpetrated in the present. The past is still visible in the apartheid architecture of the country, ownership of the commanding heights of South Africa's economy, property ownership, and visible privilege of most white people and a growing number of black middle class people. Yet those who fill the prisons are not those who are responsible for the trans-historical cultural-structural-direct violence (Galtung, 1996:2). The people who fill the prisons are those upon whom the triad of violence was unleashed inter-generationally, for centuries – yet their direct and counter-violence (Gil, 2006:509) are individualised and processed in an acontextual and ahistorical manner.

This conception of long-term peacebuilding is a standpointist addition to other conceptions of peace that have been crafted from an 'objective', rather than a subjective location - to fill out a broader understanding of long-term peacebuilding that includes a subjugated voice. The expansive, backward- and forward- looking, micro-macro and

cross-cutting conception of long-term peacebuilding where the notion of peace is intricately interwoven with substantive and symbolic justice, resonates with Lederach's notion of justpeace (2005:82).

2.8 Peacebuilding practice: The problem-solving workshop

According to Fisher (1997:57) the foundations of the interactive problem-solving workshop with its focus on human needs, was laid by Burton and his colleagues in the United Kingdom during the 1960s, and was developed further by Kelman, an American social psychologist. The problem-solving workshop resonates with the model of victim offender mediation used in South Africa and Norway with regard to the pattern of interaction from the pre-mediation, mediation and post mediation/follow-up phases as well as the four mediation stages. As Fisher (1997:59) states 'Kelman realised that it was essentially a social-psychological method of intervention, in that changes at the individual level were being linked with policy processes at the macro level' (p.57). He viewed interactive problem-solving as 'action research that integrates efforts at conflict resolution with opportunities to observe and learn' about conflict.

As Bercovitch & Jackson (2009:9) state, 'problem-solving workshops have inherent limitations ... to have any substantial impact they must be included in the wider political process'. They argue that the 'central challenge to the problemsolving workshop approach is that of transfer 'as this is how the 'positive changes achieved in the workshop are subsequently disseminated into the host societies to foster substantial constituencies for peaceful conflict management' (p.9).

The process followed in an interaction workshop follows the following basic outline (i) The *pre-workshop phase* where the doves are identified and approached to consider an academic workshop in a remote location; (ii) the *workshop phase* where each party is allowed time to tell the history of the conflict from their perspectives, academics assist with framing the conflict. Interactive problem-solving happens under conditions of controlled communication facilitated by the academics. Agreements are made as to what will be taken back to the conflict groups/mandate givers or mandated agreements are made (single text). (iii) *Re-entry phase* when the doves have to reinsert themselves into

their groups and try to convince the hawks.¹¹ This general pattern occurs in conflict-resolution and peacemaking processes such as mediation at other levels of action, including victim offender mediation as discussed in chapter four section 4.8.

Bearing the conceptions of long-term peacebuilding (discussed in section 2.4.1 – 2.8) and the basic patterns of interaction and experience during peacemaking processes in mind, I now turn to a more nuanced assessment of peacebuilding in South Africa.

2.9 A concise history of peacebuilding practices in South Africa

This section discusses a few key examples to illustrate the enduring orientation towards peacebuilding in South Africa, despite its history of cultural-structural-direct violence (Galtung, 1996:2).

Abrahams (2007) and Muthien (2008) suggest that the local groups, who encountered the first colonizers in South Africa, had a spiritually based social structure that was geared towards harmonious existence with each other and nature. Abrahams, a Khoekhoe historian argues that not much of the social structure of the historical Khoekhoe has survived after ‘350 years of colonialism, 250 years of slavery, 48 years of apartheid and ten years of structural adjustment’ (2007:217). She suggests that, over time, colonialism distorted the Khoekhoe way of life and existence:

The taking of a life indiscriminately was just not done. It is probably one of the reasons we were so easily colonized. It took about 150 years for the Khoekhoe to get over killing one colonist; it just wasn’t part of our culture. It was only around the mid-nineteenth century that the Khoekhoe began to understand the capitalist idea of taking life, as opposed to sharing life. (Abrahams, 2007:218).

While Abrahams believes that there is nothing left of the historical Khoekhoe social structure, recent research by Muthien suggests that traces of peaceful coexistence in some

¹¹ This process was discussed during lectures by Professor John Groom during Applied Conflict Theory and International Relations modules during 1997-1998 at the University of Kent, United Kingdom. Combined with my basic and advanced mediation training by the Centre for Conflict Resolution (CCR), Independent Mediation Services of South Africa (IMSSA), Community Dispute Resolution Trust and the Independent Electoral Commission, it forms part of my accumulated knowledge, practical and teaching experience from 1994 – 2012.

KhoeSan practices still exist. Using an interdisciplinary, intersectional approach to the study of a peaceful and gender egalitarian society, Muthien's research revealed that the KhoeSan - historically, and as assessed through modern KhoeSan oral history and practices - are a peaceful society for whom nonviolence and gender egalitarianism are norms (2008:i). Even in groups where patriarchy was practiced, the notion of ubuntu filtered through in everyday practices that were designed to restore wrongdoers to harmony.

2.9.1 Traces of nascent long-term peacebuilding

It would be short-sighted to start an analysis of long-term peacebuilding in South Africa only from the period of 'toenadering' (rapprochement between mainly the ANC, big business and the NP during the mid eighties and later widening out to other political formations and parties). The move towards a negotiated settlement that culminated in South Africa's Constitution of 1996 has a long history. Relevant sections from the constitutions of the three main liberation movements, read through a peacebuilding lens, suggest that these entities, while using differing means at times, had broadly compatible goals, which roughly translate into political, social and economic justice for all South Africans, particularly the oppressed African majority as their stated goals.

Under its *Aims and Objectives*, relevant sections of AZAPO's constitution of 1978 as amended and adopted in (2002:3) reads:

- (iii) To recapture and restore political, economic and social power to all Azanians,
- (vi) To work towards the unity of all people in order to maximise efforts at the total liberation of all the oppressed and exploited.

Under its *Objectives*, a relevant section of the PAC's constitution (2000:1) reads that it seeks to:

- 2.2 [F]ight for the overthrow of all forms of domination, including neo-colonial domination, for economic empowerment of the African and for implementation and maintenance of the right to self-determination of the African people in a non-racial and unitary state

Under its *Aims and Objectives* relevant sections of the ANC's amended constitution (2007:2) reads that it will:

- 2.4 Fight for social justice and to eliminate the vast inequalities created by apartheid and the system of national oppression.
- 2.6 Promote economic development for the benefit of all.
- 2.7 Support and advance the cause of women's emancipation
- 2.8 Support and advance the cause of national liberation, development, world peace, dis-armament and environmentally sustainable development.
- 2.9 Support and promote the struggle for the rights of children and the disabled.

I focus narrowly on the inclusive sections of these constitutions, as the purpose of this discussion is not to clarify what Azapo and the PAC mean by 'Africans', and 'Azanians'. I seek to establish their bona fides in terms of positive peace, by focusing on words and sentiments which are inclusive of every South African, such as 'all', 'unity', 'non-racial', 'unitary state' and other evidence of inclusion. The purpose is to show that on the left; the taking up of arms against the apartheid state was tactical in an overall strategy to free the majority of South Africans from oppression; whereas on the right, political entities sought to entrench white supremacy.

In its submission to the TRC in 1996, the ANC distinguished its counter-violence, through Umkonto We'Siswe (MK) from that of the apartheid state by asserting that 'it would be morally wrong and legally incorrect to equate apartheid with the resistance against it', since resistance was 'rooted in human dignity and human rights', while apartheid was 'an affront to humanity itself'.

The ANC's politico-military stance placed political work above military work. The first point in annexure 'D' to the ANC's 'Green book' (1979) states:

We have always felt that political work is primary and that everything else flows from it.

Similarly, APLA, the military wing of the PAC in their submission to the TRC in 1996 reiterated:

When the PAC was formed in 1959, no provision was made in its operational structures for the establishment of a military wing. The situation changed with the massacre of our people at Sharpeville and Langa in the opening days of our positive campaign launched in March 1960. In September 1961 the foundation for the military wing of the PAC was laid [...] The reconciliation conference of members of the National Executive

Committee ... in 1967 endorsed the organisation's stand on an armed struggle and set up a revolutionary command ...

It is evident that a political approach took precedence over a military approach and that armed struggle was a tactic used by liberation movements to advance the strategy of negotiation that particularly the ANC sought since its inception. South Africans found a way to de-escalate violence even when, according to Gastrow (1995:5), 'unprecedented political strife and violence' erupted during 1990 which, 'replaced 1989 as the worst year of political violence in modern South African history, with 3, 699 persons killed (a 163 percent increase over 1989').

2.9.2 'Talks and talks about talks'

It could be argued that more recent events such as South Africa's relatively peaceful transition to democracy, suggest that at least some of the parties were drawing on age old traditions that enabled them to consider 'talks' instead of pursuing protracted, intractable violence. I bracket for a moment the combined effect of the end of the cold war, apartheid South Africa's unenviable economic position, internal and international pressure, the enlightened self interest of South African and foreign countries, and other concealed reasons that ordinary citizens are not privy to, that drove parties to the negotiation table.

The talks between the ANC and big business, as well as Nelson Mandela's conciliatory gestures (from within the apartheid criminal justice system), to the Apartheid State in the 1980s, signalled the fact that armed struggle was merely a device to force the National Party to the negotiation table, as confirmed in ANC policy documents quoted above. This is confirmed by Neville Alexander who states that the ANC's turn to armed struggle after the Sharpeville massacre, was a 'classical continuation of policy by other means' (2002:46), which he characterises as "armed propaganda". He argues that the ANC, 'in spite of its often militant rhetoric, was the ideal 'valid interlocutor' and ready to take over the reins of government' (p.48).

When the diverse parties sat around the negotiation table, they co-operated with each other - albeit antagonistically and with several breakdowns - to reach their goals. It has been suggested before that:

[D]uring the South African multi-party negotiations, some parties wanted an ‘absence of violence’ and the ‘presence of political and socio-economic justice’ ; others simply wanted an absence of violence and were content with the status quo; yet others had only sectoral interests at heart. However, they all had a common interest; they all sought Peace, albeit by differing means and differing definitions. (Henkeman, 1998:9).

After 1994 very few white people admitted that they voted for the National Party and many effectively distanced themselves from the consequences that apartheid had on black people and thus freed themselves from co-responsibility to build a society of equals. From my standpoint, the need for people to lie about their support for apartheid, suggests that they perceive it as wrong. It might suggest that the TRC made people aware of exactly what the system was about and opened their eyes. Alternatively, the full truth of the extent of their complicity in human rights infringements, violations and abuses might have been too much to bear and so they escaped into denial. Neo-liberal economic orthodoxy and corruption by many within the ruling party play a role (these are discussed in several places in this thesis). Whatever the reasons, the slow pace of change in South Africa throws white privilege and black poverty into sharp relief and it focuses attention on within-group inequality as many educated, skilled and politically connected black people are seen to have deracialised the middle class (this notion is questioned in chapter four section 4.6.6). Cohen’s (2001) theory of denial, referred to in more detail in chapter nine, provides a way to comprehend the South African psyche somewhat.

2.9.3 Local and imported conflict resolution models

During the early 1990s, many experts in conflict resolution came from outside South Africa to train practitioners, who in turn trained other South Africans. These skills were put into practice through the work of various conflict resolution and mediation organisations and other civil society and community based structures. For many people in South Africa’s divided society, this was the first time that they were exposed to non violent processual and dialogical ways of resolving disputes and conflicts. However, many aspects of the models that were imported to South Africa were already in use in black townships across the country. These practices were in part based on centuries-old traditions of collective wisdom and the restoration of harmony; but were subjugated during the colonial and apartheid periods. Some of these processes were gender biased, but these processes excluded the notion of imprisonment. In the vacuum left by state

ordering during apartheid, many of these forms of justice conformed to what is known as 'popular justice'. Some took the form of what was controversially called 'kangaroo courts' - a swift form of justice that sometimes culminated in 'necklacing' - (instant execution by igniting a petrol filled tyre draped around the neck) - of those deemed guilty of collaborating with the apartheid state.

2.9.4 National Peace Accord structures

According to Gastrow the NPA and its structures were a consequence of the political transition in South Africa and was an 'extraordinary and daring experiment in conflict resolution on a national scale', without precedent internationally (1995: viii). It is evident that whether parties were incentivised by what Galtung (1967:12) refers to as negative (absence of violence) or positive (presence of all forms of justice) peace, an agreement was reached that at the very least averted full blown civil war between black and white South Africans. Many people are however conducting their lives with unprocessed lifespan trauma experienced during apartheid as well as compounded intergenerational trauma rooted in colonialism.

During the early 1990s, when political leaders were poised to negotiate a new dispensation in South Africa, they were hamstrung by political violence on the ground. Civil society actors initiated the National Peace Accord structure where micro, mid, and macro level linkages were made between the political elites, mid-level and grassroots South Africans to achieve peace. All political parties (except three) signed the peace accord in 1991 (Gastrow, 1995:93). It has been suggested that the National Peace Accord structures alone exposed 'tens of thousands of people to conflict resolution methodologies' (Spies, 2002, 25). On the one hand, the 'logic of compromise' exemplified by high level processes of 'talking' to and co-operating with former enemies to secure peace, was being demonstrated to ordinary South Africans by politicians, even if it appeared to be 'antagonistic co-operation' (Welsh 1994:23). On the other hand, the civil society led National Peace Accord structures exposed the South African Police Force to problem-solving approaches and arguably 'stimulated a community policing approach' that was later adopted by the South African Police Services (SAPS) (Spies, 2002:24, Rauch & van der Spuy, 2006:28). In addition to the substantial number of people who were trained by the Peace Accord Structures, the Independent Electoral

Commission (IEC) had its own Monitoring division and a Mediation Service that trained many lay mediators and peace monitors in conflict resolution skills. Through their work around the country before, during and after the election period, thousands of people were also exposed to peacemaking principles and practices.

2.9.5 The Criminal justice system

The police force transformed into a police service and adopted community and problem solving methods of policing after apartheid, in line with the new constitutional goals. However high levels of crime and violence have been met with ‘war making’ rather than ‘peacemaking’ approaches by the police. During 2010, the police service was changed back to a force with military ranks, in response to the rising levels of crime and violence. At the same time, community police forums, which were intended to build relationships amongst others, now co-exist with the remilitarised police *force*. This is ironic, as the introduction of civilian oversight at all levels was part of the move away from apartheid militarisation and ‘war making’ on crime. After apartheid the impetus for civilian involvement was more in line with restorative justice and peacebuilding principles.

Despite the appearance of difference between the National Prosecuting Authority, Departments of Justice, Correctional Services, Social Development and the Police service, they all fundamentally share the same pattern of beliefs about crime and the criminal that is encoded in criminal law. This pattern consists of a belief that the individual is responsible for his/her actions and that the state can use its coercive power of social control to bring the individual to justice. The system remains offender oriented, but with the rise of restorative justice processing, victims have been elevated from their marginal status and have the opportunity to engage offenders in facilitated dialogue. These discursive clashes and practical similarities are nowhere more evident than in the practice of victim offender mediation, the place where these seemingly opposing paradigms intersect. The difference in values is one of degree but the belief that there is a difference is very strong. While victim offender mediation and other restorative justice forms provide a diversion away from the punitive system to a fine, no criminal record nor imprisonment, the individual is still deemed responsible – in line with the orthodox theories of crime embraced by state departments. According to some research participants, the seeming conflicting approaches give rise to tensions between members

of the police and prosecutors. War making and peacemaking approaches co-exist at the discursive level and clash at the practical level when members of the South African police force are prosecuted individually, when they shoot and kill anyone 'unlawfully'. This is an indication of the uncertain and contradictory transitional terrain into which restorative justice processing has been injected and that facilitators of victim offender mediation processes have to negotiate during each process.

2.9.6 Community Police Forums

At the time when community police forums were initiated in terms of the Interim Constitution Act 200 of 1993 s221, many community facilitators were trained in constructive approaches to conflict and the establishment of community police forums required the training of police and community members in basic conflict resolution skills. The three phase, four stage model of conflict resolution used in victim offender mediation processes, is with minor differences, nearly identical to the processes that were used by peace accord structures, the independent electoral commission and nongovernmental organisations that facilitated the formation of community policing forums and other structures.

2.9.7 Truth and Reconciliation Commission

After the talks and constitution making process, which officially started South Africa's process of nation building, the Truth and Reconciliation Commission (TRC) dealt with one category of past violations - gross violations of human rights, within a specified period. This was pitched at the political level and was intended to start the process of societal reconciliation. Implicit in the notion of starting a process is the expectation that it will continue until the intended goal is reached. The TRC, as a temporal institution mandated with a specific task, was limited in what it could achieve and continuation of the work it started had to be taken up by trans-temporal institutions, organisations, communities, groups and individuals within South African Society. It could be argued that there is no clear continuity of the TRC's work save for a handful of NGO's working in silos, competing for foreign funds and therefore conforming to the agenda of foreign states, their country strategies and funding cycles.

What remains of the TRC, is still located within the Department of Justice and Constitutional affairs, and was a ‘quasi judicial’ institution which was created to deal with apartheid crimes. In that sense, it was a ‘temporal institution charged with addressing trans-temporal peace-building issues’ (Henkeman, 1998:26) and it did this by processing political crimes restoratively, using the notion of ubuntu to facilitate national unity. The incorporation of restorative justice within the criminal justice system potentially allows for ‘continuity of the underpinnings of the TRC’ (Henkeman, 1998:27) by providing victims and offenders an opportunity to exercise agency. This means that there is no break in the thinking that informed the creation of the TRC on the one hand, and the adoption of restorative justice principles and practices within the criminal justice system on the other – at least at the policy level. The Justice, Crime Prevention and Security cluster (JCPS) which is comprised of the (South African police force, National prosecuting authority, and the departments of Justice and Constitutional Development, Correctional Services, Social Development, Home Affairs, Defence and State Security) approved a National Policy Framework for restorative justice in February 2011. It has been suggested that:

Restorative justice provides a framework within which one can comprehend what justice requires in the transition and beyond to contribute to establishing and maintaining peace. (Llewellyn, 2008:9).¹²

It is therefore not a conceptual leap to link restorative justice processing as practiced in relation to crime, to restorative justice as practiced by the TRC, which processed political crimes with the intention to start the process of building long-term peace in the post apartheid society.

2.10 Present peacebuilding efforts

It could be argued that while many aspects of the political, social and structural aspects of South Africa’s peacebuilding process are on track, others have fallen through the cracks and have experienced serious setbacks. This is as much as a result of a proliferation of discourses as it is a lack of continuity. National and visible peacebuilding efforts seem to

¹² The author required permission to quote this is article. Permission was requested and granted by her via email on 5 October 2012.

have faltered at the unfinished and largely meta-physical altar of reconciliation shortly after the quasi-judicial TRC discontinued its work. This presents a grave problem, as a society, we do not understand the effects of growing inequality; the possible manifestations of intergenerational and lifespan trauma and internalised inferiority, on many of the previously oppressed. Nor do we understand the effects of sustained privilege, internalised superiority and denial on many former direct and indirect oppressors and beneficiaries of the apartheid system on the other hand. The notion of ‘rainbowism’ made famous by Archbishop Desmond Tutu, while idealistic and visionary in its intention, gives a false sense of equality in diversity that does not exist in reality. This points to the invisibility of the economic component of transition alluded to by Miller (2008:266) as well as the nested nature of inequality and its consequences which are discussed in chapter four.

2.11 Conclusion

In this chapter, I have provided a brief description of the impetus behind construction of the conceptual framework for this study. I explained the background to the research question and showed the resonance between this research and the seven year international study conducted by Gavrielides (2007). The chapter started construction of the conceptual framework. It examined different constructions of peacebuilding and interrogated the silences surrounding it. It takes South Africa’s unequal, transitional context into account by broadening the conception of peacebuilding to include notions of historical trauma and trans-historical inequality. This is in line with a multi-perspectival and by implication long-term conception of peacebuilding in the South African context. It is against this broader and inclusive conception of long-term peacebuilding that restorative justice processing is examined in chapter three and social justice in chapter four.

CHAPTER THREE: SOCIAL HARM AND SOCIAL HARMONY

3. Introduction: The personal is political

Chapter two clarified the cultural-structural-direct violence linkage (Galtung, 1996:2) and the basic pattern of interaction and experience during mediation/problem-solving workshops. This chapter begins with a brief summary of restorative justice research literature to reveal the key features and concerns in restorative justice processing. It then draws on restorative justice literature to show that long-term peacebuilding and restorative justice processing converge on cultural violence (justification and legitimization of structural and direct violence); structural violence (of which inequality is an example); direct violence (of which crime/social harm is a manifestation); social justice (also conceptualised as transformative justice and structural peace); the interaction of individual and structural factors that produce crime/social harm; and mediation strategies, techniques and tactics. Conceptualising restorative justice as a sub-process of peacebuilding, as this thesis does, obviated the need to get involved in conceptual debates about terminology; and pragmatically focuses attention on micro-macro linkages that deepen understanding about building comprehensive peace and justice in unequal, transitional contexts.

3.1 Conceptions of restorative justice

This thesis is not the first attempt to combine the notion of restorative justice with other concepts. In an article termed *Transformative Justice: the transformation of restorative justice*, Harris (2006) captures the restorative justice/transformative justice debate. Barak (2000) makes the case for integrative praxis in his article termed *Repressive vs Restorative justice: a case for integrative praxis*. From restorative justice literature, in general two conceptions of restorative justice processing can be discerned. The one is a modest conception based on *individual* (dispositional) theories of crime and the other is an expansive view which is closer to peacebuilding and has a further distinction. One distinction is based on situational theories of crime which hold that *structural factors* are responsible for crime. The other distinction is based on integrative theories of crime which hold that there is an *interaction* between individual and structural factors that produce crime and that structural factors should be taken into account during restorative justice processing.

The view based on individual theories of crime is straightforward as most, if not all, criminal justice systems around the world process individual criminal cases by 'responsibilising' (Pavlich, 2005:10; Strang & Braithwaite, 2001:6) the offender. Social circumstances of the offender might be considered in mitigation of sentence, but it is not taken into account otherwise. When cases are referred for restorative justice processing from the criminal justice system, practitioners cannot change the criminal law definition, and they process cases on the basis of individual propensity. This resonates with a modest view of restorative justice which focuses on the intra- and interpersonal levels only.

Some restorative justice scholars, who hold an expansive view, have used intersectional thinking with regard to restorative justice. This view resonates with peacebuilding as Daly (2008:3) uses intersectionality both analytically *and* politically to critically assess categorical thinking in social theory, law and social movements 'to address the conflicting interests of victims and offenders, social movement groups, individuals and collectivities in responding to crime'. According to Barak (2000:42), 'the scenarios of restorative and social justice may be viewed as part of the critically-based integrative praxis for an evolving theory and policy of social justice'. The 'evolving theory and policy of social justice' that Barak (2000) refers to is based on Arrigo's (2000) work. In moving towards a critical and integrated theory of social justice, Arrigo (2000:10-11) explored 'conceptual integration based on a fusion of knowledge' by considering 'how critical criminological theories¹³ distinctively embrace and uniquely converge upon each of ...four knowledge domains.' These knowledge domains are (i) Person-World Dialectic, (ii) Demythologize Systems of Control, (iii) Narrative of Crime, Justice and Community and (iv) Restoration and Reconciliation. As Daly (2008:9) argues, 'a criminal act creates inequality' between a victim and an offender. According to her, 'justice means redressing that inequality and expressing the 'victim's equal value'. She argues that 'individual acts called crime take place in, and some would argue are partly caused by, societies marked by inequality and histories of state violence'. Daly does not believe that justice can be achieved in an unequal societal context 'especially when we

¹³ The 12 critical criminological theories are Marxism, Socialist-Feminism, Peacemaking, Prophetic Criticism, Anarchism, Postmodern Feminism, Seniotics, Constitutive Criminology, Critical Race Theory, Gay/Lesbian theory, Chaos Theory, Catastrophe/Topology' (Arrigo, 2000:11).

appreciate that criminal law and established forms of criminal justice reproduce and amplify social inequalities, not reduce them'. Daly believes that 'we should not expect new justice practices *alone* to achieve social justice'. According to her, striving for this achievement will require other major societal commitments and policies' (2008:9).

The ease with which some scholars work within the criminal law definition of crime without making any reference to structural factors, are exemplified in the following examples of large scale studies of restorative justice processing. Latimer, Dowden and Muise (2005:135) conducted a quantitative meta-analysis of 22 unique studies that examined the effectiveness of 35 individual restorative justice programmes. They focused on the individual level only by examining 'victim satisfaction, offender satisfaction, restitution compliance and recidivism'. Sherman & Strang (2007) conducted a meta-analysis and a quantitative review of the impact of restorative justice research based on 36 international reports. According to them, restorative justice processing might and do in many instances increase victim and offender satisfaction, lower recidivism rates and with regard to repeat offending, they found that 'restorative justice works differently on different kinds of people'. According to them, 'rigorous tests of restorative justice in diverse samples have found substantial reductions in repeat offending for both violence and property crime'. They also state '[t]he evidence consistently suggests that victims benefit, on average, from face-to-face restorative justice conferences' (Sherman & Strang, 2007:9). While these findings are positive for individual practitioners, victims and offenders, it does not provide a deeper and broader understanding of the interplay between individual and structural factors that produce crime/social harm, nor does it provide information on whether restorative justice deals with structural violence at all.

3.2 Interplay between restorative justice theory and practice

The emphasis that different scholars and practitioners place on maximalist, minimalist or expansive notions of restorative justice, reveal the constructions of crime and the criminal that their conceptions are based on. The maximalist-minimalist restorative justice debate in the United States of America is relevant but not central to this study. I do not reproduce the debate here, instead I attempt to pick out and combine aspects on both sides of the debate that are relevant to this study and South Africa's unequal, transitional context. This stance resonates with the 'expansive, transformative view of restorative

justice' suggested by Harris (2004:117-141). Johnstone (2008:60) asserts that restorative justice is a social movement – a collective endeavour that seeks to transform numerous aspects of modern society and seeks 'to bring about a set of far-reaching changes in ourselves and in existing social relations.'

In their efforts to theorise restorative justice processing, some scholars take multiple elements that interact to produce crime into account; while others choose one or a few aspects, and build their definitions and practices for restorative justice processing around a partial conception. It has been noted by Morris (2000:4) that compared to transformative justice, 'restorative justice does not go far enough'. According to her, restorative justice is based on the notion that one event defines right and wrong. She argues that restorative justice ignores the past, and 'the social causes of all events'. For her, it is similar to 'science fiction stories where time stops, and the whole world focuses on this one moment, without a past or future' (p.4). Morris' stance resonates with Gil's (2006:499) argument with regard to structural-, counter-violence and injustice:

'[L]ike conventional criminal justice processes, restorative justice practice follows, rather than precedes, destructive events. It deals with consequences of structural violence and injustice but not with their sources. It aims to rehabilitate people trapped in vicious cycles of structural violence and counter-violence; to change their deviant tendencies and behaviours into conformity with social expectations; and to re-integrate them into the status quo of structurally violent, unjust societies. (Gil, 2006:499).

Gil's (2006) analysis resonates with the South African context where many people are still suffering from lingering structural violence.

3.3 Constructions of crime

According to Mantle, Fox and Dhami (2005:1), 'relatively little (direct) attention has been paid to the relation between restorative justice and theories of crime'. Figure 3.1 helps to focus the mind on the aspects that different theories of crime draw from, and that restorative justice practitioners base their practice on. Following Muncie's (2000) example, a sensible place to start an analysis of restorative justice in the South African context, is to deconstruct the concept of crime, to get a clear understanding of exactly what contemporary forms of restorative justice are responding to. This is particularly necessary because restorative justice, as currently deployed primarily *within* the criminal

justice system, is not consciously or explicitly linked to indigenous forms of justice on the African continent, but is presented as a new, western form of justice which resonates with indigenous practices. Indigenous forms of justice, while by no means perfect, generally take a more holistic, communal approach to harms, as opposed to the more individualistic approach of the western criminal justice system. It has been argued that restorative justice is characteristic of traditional African jurisprudence that is infused with 'the spirit of ubuntu', which seeks to restore, heal or mend breaches, imbalances and broken relationships (Tutu, 1999:51). This conceptual starting point focuses the mind on the powerful role of criminal law in including and excluding certain harmful acts from its definition of crime, while at the same time revealing that lay restorative justice practitioners, who work within the criminal justice paradigm, do not have the power to define. For Muncie (2000:4), 'A conception of crime without a conception of power is meaningless.' He argues that:

The power to render certain harmful acts visible and define them as 'crime', whilst maintaining the invisibility of others (or defining them as beyond criminal sanction) lies at the heart of the problem of working within notions of 'the problem of crime'. Notions of crime offer a peculiarly blinkered vision of the range of misfortunes, dangers, harms, risks and injuries that are a routine part of everyday life. (Muncie, 2000:4)

Practically, the criminal justice paradigm adopted by many scholars and wittingly or unwittingly exercised by restorative justice practitioners, limits the range of analysis and action which practitioners can apply with regard to possible causes, correlates and consequences of harmful acts that they are called upon to mediate on behalf of the state. While some criminologists are attempting to move away from legal definitions of crime, restorative justice practitioners, who work *within* the criminal justice paradigm, seem to be locked into it. As Mantle, Fox & Dhami (2005:27) argue, restorative justice is closely tied to theories of individual positivism, 'law and order' conservatism and classicism, which all focus on the individual offender. They state that 'restorative justice might never be successful unless radical changes were made in existing social structures and processes' and that the relationship between 'criminal and social justice cannot be skated over' (p.27).

In an attempt to overcome the confines of orthodox approaches, Muncie (2000:5) argues for the redefinition of crime as harm as, according to him, it provides the option to treat

harmful acts as ‘conflicts and troubles’ which deserve restorative approaches such as ‘negotiation, mediation and arbitration rather than as criminal events deserving guilt, punishment and exclusion’ (p.5). He suggests that such a discourse would be ‘less concerned with controlling, preventing and punishing and more with enabling, empowering and restoration’. Muncie believes that to work ‘within the established discourses of crime and criminal justice’, is to ‘close the door to any imaginative rethinking’ (p.6). This resonates with the work of Christie 23 years earlier. After observing a communal victim offender process in Arusha, Tanzania, Christie (1977:2) developed a model of justice that culminated in Norway’s konfliktråd, a state run facility where restorative justice processes are conducted as part of criminal justice processing, and where mediation services are offered to the general public.

3.3.1 Crime as conflict

Based on his experience in Tanzania, Christie (1977:1-14) contends that the state and lawyers are ‘professional thieves’ who ‘steal’ the conflicts of citizens by delinking it from the ordinary person’s ability to deal with harms in non-violent and non coercive ways. He argues further that:

[S]ocial structural thieves’ – specifically segmentation according to space and biological attributes - change the basic social structure of highly industrialised societies by depersonalising social life to the extent where professionals are ‘willing to take our conflicts away and we are more willing to give it away. (Christie 1977:5-6).

Here Christie alerts us to the wider societal and global changes that exert its influence on individual choice, to the extent that it becomes a ‘taken-for-granted’ view of reality (Berger, 1963:147). On the one hand Criminal Law limits the harms it defines as crime and thus limits the space within which restorative justice practitioners - who do not have the power to define - conduct their work. On the other hand, the abolitionist and boundary crossing stance taken by some criminologists, open up the possibility of ‘*defining in*’ the multiple and simultaneous interactions of economic, political, psychological and other relevant causes, correlates, triggers and determinants of crime, into the long-term peacebuilding/restorative justice frame. As Elias (1991:252) has argued in a chapter titled *Crime control as Human Rights enforcement in Criminology as Peacemaking*:

Most crime results from political, economic, and social injustices that the government or the society has failed or refused to prevent. In some circles that injustice is called “repression”: a violation of human rights. Thus promoting peace is a matter of the government not merely refraining from its own violence and war and (crime) but providing the conditions to persuade others against launching their own violence and war (and crime). (Elias, 1991:252)

The work of Christie, 1977 (crime as conflict); Fuller 1998, Pepinsky & Quinney, 1991 (peacemaking criminology); and the boundary crossing suggested by Shearing (1989:1) and Muncie (2000), serve as examples of how far scholarship has come in laying bare the ‘relations of power embedded in social orders’ (Muncie, 2000:4). For example, Shearing (1989:169) argued for criminology to retain its traditional crime focus, but to embrace ‘developments that are moving criminology beyond its traditional boundaries’. Friedrichs (2006:441-445) characterises the break with orthodox criminology as ‘unorthodox’, ‘alternative’ and ‘heretical’ and he places the ‘restorative justice movement’ in this category arguing that the ‘restorative justice movement ...has challenged traditional conceptions of crime’. Sullivan & Tifft (2001) make a direct call for healing of the ‘foundations of our everyday lives’ on the title page of their book on restorative justice. This signals an implicit call to shift the power to define away from the state to ordinary individuals and communities. For the purpose of this research, the most important outcome of this shift is that it ‘highlights the need to understand crime and criminal justice within the context of the existing political economy’ (Friedrichs, 2006:446).

3.3.2 Crime as harm

Friedrichs (2006) contends that ‘criminological orthodoxy’ is characterised by a historical focus on ‘street’ crime, with the relative neglect of white-collar crime, particularly corporate crime in the criminological and criminal justice literature. Specifically addressing the restorative justice community, he states that ‘what has traditionally been defined as crime must begin by abandoning the term ‘crime’ itself and replacing it with a new term’ (p.442). This seems to be one of the premises of those committed to a restorative justice approach who promote the term ‘harm’ in place of crime.

This resonates with Muncie’s (2000:5) suggestion that crime be recoded as social harm and Criminal Justice as Social Justice. From van Wormer’s perspective, restorative

justice is a form of social justice (2002:113). This presents an implicit challenge to restorative justice practitioners to take the intersectional nature of harms and social justice into account in the course of processing 'crime' as defined by criminal law. Friedrichs (2006:443) also draws attention to the different 'cognate, hybrid or marginal forms of white-collar crime' that escape the criminal law definition of crime, but can be more harmful in terms of its scale and consequences. These include amongst others, 'illegal, unethical, and harmful actions committed on behalf of corporations' as well as occupational-, state/corporate-, finance-, enterprise- (syndicates and legitimate business), entrepreneurial- (scams), and techno-crimes' (p.442-3).

Another form of harms, which Friedrichs (2006:443) argues is not suitably captured by traditional conceptions of crime, are 'crimes of globalization' which arguably are implicated as causes or correlates of 'street crimes'. He suggests that the restorative justice movements' focus on harm is particularly suitable for crimes of globalisation. He argues that while, for example, it might not be the World Bank's intention to do harm, its 'mode of operation is intrinsically criminogenic and it functions undemocratically despite its stated goals of enhancing people's lives' (2006:443). Friedrichs argues elsewhere that the *effects* of some of the World Bank's operations are also criminogenic and that it has been:

[C]harged with complicity in policies with genocidal consequences, with exacerbating ethnic conflict, with increasing the gap between rich and poor, with fostering immense ecological and environmental damage, with neglecting agriculture ...and with the callous displacement of vast numbers of indigenous people in developing countries... (Friedrichs, 2010:166).

Similarly, orthodox criminologists neglect crimes of the state and other large scale crimes (Cohen 2001, Friedrichs, 2006). Friedrichs suggests that an inverse relationship exists between the overall amount of attention criminologists give to different types of crime. The degree of harm caused by these crimes, 'seems especially applicable to the realm of crimes of the state' (2006:444). Cohen (2001) gives a thorough account of the neglect of large scale crimes. He attributes this to various 'states of denial' from the individual to the state and global level, and questions whether this is leading to 'cultures of denial' (p.278-296). Cohen's analysis is referred to as the 'most persuasive and fully realised account of criminological neglect of large-scale crimes' (Friedrichs, 2006:444). He

suggests that unlike Cohen, most criminologists 'tend to share a more broadly diffused resistance to confronting monumental crimes and atrocities' (2006:444). I argue that practitioners in turn limit themselves to the theoretical confines of their chosen male and western restorative justice 'father', 'grandfather', 'pioneer' or 'leading scholar', as they are referred to in the literature and by some practitioners.

Cohen (2001) cuts to the core of the main 'invisible' and denied nested causes, correlates and facilitators of modern harms. His argument is a general comment on free market capitalism and how it generates cultures of denial. The 'physical reproduction of the conditions of denial' he refers to, are still evident in South Africa today. The reality is that even the new regime is not able to provide the fundamental human rights, equality and social justice promised in the constitution while pursuing free market capitalism. This suggests that restorative justice practitioners should have a working understanding of the micro-macro linkages and interaction of global, social structural and individual harms; have the ability to discern the patterns of interaction as it relates to the cases they are facilitating; and have the ability to devise a course of action that takes these patterns into account. Cohen (2001:293) draws attention to the types of 'solutions' many government's apply, which exacerbate rather than reduce the crime problem. He states that:

The 'solution' to these problems [of late capitalism] now physically reproduces the conditions of denial. The strategy is exclusion and segregation: enclaves of redundant populations, living in the modern versions of ghettos, remote enough to become 'out of sight, out of mind', separated from enclaves of winners, in their guarded shopping malls, gated communities and retirement villages. (Cohen, 2001:293).

The course of action that restorative justice practitioners can take, albeit limited, would be in line with an expansive view of restorative justice which emphasises the need to 'understand crime and criminal justice within the context of the existing political economy, the focus on conventional offenders and the range of 'pathological' conditions giving rise to such offenders' (Friedrichs, 2006:446). As Wozniak (2002:221) has observed, 'peacemaking criminologists tend to examine the connections among social structure, crimes, social harms, the criminal justice system, and peacemaking alternatives'. A long-term peacebuilding perspective includes different levels of analysis which does not limit the focus to intra- and interpersonal factors. This resonates with Sullivan & Tiff's (2001:179) argument about restorative justice, that 'possibilities for

transforming social arrangements exist on all levels, from the most personal up through the most global' and provides a way to overcome the 'it can't be done' and the 'one person can't make a difference' syndromes that 'can deflate our energies for transformation' (p.180).

3.4 The rise and policy transfer of contemporary restorative justice

Judging by the literature, the history of contemporary restorative justice is alternately understood to have arisen from indigenous practices, or it can be traced to a western scholar who is regarded as a leader/father/grandfather of restorative justice. My concern is more to look beneath the surface for the impulses towards positive peace and that is what this section will concentrate on.

According to Daly (2008), the call for transformation of criminal justice by victims and offenders started in the 1960s. She states that during the '1970s and early 1980s established criminal justice began to devolve and fragment, with the introduction of informal justice, neighbourhood dispute centers, and mediation' (p.5). Daly cautions that while it is tempting to believe that the justice explosion is underpinned by principles of restorative justice, 'specific contexts and politics of justice aspirations and practices' should be recognised. At the same time, she suggests, 'despite particularity, there are shared elements and affinities across diverse practices' (p.5). This resonates with Muncie's (2001:27) assertion that policy transfer of restorative justice elements from other countries has the potential to influence a fundamental rethink of current criminal justice practices, but that implementation will remain piecemeal and partial in other locations if these elements are not properly adapted to the different contexts. However, some of the principles, values and practices which underpin restorative justice have for centuries been applied by indigenous people as well as different religious communities around the world. The principles and values of positive peace on which restorative justice is based, are therefore not completely foreign, particularly in the South African context.

An expansive view of restorative justice would also reveal what Friedrichs (2006) describes as 'the true objectives of the conventional criminal justice response to crime', which was the impetus for the critical criminological approaches of the 1980s and 1990s such as left realism, peacemaking-, feminist-, postmodern- and constitutive

criminologies that resonate with the restorative justice movement (p.446). It has also been suggested that after its emergence, victimology helped give rise to restorative justice via the broader field of criminology and that ‘peacemaking criminology contributed most directly to the emergence of the restorative justice movement’ (Friedrichs, 2006:446).

3.5 Individual and/or structural levels of analysis and action

While Friedrichs only hints at the ‘true’ objectives of a traditional approach to crime, Boyes-Watson (2000) wonders why the minimalist model limits the theoretical parameters of restorative justice to simply the harms that occur at the individual rather than the structural level. She argues that it may well be true that not much can be done to directly achieve social justice as a result of a restorative justice process. However, she suggests that:

[I]f one of the outcomes of a restorative justice process is a shared understanding about needs and responsibilities, ... the restorative process holds far greater potential for addressing social justice than either model seems to recognise. (Boyes-Watson, 2000:443).

According to her ‘institutions define criminal wrongdoing as one type of harm and poverty as another type of social wrong’ which makes it hard to think about these concerns in a unified manner. She deems it important that restorative justice should maintain a conscious connection to the notion of redressing social injustice (p.448). This point is driven home by Harris who argues that ‘it will not do to try to turn a blind eye to larger social, economic, cultural, and social structural factors that set the stage and often contribute directly to the harms that occur in a given situation’ (2004: 122). It has been argued elsewhere that restorative justice practices cannot address, or resolve, profound social structural injustices that are linked to problems such as hunger and racism (Cohen, 2001:228). In a critique of restorative justice, Cohen (2001) poses the following searching questions that go to the heart of this study:

How likely is it that practices such as Reparative Probation, victim offender mediation, or even such all encompassing practices as the TRC can, at the very least, avoid making structural injustice worse? Faced with offenders who suffer from structural injustice, is it possible to address their offence in responsible ways - restoring the victim and reinforcing the moral authority of the law violated – as well as to do so in the context of a deliberative dialogue which takes account of underlying injustices? If so, it is difficult to

imagine how this might occur. And if it doesn't, the risk of reinscribing lines of moral differentiation becomes much greater. (Cohen, 2001:228).

These questions by Cohen contribute to a better understanding of what he refers to as an 'issue complex'. An intersectional analysis generates many themes and vantage points from which to understand the different elements that constitute an 'issue complex'.

Boyes-Watson puts her finger on the issue that is at the heart of the logic of an expansive view of restorative justice processing. To her, in the 'real world of relationships, the fundamental connectedness between the realm of individual wrongdoing and the realm of structural harms is crystal clear'. She argues that needs surface 'obviously and urgently' during restorative justice processes which deal with crime - and she cites some examples that exemplify the interaction of individual and structural factors that produce crime.

These are:

The need for an individual to be able to earn a living with dignity, have a place to call home, to be recognised by others, to have a voice in their lives, to be loved, to be healthy, secure and enjoy a measure of peace, are not abstract goals of social welfare but the very concrete, specific, pressing needs implicated in the acts we call crime. (Boyes-Watson, 2000:448)

Boyes-Watson believes that the quality of restorative justice processes are vital to its definition, as it preserves what to her, are the most promising aspects of restorative justice as a source of institutional change. She contends that it is the process which enables the issue of responsibility to be understood as simultaneously individual *and* collective; as opposed to the partial conception of individual guilt, which, she argues, we know is a legal fiction. Crime, she suggests, cannot be divorced from social context. Therefore justice processes which allow 'a wider accounting of responsibility and mechanisms for holding us accountable to each other and for holding the larger institutions within our society accountable to us' should be pursued. In this regard she refers specifically to rehabilitative/social and punitive/criminal justice institutions which operate on the basis of 'atomization' (p449).

The contribution by Boyes-Watson to the maximalist-minimalist debate, gives a clearer understanding of how individual and structural factors interact, and how state institutions 'isolate' the individual from 'real life' which happens in interconnected ways. She also

broadens our understanding of the possible role that the restorative justice process could play to help overcome atomization in state institutions.

3.6 Maximalist-minimalist or continuum of agendas?

From the literature on restorative justice, it is evident that scholars from different disciplines view restorative justice primarily from the confines of their particular vantage points. Johnstone (2008) criticises narrow ‘virtues and vices’ debates about restorative justice that focus on particular aspects. He set out to expose the ‘poverty of such a restricted focus’ and provided a more comprehensive descriptive account (p.60) of a continuum of restorative justice agendas. He summarises five analytically distinct but interlinked and overlapping agendas of the restorative justice movement as:

- (i) *Encouraging the use of restorative processes as part of the social response to crime* which includes, deprofessionalization of criminal justice and crime control; a renewed interest in lay participation; restorative processes enable the reactivation of traditional methods (p.62);
- (ii) *Encouraging a new way to construe crime as an offence to a person rather than the authority of the state*, which implies a shift towards ‘repairing the harm and healing the trauma caused by crime’ (p.67);
- (iii) Promotion of the application of restorative principles and processes in various institutional settings (p.69);
- (iv) Advancing restorative justice as a solution option in realizing political reconciliation after oppression and political violence (p. 72); and,
- (v) *To construct a just society, wherein all human needs are provided for*; and to transform people’s understanding of themselves and their connection to the world (p.72).

Separately, these agendas range from modest to expansive views of restorative justice processing. Taken together, these agendas may enable a broader approach to restorative justice, which takes micro-macro linkages between individuals and the wider world in which injustices are embedded, into account. This resonates with Gil’s (2006:509) invitation to a radical form of restorative justice. He argues that:

In conventional models of restorative justice, practitioners tend to share the ‘common sense’ consciousness of most people, according to which prevailing social realities are valid, legitimate and essentially just. These practitioners pursue therefore the rehabilitation and reintegration of offenders and victims into these very realities, in spite of the social structural violence and injustice that inhere in them, and that are likely to cause recidivism or acts of counter-violence. (Gil, 2006:509).

This observation by Gil speaks directly to the South African context in which restorative justice is deployed. An expansive conception of restorative justice, which includes social justice, resonates with the long-term conception of peacebuilding discussed in chapter two. As Barak (2000:42) contends, although a range of policies issue from each of the ‘styles of scenarios of justice, it can be argued that on a ‘continuum of justice’, ‘restorative justice would be in the middle as it shares some assumptions in common with both repressive justice and social justice’. He suggests in terms of ‘reducing crime and enhancing justice, the scenarios of restorative and social justice may be viewed as part of the critically-based integrative praxis for an evolving theory and policy of social justice’.

From these modest, structural and expansive views of restorative justice, various elements can be discerned. Figure 3.1 displays some of the key elements found in the literature and at the same time serves as a heuristic device which provides an intersectional understanding of the various factors that interact to produce crime. This display, although not exhaustive, contributes to a clearer understanding of what restorative justice processing should ideally be responsive to if it is to be a tool for long-term peacebuilding in South Africa’s unequal, transitional context. That is, restorative justice practitioners should be open-minded about the interplay of individual and social factors that produce crime instead of limiting their constructions of crime and the criminal to a criminal law definition.

The elements included in constructions of crime and the criminal by different restorative justice positions, are depicted in the display. The vertical axis depicts factors from the individual level to the social structural level, and include intrapersonal, interpersonal and intra-community (relationship) levels, where the modest view of restorative justice limits the gaze. The display extends to allow for the group, national and international levels that are included in the expansive conceptions of restorative justice.

The horizontal axis ranges from backward- to forward-looking aspects of restorative justice. In a chapter titled *Tapping indigenous knowledge: traditional conflict resolution, restorative justice and the denunciation of crime in South Africa* Skelton (2008: 234) notes that ‘restorative justice is both backward-looking, in that it includes dealing with the ‘aftermath of the offence’, and forward-looking, in that it is a process that looks at the implications for the future’. Cross-cutting aspects depict socio-economic, socio-political

and socio-legal aspects at the macro-level, and psycho-dynamic and psycho-social aspects on the micro level. These aspects are not exhaustive, but are the main elements that I discerned in the literature.

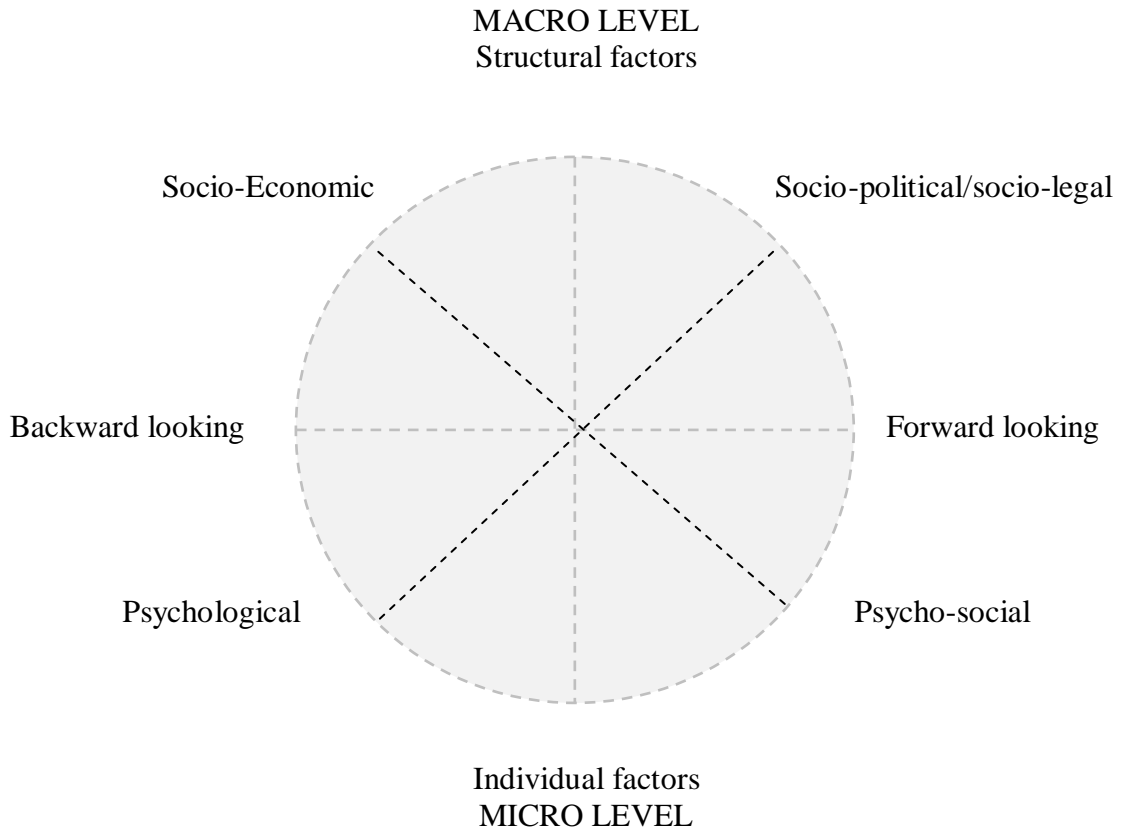


Figure 3.1 Key themes in restorative justice literature

In sum, from this discussion and display of key themes in restorative justice, it is clear that the ambit of restorative justice is wider than the individual and relationship levels and that it includes all levels of society. On this view, restorative justice is not only confined to criminal justice, but includes various social phenomena within its area of practice. Similarly, victim offender mediation as a form of restorative justice, is applied within the criminal justice system (the focus of this research) and in non-criminal justice settings such as schools, communities, workplaces and other areas (which fall outside the scope of this research). It is important to note that victim offender mediation used for minor harms, does not always require mediators to raise structural issues.

The next section discusses restorative justice and practices that foreshadowed restorative justice processing in South Africa.

3.7 Indigenous and ‘non-state forms of justice’ in South Africa

It could be argued that indigenous and ‘non-state forms of justice’ in South Africa prefigured contemporary forms of restorative justice and thus these methods were embraced because they resonated. Rapid social change and the explosion of contemporary forms of imported conflict resolution and peacemaking models into public discourse and practice, obscured the fact that indigenous and community forms of justice were based on processes of restoring harmony, repairing relationships and reparation – on similar lines as the imported models and specifically restorative justice processing. There were also some excesses during the apartheid era but in the main, the principle of third party or parties, as interlocutors not directly involved in the dispute, is well established. Many of these processes are still performed today, as part of the fabric and worldview of many indigenous African cultures and religious communities. Some participants in this study have stated that restorative justice resonates with justice forms they encounter in their own culture and those which have been adapted to urban communities in South Africa.

In a conference paper based on his research on non-state ordering, Schärf (2005) argues that non-state ordering occurs in almost all countries but that it is predominant in developing countries under the influence of decolonisation in the 1960s and democratisation in the post cold war era. He suggests that the status of these justice systems is affected by ‘the process by which the state configured itself in the decolonisation period’ and whether customary justice is ‘relegated, or revived’ by the state adopting ‘new directions in keeping with indigenous culture’. He concludes that restorative and traditional justice are part of a plurality of forms of ordering in developing countries (web reference 8). While South Africa did not have a period of decolonisation along the same lines as other African countries, the fall of apartheid coincided with the end of the cold war and the beginning of an era of ‘democratisation and marketization’ (Chua, 2003:145). As Alexander (2002:43) contends, neo-liberal orthodoxy and the disintegration of the Soviet Union resulted in technological and geopolitical

transformations that 'altered the face of the world in the period after the Second World War'.

Regardless of whether indigenous forms of justice were subjugated and suppressed, many of its forms emerged and continued to be applied in urban and particularly rural areas of South Africa. Many restorative justice theorists trace the roots of restorative justice to indigenous and religious practices. In its expansive iteration, contemporary forms of restorative justice resonate with '*ubuntu*' which is essentially a communal approach to justice. Archbishop Tutu (1999:51) suggests that restorative justice is characteristic of traditional African jurisprudence that is infused with 'the spirit of ubuntu', which seeks to restore, heal or mend breaches, imbalances and broken relationships. According to Muthien, the essence of *the* pan-African term *ubuntu*, also known as *unhu* in Sotho and *Khoe!na* by the Khoesan, can be summed up as "I am because I belong" rather than the Cartesian "I think, therefore I am" (2008:6).

3.8 Restorative justice, truth and reconciliation

In South Africa, the adoption of restorative justice discourse by the Truth and Reconciliation commission (TRC) which commenced its work in 1996 - to deal with limited high profile aspects of historical trauma - raised the profile of restorative justice considerably. In general, media effect resulted in individual level issues during hearings being foregrounded, while the work of the committees, particularly the reparations committee was given less attention. The TRC dealt with one category of past violations - gross violations of human rights - within a specified period. According to the TRC website, '[a]pplicants could apply for amnesty for any act, omission or offence associated with a political objective committed between 1 March 1960 (the year in which the ANC turned to armed struggle) to 6 December 1993 (a few months before South Africa's first democratic elections). The cut off date was later extended to 11 May 1994. The final date for the submission of applications was 30 September 1997' (web reference 9). The choice of 1960, which was the year that armed struggle began, suggests that the TRC's mandate was to deal with direct and counter violence, instead of cultural and structural violence. This focus suggests that its intention was to achieve negative rather than positive peace. Although national reconciliation was part of its mandate, the mandate was emptied of the means to deal with trans-generational economic dispossession and

historical trauma. Directed at the political level, the commission was intended to start the process of societal reconciliation. Implicit in the notion of *starting* a process is the expectation that it will continue until the intended goal is reached.

3.9 Restorative justice as peacebuilding practice

This thesis is concerned with whether and how long-term peacebuilding practice, in its various forms - specifically victim offender mediation as a form of restorative justice processing – contributes to long-term peacebuilding. Specifically this study sought to gain a clear understanding if restorative justice processing is responsive to the *consequences* of historic cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) which characterises contemporary South Africa with its growing inequality, poverty, unemployment and crime/social harm skewed along racial lines. By rendering visible the relationship between cultural violence (which legitimizes and justifies) structural violence (in the form of trans-historical inequality) and direct violence (as manifested in crime/social harm), this study brings restorative justice processing within the domain of long-term peacebuilding as illustrated by Schirch (2008:6) in figure 2.2, Galtung's (1996:2) conception of cultural-structural-direct violence and Gil's (2006:509) notion of counter-violence. The macro level continuity of cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) from South Africa's colonial and apartheid past to the period of the market democracy are taken into account in the assessment of micro practices in chapter seven. The micro level practices of restorative justice processing as exemplified in pre-trial and pre-sentencing victim offender mediation were examined to get a clear understanding of what happens in the black box of restorative justice processing in this context.

3.10 Victim offender mediation practice

The concepts victim offender mediation and restorative justice are used interchangeably in the literature (Miers, 2001, Latimer, Dowden & Muise, 2005; Sherman & Strang, 2007) as restorative justice is a theory and processes like victim offender mediation, family group conferencing, circles and other processes constitute its practice (Daly, 2002, Gavrielides, 2007). For the purpose of this study, victim offender mediation as the practical manifestation of restorative justice processing was used as an instrumental case to provide information on peacebuilding practice. The process phases and stages of pre-

trial and pre-sentencing victim offender mediation are described in pp.193 – 196 chapter seven point 7.5 and resonance with the problemsolving workshop (Bercovitch & Jackson, 2009:9) as used in peacemaking (Fisher,1997:57) is discussed on p.70 chapter two point 2.8. Research related to victim offender mediation is discussed on p.31 chapter one point 1.2.1. While there is no noticeable difference in the patterns of behaviour and experience between victim offender mediation and the problemsolving workshop process, the concept ‘victim offender mediation’ is usually applied in the criminal justice system.

3.11 Conclusion

This chapter laid bare the modest, structural and integrative approaches to restorative justice processing. The constructions of crime and the criminal by various scholars were discussed, as well as the theories of crime on which the different conceptions of restorative justice rest. The examples in this chapter suggest that like peacebuilding, restorative justice deals with direct violence (in the form of crime/social harm). Implicit in the arguments of scholars who hold the structural and expansive view, is the notion that the culture-structural-direct violence conception proposed by Galtung (1996:2 and discussed in chapter two section 2.5.1, has merit. This chapter laid the groundwork for understanding which application of restorative justice processing is appropriate for South Africa’s unequal, transitional context.

CHAPTER FOUR: SOCIAL (IN)JUSTICE

I hope I may be forgiven for asking that those who take it on themselves to describe colonialism remember one thing: that it is utopian to try to ascertain in what ways one kind of inhuman behaviour differs from another kind of inhuman behaviour. (Fanon, 1967:86).

[W]ithout some, more or less determinate, guiding idea of the good society, critical social thinking would be inconceivable; it would lack an ethical basis for its critical diagnoses and its endeavour to stimulate social and cognitive transformation would have no ethical point. (Cooke, 2006:3).

4. Introduction: Rendering trans-generational and lifespan inequality visible

In chapters two and three the content of the concepts long-term peacebuilding and restorative justice were discussed. These chapters laid the groundwork for the argument that peacebuilding and restorative justice converge on cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509); social justice; the interaction of individual and structural factors that produce crime; and mediation strategies, techniques and tactics. In this chapter the third concept of the conceptual framework - social justice - is deconstructed. First, a guiding idea of what would constitute social justice in the South African context is distilled. This idea is then used to guide a descriptive analysis of key constitutive aspects of the history of cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) in South Africa. This is not an extensive history, but it is included to provide context for a clearer understanding of whether restorative justice processing is responsive to the interaction of structural and individual factors implicated in crime/social harm. I then provide a summary and a simple display of the conceptual framework in figure 4.2. The display fore-grounds the conceptual framework (and the links between long-term peacebuilding, restorative justice and social justice) which is embedded in the displayed intersections of the horizontal, vertical and cross-cutting analyses undertaken in this study. The chapter ends with a brief explanation of the conceptual argument which is contained in the conceptual framework.

4.1 Social Justice as positive peace

As established in chapter two and three, peacebuilding scholars in general; and scholars who subscribe to a structural or expansive conception of restorative justice, share a core belief and a common goal. They believe that there is a relationship between structural and

direct violence and strive to make their academic work practically relevant to advance social justice. Crime/social harm is understood to be a manifestation of direct violence by scholars in both fields. In this research, social justice as means and end is regarded as an antidote to structural and direct violence and a synonym for positive peace. In addition, the notion of social justice provides an ethical basis to contribute to the stimulation of cognitive and social transformation as envisaged by Cooke (2006:3). Adoption of this conception of social justice served as the overall guiding 'idea of the good society' for this research (p.3). This chapter completes construction of the conceptual framework as depicted in figure 4.2.

In a broad review of the concept 'social justice' Buettner-Schmidt & Lobo (2011:950) state that they did not find any social justice definitions in dictionaries and thesauri that are in common use. Hayek made this observation decades earlier. In a chapter titled 'The Atavism of Social Justice', Hayek (1978:58) suggests that the phrase is commonly used as a synonym of the term 'distributive justice'. He argues that the absolute emptiness of the expression 'social justice' is revealed by the fact that there is no consensus about 'social justice' requirements in particular circumstances. There is, according to him, no known test to decide whose understanding is correct if people differ. He suggests, that 'while a great many people are dissatisfied with the existing pattern of distribution, none of them has really any clear idea of what pattern he would regard as just' (p.58). According to him people make intuitive appraisals of individual instances as unjust.

In the same vein, Novak (2000) contends that it is the precise meaning of the term 'social justice' that is problematic. According to him the phrase floats around as if an instance of it will be recognized by everyone when it appears. However, he states that the elusiveness seems indispensable as, the minute 'one begins to define social justice, one runs into embarrassing intellectual difficulties' (p.1). It is clear that Hayek and Novak's concerns about definitions of social justice have an intellectual bias. Peace studies and the expansive approach to restorative justice allows for an openly utopian bias. I therefore choose a more idealistic conception of social justice that favours overall wellbeing and equity in the world.

Williams (2008) suggests that though 'social justice has been and continues to be variously defined and conceptualized, most if not all characterizations are rooted in ideals

of human flourishing'. For him, the very notion of 'social justice' is, at core, linked to the development of, or existing conditions that facilitate the improvement of human potentialities. He argues that notions of social justice seem to originate from one crucial and dominant humanistic concern: *'the development and sustenance of social conditions within which all persons have the greatest opportunity to realize their potentialities, both as unique individuals and as members of greater communities and societies'* (p.6-7). This resonates with Arrigo's (2000:10) argument with regard to social justice and critical criminological theories that 'thematic convergence ... is a function of how ... theories are existentially and humanistically linked rather than how they are substantively the same'. Barak's expands the view on social justice by suggesting that:

Like restorative justice, social justice views crime as social harm and social injury. It goes further, however, in recognizing that there are 'crimes against humanity' or crime as a violation of fundamental human rights, such as the right to life, liberty, happiness, and self-determination or as Herman and Julia Schwendinger (1970) maintained, the right to be free from exploitation, oppression, hatred, racism, sexism, imperialism, and so on. (Barak, 2000:41).

Barak suggests that a social justice standpoint does not accommodate or ignore what he terms 'the production of inequalities in society and the role of law in that construction' (2000:41). For this research, I required an approach grounded in theory, to include social justice in the conceptual framework. I found this in the work of Buettner-Schmidt & Lobo (2011) who used the Wilsonian method of concept analysis as a guide to analyse social justice. Wilson (1963:vii) developed a technique which he called 'the analysis of concepts' because, according to him, 'it provides one with a specialised and appropriate method which one can be taught to use in answering many of the more important and interesting questions which can be asked'. Buettner-Schmidt & Lobo reviewed multi-disciplinary literature databases for the years 1968-2010, books and appropriate websites for their analysis of the term social justice (P.948).

The result of their analysis was an 'efficient, synthesized definition of social justice based on the identification of its attributes, antecedents and consequences that provides clarification of the concept' (p.948). They found that the objective of obtaining social justice - attaining fairness and equity - seemed similar in each discipline (p.953). Based on the results of their analysis, they defined social justice as 'full participation in society

and the balancing of benefits and burdens by all citizens, resulting in equitable living and a just ordering of society' (p.995).

For them, the attributes of social justice consist of '(i) fairness (ii) equity in the distribution of power, resources and processes that affect the sufficiency of the social determinants of health (iii) just institutions, systems, structures, policies and processes (iv) equity in human development, rights, and sustainability and (v) sufficiency of well-being' (p.995). They suggest that the consequences of the notion of social justice are 'peace, liberty, equity, the just ordering of society, sufficiency of social determinants of health and health, safety and security for all of society's members' (p.995). While their emphasis was on healthcare, my emphasis is on restorative justice as a sub-process of long-term peacebuilding. Arrigo (2000) and Barak (2000) bring social justice into the domain of social action and research inquiry. As Arrigo argues:

[S]ocial justice must not be something forever abstract; an artefact of philosophy removed from all human praxis. Thus, in the midst of such invaluable conceptual analysis the place of social action must not be forgotten. [...] The struggle for critical criminology is one of developing better, more theoretically sophisticated integrative inquiries. (Arrigo, 2000:29).

Barak (2000:41) suggests that restorative justice, like social justice 'views crime as social harm and social injury' and he includes 'crimes against humanity' or crime as a violation of fundamental human rights, such as the right to life, liberty, happiness, and self-determination' within this conception. South Africa's history of nested inequality as set out in this chapter is also covered in Barak's conception of social justice. He states that 'policies of social justice are not limited to the formal and informal policies of criminal justice and the administration of criminal law' (p.41). Instead he argues, 'scenarios of social justice focus on the social ecologies of crime and market society in their relations with the more impersonal policies and macro-sociologies of political economy and inequality' (p.42). With regard to South Africa's market democracy, post apartheid, Barak's contention resonates, he states that:

[W]ithout integrating more fundamental and broader styles of social justice whose policies address the inequalities in the delivery of goods and services generally, then inequalities of class, race and gender will continue to shape the social and political realities of criminal justice (Barak, 2000:42)

Therefore social justice and restorative justice interacting together would provide for a two-pronged approach to reduce crime and enhance justice (Barak, 2000:42); and possibly contribute to building long-term peace.

4.1.2 Social Justice in the South African context

In an attempt to distil what social justice means in the South African context; what is implied by the concept in long-term peacebuilding; and how the idea is deployed in restorative justice processing, I took account of the above conceptions of social justice. These perspectives on social justice were considered, to find answers about what would constitute a socially and individually just restorative justice response that would advance long-term peacebuilding in the South African context. Taken together, these cautions, definitions and conceptions of social justice provided me with elements to construct a working conception of social justice elements. This was done to understand what social justice might mean in South Africa if it is linked to peacebuilding and restorative justice in the conceptual framework. I used an inversion of what constitutes social justice to undertake a brief analysis of key features of the trans-historical nature of cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) in South Africa over time. The working conception of social justice consists of an understanding that:

- The notion of social justice is not easy to pin down intellectually;
- Social justice is utopian and generally seeks wellbeing and conditions that facilitate wellbeing for everyone regardless of status;
- However, it is possible to break the notion of social justice down into component parts of its attributes, antecedents and consequences as shown by Buettner-Schmidt & Lobo (2011).

The following interlinked ways to discern instances of social justice and injustice provided substance by looking for the absence and/or presence of:

- Human flourishing (Williams, 2008);
- Fairness; equity in the distribution of power; just institutions, systems, structures, policies and processes; equity in human development, rights, and sustainability; and sufficiency of well-being (Buettner-Schmidt & Lobo,2011) as the minimum condition;
- Other macro and micro life improving aspects unique to the South African context.

I used secondary sources to examine instances of social injustice over time which allowed the inclusion of some examples that were not necessarily intended as an injustice, but that were unjust in its consequences, particularly during early transition. This helped to answer part of the research question related to the ‘unequal, transitional society’. I traced the intergenerational and compounded nature of ascribed inequality and privilege, and some of its consequences over time, so that contemporary restorative justice responses to crime are contextualised. Specifically I looked for examples of cultural violence which legitimised and justified structural violence and gave rise to manifestations of direct violence such as inequality of wealth, power, social standing, opportunities and conditions; armed repressive violence and counter-violence, as well as infringements, abuses and violations of human rights.

4.2 Contextual background: Inequality and transition in South Africa

This section commences with a concise history of South Africa’s pre-colonial, colonial and apartheid past and the current process of transition to democracy as it pertains to the context in which harms are committed. The literature on South African history is a minefield and in some instances contradictory. I initially considered the fact that I am not a historian as a limitation when I encountered these contradictions. However, my study is not exclusively historical; it includes analyses of the intersection and interaction of *relevant* horizontal, vertical *and* cross-cutting phenomena that help to answer the research question. This multi-perspectival approach, which is in line with the bricolage, is referred to in chapter one and depicted in figure 1.1.

Practically, the horizontal (trans-temporal) reading of the texts traced constitutive elements of past and *present* inequality and violence, and implications for an implied socially just *future*. The vertical reading focused mainly at the group and societal levels of analysis with relevant individual level explanations that shed light on structural violence. I focused only on some cross-cutting aspects (for example social and economic) that shed light on inequality as a result of different forms of violence, and its consequences over time. The psychological (specifically trans-generational trauma) is striking in its absence from these historical texts. This is a subject that is under researched in South Africa – particularly the possible linkage with direct violence in the form of

crime/social harm. The notion of historical trauma is discussed in chapter 9 and referred to in chapter 10 with regard to further research.

4.2.1 Trends in historical writing

Crais raises some pertinent points about historical writing, which he argues:

[G]enerally followed trends set elsewhere: European, especially British, labor history; the new economic anthropology and world systems analysis. A corpus of work privileged the study of capital and class, part of a later social turn in the interpretive social sciences. Beginning in late 1980s and accelerating in the next decade, the history of political economy generally began fading from view. The 1990s saw a wave of studies in which culture and language, colonial encounter and discourses, moved toward the center of research and writing. (Crais, 2011:7).

With regard to South African history, Crais (2011) states that some historians questioned the 'telos of historical models whereby Africans inevitably became wage labourers or city dwellers'. He argues that they offered unorthodox ways of 'thinking about the political imagination unfettered by the narrative of official nationalism or resistance to the state'. He poses the question, '[H]ow have models of explanation obscured or suppressed engagement with other ways of understanding the past, other ways of being in the world (p.7)?

My research question and overall research approach resonates with Crais' central concerns. In his historical writing he seeks to understand the bare conditions of existence by focusing on 'two processes at the center of modern imperialism and the contemporary world: the prosecution of violence and the creation of new patterns of systemic poverty and inequality' (p.8). He queries how the story of rural poverty might unfold if violence was at the centre of the analysis, and poses the question – '[T]o what extent was violence both destructive and formative or constitutive of new and durable social and economic patterns? (p.8). Having established this resonance with Crais' key questions, my concern was laid to rest because I sought to understand if there is a plausible interaction between past and present violence(s); and individual propensity that result in social harms in the present.

I chose a random selection of expert voices to get an overall idea of South Africa's broader historical transition, and the continuity of patterns of inequality as a significant

constitutive element of structural violence. This was done to provide a broad view of the macro context within which social structural, political and criminal violence intersected over time, and into which restorative justice is injected at a micro level. I include many perspectives that are marginal to mainstream scholarship throughout this thesis, as I believe that these voices help to bring the bigger picture into focus by highlighting aspects that are routinely ignored. I begin the section with the voice of a female Khoekhoe descendant, to signal that I understand South African history to be contested. Even the choice and spelling of the names of the first peoples of South Africa and their historical experience, from their own perspective, remain in the blindspot of the new South Africa.

4.2.2 History and positional inequality

For example, Abrahams (2007:422) a Khoekhoe descendant and historian, who wrote the historiography of Sarah Baartman from a subjugated position, suggests that history is about identity. According to her, the identities of historians appear to interact with their studies in peculiar ways. Her research on Sarah Baartman's life and the conversations she had with people about her was for Abrahams, a process of learning. She describes a key lesson as: 'I would remain a Brown woman, no matter how many strings of degrees I trailed behind my name' (p.422). This statement provides a glimpse into the deeply entrenched and intersectional nature of inequality in the form of race, class and gendered internalised superiority and internalised inferiority in South Africa. Abrahams chronicled her struggle in a journal which gives an idea of research on an aspect of South Africa's history, from a subjugated position:

This diary is about my inability to be a disembodied academic dispassionately analysing some objectified specimen. My race and my gender follow me, even into my academic work. There is not, in the Sarah Baartman historiography which has been written by white males, any symbolic role model where Black = good, woman = righteousness, or Brown = beauty. (Abrahams, 2007:422).

Here Abrahams alludes to the fact that she had to do a lot of '[r]estoring, re-contextualising and rebutting' to re-work the Khoekhoe history written from a white, mainly male perspective; and to replace this with an exploration of the triple intersection of the identity African/native/slave (p.436).

4.3 Accounts of the Pre-colonial period

The South African San Institute (SASI) sanculture website states that ‘the San and Khoekhoe are aboriginal to southern Africa [and]... lived here before black or white people migrated into the region’. It is suggested that the San are descendants of Homo sapiens ‘who occupied South Africa for at least 150 000 years. According to geneticists, ‘the oldest gene patterns amongst modern humans is that of the Khoe-San’ which reportedly dates back 80 000 years. ‘Khoe-San peoples and their descendants were hunter-gatherers until the ancestors of the Khoekhoe acquired domesticated animal stock somewhere prior to 2 500 years ago’. It is suggested that there have been ‘three major waves of genetic, cultural and technological immigration into South Africa: Khoekhoe herders, Bantu speaking agro-pastoralists, and European colonial agro-pastoralists. Each group brought major changes to the lives of the San peoples’ (web reference 10).

This ties in with Worden’s contention that several key processes of movement and settlement by inhabitants took place in South Africa, ‘before colonial penetration began in the late seventeenth century’. He suggests that the territory was widely populated by San people approximately 10 000 years ago and that some hunter-gatherers near northern Botswana turned to herding after acquiring livestock which he says happened between ‘3, 000 and 2, 000 years ago’ (2012:10). This is confirmed by Feinstein who states that ‘large numbers of Khoisan and Africans already occupied the southern part of the African continent long before the first Europeans arrived from Holland’ (2005:1).

4.3.1 The seeds of inequality through constructed invisibility

It has been suggested that ‘colonialism is one of the most pervasive transnational examples’ of structural violence (Reitan, 2007:17). The history that I was taught at school during the apartheid era, was that Europeans ‘discovered’ South Africa, which immediately rendered indigenous people invisible. This is confirmed by Worden (2012) who suggests that one of several myths propagated in South African history was that colonists occupied an ‘empty land’, or at minimum only started to ‘settle in the interior of the region at about the same time as indigenous pastoralists and cultivators were moving into it from the north’. He suggests that the purpose of these myths served to legitimize the strategy of whites to occupy land at a later stage (p.9).

4.3.2 Inequality through a divisive gaze

Where indigenous people were not rendered invisible, the language used by some historians suggests a divisive gaze (by the colonists) at the indigenous populations on the one hand, while others claim a single identity on the other. At least two scholars, who are aware of their lineage, described themselves as Khoekhoe (Abrahams, 2007) and Khoesan (Muthien, 2008) and respectively emphasise a unified identity. Muthien shows sensitivity to self determination by groups, by explicitly stating that she respects the various names surviving groups choose for themselves. Abrahams seeks to reconceptualise an intersectional identity of the people who occupied the land before European settlers arrived. As Reitan argues (2007:17), ‘exploitation, the penetration and segmentation of identities, and marginalization and fragmentation are all forms of structural violence and can occur between individuals, societies, and regions, as well as globally’.

According to Lucas (2006) there is ambiguity over diversity in the various groups who lived at the Cape when the colonists arrived. He suggests that the term Khoisan is occasionally used to conceal this ambiguity. According to him a distinction is generally made on social and linguistic grounds between nomadic pastoralists of various tribes. They were known jointly as Khoikhoi but at first as Hottentots. The hunter-gatherer groups were known as Bushman (p.69). Lucas does not mention who ‘knew’ them by these names – but some of the names were clearly not chosen by the indigenous people themselves. This act of naming already points to the asymmetry of power to define and limit people. Driving home the notion of a divisive gaze on the part of the historian, Lucas argues further that ‘certainly the Khoikhoi looked down on the San as socially inferior’ (p.70). Again, Lucas does not provide evidence for this assertion.

4.3.3 Inequality through asymmetry of power

One way in which asymmetry of power manifests in historical writing is through the power to define. As Muthien (who interviewed Abrahams for her 2008 study on Khoesan women) states, she was advised by Abrahams that her Namibian uncle insisted that she spell the word ‘Khoehoe’ as used by her Damara ancestors - meaning people. Muthien (2008:6-7) argues that:

The shift in spelling over a decade between the 1990s and the twenty first century from Khoi to Khoe, is indicative of the Khoe themselves claiming intellectual power, and naming themselves, and attempting to spell more aptly what was previously defined, and spelt, by descendants of Europe [...] when combined as in Khoekhoe or KhoeSan ... or Khowesin it means “people’s people”. (Muthien, 2008:6-7)

Generally historians seem to describe the Khoekhoe and San as distinct groups, but it is never clear what this construction is based on. According to Abrahams (2007:422), who appears not to make a distinction between Khoekhoe and San:

The Khoekhoe are the native South Africans. Our history here stretches back some 25 millennia, and yet how are we brought into white male history? The answer, in my native idiom, is unprintable and yet white academic language was not only saying it, but saying it in such a way that it legitimises the speaking of the unspeakable. By now I could see that I was not taking on Gilman alone. This was about his history, his people: my history, my people and the fight, not just to take our land and make us slaves, but to determine our identity through racial and gendered power. (Abrahams, 2007:422).

Worden (2012) contends that Khoekhoe pastoralists were encountered by the Dutch when they arrived in 1652. He asserts that crop cultivators (black groups) moved into the territory between approximately AD 300 and 1000. Some of them mined and processed metals, for example copper and iron. According to linguistic studies, unlike the San and Khoekhoe these crop cultivators spoke African languages (p.10).

4.3.4 Inter-group inequality

According to Worden both expansions, by the Khoekhoe and African language speaking people, encroached on the San’s hunting grounds. Many San were, according to him, compelled to retreat to areas that were not environmentally well suited to livestock keeping and crop growing. He suggests that contact between herders and cultivator communities involved exchange of goods. However, conflicts also arose over grazing lands. As Worden avers, ‘the region had become both socially complex and economically diverse before colonial settlers moved in’ (2012:11).

Boonzaier’s (1996:35) description is instructive. He states: ‘the fact that the Khoikhoi were cattle and sheep herders *set them apart* from the hunting San’ (my italics). He suggests that ‘unlike the San, who lived in very flexible and mobile bands generally

numbering fewer than fifty persons, the village settlement (or kraal) of the Khoikhoi was significantly larger, with often well over one hundred persons (p.36).

In sum, by piecing together the accounts of these scholars, it is clear that indigenous people were well established on the land when the settlers arrived. It also appears, from the literature, that the Khoekhoe and Black language speaking groups were more dominant than the San who were in retreat. There are no accounts from the San themselves as to their motivation for ‘retreating’. It is also not clear from the literature if there was any aggression from the side of the Khoekhoe and African groups.

4.3.5 ‘African/native/slave’

While Muthien uses the term KhoeSan (with San capitalised) to honour both Khoe and San people equally, she does allude to the fact that some descendants refer to themselves as San, Khomani San, !Xun and Khwe (2008:7). This suggests that these groups reject the prefix Khoe and the lowercase san. Abrahams’ move towards an intersectional analysis of a unitary African/native/slave identity, suggests that her notion of Khoekhoe might be inclusive of San – but she does not say so explicitly. The joining of the names Khoi and San with San uncapitalised, speaks volumes about attitudes towards the San and constitutes an uninterrupted form of violence which has the tacit approval of those who use the spelling without question.

The Director of SASI states that the Khoe and San are distinct from each other. According to her, the communities she works with ‘are all very clear that they are San and not Khoe-San’. Further, in her experience, people ‘prefer to be called by their clan/language names for example !Xun, Kwe, Khomani, Ju’hoansi, Naro and so forth. Some San, especially from the Kalahari even refer to themselves as Boesmans and are quite comfortable with that term’.¹⁴ I also take cognisance of Abrahams’ standpoint from

¹⁴ Facebook inbox message from Ms Schippers, Director of South African San Institute (SASI) dated 7 July 2012.

which she confronts historiography on the Khoekhoe written from a mainly white, male perspective.

I now move to the colonial period to trace key antecedents and consequences of the discriminatory, ‘divide and conquer’ attitude and behaviour that sheds light on contemporary inequality (uninterrupted structural violence) and crime/social harm (direct violence). I bear in mind Fanon’s sober admonition: ‘to those who take it on themselves to describe colonialism ... it is utopian to try to ascertain in what ways one kind of inhuman behaviour differs from another kind of inhuman behaviour’ (Fanon, 1967:86).

4.4 Colonial period: unequal constructed identities

South Africa was colonised by the Dutch in the mid 1700s and later by the British. It has been suggested that:

From the outset, modern Western colonialism presented itself as a civilizing project. [...] Said to signify the pinnacle of Western civilization, the modern state was considered testimony to the organizing genius of Western man. The architecture of the modern state was inscribed in modern law, Western law. And rule of law was in turn central to the construction of civilized society, in short, civil society. [...] Wherever in the non-Western world the white man carved out colonies, the civilizational project was marked by a turn-key import: Western law. (Mamdani, 2001:24).

Even though the Dutch did not initially arrive with the intention to colonise, their divisive tactics in how they engaged with the local people resulted in the locals fighting amongst themselves on behalf of the colonists. The fracturing of identities of Khoe, San and African groups must be understood in terms of their relationships with the colonists and the fact that ‘[i]n addition to a racial separation in civil law between natives and non-natives indirect rule divided natives into separate groups and governed each through a different set of customary laws’ (Mamdani, 2001: 24). According to Adhikari (2010:51) the Khoikhoi were complicit in aggression against San in their capacity as customers and labourers of the trekboers. He suggests that in instances where trekboers were reluctant, many Khoikhoi stood in as surrogates for them in commando raids. He states that a reason for this aggression was that Khoikhoi servants often bore the brunt of attacks by the San. Adhikari describes the relationship between the Khoikhoi and San as complex as they jointly resisted the colonists on other occasions ‘as the status and freedom of

Khoikhoi in the service of farmers declined' (p.51). As opposed to the Khoikhoi or the San, African farmers largely resisted aggressive raids for labour (Crais, 2011: 41).

4.4.1 Inequality and murder

Adhikari (2010:79-89) draws attention to the process by which the San were marginalised and later murdered en masse when the Dutch East India Company (DEIC) government in 1777 'radicalised its stance by endorsing the root-and-branch killing practices of commandos' using an 'extirpation order'. In explaining the colonial experience of the San he uses the words 'the Cape San was relegated to little more than a footnote to the grand narrative of conflict with Nguni- and Sotho-Tswana-speaking peoples'; 'in the establishment of white dominion... hostilities with the San often appear as a sideshow to Dutch interaction with the Khoikhoi'; and 'the distinct experience of hunter-gatherer societies is glossed over, with the term 'Khoisan' being used mainly to refer to the Khoikhoi' (p.79).

With regard to the San and their identity, for example, Adhikari also argues that:

The effacement of San identities formed a significant part of the genocidal process [...] in the latter decades of the eighteenth century, the already ambiguous distinctions between Khoikhoi and San, and between forager and herder, had become even more blurred in the eyes of frontier society as increasing numbers of San were taken up as labourers, as Khoikhoi joined up with San resisters. (Adhikari, 2010:51).

Adhikari states that even if the extirpation order had not been issued in 1777, government complicity in killing San people is still evidenced by the fact that they supported commandos (p.51).

4.4.2 Racial Inequality

According to Feinstein (2005:1), it was 'after control of the colony passed to the British that the process of movement into the interior gained momentum'. He contends that there was a:

'[F]undamental division between these two groups of people – the original black majority and the new white minority with massive and enduring implications for those who would come to own the land, water and other resources, and those who would supply the manual labour'.

By referring to all indigenous people as 'black' Feinstein remains silent about the Khoekhoe and San and their self-identity. This could indicate a historical erasure or simply the use of binaries to indicate local and settler communities. Whatever his intention, which appears to be politically correct, and in line with Biko's black consciousness stance; the fact is, some people want to be known by their own chosen identity and do not want to be rendered invisible by a politically correct term. In an introduction to the anniversary edition of Freire's (2000:20) *Pedagogy of the Oppressed*, Macedo suggests that it is often ignored that language is sometimes used to 'make social inequality invisible'.

4.4.3 Inequality through destruction of political economy

According to Wilson the British applied a policy that caused them to systematically push the Xhosa back east. He states that this led to the destruction of the Xhosa's political-economy (Wilson 2007, web reference 11). Wilson states that during the late 1800s, the colony took initial steps towards political equality for some, by granting the franchise based on economic qualifications which excluded most African and coloured people. No reference is made here to San or Khoekhoe people and what happened to their political-economy. As Feinstein avers:

[T]he situation was totally transformed by the discovery of diamonds and gold in the late nineteenth century. From that point forward the economic history of South Africa becomes a story of how this unique combination of the indigenous people, European settlers and mineral resources were brought together in a process of conquest, dispossession, discrimination and development to promote rapid economic progress. (Feinstein, 2005:3).

4.4.4 Inequality in death

Even in death, the theme of inequality was evident. This is exemplified by the 1899-1902 South African war between the Boers and the British where approximately 14 000 African and coloured men, women and children, and approximately 22 000 Afrikaner, women and children died under appalling conditions in separate civilian concentration camps (web reference 12). Yet, when this war is referred to, the unequal treatment and deaths of African and coloured people in camps are seldom mentioned – only the deaths of white women and children (cf. Jansen, 2009:67). In some books black African people are referred to, and coloured groups are completely erased. The numbers of those who

died differ in every book. These examples of routine erasure or marginalisation according to an unstable hierarchy, point to the normalised inter-relationship of cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) in South African society.

4.4.5 Inequality enforced by law

According to Gelb (2003) the boer settler republics were defeated in 1902. He suggests that the 'peace settlement inscribed racial discrimination in the foundations of the new South African state'. This state was 'constituted in 1910 from the British colonies of the Cape and Natal and the Boer republics of Transvaal and Orange Free State' (p.18). The Cape was the only province with non-racial franchise when the Union of South Africa was formed in 1910. Black people were excluded from parliamentary membership (web reference 13). As Gelb (2003) states, 'inequality in relation to land, labour and capital, the factors of production', began to manifest. The 1913 Land Act reserved initially 8% which was increased to approximately 13% land for black people. This served as the basis for the Bantustan system (p.19). Other repressive measures such as the 'Masters and Servants Act, the Native Poll Tax, and reservation of skilled work for whites' were entrenched, amongst other laws and policies (web reference 14). Inequality was now formally enacted in the laws of this society which combined race and class into mutually reinforcing constructs that favoured whiteness. Further repressive laws followed in later years.

4.4.6 Resistance to inequality

In 1912 after several trips to London to plead the case of black people came to nothing, the ANC was formed. Workers began to resist the racial and class inequality. During 1918 and again in 1920, approximately one million black workers went on strike for higher wages. Workers started to organise themselves in trade unions. Increased repression caused resistance to strengthen. This period marks the emergence of non-violent resistance to political, social, economic and legal inequality and its myriad consequences (web reference 15).

4.5 The Apartheid period: legislated inequality

Inequality continued uninterrupted during the transition from colonialism to apartheid. The National party came into power in 1948. They became more repressive during the 1950's and were met with continued non-violent forms of resistance. The Group Areas Act (1950), Population Registration Act (1950), Pass Laws (1952) and the 'petty apartheid' Separate Amenities Act (1953) followed one after the other to further entrench inequality for black people and privilege for white people. In addition, the architects of apartheid also tried to halt black urbanisation (Wilson 2007). In response to the cultural-structural-direct violence (Galtung, 1996:2) and injustices, a non-violent Defiance Campaign was launched in 1952. The jailing of thousands of participants led to unity amongst black, coloured, Indian and white resistance groups and the Congress of Trade Unions, which led to the formation of the Congress Alliance (web reference 16).

4.5.1 Spatial Inequality

The apartheid state then turned to a divide and rule strategy by instituting the policy of separate development which divided Black people into ethnic 'nations' each with a homeland and 'independence'. This led to forced removal and relocation of populations which destroyed communities. Migrant labour was instituted which placed untold burdens on families, particularly women, since only men were allowed temporary work permits (web reference 17). According to Gelb, (2003) the Group Areas Act (1950) 'designated areas for Africans, Indians and coloureds in urban areas while the migrant labour system controlled the movement of Africans' into urban areas. He suggests that banks were complicit in maintaining the system by limiting collateral for loans (p.20). Home ownership by Africans was effectively curbed. Many African people, like my grandparents, reclassified as coloured to buy property. Many coloured people reclassified as white to enjoy the benefits of whiteness. After apartheid, many families reunited and others are still estranged. These people are regarded as sell-outs by many, and as economically astute by others. The fact is, apartheid did not bring out the best in people and intergenerational trauma, shame and internalised inferiority and superiority remain concealed in South African society.

I vaguely remember that we had to move because of the 'Group Areas' as it was colloquially known, when the coloured area where we lived was declared an Indian area

during the 1960s. Under what was commonly known as territorial segregation, each race group lived in their own 'area' which was enforced by the Group Areas Act. Mixed communities were destroyed by forced removals to racially designated areas. Black employees had to commute long distances and carry passes to work in white areas. To forget your pass at home had both economic and criminal justice implications. I have early memories of black men running and policemen chasing and arresting those they caught for being without a pass. Many black domestic workers lived in outside accommodation at their place of work while their children lived either in the homelands or in the dormitory townships. Racial and economic inequalities were demarcated by spatial inequality.

4.5.2 Inequality and the Criminal justice system

In the introduction to Mandela's *No Easy Walk to Freedom* Oliver Tambo (1965, 1989: xii), former president of the ANC in exile, wrote that jails were 'jam-packed' with Africans. He stated:

To be unemployed is a crime because no African can for long evade arrest if his passbook does not carry the stamp [...] To be landless can be a crime ... families had worked a little piece of land from which they were now being ejected. To brew African beer, to drink it or to use the proceeds to supplement family income is a crime [...] To cheek a white man is a crime. To live in the 'wrong' area ... can be a crime for Africans. South African apartheid laws turn innumerable innocent people into 'criminals'. (Tambo (1965, 1989: xii)

Wilson (2007) draws attention to the corruption of the Criminal justice system in enforcing unjust laws in this example from Cape Town:

By the early 1970s the annual number of prosecutions for being in town without permission averaged 540 000 persons - one every minute, 24 hours a day. In Langa, by the early 1970s the ratio of men to women was 11:1. (Wilson 2007, web reference 11).

The criminal justice system, while on the surface prosecuting black people for 'transgressing the law', by that very act, obscured the fact that it entrenched economic inequality and acted as an instrument of cultural violence by criminalising blackness, thereby 'legitimising and justifying structural and direct violence' as suggested by Galtung (1996:2). Black people's distrust of the criminal justice system runs deep as it

has been experienced as the strong arm of a criminal state, the actions of which even the UN renounced as a crime. Tambo makes the link between oppression and crime by stating that '[y]oung people who should be in school or learning a craft wreak their revenge on their society that confronts them with only the dead-end alley of crime or poverty' (1965, 1989: xii).

4.5.3 Embedded inequality

Apartheid further entrenched inequality by providing the best amenities and education for white learners and progressively inferior amenities and education for Indian, coloured and Black learners, with 'Bantu Education' at the bottom of the pile. These stratified services extended to housing, health, municipal services and every conceivable right to live a dignified life. Other factors that deepened inequality are described by Gelb who states that:

Conquest and political exclusion were the 'initial conditions' shaping black peoples' unequal access to resources, their potential for asset accumulation, and the returns from their assets. Inequality was deepened by the pattern of economic growth and development after the mineral discoveries. The forced labour regime in mining established the migrant system and provided the foundation of racial discrimination in the labour market and in the workplace as the secondary and tertiary sectors developed. (Gelb, 2003:18).

Apartheid and its militarised enforcement by the white regime acted as stimulus to progressively angry and largely non-violent action during the 1950's. Anger started to mount over time and Nelson Mandela and his peers considered armed resistance and went overseas for military training in the 1960s.

4.5.4 Inequality and violence

The trigger for the armed resistance came when 69 people were killed by police during non-violent protest in Sharpeville and Langa on 21 March 1960. A state of emergency was declared and an estimated 18 thousand people of all races were arrested. On 1 April 1960 the Security Council of the United Nations adopted Resolution 134 (1960), in which the actions and policies of the South African government were deplored. The ANC and PAC were banned on 8 April 1960 according to the Unlawful Organisations Act. During May and June 1960 many countries started boycotting South African products (web reference 18). As early as 1961 calls were made for a national convention to be held.

Chief Albert Luthuli was awarded the Nobel Peace prize one week before Umkonto we Sizwe, the armed wing of the ANC, under the leadership of Mandela, set off explosions in Johannesburg, Durban and Cape Town (web reference 19). This is a key example of how cultural violence led to structural, direct and counter-violence in South Africa.

4.5.5 Widening racial inequality

According to Gelb (2003) the rising living standards of white people implied a growing gap between race groups. This he suggests, was ‘exacerbated by increasing capital-intensity and limited labour absorption raising black unemployment from the late 1960s’ (p.18). Gelb argues that:

In the early 1990s, 67000 white farmers owned 85.8 million hectares amounting to 86% of agricultural land supporting a population of 5.3 million people [...] substantial state support from the 1930s on, via marketing boards, subsidised credit and generous rural infrastructure and extension services. By contrast 13.1 million Africans lived in Bantustans on 17.1 hectares (Gelb, 2003) 19).

The UN General Assembly ‘condemned South Africa’s racial discrimination as reprehensible and repugnant to human dignity with a vote of 95-1’ on 13 April 1961. On 31 May 1961 South Africa was declared an independent republic outside the Commonwealth. It was immediately ‘placed on a war footing to smash the nation-wide strike called to protest against the establishment of the so-called Republic of South Africa’ (web reference 20).

During the early 1970s, people arrested under security laws started to die in police detention. In 1976 many student leaders who were influenced by the ideas of black consciousness promoted by Steve Biko, as well as those who were linked to the ANC, were at the forefront of the Soweto uprisings which spread to many areas. Many pupils were killed and injured during clashes with police. In 1977 Steve Biko was murdered in detention by security police (web reference 21). Non-violent resistance morphed into violent and armed resistance over time. Cultural-structural-direct violence (Galtung, 1996:2) led to counter-violence (Gil, 2006:509) which set the country on a rocky path that elicited some tinkering with a tri-cameral system of government which excluded the black majority but split off some coloured and Indian people.

During the 1980's, the period of 'ungovernability' called for by the ANC in exile, many violent acts and murders, notably 'necklacing' (car tyres filled with petrol, lit around the neck of suspected informers) and 'mob killings' ensued. Self Defence Units were formed in various black townships. Those who were viewed as collaborators in the tri-cameral (white, Indian and coloured) parliament were targeted by having their houses petrol bombed. The same applied to 'kitskonstabels' (black policemen trained for short periods and let loose in the townships) and others who colluded with the apartheid system. Apartheid repression and violence acted as stimulus for an orgy of direct and counter-violence while cultural and structural violence continued. Many oppressed people, joined by a fair number of white people, started to join the struggle to overthrow the apartheid state. Instead of internalising their ascribed inferiority and superiority, those who were at the forefront of the struggle, externalised their anger by taking on the state. Other less confrontational ones played active and passive supportive and bystander roles. Yet others collaborated with the apartheid state, or acquiesced and co-operated with their oppression. A minority engaged in self-destructive behaviour, which includes criminal behaviour. Regardless of the manifest response, no one in South Africa escaped with their full humanity intact.

The state responded to the struggle with targeted violence, torture, disappearances and murder euphemistically termed 'gross violations of human rights' in TRC legislation. Because the TRC dealt with narrowly defined gross human rights violations of a political nature, other daily and destructive human rights abuses, violations and infringements, and the trauma it generated over generations, were never dealt with. For example, black people who committed street crimes received harsher punishment than their white counterparts who committed similar crimes. If a white man raped a black woman, his sentence would be lighter than the sentence that a black man received¹⁵. Equality before the law and adequate access to justice existed in theory, but many times unjust laws made a mockery of the notion of justice. This is the reason why many lawyers specialised in

¹⁵ I am aware of two black-coloured men who received the death sentence in the mid 1980s, for raping a white woman. A petition by the Legal Resources Centre, a public interest NGO, to have their sentences commuted to life, was met with no response from the prime minister. There are many similar examples that I am aware of, as I worked at the Legal Resources Centre between 1983 and 1986.

Human Rights Law. They were in heavy demand throughout the apartheid period and still litigate on behalf of vulnerable groups. This is one example of the strong and vibrant civil society that mushroomed to resist apartheid laws on the one hand and to show solidarity with the oppressed on the other.

Amongst white South Africans, the majority appeared to have had enough of apartheid and the instability it gave rise to. As Adam (2002:34) writes, by the 1990s, F. W. de Klerk 'secured the consent of his white constituency for negotiations through a referendum on 17 March 1992'. The referendum showed that 68.7 per cent of white South Africans who voted, 'supported a negotiated abolition of their minority rule through a likely non-racial majority rule'.

4.5.6 Some effects of inequality and violence

Standpoint theory enabled me to narrate the story from different perspectives, but specifically from a subjugated position coming to voice and using that voice as data. I deployed my counter-story from my standpoint as a trans-generationally oppressed person, a category I share with the majority of South Africans. Where the literature does not provide information, I insert situated information about South Africa's history of colonialism and apartheid and the continuity with the market democracy. From this standpoint, colonialism and apartheid were not only about economic dispossession, genocidal violence and racial oppression. It was also about internalised superiority and dominance based on a combination of race, wealth and coercive power. My standpoint is in addition a counter-story about intergenerational resilience and resistance on the part of the oppressed, as well as internalised inferiority, intergenerational poverty and intergenerational trauma – the invisible, denied, soul wound about which South African society maintains a deliberate silence. These silences are pregnant with information about structural violence in the form of trans-historical inequality and its relationship to direct violence of which crime/social harm is an example.

From the standpoint of the oppressor, black people were inferior. Oppression was legalised and black people did not qualify as full citizens with the right to vote. Instead, African-black people were tolerated in 'white South Africa' as a cheap form of labour to generate and grow the wealth that the apartheid state believed white people were entitled

to. The Western Cape was treated as a ‘coloured preferential labour’ area. Apartheid’s divide and rule strategy made coloured people the equivalent of the so called ‘house Negro’ and African-black people the so-called ‘field Negro’.¹⁶ The terms ‘house Negro’ and ‘field Negro’ are ascribed to Malcolm X by Dolo (2005:80) and refer to the hierarchy of oppression by which oppressors divide and rule. I use these binaries advisedly, as in South Africa, the Black Consciousness Movement (BCM) which originated with Steve Biko, started a process by which many oppressed people began to understand the origin and intent of these divisive ascribed identities, and embraced their own political identity as black South Africans.

As a result of their constructed identity, many coloured¹⁷ people exhibit behaviour that can be ascribed to ‘internalised oppression’. Biko & Stubbs (1978), Fanon (1967, 1986:83-108), Freire (1974) and Memmi (2003: 163 – 184) all made reference to the notion of internalised oppression in colonised people (although not explicitly in some instances). The constructed name ‘coloured’ by the oppressor and embraced by many, obscure the links to Khoekhoe, San and African lineage for many coloureds – who prefer to remain in ignorance because of their own internalised inferiority¹⁸. Inter-ethnic discrimination and violence is also a feature in South Africa. For example, during the xenophobia related violence in 2008, foreign nationals, as well as Shangaan people were attacked and 69 people were murdered. While colonialism and apartheid cannot be blamed for every instance of inter-ethnic violence, their divide and rule strategies have contributed in large part to the enmity between groups, as a result of the hierarchy of legislated oppression. As Mamdani (1996:1) has observed, that ‘just like colonialism, apartheid produced a dual identity: racial solidarity amongst its beneficiaries, and an

¹⁶ The mediation that I recused myself from in 2005, and that set me on a course towards this research, exemplified old apartheid mindsets. At the small, rural factory two white people sat upstairs, coloured people sat downstairs, and black people worked outside. The physical and relationship structure were steeped in apartheid more than a decade after it ended.

¹⁷ I use the construction ‘coloured’ for people who embrace the term and do not identify themselves as black or African.

¹⁸ From my own accumulated knowledge growing up in the ‘coloured’ community – many coloured people

ethnic identity amongst its victims, each reproduced by a set of institutions' (cited in Henkeman 1998:29).

4.5.7 Inequality and denial

In the main, most beneficiaries of apartheid appear to have lived in varying states of denial while accepting the privileges delivered by its policies and practices. Cheap black labour as nannies, domestic workers, gardeners and the employment of all forms of menial and semi-skilled labourers, enabled beneficiaries of apartheid to occupy superior positions at home and in the country's economy. Over 100 apartheid laws and by-laws ensured that white people and black people lived separate, unequal, policed lives. The ascribed black inferiority and white superiority also led to internalised inferiority by many black people, and internalised superiority by many white people. This inferiority and superiority still manifest in the present in numerically less explicit ways, but mainly in masked, plausibly deniable forms. These phenomena intersected to *normalise* the perceived inferiority of black people and the perceived superiority of white people. This unequal order led to dispersed and multiple daily micro aggressions and human rights violations between race groups.

The multiple effects of such a complex toxic relationship was not swept away by political liberation, nor by the TRC process where ultimately, the abiding image that remains is that after the reconciliatory hugs, one person returned to privilege and the other to poverty, to enjoy their newfound 'equal' relationship. The foundations of inequality have in no way been shaken, because the master narrative of the 'miracle nation' remains politically correct. It is only in recent times that some in the ANC government are beginning to acknowledge that they did not fully grasp the enormity of the economic question. Due to pressing material problems (which are exacerbated by corruption) that direct the energies of politicians, the historical trauma of ordinary citizens remain in the realm of denial. A few NGOs are trying to fill the gap with regard to trauma counselling; however, in the absence of research, the true national effects of trans-generational trauma are not known.

4.6 Early transition period: Attempts to address inequality

South Africa's transition from colonialism and apartheid to democracy was achieved at great cost. Many South Africans have died violently, others have made enormous sacrifices. Many have built positive resilience to achieve a society where the social, political, economic and psychological well-being of everyone can be achieved over time. The South African Constitution (1996) contains the high level intentions of the society in written form. South Africa's heraldry provides visual symbols of the society's projection of socio-political unity, undergirded by an indigenous frame of reference by the centrality of KhoeSan art and language.

4.6.1 Unity in diversity

The central idea of 'unity in diversity' is depicted in South Africa's national symbols - the national flag and coat of arms - as well as in the words and symbolism of combining five official languages in its national anthem. Historical KhoeSan language and art (cited as 'the *primary* symbol of our nation') feature prominently in the symbolism of South Africa's Coat of Arms. According to the government website, the Coat of Arms is the *highest visual* symbol of the state. The website states that 'South Africa's Coat of Arms was launched on Freedom Day, 27 April 2000. The change reflected 'government's aim to highlight the democratic change in South Africa and a new sense of patriotism.' The most important reason given for the inclusion of KhoeSan symbolism, reads as follows:

The Khoisan, the oldest known inhabitants of our land and most probably the Earth, testify to our common humanity and heritage as South Africans and as humanity in general. The figures are depicted in an attitude of greeting, symbolising unity. This also represents the beginning of the individual's transformation into the greater sense of belonging to the nation and by extension, collective humanity.

While it might be the intention of South Africa's leaders to unite the nation – the very use of the word Khoisan is divisive, given that the San feel historically marginalised erased and/or diminished, and judging by what Abrahams says, the Khoekhoe have been misrepresented in history.

4.6.2 Growing inequality gap

As a result of the legacy of its colonial and apartheid history coupled with current economic arrangements, South Africa is after 18 years, still a grossly unequal and highly stratified society. The peace negotiation process culminated in South Africa's new Constitution (1996). Demobilisation, disarmament and reintegration of combatants were done. Regime change happened after South Africa's first democratic elections in 1994. As co-ordinator of mediation services at the Cape Town offices of the Independent Electoral Commission (IEC), I witnessed demobilised combatants and anti-apartheid activists working side by side with Afrikaner people from Home Affairs, as well as the police. The honeymoon period in South Africa at the time, cannot be described in words.

The TRC *started* a peacebuilding process with a slant towards reconciliation and the 'constructed invisibility of economic questions' (Miller, 2008:266). The economic inequality gap has increased rather than decreased. This suggests that the proposed transition to a more equal society is not on track, despite massive transformation efforts, policies and rhetoric of a more equal and inclusive society. Many scholars argue that the neo-liberal economic system adopted by the ruling party, has contributed in large part to the increase in the inequality gap. While this may be true, it could be argued that the fault also lies with the lack of conflict analysis that takes account of the trans-temporal nature of the conflict in South Africa.

The TRC was a temporal institution with a limited mandate that did not take the full history of conflict and the nested nature of trans-generational inequality and trauma into account. Miller (2008:266) suggests that 'the field of transitional justice – in both its institutional and scholarly aspects – has historically excluded issues of economic inequality, structural violence, redistribution and development'. To the list of exclusions, I would add historical trauma of those who directly and indirectly suffered from colonial violence. There is also no understanding of the possible connection between historical trauma, coupled with lingering inequality; and crime/social harm.

With the clear vision of hindsight, political liberation was necessary but not sufficient to achieve equality for all South Africans. Instead, it could be argued, that political liberation achieved partial negative peace (cessation of political but not criminal

violence) but that a continued, co-ordinated peacebuilding process is meant to achieve social, economic and other forms of equality, justice, reconciliation and healing (positive peace). For this to happen, the intergenerational trauma and inequality associated with South Africa's history, from pre-colonial times to date, need to be taken into account. The erasure of part of South Africa's history – to ensure negative peace – is coming to avenge itself in the form of different social harms, which delays positive peace.

4.6.3 Intergroup and intra-group inequality

To date, the main beneficiaries of democracy are big corporations who benefit from government tenders, tax cuts and the ability to move their money abroad instead of investing domestically. Yet, according to Marais (2001:110), these were the people who advised the ANC to attract foreign direct investment and used the opportunity to move money out of the country. As Marais states:

The emphasis placed by South African business leaders on foreign investment seemed disingenuous ... given the low rate of domestic investment by South African capital. (Marais, 2001:110).

Among ordinary citizens, white people remain the primary beneficiaries of democracy. Of the 'previously disadvantaged', a handful of individuals became captains of industry through Black Economic Empowerment (BEE) deals. From Terreblanche's (2002:438) common sense perspective, '[i]f empowerment only involves transferring wealth to a small number of black entrepreneurs, the objective of social transformation will not be achieved'. Because of Affirmative Action (AA), a band of skilled and educated people have swelled the ranks of the upper and middle class and it has been claimed that the middle class has been deracialised. Those at the bottom of the pyramid remain trapped in poverty and many people, mainly black, are reliant on government grants. Unemployment has been described as an intractable problem by the Minister of Finance. Many demobilised former combatants are unhappy about the fact that after fighting for freedom, they are economically excluded. Many white men in particular, have left the country because they feel unfairly targeted by Affirmative Action (AA) and Black Economic Empowerment (BEE).

Coupled with this, South Africa remains a very violent society and crime levels are unacceptably high. Partial analyses and the apportionment of blame are rife. Some argue that this is the legacy of the apartheid past. It has also been suggested that the acquisitive and violent crimes we currently witness can be ascribed to the ANC's strategy of ungovernability in the past. An either/or approach may be irrelevant because it does not move us closer to an understanding and more accurate response to this society's violence. Instead, it alerts us to silences and exclusions on the one hand, and the invisible power that operates to narrow our focus to the politically expedient definitions of violence and crime.

South Africa's early transition from apartheid to democracy was marked by (i) a peace process which resulted in a liberal constitution, (ii) constitutional goals of equality, social justice and fundamental human rights, and (iii) a Truth and Reconciliation Commission (TRC) that started the process of nation building, characterised as peacebuilding by Bertram (1995). The TRC, hailed in some quarters for visibly implementing restorative justice principles, has recently come under fire for its limitations. Miller (2008) makes the bold claim that the TRC effectively backgrounded the long-term systemic abuses which originated with colonialism, by foregrounding apartheid as a story about race and specific individual rights violations.

4.6.4 Moral high ground

Current corruption where many of the former freedom fighters are exposed in massive scandals, seems to suggest that the moral high ground construct, has blinded people to their own dual propensity towards social harm *and* social harmony. For example, some questions remain unanswered as to why people, who were willing to lay down their lives for freedom, succumb to corruption and conspicuous consumerism on an alarming scale? Is it a question of individual propensity alone? Is it only an economic problem? Is it a manifestation of masked historical trauma and present inequality? Is there an interaction between the chosen economic path, media driven consumerism and individual propensity? All these questions cannot be answered in this research; however they arise naturally out of a multi-perspectival analysis of South Africa and its crime problems. In a chapter titled *A Situationist Perspective on the Psychology of Evil: Understanding How Good People Are Transformed into Perpetrators*, Zimbardo (2004:25) states that:

Dispositional analyses of anti-social, or non-normative, behaviours always include strategies for behaviour modification to make the deviant individuals fit better by education or therapy, or to exclude them from society by imprisonment, exile or execution.[...] locating evil within selected individuals or groups always has the ‘social virtue’ of taking society “off the hook” as blameworthy, as exonerating societal structures and political decision-making for contributing to the more fundamental circumstances that create poverty, marginal existence for some citizens, racism, sexism and elitism. (Zimbardo, 2004:25).

In the preface to his book, *The Lucifer Effect*, and on his website by the same name, Zimbardo (2007) argues that ‘a large body of evidence in social psychology supports the concept that situation power triumphs over individual power in given contexts’. He states that most psychologists ‘have been insensitive to the deeper sources of power that inhere in the political, economic, religious, historical and cultural matrix that defines situations and gives them legitimate or illegitimate existence’. Zimbardo suggests that a ‘full understanding of the dynamics of human behaviour requires that we recognize the extent and limits of person power, situational power, and systemic power’ (web reference 22).

4.6.5 Trans-historical inequality and the two worlds thesis

Seen through an economic lens, the current gap between rich and poor reflects intergenerational wealth and poverty along racial lines initiated by colonialism. This developed/underdeveloped binary was entrenched during apartheid. Despite regime change in 1994, inequality and its manifestations - intergenerational privilege and poverty - co-existed side by side. The notion of duality - expressed as ‘second economy’, ‘two worlds’ and ‘two nations’ – characterise some descriptions of South Africa. During 2008 former deputy-president Mbeki, was reported in several newspapers as saying that South Africa is two nations in one country although it is one nation on paper. This is in direct reference to uninterrupted inequality.

4.6.6 Economic Policy implicated in cultural-structural-direct violence

Galtung argues elsewhere that ‘mainstream economics is mainly seen as cultural violence, concealing and mystifying what happens when people produce, distribute, and consume.’ According to him, ‘[m]ost causes and effects are made invisible as ‘externalities’, outside mainstream theory and practice.’ He suggests that by making these externalities ‘explicit and internalizing them into theory and practice, less violent

economic structures may emerge' (1996:viii). Marais (2001), Terreblanche (2002), Alexander (2002), Chua (2003), Gumede (2007), Gentle (2012) and Klein (2007) focus attention on the economic continuities of apartheid as well as the global plan to democratise and marketise societies emerging from conflict. Terreblanche (2002:424) argues that '[t]he economic and social policy approach of the new government was formulated under strong pressure from the corporate sector and its global partners, and was based on several contentious premises'. According to Gumede (2007:84), the ANC entered the multiparty negotiations at a severe disadvantage against Nationalist party capacity, with its own members feuding over economic policy. In addition, he suggests, the ANC was under severe strain from the onslaught of local and international business, the media, the World Bank and the IMF. It is not clear if the ANC knew what the impact of their economic decisions would be on poor people on a day to day basis. Gumede argues that:

Like Britain's Tony Blair, Mandela's grasp of economics was somewhat rudimentary. He came from a generation of African Nationalists who used the rather vague Freedom Charter, which calls for public ownership, as their economic touchstone. However what finally convinced him were the experiences of two avowed socialist states, China and Vietnam, whose leaders told him that the collapse of the Soviet Union had led them to embrace private enterprise. (Gumede, 2007:84).

The South African Communist Party (SACP) deputy general secretary and Deputy Minister of Transport Jeremy Cronin conceded that the liberation movement 'were not well positioned, intellectually, theoretically in terms of policy formation, in terms of socio-economic transformation' as they have been very focused on the 'political tasks, democratisation, mobilisation, fighting a guerrilla struggle'(Gumede, 2007:84). A similar opinion was attributed to Winnie Mandela by journalist Nadira Naipaul who wrote an article based on an interview (which was later publicly disputed by Winnie Mandela), in the *London Evening Standard* of 8 March 2010:

You know, sometimes I think we had not thought it all out. There was no planning from our side. How could we? We were badly educated and the leadership does not acknowledge that. Maybe we have to go back to the drawing board and see where it all went wrong.

The country's adoption of neoliberal economic orthodoxy has resulted in those who were already economically secure to maximise their benefits. It has been suggested that many

educated, skilled and/or politically connected black people, who have benefitted from affirmative action, black economic empowerment (BEE) deals and other advantages of societal transformation, have ‘deracialised’¹⁹ the middle class. The economic inequality in the country is thus seen to be between black and white (inter-group) and within the black group (intra-group). In a *Mail & Guardian* article titled ‘An apartheid beneficiary’s guide to the budget’, Meersman (2012) states that ‘the fall of apartheid became an enormous boon for those best positioned to take advantage’. According to him these were mainly white South Africans who experienced a ‘surge in the value of their assets’ – both stocks and property. Meersman (2012) argues that ‘most prime property holders’ became millionaires. He suggests that ‘real estate may have been paid for, but whites were able to do this at artificially low prices because of the Group Areas Act ...[which] reserved prime locations for whites only’ (web reference 23). Many black middle class people who are deemed to have deracialised the propertied middle class had to obtain mortgages in line with the property boom and must earn exceptionally high salaries to pay mortgage bonds, and thus are not ‘equal’ to those with whom they are deemed to share a class. It is therefore a myth to believe that the middle class has been deracialised, if this argument is based on mortgaged property and monthly salaries in an unstable labour market. Uninterrupted inequality in South Africa is more complex than stratification on the basis of mortgaged property and salaries would suggest. Race based inequality is still a feature which is being entrenched by the market democracy.

In the meantime, the inequality gap between the rich, ascribed rich and poor people has grown, crime/social harm remains at unacceptably high levels, and the criminal justice system is overburdened. Black people (diverse) are overrepresented in the criminal justice system both as victims and offenders (as discussed in chapter nine). On the one hand police have taken a tougher ‘shoot to kill’ stance in response to crime that is deemed to be ‘out of control’. On the other hand, the departments of Justice and Constitutional affairs, Correctional services and Social Development embrace restorative justice *and* continue with their main business of individualising ‘crime’ in line with the *dispositional*

¹⁹ According to the New History website, Mbeki saw the ‘formation of a black capitalist class as the key to a deracialised South African society and building a sustainable democracy’.

definition of crime/social harm. Many criminologists argue for situational aspects, and others argue that the *interaction* of dispositional and situational aspects should be taken into account. According to Galtung (1996:2) ‘the major causal direction for violence is from cultural via structural to direct violence.’ He argues that cultural violence is symbolic and that it legitimizes direct and structural violence (p.2). It has been suggested that direct violence is the most obvious form of violence ‘whereby an actor intending to cause physical or mental harm can be identified ...the social structure itself is the medium through which the violence is conducted’ (Reitan, 2007:17).

The silence about the link between the economic path taken and visible, growing inequality and its wide effects appear to be related to a reluctance on the part of ‘the leadership’ to admit that they were deprived of a realistic frame of reference with which to comprehend the intricate workings of the global neoliberal project during and after the negotiation period. It has been suggested that neoliberalism ignores the distortions caused by economic and social inequalities, and that it ‘advocates the dominance of a competition-driven market model’ in which ‘individuals in a society are viewed... as autonomous, rational producers and consumers whose decisions are motivated primarily by economic or material concerns’ (Farmer, 2006:5). On this view, the ANC’s assumed embarrassment arguably contributes to a ‘culture of denial’ (cf. Cohen 2001) about the wider impact of growing, nested inequality within South African society and the very real threat it poses to the Constitutional goals of equality, human rights and particularly social justice. On the other hand, it may well be that the ANC leadership have done a cost benefit analysis, that they knew exactly what the outcomes of embracing the neoliberal path would be, and that they have a plan to deal with increasing inequality which they are not sharing with the general citizenry.

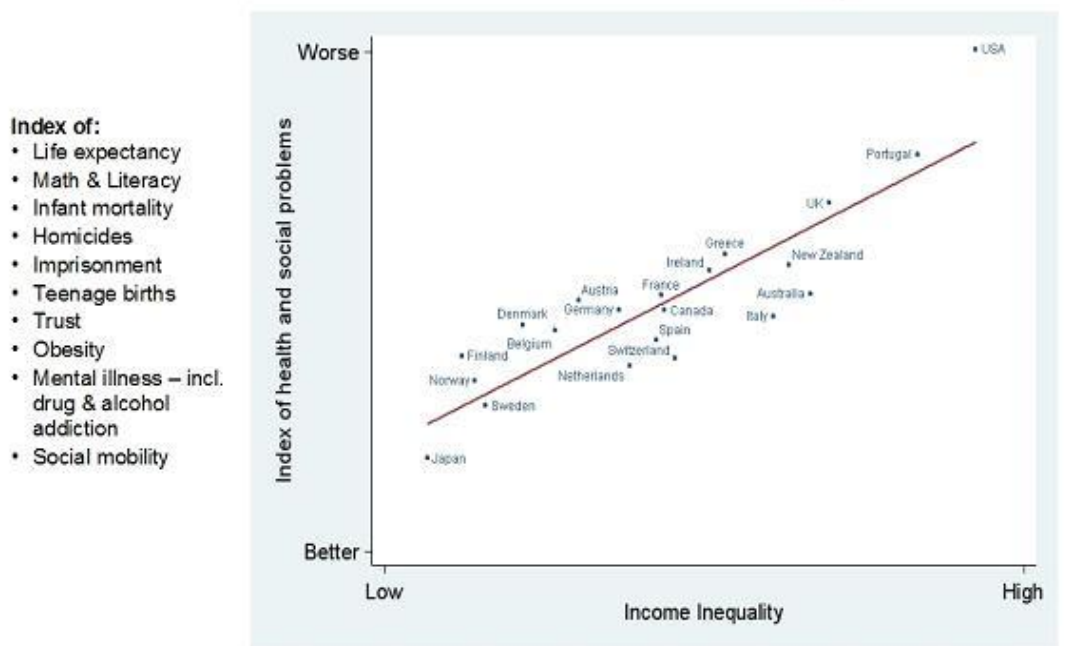
4.6.7 Some constitutive elements of inequality

This analysis has traced several strands that contributed to inequality over time. Triegaardt (2006:1) focuses our attention on other constitutive elements of inequality in the present. She states that ‘[i]nequality is also demonstrated through lack of access to natural resources; a two-tiered educational system; a dual health system; and other socio-economic dimensions. Gelb (2003:44) adds further nuanced elements of inequality and the constitution’s position on it by saying:

[t]he property and related clauses allow the unequal treatment of citizens to take account of the historical legacy of apartheid in creating structural economic and social inequality. The bill of rights also spells out a range of socio-economic rights, including rights to ‘adequate housing ... health care services...sufficient food and water, and social security...a basic education ...[and] further education (South Africa, 1996a, s26, 27 29).

After more than 30 years’ research, Wilkinson & Pickett assert that ‘physical health, mental health, drug abuse, education, imprisonment, obesity, social mobility, trust and community life, violence, teenage births and child well-being are all affected by inequality in a society’ (web reference 28). The graph in figure 4.1 shows that the US, UK, Portugal and New Zealand are doing much worse than Japan, Sweden and Norway. South Africa, as one of the most unequal countries in the world, would fit with the first four countries.

Health and Social Problems are Worse in More Unequal Countries



Source: Wilkinson & Pickett, *The Spirit Level* (2009)

www.equalitytrust.org.uk Equality Trust

Figure 4.1 Wilkinson & Pickett’s index of health, social problems & income inequality

Wilkinson and Pickett also argue that further economic growth will not improve health or wellbeing. According to them ‘more equal societies perform better on the Global Peace Index’. Crucially, they argue that ‘inequality fuels status competition, individualism and

consumerism' which makes it harder to gain public support for policies to reduce global warming. The South African government's National Planning Commission has taken note of Wilkinson & Pickett's research to the extent that it is included in its Vision under the heading Poverty and Inequality (web reference 24) and reference is made to it in relation to crime. A review by sociologists Neckerman & Torche (2007:345) resonates with Wilkinson & Pickett's research. They based their review on 'patterns and causes of inequality' in America and worldwide research on inequality and write that 'the evidence at hand, ... supports concerns that economic inequality may become more entrenched (a) through the attainment process, as economic disadvantage is compounded by disadvantages in health, education, and other domains; (b) through growing segregation in residence and social relations; and (c) through politics, as power and influence become more concentrated among the affluent'. This resonates with the South African context where the inequality gap has grown considerably after apartheid.

According to Gelb (2003:46) South Africa's constitution (1996) addresses substantive, and not only formal equality. In addition, the constitutional court is able to 'advance the realisation of these socio-economic rights over the long run'. With regard to property rights, Alexander (2002:52) states that:

[B]esides the generally relevant point about whether the guarantee of existing property rights does not perpetuate social inequality derived from colonial conquest and capitalist exploitation based on 'race' (which it certainly does). The highly problematical issue (in the South African context) of group rights with its implications for the nation-building project and identity politics is immediately involved. (Alexander, 2002:52).

However, Marais (2001:111) argues that 'property rights were ensconced in the constitution (without any significant 'restructuring' having taken place).' He also avers that the state's macro-economic strategy conformed to most neoliberal injunctions which resulted in the rand being devalued in excess of 30 per cent within six months.

4.6.8 Post apartheid continuities

The aftermath of South Africa's early and mid-transition, and the rapid political and social change that accompanied it, have had uneven effects on different groups within society. South Africa is understood to be in the process of undergoing a transition *away* from the lingering effects of cultural, structural and direct violence of colonialism and

apartheid. The intention is also to transform *towards* the Constitutional goals of ‘a society based on democratic values, social justice and fundamental human rights’ according to the Preamble of the Constitution (1996). Given South Africa’s history of colonialism and apartheid (structural violence), the direct and counter (armed) violence in response to the failure of non-violent struggle; and the fact that the new order was eventually negotiated and not achieved by revolution; means that peacebuilding is a complex and contradictory concept in South African society. For Alexander (2002:48) the absence of revolution meant that post-apartheid continuities - rather than discontinuities with the apartheid state - are dominant and tend to obstruct reform in post-apartheid South Africa. Confronted with the daily consequences of trans-historical inequality along racial lines on the one hand, and the master narrative of the ‘miracle nation’ on the other, particularly more privileged South Africans are faced with a massive dilemma to either speak up or escape into denial. Similarly, many peacebuilders are dealing with the temptation to avert their gaze from factors that cause nested inequality and its effects to grow. Others ignore structural violence in the form of uninterrupted inequality; and its relationship to crime/social harm. No connection is made between the decrease in political violence in response to historical violence; and the increase in criminal violence/social harm which is defined and responded to ‘in its individuality rather than in its structure’ (Neves 2009:492). As Darby argues, rising expectations with regard to:

[E]conomic and other improvements, raised during the period of negotiations, are often disappointed after the accord is signed. This is what happened in South Africa, where the crime rate increased to such a degree as to seriously undermine post-settlement peace-building). [...] More ominously the barrier between conventional crime and South Africa’s underlying racial tensions became increasingly blurred. (Darby, 2007:333-334).

In his comparison of political violence, conventional crime and vigilantism in post-conflict countries, Darby (2007:333-334) brings three perspectives - economic factors, racial tensions and crime - into his frame of analysis with regard to violence in South Africa, in a comparative study that includes Angola, Guatemala, Northern Ireland and San Salvador. His multi-perspectival approach resonates with the approach taken in this research, which seeks a clear understanding, from different vantage points, of what

restorative justice processing responds to in the South African context, and whether this response advances long-term peacebuilding.

4.6.9 Inequality and crime in post-apartheid South Africa

Of concern with regard to the project of peacebuilding, is the fact that there is currently an over-emphasis on individualising crime and calls to ‘come down on criminals like a ton of bricks’ Altbeker (2007:34) and ‘shoot to kill’, as Deputy Minister Shabangu is reported to have suggested in 2008 (web reference 25). Nested forms of inequality accord full citizenship to the privileged of all races, while the poorest people – who are mainly black and coloured - are excluded from full citizenship. The one place where poor black and coloured people are over-represented in South Africa, is the criminal justice system, particularly prisons. In the absence of accelerated means of attaining social justice, the criminal justice system has become the unacknowledged means of dealing with the interaction of individual propensity and lingering structural violence. Police are deployed during service delivery and other protests and there have been situations where communities were involved in counter-violence (Gil, 2006:509) against the police.

Many criminologists would explain acquisitive crime in an unequal context with single cause theories like relative deprivation, rising expectations, deviance, anti-social behaviour and other dispositional theories. These theories may well be relevant; however, there is no consensus on the correlates, facilitators, triggers and determinants of excessive violence that accompanies crime in South Africa. Peace and Conflict studies, with its focus on micro-macro linkages, help us to also think of crime and violence as the direct result of structural violence. In the context of South Africa’s unequal and violent history, current acquisitive and violent crime should simultaneously be understood in the context of inequality.

As a result of partial analyses, strategies to deal with crime are symptomatic, do not go to the heart of the problem and are palliative in its effect on victims, offenders, their families and society at large. All other concrete post apartheid social justice activities that qualify as peacebuilding have been and are currently undertaken in conceptual and practical isolation of each other. The unitary approach to some macro and micro level factors has to date prevented the analytical connection of the links between structural violence of the

past; and present discrete attempts that are loosely intended to move South Africa towards social justice in the future.

4.6.10 Towards social justice – inequality on the agenda

Former president Nelson Mandela and Archbishop Desmond Tutu popularised reconciliation at the relationship level. While this was necessary during early transition, it was not sufficient to bring about social justice and equality for all South Africans. While the Constitution sets the tone for social justice to be achieved over time, there was no co-ordinated attempt at dealing with inequality, until 2010, when the National Planning Commission, for all its flaws, was initiated in the President's Office.

According to a report of the Programme to Support Pro-Poor Policy Development (PSPPD) in the Presidency titled '*Policy Forum: Tackling inequality and poverty in South Africa*' (2011:5), the perennial problem of spatial inequality is acknowledged:

[S]patial inequality is a major driver of poverty and inequality in South Africa: distance from jobs and the exclusion from well –located land perpetuate the gap between where people live and where they work – and creates areas of concentrated poverty and barriers to opportunities.

In this report a comparison is made with Brazil's inequality and France's youth unemployment. The National planning Commission (NPC), Trade & Industrial Policy Strategies (TIPS) and the Organisation for Economic Co-operation and Development (OECD) held a 'high level policy forum to discuss the issue of inequality and poverty in South Africa and what policy options exist to address it' (2011:5).

In sum, part of chapters two, chapter three and part of chapter four 'announce[d] ...the conceptual underpinnings' of the thesis (Charmaz, 2006:169). The conceptual framework is summarised and displayed next, to complete construction of the framework which was commenced in chapter two section 2.3; and to provide context for all the references to it throughout the thesis (Charmaz, 2006:169).

4.7 Application of the conceptual framework

Taken together, the framework allows for an intersectional and multi-perspectival analysis of the South African context and restorative justice processing, within the broader theme of peacebuilding. On the one hand the framework allows an analysis of

how crime is constructed in the South African context. On the other hand, it provides a lens through which to conduct an examination of whether victim offender mediation, as an expression of restorative justice processing, is responsive to the macro and micro patterns of interaction that constitute the unequal, transitional context of crime. The conceptual framework and the trans-temporal, multi-level, cross-cutting approach it takes, is depicted in figure 4.2 and is explained hereunder.

4.7.1 Vertical: levels of analysis

The vertical analysis helped me to capture different levels of analysis and action (from intrapersonal, interpersonal, family, group, community, national, international to the global level) within the frame of analysis, where necessary. The concept restorative justice enabled me to plot the vertical level(s) at which restorative justice processing functions, as a sub process of peacebuilding. This level intersects with the horizontal and crosscutting levels which enabled me to see that victim offender mediation focuses at the intra- and interpersonal (relationship) levels and does not include the structural levels made visible by the display in figure 4.2.

4.7.2 Horizontal: past, present, future analysis

By using a horizontal analysis, I sought to capture within the frame of analysis, South Africa's transition from its unequal, colonial and apartheid past to the present in which the inequality gap has increased; and an anticipated future in which social justice, human rights and equality will prevail according to the South African Constitution (1996). The concept peacebuilding, in the conceptual framework, enabled me to capture the transition from past to present and the anticipated social justice for the future. The intersection of the horizontal dimension with the vertical and crosscutting dimensions helped me to understand the nested nature of inequality in South Africa.

4.7.3 Cross-cutting analysis

To simplify the display, I depict only two cross-cutting lines; however relevant cross-cutting phenomena such as economic, political, psychological, social and other categories are included in the discussion, as they become salient. The concept social justice, as the third concept of the conceptual framework, is aligned with the cross-cutting dimension.

The social justice lens helped me to disaggregate and get a clearer understanding of the nested forms of trans-historical inequality over time and at different levels of analysis.

4.7.4 Intersections

This part of the display depicts the intersections of horizontal, vertical and cross cutting dimensions of various social phenomena. It provided insight into the interaction of individual and structural factors that produce crime.

4.7.5 Visual display of the conceptual framework

As it stands, the display that depicts the conceptual framework for this study is a simple reflection of a multi-perspectival approach. However, it is intended to depict the multiple and simultaneous (cf. Hill Collins, 2000) intersections and interactions between individual characteristics and vertical, horizontal and cross-cutting social phenomena. The individual is assumed to be located at the point where all these phenomena intersect as displayed in figure 4.2 number three. The display shows that these factors can be made analytically distinct, but that they are not experientially separate and therefore cannot be severed in real life, even if individuals are unaware of the intersections and interactions that bear down on them. Read together with Warnat's (2012) model depicted in figure 4.3, the simple display for this section is intended to show how the conceptual framework arises out of a complex understanding of South Africa's unequal, transitional context and the interaction with individual level factors. It also shows that the basic model can be adjusted to analyse different situations, as in the case of Warnat's (2012) study of employment equity in the South African context for which she adapted and adjusted Dhamoon's (2010, 2011) work which she incorporated into Henkeman's (2011)

model ‘in order to incorporate a sufficient degree of complexity’ (Warnat 2012:37).

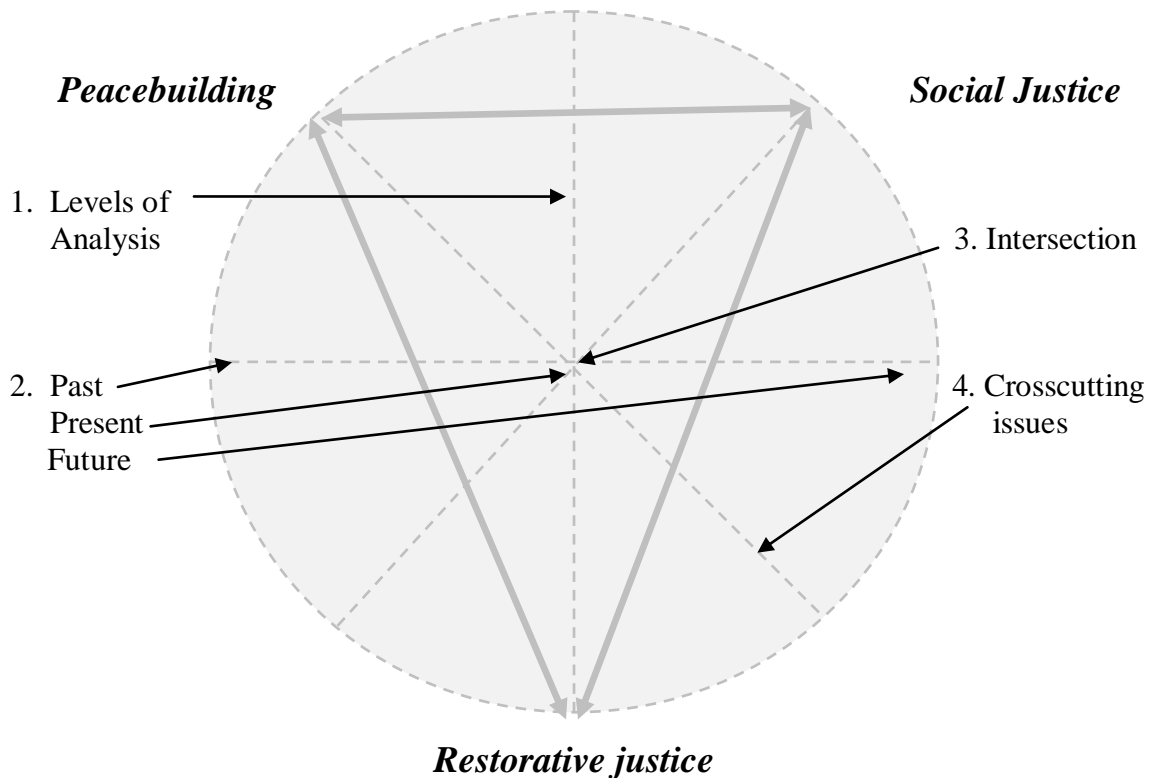


Figure 4.2 *The conceptual framework: Peacebuilding, restorative justice, social justice*

4.7.6 Display of core features of a multi-perspectival analysis

Warnat (2012:38) arrived at the most succinct description for the intersection of social phenomena. She argues that:

The crux of the intersectional argument is the recognition that individuals’ categories of difference intersect with other categories of difference. The categories of difference, and the intersection between them, then interact with systems of domination, history, and various socio-political spaces. (Warnat, 2012:38).

This description holds true, in part, for the interaction between a victim and offender in the context of restorative justice processing. This suggests that before a harmful act is committed (at the interpersonal level); other social structural level phenomena have already intersected and interacted with factors *within* the offender (at the individual level). This interplay between social structural, intra- and interpersonal intersections and interactions, lie at the heart of this research. It forms the basis of the underlying

hypothesis of this study, that a gap exists between restorative justice theory and practice in the *context* of inequality and transition in South Africa. The conceptual framework is intended to reveal the extent of, and reason for the perceived gap.

Psycho-social, socio-economic, political-economy and any other relevant intersections and interactions of interest for this study, are the mix of factors that co-produce crime and social harms within a specific context. For example, with regard to the individual, the intrapersonal aspects are taken into account as well as interpersonal interactions with other individuals. The same applies to intra- and inter-family; groups; communities; localities, provinces, region, nation and globally. Where applicable, all relevant levels are taken into account to a lesser or greater degree in the multi-perspectival conception advanced here. Each configuration helps to fill out the bigger picture, but there will always be a margin of error or a blind spot in any human endeavour. A multi-perspectival approach, with its obvious overlaps, greatly reduces the size of the glaring blind spots left by many single lens approaches. I have used relevant single lenses sequentially and iteratively, and then combined and blended the data gathered to give as true a picture as is possible of lived reality.

This complex understanding of the interaction between the individual and the social world is at the heart of the framework discussed here. It enabled me to take complexity into account by moving iteratively between microscopic and macroscopic, as well as multi-perspectival views of the instrumental case (victim offender mediation as a form of restorative justice processing) and the broader topic of this research (peacebuilding). Figure 4.3 provides a visual display of the more complex version of intersectionality developed by Warnat (2012) while figure 4.2 is a simple version that foregrounds the conceptual framework to show how it merges with the context from which it arises.

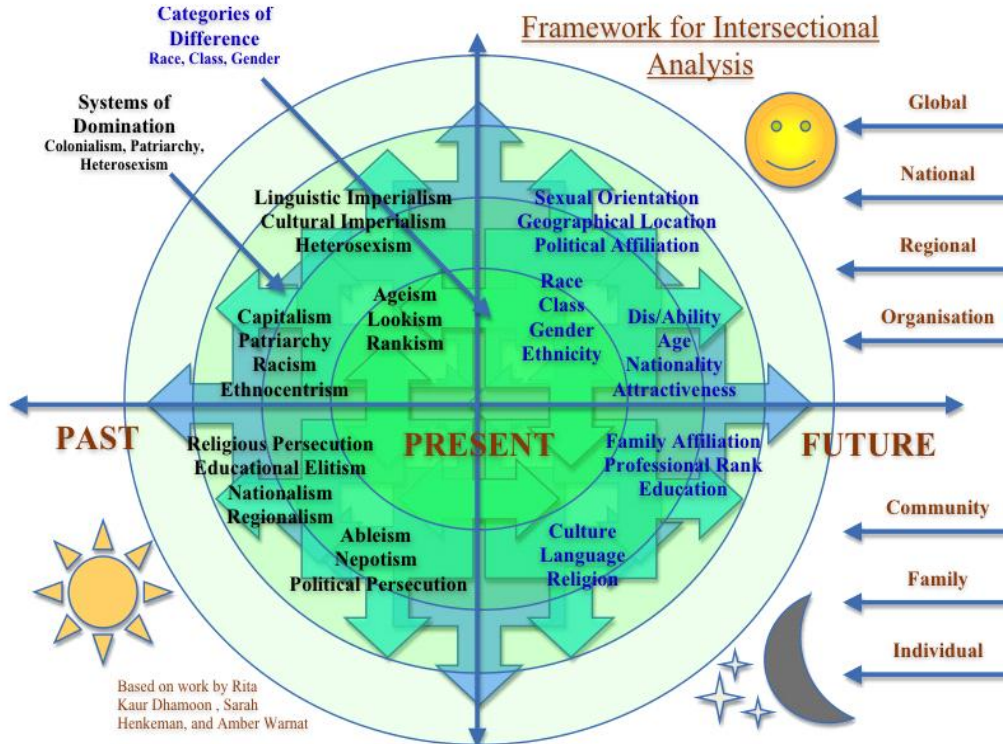


Figure 4.3 Warnat's intersectional model based on Dhamoon & Henkeman's work

4.7.7 Self awareness and default perspective

Critique that is not willing to open itself up to critique cannot be properly considered critique. (McFarlane, 2006:36).

As stated before, my standpoint is that of a historically oppressed black woman whose default response to oppression and domination is resistance. This standpoint also produces my default perspective on social phenomena, as depicted in figures 1.1, 4.2 and 4.3. However, my awareness of the partial nature of perspectives, prompts me to acknowledge that other perspectives and standpoints exist and that I should take account of them. In the context of knowledge production and the subjugated knowledge of black women, McFarlane (2006:30) suggests that the main issue is not with:

[O]ppression as such, but rather with the relation one has between one's standpoint in the matrix in relation to knowledge ... we could assume that the majority of social scientific knowledge has an especially close relationship with the standpoint from which much of it was produced; that is, the standpoint of white men. (McFarlane, 2006:30).

I would argue that within society and academia in general and South Africa in particular, the most dominant and therefore most powerful standpoints with regard to knowledge

production are those of white men, white women and black men in relation to the subjugated knowledge of black women. Black women scholars on the other hand, occupy an economically more privileged and more powerful location in relation to knowledge than do working class and marginalised white men, white women, black men and black women. My education also places me in the category of post apartheid beneficiaries who *appear* to have deracialised the middle class. Self-critique therefore becomes vital for any critical social theorist who claims to actively work for social justice, regardless of their location in the matrix of domination.

I approached the construction of the conceptual framework and the entire research process reflexively, self-critically and tentatively over a prolonged period, rather than with a stance of ‘absolute certainty’ and a position of ‘absolute truth’. Over the years I have introduced a crude model and exercises which concretise an understanding of this multi-perspectival approach in lectures and workshops, as it is adaptable to different topics. This way of thinking makes me aware that, because of my social location and the fact that I am embedded in South African society, my blind spots and shadow will cause me to deny or overlook something that other researchers, who are located differently, might see more clearly than I do.

When I explained a crude version of this conceptual model in peacebuilding training workshop or lecture situations, I also made participants aware of the duality of human nature through the concepts of shadow (Jung, 1953:177), blind spots as exemplified in Johari’s window developed by Joseph Luft & Harrington Ingham (Runde & Flanagan, 2010:135) and the notions of human disposition towards ‘good’ and/or ‘evil’ (depending on the situations they find themselves in) as discussed by Zimbardo (2007). Based on the question of human duality, Warnat (2012:40) depicts a sun and a moon in her display, which captures her understanding of self awareness, blind spots and shadow as follows:

As intersectionality developed out of the feminist movement, it calls on us always to critique ourselves and our processes ... to question accepted norms and realities, and to accept our own weaknesses. Henkeman (2011b) argues that each of us has a ‘light’ and a ‘shadow’ side. Rather than assuming we have an innate nature of either good or evil, she points out that we all have the ability to be either, depending on the context. (Warnat, 2012:40).

The emphasis I place on self awareness on the one hand and contexts on the other; and the implied interaction between individual and contextual factors, reveal my own bias and how I control for it, with regard to harmful behaviour in general and crime in this research. I side with unorthodox criminologists who believe that society *and* the criminal must be changed as there are multiple and simultaneous intersections between individual and social structural factors which interact to produce crime/social harm. As Sen (2008:15) cautions, there is a need to avoid 'isolationist programmes of explaining violence *only* through concerns of economic and social inequality and deprivation, or exclusively in terms of identity and cultural factors' (*my italics*). He argues that 'none of these *individual* influences, important as they very often are in a fuller picture, can provide an adequate understanding of the causation of widespread violence and the absence of societal peace' (*my italics*). Instead, Sen draws attention to the *interconnections* between these influences, which, he argues 'are as important as the elements that have to be connected' (2008:15). In sum, South Africa's history of inequality combines the ingredients that produce violence which according to Galtung (1996:2) and (2008:10) is an interaction between economic, social, cultural and political aspects. On this view, apartheid was the perfect recipe for disaster.

4.8 The conceptual argument

The conceptual argument of this thesis is that restorative justice is a sub-process of long-term peacebuilding. This argument is based on the fact that restorative justice and peacebuilding converge on six key points. These are:

- *Social justice* as a goal;
- *Cultural violence* which is largely symbolic and justifies and legitimizes structural and direct violence;
- *Structural violence*, of which inequality is an example;
- *Direct violence*, of which crime/social harm is a manifestation.
- The combination of structural and individual *dynamics* that lead to crime/social harm and the dynamics it gives rise to as a result, are not confined to the methodologically and epistemologically limiting boundaries of one discipline and its limiting definitions.²⁰

²⁰ I use the thinking behind the argument made by Mamdani (2001:xii-xiii) with regard to breaking out of the methodological boundaries of 'area' studies in his book on the genocide in Rwanda. In that regard he

- *Mediation*, which shares the *basic pattern of interaction* and employs the same *strategies, techniques and tactics* that are applied in conflict resolution and peacebuilding practice as described in chapter two section 2.8.

4.9 Conclusion

In this chapter, social justice was deconstructed. A working conception of social justice was distilled from the literature. An inversion of the notion of social justice was used to guide a descriptive analysis of key constitutive aspects of South Africa's history of cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) from the colonial and apartheid periods, to the era of the market democracy. This chapter provided a deeper and broader understanding of (i) cultural violence, which, according to Galtung (1996:2) is largely symbolic and serves to legitimise and justify (ii) structural and (iii) direct violence. It also provided a clearer understanding of trans-historical inequality as unbroken structural violence and raised questions about its relationship to crime/social harm which are, according to the literature, manifestations of direct violence.

Construction of the conceptual framework was completed in this chapter. A summary and simple display of the conceptual framework was provided in figure 4.2. The display foregrounds the conceptual framework and the links between long-term peacebuilding, restorative justice and social justice. In the background it shows how the framework arises out of intersectional (horizontal, vertical and cross-cutting) analyses undertaken to provide content for the conceptual framework. At the same time the framework outline provided the parameters for the conceptual argument based on an intersectional analysis; as well as a border outline and context for the empirical study to follow. The conceptual argument which is contained in the conceptual framework was briefly explained.

PART III: RESEARCH METHODOLOGY

stated 'just because the genocide took place within the boundaries of Rwanda, it did not mean that either the dynamics that led to it or the dynamics it unleashed in turn were confined to Rwanda.'

This section sets out my research philosophy, explains the choice of an instrumental case study with embedded sub-units, and describes the data management and analysis processes.

Chapter five explains my standpoint and research philosophy; why I chose an instrumental case study with one external and five embedded sub-units as a means to generate primary data; the data collection methods I used; and how different aspects of the study were conducted and access problems overcome.

Chapter six explains the *process* of data management and analysis and sets out the methods used to collect, manage, reduce and analyse data to reveal underlying patterns, themes and ideas within the parameters of the conceptual framework.

CHAPTER FIVE: THE RESEARCH BRICOLAGE

When we create a world where there is union between theory and practice we can freely engage with ideas. Our thoughts then are not abstract meaningless currency, of use solely to those who seek to live their thinking lives in an academic environment removed from the ways and workings of everyday life. (hooks, 2010:186).

5. Introduction: Nested case design and research methodology

This chapter explains my standpoint and research philosophy; why I chose an instrumental case study with one external and five embedded sub-units as a means to generate primary data; the data collection methods I used; and how different aspects of the study were conducted and access problems overcome.

5.1 Reflexivity, positionality and research philosophy

A research project of this nature involves examining methodological choices and interactions with participants to uncover what philosophy informs one's own position and choice of research topic. This research process has helped me to find my voice and place as a scholar. I have never fully understood the need for 'disciplinarity', nor the exclusive thinking (from my perspective) behind some of the dominant and taken-for-granted research practices in academia. This includes the fact that available literature is dominated by white and western scholars - which reflects the all too familiar structural domination that is so invisible to those who hold the power in the world. I saw no difference between the overt euro-centrism that I was subjected to from childhood into my adult life; and the covert euro-centrism with its attendant exclusionary and silencing tactics in academia, principally by enforcing positivism as *the* 'gold standard'. I am aware that my own trans-generational internalised inferiority is a factor in this asymmetrical relationship and that reflexivity and standpointism might appear to border on self-indulgence. It has been suggested that reflexivity can result in 'navel gazing', however, as Sultana (2007:374-376) contends, reflexivity is at the heart of ethical research. She argues that 'being reflexive about one's own positionality is not an act of self-indulgence, but to reflect on how one is inserted in grids of power relations and how that influences methods, interpretations, and knowledge production'. She also argues that research undertaken 'at home' has its own dynamics with regard to 'concerns of insider outsider

and politics of representation, across other axes of social differentiation beyond commonality in nationality or ethnicity' (2007:378). I do not wish to have my mind colonised by those who hold the power in academia, nor do I wish to hide the normative and utopian ideals that drove my quest for an implementable answer to the research question. My standpoint thus serves as data from a subjugated, overtly political position.

5.1.1 'Polycentric thinking'

Following Shohat & Stam (2005:14) I understand that '[a]n idealized notion of the west organizes knowledge in ways flattering to the Eurocentric imaginary'. They argue that the 'correlative of this attitude in the realm of theory is to assume that all theory is "western" ... a view that projects the west as "mind" and theoretical refinement and the non-West as "body" and unrefined raw material' (p.14). For years, during my encounters with academia, I did not have the language to articulate what I knew to be my already subjugated knowledge. The onus was on me to make myself understood in a language that I did not yet possess. Feminist standpoint theorists assert that this kind of 'marginal' knowledge, which forces one to straddle social divides, gives one an 'epistemic advantage' as an 'insider/outsider' to academia (cf. Hill Collins, 1998:121, Narayan, 2004:220, Bowell, 2011). Following Narayan (2004:219 -220), I agree that it would be wrong to 'move from the thesis that knowledge is constructed by human subjects who are socially constituted' and then to arrive at the conclusion 'that those who are differently located socially can never attain *some* understanding of our experience or *some* sympathy with our cause.' For example, Jansen (2009) wrote an insider/outsider account of his experiences as a black dean in an Afrikaner university in South Africa. While there is much to critique about the inexplicable exclusions in Jansen's book about race in South Africa, his summary of what the book is about resonates at a deeply human level:

This book will convey the tensions between being an insider and remaining an outsider. The stories and analysis will show the slipping between the two, the desire to be part of the lives of people whom I serve and yet being constantly and often unconsciously reminded that I was in the end, an outsider. Throughout, this tension is seen as productive and one that brings the capacity for a kind of analytical engagement that would not be possible by taking the position of either an angry outsider or an unreflective insider. It enabled me to bear witness. (Jansen, 2009:27).

The universal nature of the painful but productive sides to insider/outsider status is also exemplified by Fugelli (2003:173). While speaking about his insights as a general practitioner (prior to entering academia) in the medical field in northern Norway, Fugelli puts into words what I did not have the vocabulary to articulate with regard to my own insider/outsider relationship to academia in terms of race, class, gender, language, and other intersections: '*[m]y pons cerebri harboured a conviction of ... [another way] ... I knew this as a tacit instinct. I lacked words, concepts, definitions and a structure: a paradigm*' [italics mine]. I believe that I have now found the means to engage the academy via the bricolage approach which confirms the academic merit of the process by which I arrived at the research question and the answer to it, without acquiescing to (nor rejecting) the 'gold standard' (cf. Denzin & Lincoln (2011), Kincheloe (2008), Wright (2006) and Kincheloe, McClaren & Steinberg, 2011).

Denzin & Lincoln's (2011) conceptions of the bricoleur and bricolage have opened a way for intellectual labour to be poly-centric, a concept discussed by Shohat & Stam (2005:46) who argue for a more egalitarian world. Like them, I do not wish to replace euro-centrism with afro-centrism, as I have nothing against Europeans, but everything against *any* kind of 'centrism' which subjugates and marginalises other voices (cf. Shohat & Stam, 2005:14) while holding the dominant, euro-centric view up as the gold standard. I concur with Kincheloe (2008:5) who argues that 'any writing on knowledge and issues of justice in the contemporary era must deal with the last 500 years of oppression and power differences between European colonizers and the colonized peoples around the world' as 'one of the central dimensions of Western colonial domination has involved its production of 'universally valid knowledge' that worked to invalidate the ways of knowing that had been developed by all peoples around the world.'

5.1.2 'Epistemology of complexity'

I introduced the terms bricoleur and bricolage in chapter one section 1.3 and this section relates these notions to my positionality and pragmatic research philosophy. As Kincheloe, McClaren & Steinberg (2011:168) state, 'the bricolage exists out of respect for the complexity of the lived world and the complications of power... it is grounded on an epistemology of complexity.' Denzin & Lincoln (2011:5) distinguish between six types of bricoleurs. These are methodological, theoretical, interpretive, critical, political

and gendered, narrative bricoleurs. They suggest that the (i) methodological bricoleur is competent at undertaking tasks, which range ‘from interviewing to intensive self-reflection and introspection’. They also state that the (ii) theoretical bricoleur reads extensively and is familiar with many interpretive paradigms that can be applied to any problem, (p. 5) and:

[I]f paradigms are overarching philosophical systems denoting particular ontologies, epistemologies, and methodologies, one cannot move easily from one to the other. Paradigms represent belief systems that attach the user to a particular worldview. Perspectives in contrast, are less well developed systems, and it can be easier to move between them. The researcher-as-bricoleur-theorist works between and within competing and overlapping perspectives and paradigms. (Denzin & Lincoln, 2011:5).

This explanation of working within and between overlapping and competing paradigms and perspectives, best explains how I arrived at the findings of this research. The (iii) interpretive bricoleur, according to Denzin & Lincoln (2011:5), takes research to be an interactive process which is shaped by ‘personal history, biography, gender, social class, race and ethnicity and those of the people in the setting’ (p.5). The result of the ‘interpretive bricoleur’s work is a complex, quilt-like bricolage, a reflexive collage or montage; a set of fluid, interconnected images and representations’ which connect parts to the whole (Denzin & Lincoln, 2011:6). The (v) political bricoleur is aware that science is power, and that it is not value free as ‘all research findings have political implications’ (p.5). The (vi) gendered, narrative bricoleur regards the stories or narratives that scientists convey as versions that are couched and structured within particular storytelling traditions. These are frequently defined as paradigms for example ‘positivism, postpositivism and constructionism’ (pp. 5-6).

5.1.3 ‘Continuum of roles and methods’

In the tradition of the bricoleur, I took these roles as and when it was needed on a continuum of roles and methods, to construct an answer to the research question by reaching the overall objective of this study. In a chapter titled *Analysis and representation across the Continuum*, Ellington (2011:601-606) makes the case for qualitative methods to be conceptualised as a continuum anchored by art and science, with vast middle spaces that embody infinite possibilities for blending artistic, expository, and social scientific ways of analysis and representation. Extending the notion of

triangulation as a ‘form of, or alternative to validity’, Denzin & Lincoln (2011:5) suggest the metaphor of a crystal which has many facets that constitute a ‘display of multiple, refracted realities simultaneously’ similar to a ‘performance around a central theme’. Wright argues that ‘every overtly social-justice-oriented approach to research... is threatened with delegitimization by the ... exclusivist assertion of positivism and foundationalism as the ‘gold standard’ of ... research’. Wright presents researchers with a direct challenge as follows:

[A]ny and all work undertaken in the present moment is inherently political ... the present/next moment is one of stark alternatives: acquiescence to and compromise with the gold standard on the one hand and resistance to it and continued innovation and diversification on the other. Which side are you on?’ (Wright, 2006:800).

Wright (2006) and Denzin & Lincoln (2011) make overt and covert reference to a ‘paradigm war’. I did not feel the need to choose a side in this ‘war’ as my intention was to reach the overall research objective, using whatever theories and methods necessary to achieve that goal; and reaffirming that the insider/outsider position to academia and practice has distinct benefits that keeps the focus on improving practice through new knowledge. Drake & Heath (2011:2) argue that ‘a practitioner researcher will have engaged with new knowledge at all stages of the project, from conceptualisation, through methodology, methods and empirical work, to the thesis.’ They suggest that ‘new knowledge derives from all these dimensions of the study and informs all aspects under consideration at each stage, and is both directly connected to undertaking the project at all in a practice setting and unique to each researcher and their research.’

5.1.4 Qualitative research as ‘radical democratic practice’

In the preface to the *Sage Handbook of Qualitative Research*, Denzin & Lincoln argue that ‘[t]here is a pressing need to show how the practise of qualitative research can help change the world in a positive way.’ They suggests that ‘[i]t is necessary to continue to engage the pedagogical, theoretical, and practical promise of qualitative research as a form of radical democratic practice’ (2011:x). Therefore the long search for a South African based, open minded supervisor, who was not appalled by the fact that I wanted to ‘triangulate’ disciplines, theories and methods, has been tremendously frustrating. It was also very empowering when I eventually found a person who did not want to colonise my

mind by forcing me to attain the 'gold standard' exemplified by positivist research. Through structured empirical work and the multi-disciplinary literature used in this study, I have found the words and concepts to render accumulated practical and academic knowledge into a conceptual and practical research framework. In the process, I have confirmed (for myself) that disciplinary boundaries and the paradigm war are artificial and serve no practical purpose in a world that needs to overcome fragmentation of thought and action. It also dawned on me that even the dichotomy between the constructs 'practitioner' and 'scholar' is relative and that it is not 'abnormal' to straddle these worlds. I have also learnt that literature can be used as data, for comparison and confirmation of a theory that is grounded in empirical data which foregrounds, in this case, a gap in peacebuilding practice rather than foregrounding a gap in literature. Through standpoint theory, I have come to understand that my own 'accumulated knowledge' (Dey, 1993:65) of my own experience of oppression and South Africa's history of oppression, can serve as data for this study, and not only as background information. These theories provide the reflective practitioner with a philosophical position from which to conduct scientific research where a gap in practice, rather than a gap in the literature, leads the direction of the study. Support for this type of improvisation is provided by Prasad (2005:286) who suggests that many research traditions are blended. He argues that research traditions 'are not and should never be used as instruments of standardisation' and that 'melding and blending different research traditions through improvisation is both possible and feasible' provided that researchers familiarise themselves with the assumptions that undergird these traditions. Similarly Charmaz (2006:9) argues that diverse studies can be conducting by researchers who adopt and adapt grounded theory guidelines.

I adopted and adapted grounded theory guidelines to suit this multi-perspectival study. I therefore did not consider it inconsistent to start the research with a conceptual framework that is rooted in prior empirical observation as a practitioner and prior reading of literature. All stages of the research were guided by the conceptual framework described in chapter one and constructed in chapters two, three and four, except for the data analysis phase when the main concepts were linked to open and axial codes at the selective coding stage described in this chapter. This means that both deductive and inductive methods were used and that theoretical, data gathering and data analysis

methods were triangulated to produce a fine grained analysis. The choice of methods was secondary, as methods were employed to help answer the research question, in line with my normative and pragmatic research philosophy.

The type of data called for in this study required me to use mainly qualitative methods to sketch the research story. Minimal post hoc quantitative methods were used to assess the relevance of some of the themes and ideas in the data (for example, in chapter nine, race based prison statistics were used to raise questions about trans-historical constructions of ‘the criminal’ in South Africa). At all times research methods were chosen as required on the ground and inspired by the data during data gathering and analysis phases. A priori themes as contained in the conceptual framework helped to surface ‘emergent’ themes in the data. Emergent themes in turn were compared to themes in the literature in an iterative analytical process. I am a practitioner and the area of study is familiar terrain to me, I therefore designed the research and chose methods in a way that would force me to look for disconfirming evidence, paradoxes and contradictions to increase confirmability and credibility of the study (Lincoln & Guba, 1985).

In sum, Latour’s statement that ‘there is no sure ground, even for criticism ... there is no sure ground anywhere’ (2004:227) was a constant refrain as I put my own field of practice and my own learnt strategies, techniques and tactics under scrutiny. In keeping with peacebuilding practice, I tried to suspend judgement in the course of attempting to understand each perspective from the standpoint of a participant or an author. I triangulated methodology (qualitative and quantitative) and mixed methods (observation, semi- and unstructured interviews via social media, skype, email, face to face and telephonic means) as required to reach the overall objective. Nested triangulation (of theory, data sources, data gathering methods, data recording methods and data analysis methods), helped to ensure a high degree of rigour in this study.

5.1.5 Contradictions, paradoxes, dilemmas

I am aware of the shameful colonial history of research and the imbalance of power between researched and researcher (cf. Smith, 1999:1; Denzin, 2010:298). As Smith (1999:2) argues, there are ‘complex ways in which the pursuit of knowledge is deeply embedded in the multiple layers of imperial and colonial practices’. The balance of

power was clearly tilted in my favour, particularly in interviews with victims and offenders. Madlingozi's (2010:211) article titled '*On Transitional Justice Entrepreneurs and the Production of Victims*', in which he refers to the theft of victims' stories and cultural imperialism, served to remind me of my contradictory position. Even though I offered all victim and offender participants an amount in lieu of travel expenses, some insisted on only receiving the exact amount, others declined and those who accepted appeared amazed at the 'excessive' amount I offered but accepted it with grace. At the end of one interview, a woman who told me that she lived in a 'tin house', had HIV AIDS, worked for one day a week and was looking for a job, hugged me twice before leaving the room. For her, the token amount was a fortune. In those moments I did not know what exactly my philosophy or right to conduct this research were. I have been holding myself back for many years because it feels like a betrayal to 'succeed' as a black woman and be part of a small percentage of people with tertiary education and much more than the bare necessities of life in the South African context. I felt as if I was mugging people for research information that would benefit me in the first instance. Yet I continued with this research when everything in me told me to stop during those encounters. Why did I continue? What was the logic that made me sit up day and night to complete this thesis? Enlightened self interest might be part of the reason, but I also have a more profound sense that I should use my epistemic advantage (Hill Collins, 1998:121, hooks, 2004:153, Narayan, 2004, Bowell, 2011) to produce knowledge from the outsider's standpoint. This stance resonates with Smith's (1999:2) contention that '[i]ndigenous peoples across the world have other stories to tell [...] counter-stories are powerful forms of resistance which are repeated and shared across diverse indigenous communities.'

For these reasons, I regarded and treated every participant as the expert on their own experience and capable of constructing their own accounts and thus their view of victim offender mediation processes of which they were a part. On this view, the interview questions were a guide to generate data and were designed to seek their opinions on their experience of restorative justice processing, rather than their personal stories. Where (victim and offender) participants offered additional information on their own cases, it was entirely by their own volition or how they understood the opening question: 'What is your experience and knowledge of restorative justice?' Where appropriate, I have used

unsolicited accounts and accounts elicited after respectfully probing subtext, to shape the direction of the analysis as suggested by Bazeley (2009:9) – particularly where it confirmed or disconfirmed data gathered from other sources. In this sense, the participants and I co-constructed the research story within the constructed boundaries of the study.

The following questions, on which interview schedules for this study were based, are subsumed in the overall research question and inform the underlying hypothesis and research focus:

1. Are restorative justice processes, practices and outcomes aligned to the peacebuilding and social justice agenda embedded in the South African Constitution (1996)?
2. Do Criminal Justice and NGO stakeholders discern links between restorative justice, South Africa's peacebuilding process and the correlation between inequality and crime?
3. Does restorative justice processing as practiced in South Africa address the interaction of personal and structural causes of crime?
4. What is the function of restorative justice within the Criminal Justice System? Sub-process or alternative paradigm?
5. On what basis do prosecutors divert some cases for mediation and others not?
6. What is the theoretical or other basis for the frameworks, process, strategies, techniques and tactics employed by restorative justice practitioners?
7. What are the characteristics, knowledge base, role, function and skills of the mediators?
8. What is the role of the mediator during and beyond the agreement stage of restorative justice processing?
9. Does restorative justice processing have an impact on structural injustices that facilitate crime?
10. What, in general, does restorative justice offer to unequal, transitional societies in the long term?

The interview questions in each schedule were designed to generate data from which to discern if victim offender mediation, as a form of restorative justice processing, contributes to peacebuilding in an unequal, transitional context. These questions were spread over four schedules with seven core questions and the remainder specific to each sub-unit. Questions were not always asked in sequence. In some instances certain questions were omitted if previous answers covered the information sought or when saturation was reached. A combined table of the interview schedules are attached as appendix 'A' and one transcripts from a participant who straddled the mediator and key

informant sub-units is attached to give an idea of the open way in which interviews were conducted, marked 'B'.

The semi-structured nature of the interviews allowed for flexibility to suit the knowledge of the participant and to minimise power imbalances insofar as that was possible. Where it became apparent that the questions on the research schedule were outside of the knowledge of participants, I switched to an unstructured interview mode and focussed on what participants preferred to share about their restorative justice experience in general. This helped to thicken and deepen the overall analysis, as well as to add to numerous themes for further research. During interviews with experts, power was either balanced or tilted in their favour, in contrast with primary participants who seemed to feel obliged to co-operate because of their relationship with the restorative justice organisation. In some instances I departed from the script and allowed the experts to focus on aspects that they considered important in the bigger picture of South Africa as an unequal, transitional society. Many aspects of these dialogues either confirmed or disconfirmed my own general observations, or were an opportunity to debate some positions disputed by my interim analysis based on data already gathered. To balance these unavoidable and unspoken power imbalances that occurred during the data gathering phase, every voice was assigned an equitable place in a 360° formation of perspectives (discussed in section 5.3 hereunder) around restorative justice processing, during the iterative data analysis and report writing phases.

In sum, the field research was limited to focus specifically on what restorative justice processing contributes and how it does so, from the perspectives of restorative justice stakeholders. This was done by examining victim offender mediation processes conducted with parties who have been referred by criminal justice system officials. The application of a hybridised research philosophy was contingent and responsive to the ground truth and the research agenda to (i) gather varied perspectives (ii) by varied means (iii) using a variety of analytical methods to assess whether contemporary forms of restorative justice advance peacebuilding in unequal, transitional contexts. Restorative justice processing provided a contained unit of analysis which became the instrumental case to cast light on contributions to peacebuilding in South Africa. The choice of an embedded, instrumental case study approach is discussed hereunder.

5.2 Holistic, embedded and instrumental case study design

In this study, long-term peacebuilding in South Africa's unequal, transitional context is the single holistic case. Within this holistic case, restorative justice processing is the instrumental case (Stake, 1995:4). Victim offender mediation (as a form of restorative justice processing) was studied as an embedded case with six sub-units, (Yin 1994:41) which provided micro level information on long-term peacebuilding practice. The nested nature of the research strategy is illustrated in figure 5.1.

The use of the embedded and instrumental case provides insight on peacebuilding practice in unequal, transitional contexts. The case study approach was chosen as the most appropriate method to examine what and how contemporary forms of restorative justice contribute to peacebuilding in an unequal, transitional context. Victim offender mediation (embedded case with sub-units), as a form of restorative justice processing (instrumental case), provided the best strategy for this research.

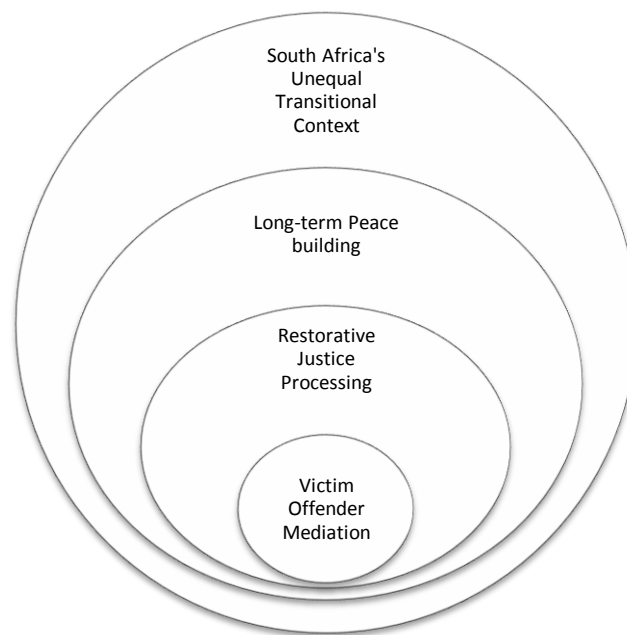


Figure 5.1 Nested holistic, instrumental and embedded case study method

As Stake (1995:4) argues, a 'good instrumental case study does not depend on being able to defend the typicality' of a case. In expounding the benefits of the instrumental case study approach, Baxter and Jack, suggest that:

The instrumental approach is used to accomplish something other than understanding a particular situation. It provides insight into an issue or helps to refine a theory. The case is of secondary interest; it plays a supportive role, facilitating our understanding of something else. The case is often looked at in depth, its contexts scrutinised, its ordinary activities detailed, and because it helps the researcher pursue the external interest. (Baxter and Jack, 2008: 548).

Victim offender mediation can thus be regarded as an embedded (Yin, 1994:41), instrumental (Stake, 1995:4) case to shed light on the single holistic case of peacebuilding practice in the South African context. The thinking that informs the 360° degree research method used primarily in Human Resources performance appraisal coheres with the multi-perspectival approach taken in this research. I therefore superimposed the 360° multi-perspectival research method which cohered well with the five embedded and one external sub-unit around victim offender mediation as set out in section 5.3 hereunder. A similar adaptation of the 360° methodology was applied by Lanza, Zeiss & Rierdon (2009:417) to gain multiple perspectives on assault in a psychiatric healthcare setting. They argue that 'by virtue of their different perspectives, each of the sources add complementary data on the variables under consideration'. The perspectives of various groups of participants, (in this instance victims, offenders, prosecutors, practitioners (which includes administrators and mediators), and key experts with the Norwegian konfliktråd as an external lens), can be described as sub-units within an embedded case, where 'within', 'between' and 'cross-case' analysis can be done to 'better illuminate' and enrich the analysis, always keeping the overarching issue in mind, in this case peacebuilding (cf. Yin 1994:41; Stake,1995:4). Figure 5.2 depicts the 360° formation of sub-units around victim offender mediation which shows that state, NGO and individual level perspectives were sought.

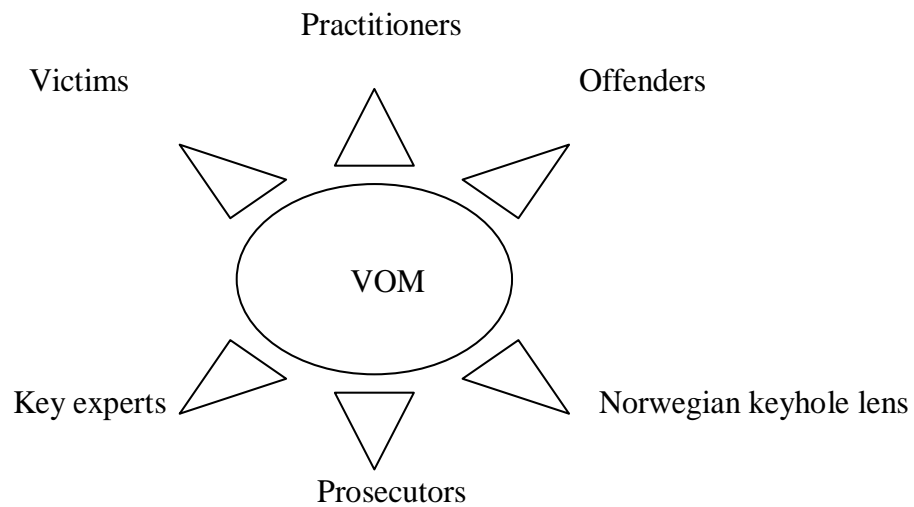


Figure 5.2 360° formation of sub-units around victim offender mediation

In sum, restorative justice processing was selected as an embedded (Yin, 1994:41) instrumental case (Stake, 1995:4) - specifically pre-trial and pre-sentencing victim offender mediation was chosen as an embedded case with sub-units - to cast light on peacebuilding efforts within the South African context. This focused analysis provided the best opportunity for a comprehensive analysis of state referred restorative justice processing that includes the victim in the process; prevents the offender from obtaining a criminal record; and uses a generic framework and strategies, techniques and tactics usually identified with peace practices and applied conflict theory. Formal and informal restorative justice approaches and practices that did not include these three elements were excluded from the case.

5.3 Embedded sub-units

The reason for including each sub unit is discussed hereunder:

5.3.1 Victims

I initially planned to interview 10 victims in total. Five who had experienced a victim offender mediation process within the 12 months prior to the research interview and five who had been involved in a process 12 or more months ago. In addition to getting their perspective on the restorative justice process and victim offender mediation in particular,

I also wanted to assess the difference between perspectives after a considerable amount of time had elapsed. I eventually interviewed six victims for reasons set out in 5.5.

5.3.2 Offenders

Similarly, I initially planned to interview 10 offenders in total. Five who had experienced a victim offender mediation process within the 12 months prior to the research interview and five who had been involved in a process 12 or more months ago. In addition to getting their perspective on the restorative justice process and victim offender mediation in particular, I also wanted to assess the difference between the perspectives after a considerable amount of time had elapsed and they had returned to the same ecosystem that co-produced their criminal behaviour. In the event I interviewed four offenders for reasons set out in 5.5.

5.3.3 Prosecutors

A group interview was held with five control and one senior prosecutor as the focal criminal justice institution involved in restorative justice processing that involves both victim and offender. The perspectives of prosecutors were important to shed light on the state's position with regard to restorative justice in general and victim offender mediation in particular. Prior research on magistrates and prosecutors' views on restorative justice was used to supplement this perspective given the time required to seek permission from different institutions. The initial exploratory interview with the Western Cape Provincial head of the Department of Justice and Constitutional Affairs provided sufficient additional information given the specific focus of this research.

5.3.4 Mediators

The perspectives of mediators were pivotal to understanding restorative justice processing. This sub unit also shed light on the training they received and I was allowed to observe a mediation process which enabled me to compare and contrast interview data, observation and the training curriculum to understand the philosophy and theories which inform the strategies, techniques and tactics in use.

5.3.5 Key experts

I interviewed three external key experts who straddled the restorative justice, criminal justice and peacebuilding sectors, to provide a broader view on South Africa's unequal, transitional status. External experts were interviewed for their historical knowledge of how contemporary restorative justice processing was introduced to South Africa and for their expert opinion on constructions of 'the criminal' that lay and professional people use. These interviews were conducted via skype and facebook inbox to Australia, skype to Johannesburg, email to Pretoria and face to face in Cape Town. These interviews were conducted from July 2011 to the period of the final write up. Some of the mediators and organisational and programme leaders straddled the key expert sub-unit based on their practical and academic knowledge. The internal experts were interviewed for their perspectives on restorative justice processing and specifically to assess the organisation's underlying philosophy and theories about criminality.

5.3.6 External sub-unit

During the period that I had no firm commitment from South African NGOs I decided, in consultation with my supervisor, to make contact with the Norwegian konfliktråd²¹ since I was travelling to Norway for work purposes the following month.

Supported by literature on case study research, I argued that victim offender mediation, as a form of restorative justice processing, is an embedded (Yin, 1994:41) instrumental (Stake, 1995:4) case to shed light on peacebuilding in an unequal, transitional society. In research done elsewhere, it has been argued that the 'conceptual and implementation issues [of restorative justice] are not attached to any specific local or national system, but can relate to four community levels (local, national, regional or international)'. These theoretical and practical developments which occur at different levels 'are not disengaged from each other' (Gavrielides, 2007:80). This thinking resonates with the logic I used to include the Norwegian konfliktråd. Its inclusion as a sub-unit of analysis expanded the

²¹ According to the Konfliktråd website 'Mediation is a public service which helps to resolve conflict – whether between private parties or between victim and perpetrator where a criminal offence has taken place. The intention is that the parties through dialogue can find solutions, whether it's to make up for specific offenses – or restoring human relations. Mediation is offered to all, regardless of age. The service is free throughout the country.'

diversity of perspectives in a 360° formation on restorative justice processing. As an external sub-unit the konfliktråd added a perspective on restorative justice processing within a different political and economic context. As Zerubavel (2007:133) has noted, ‘general patterns ...transcend their specific instantiations’ – I therefore focused on general patterns in practice in both countries. In addition, the original konfliktråd idea is the brainchild of Nils Christie, a world renowned restorative justice expert and the opportunity for comparison was exciting. I interviewed one present and one past mediator, the head of training and a deputy director.

5.5 Sources and categories of information

In this study my concern was not with the number of participants in each sub-unit, but with which participants carried information to answer the overall research question. The range of perspectives in the 360° formation of sub-units contained rich information. The number of people in each sub unit varied until no new information was found. Some sub-units had six or more people (prosecutors and victims) and the lowest numbers per sub-unit was three (key experts) and four (offenders). When I originally specified numbers per sub-unit, I had no idea how much information would overlap nor did I have in depth knowledge of the different types of case studies. This changed during the course of the study. Some participants straddled two sub-units, some mediators and administrators also qualified as ‘key experts’ based on their practical and academic experience. The gaps in information that remained were filled in part with information provided by key experts and the literature, which was used as data. A total of 30 participants and key experts were interviewed. The number of participants per sub unit is set out in figure 5.3.

Sub-units	Female	Male	Totals	Country
Victims (5 Primary 1 Secondary)	6	1	7	SA
Offenders		4	4	SA
Prosecutors	4	2	6	SA
Mediators	3	3	6	SA 4F/NOR 2M
Internal key experts	2	2	4	SA 2M/NOR 2F
External key experts	2	1	3	SA 2F1M

Figure 5.3 Numbers of female (F) and male (M) participants South Africa and Norway (NOR)

Each sub-unit in the 360° formation was chosen because of the unique perspectives participants in that sub-unit could provide on restorative justice processing. The choice of participants was information oriented and convenient. Many of the participants for this study can be described as ‘hard to reach’ (Abrams 2010:542) and had to be accessed via organisations who held their contact details.

5.6 Journey of discovery

This section describes the joys and difficulties of gaining access to organisations and their clients; takes a hard look at the ambivalence displayed towards research and researchers, and describes the data gathering, recording and transcription methods used.

5.6.1 The 360° degree research method

Triangulated data gathering methods were used to get a nuanced understanding of the case and to find an answer to the research question. These consisted of semi-structured (i) group, (ii) paired and (iii) individual interviews and (iv) observation of restorative justice processing. On the subject of triangulation, Stake (1995:113), argues that ‘because there is no best view, researchers must rely on multiple perspectives or views on a case’.

Following Stake, the data was collected from various sub-units at multiple sites in South Africa, one site in Norway and from a key expert who now lives in Australia via a skype interview. This completed the 360° formation of sub-units.

5.6.2 Access granted

This story is out of sequence, but I want to start on a positive note. In 2011, when it became clear that I would not have access to clients of the organisation that originally gave me permission as they were not ‘able to assist during this financial year due to present research and student commitments’, (correspondence with national manager dated 24 March 2011) I wrote to an organization in another province. After a period of approximately six weeks in which we had constant email contact, I was given permission to conduct interviews. I was provided with 24 names. In the meantime, the Director provided me with documents about the organization, consented to be interviewed as a key expert and agreed that I could interview their mediators. Despite their busy schedules, I was given all the assistance I needed. After the visit to their offices, I made a donation towards costs incurred in the course of contacting clients and for providing me with office space.

5.6.3 Access denied

Before I started to write my proposal in 2007, I first sought permission from a crime prevention organisation in Cape Town, where I live, for access to their clients who had undergone victim offender mediation as part of restorative justice processing. This permission was granted by their CEO.

In 2009 the crime prevention organisation referred to above also submitted a letter in support of my application for ethics clearance. After receiving clearance I had a meeting with the deputy director and the newly appointed national manager in charge of the Western Cape Province. It was agreed that the organisation would supply me with names of their clients. A few names and contact details were sent to me via email at different times around September 2009 and I filed the emails under a research file in my email inbox where all research correspondence was kept.

I was initially advised that I received ethical clearance but was informed about a month later that I should effect some changes to the research schedule and give more detail with regard to confidentiality. This process took some time and I held off on setting up interviews as I was not covered in terms of university ethics. I contacted the organisation’s site office, where I was supposed to observe a process, to advise them that

I should wait for ethics clearance. In November I travelled to Norway again for work purposes.

In the meantime, I conducted an exploratory interview with a senior official from the Department of Justice and Constitutional affairs in the Western Cape Province. From there it snowballed when he provided me with leads as to whom I should interview in the Criminal justice system. After approximately six months of correspondence interspersed by long silences, I received permission from the National prosecuting authority to interview six prosecutors. They submitted a letter in support of my application for ethics clearance in 2009. During December and January it was not possible to conduct interviews with other participants, but the time was more convenient for prosecutors and I interviewed them on 10 December 2009 and a follow up interview with the senior prosecutor during the following week.

During 2010 I experienced one computer crash and lost many documents. Of those that could be retrieved, many were corrupted. I also experienced three virus attacks in which all the contents of my inbox was lost, including my email research correspondence file. This included all emails containing the names of clients from the organisation in Cape Town. I discovered this loss in early 2011 when I wanted to contact their clients. I wrote to the organisation explaining my dilemma and to ask if they could resend the emails. They informed me that all their old emails were deleted. I offered to personally search their database for names, but the newly promoted national manager refused even after I offered to provide proof of my computer problems from the computer technicians. I could also prove that since I started with proposal writing in 2007 to date, I have replaced computers twice (2008 and 2011). I preferred not to take the matter up with their CEO who originally gave permission for me to conduct research with the organisation.

The deputy director of the organisation later facilitated access to one of their offices in another province, unfortunately, despite my request for adult victims and offenders, the list of names I received were all juveniles and their parents. I only discovered this after several telephone calls to set up appointments and found that only two parents were available for interviews during the times agreed to with the organisation. I postponed these appointments and contacted my supervisor for advice as I did not have ethical clearance to interview juveniles. The organisation was aware of the fact that I needed to

interview adults, because I provided them with a copy of the university ethical clearance form, and stated the requirements in email correspondence, but somehow lines got crossed and I could not conduct these interviews. With hindsight I realise that they may not have read every section of the ethical clearance form and may have assumed that I wanted to interview juveniles. Also, since a year had passed since we had a meeting where I expressly stated that I needed adults, I assume that this aspect was forgotten.

5.6.4 Access delayed

During the period of uncertainty I contacted an organization in another province. I sought permission from their head office and was referred to the site manager. I corresponded with the manager of this office during 2009 and despite the fact that I explained that I lived in another province, she wanted me to make an appointment to see her at their office. I tried again in 2011 after the first organisation became unavailable, and we corresponded for several months. During this time I complied with every request the manager made, including asking my supervisor to write to the organisation. After answering all the questions that were asked in 2009 and after fulfilling all their requirements over time, I was advised that they were waiting for permission from their funders. At this point I asked for their written refusal to co-operate so that I could hand it to the university. They gave their permission for me to conduct interviews in May 2011, a few days before I left to work in Norway.

In the period that I was waiting for permission from the second organisation, I sought permission from a third organisation in a province even further afield. As I was due to return to Norway for work purposes my mind turned to the Norwegian konfliktråd where an ex colleague was a mediator as part of his PhD experience. I contacted my supervisor for his opinion on a Norwegian sub-unit and he consented. My colleague introduced me to the konfliktråd and also consented to be a participant.

5.6.5 Serendipitous access

Before I travelled to Norway in May 2011, I was advised by the konfliktråd that victims and offenders were reluctant to participate in research, but that they would continue to search. When I arrived at the konfliktråd offices, they had not been able to find victims or offenders who were willing to be interviewed. The deputy director, head of training, one

current and one past mediator of the konfliktråd consented to interviews. The deputy director remained in email contact with me after our interview and provided konfliktråd documents, and more importantly, a 2009 report of research conducted with 340 participants throughout Norway. An initial step of the research was a survey conducted in 2008 with 22 konfliktråd leaders from all offices throughout Norway. This research report, together with further documentary analysis, follow up questions to participants, and regular visits to the konfliktråd website provided me with secondary data on participants' perspectives of restorative justice processing. I hoped to interview four Norwegian restorative justice participants on skype or via email before finalizing my methodology chapter. I abandoned the idea after the attacks in Oslo and Utøya in July 2011, as the offices of the konfliktråd were in the vicinity of the attack and one of their mediators died as a result of the blast. My need for primary data from Norway was not pivotal to understanding restorative justice processing as an embedded (Yin, 1994:41) instrumental (Stake, 1995:4) case in South Africa. The secondary data sufficed and added to the depth and breadth of the perspectives on the Norwegian sub-unit. After my interviews with the staff of the konfliktråd, they continued to provide me with articles, policies, legislation and an invitation to visit them at any time in future.

5.6.6 Hard to reach participants

In 2010 I retreated completely from the battle for access to do fieldwork. I became absorbed in thinking, reading widely, attending public lectures and commenting on thought leader type blogs about contextual issues regarding South Africa's historical and contemporary matters related to inequality, crime, violence and reconciliation. I wrote a thought piece for a journal of Psychology titled '*Mediator's Dilemma: mediation in South Africa, an unequal, deeply divided, transitional society*'. The essay was about an actual mediation 'event', but it was also about a struggle to negotiate the 'post' apartheid South African terrain and being confronted with my own inadequacy as a practitioner, with so many good intentions and as many blind spots.

In 2011, I decided that I was not going to be defeated by any overt or covert resistance to research on the subject of restorative justice as a peacebuilding tool. I exercised my right as a tax paying citizen to respectfully and persistently correspond with organisations until they opened their doors. Two organisations in two different provinces in South Africa

respectively gave their consent for me to contact their clients. In one province I interviewed six parties from a list of nine who were available, three mediators in one province and a few weeks later the head of their restorative justice programme from another province via skype. I was advised that parties were not keen to be interviewed for research, therefore the small list of names.

I also interviewed four parties, a mediator and the director of a restorative justice organisation in the other province. While this organisation was keen to assist and originally provided me with a list of 24 names, after several attempts on my part, I was only able to make contact with two people who were able to present for an interview. Some of the reasons given why people were not contactable at the numbers they have on record, is related to the fact that (i) some people live in informal settlements and the number might belong to a neighbour or relative (ii) the person might not have airtime (iii) the cell phone battery might have died and there might not be immediate access to electricity to charge the battery (iv) some people could not come for an interview because it was close to payday, and various other reasons. After offering to pay someone from their office to act as a research assistant and to set up appointments during their lunch hour and after hours at a research assistant's fee, he was able to secure four appointments with two victims and two offenders from the list of 24 names.

5.6.7 Group Interview

I conducted a group interview with five control prosecutors and one senior prosecutor in Cape Town. This interview was conducted under the supervision of the senior prosecutor, with whom I had a follow up interview at her office at the courts in Cape Town. These interviews were conducted in December 2009.

5.6.8 Paired and individual face to face interviews

During June 2011, I conducted field visits in Durban and Pretoria respectively. When I originally wrote to the NGOs for permission, I requested the names of adult victims and offenders who have participated in victim-offender mediation within the last 12 months and later. When it became clear that South African victims and offenders were also reluctant to participate in research, I asked for whoever is available. Since the aim of my research was to get multiple perspectives on restorative justice processing, the number of

participants and types of cases were of secondary importance, so in consultation with my supervisor I settled for the available number of adult victims and offenders, which proved sufficient for the direction in which the data took the research.

5.6.9 Observation

I was scheduled to observe two mediation processes. Due to the fact that one of the parties arrived late the one mediation was postponed. I therefore observed one victim offender mediation process for which I received signed consent from the parties involved. I will draw on past experience and ‘accumulated knowledge’ (Dey, 1993:63) of facilitating and observing mediation processes as well as experience of conducting mediation training workshops and literature to analyse this process in light of the research question.

5.6.10 Continuous contextual data gathering

As South Africa’s transition (from the colonial and apartheid periods to the period of market democracy) is a core part of the research, I attended public lectures related to Transitional Justice, crime, violence and reconciliation in South Africa as a further source of data gathering. I would ask questions at these meetings to test if others are making the connections that I started to see. From 2008 to date, I have been doing background reading on the South African context and have started to read and comment on newspaper blogs to get a feel of where South African society is heading. I have found that in early 2008, inequality was seldom mentioned. In the latter half of 2008, after the violence in which xenophobia became salient, inequality was found to be core to the spread of the violence and had a ‘tinderbox effect’²² (cf. Henkeman, 2008:1-12 status report based on interviews with mediators). In 2012, during the write-up period of this thesis, inequality was mentioned in every newspaper and some reference was made to it on television news on a daily basis, as latent conflict is becoming more manifest. Following Ryan & Bernard (2003:92), I went back to the data to look for what was missing. I conducted the informal round of meetings/interviews with key experts in criminology, community safety and the

²² The volatile situation around the country was referred to as a ‘tinderbox effect’ by Mr. Mntambo, one of the mediators in the Western Cape.

peacebuilding field after the interim analysis was done. Some were conducted telephonically, others via skype. I was seeking answers to the questions that arose during the interim analysis, to fill the gaps and cracks and to orient myself.

5.6.11 Desk Study

Continuous desk study was done to construct the conceptual framework, analyse documents and to scan multi-disciplinary literature to locate the themes and categories that emerged in the data. I requested documentation related to restorative justice processing as well as mediator training from restorative justice stakeholders to provide a fuller picture of restorative justice processing. These documents were analysed in light of the literature and formed part of the data from which the comprehensive model of findings emerged. The study was located within the literature in two ways (i) to inform the conceptual framework which bounded and directed the study and (ii) as data for the purpose of comparison and confirmation of themes that surfaced in primary data.

5.7 Conclusion

In conclusion, I have shown how this study was a process by which many latent aspects of my personal philosophy surfaced. I have shown how the research process changed me and clarified my epistemic location which is most closely, if not entirely, reflected in the bricolage approach which incorporates critical social, standpoint, intersectional, contrapuntal and (an adaptation of) grounded theories. The research has also finally resolved for me that (i) the boundaries between disciplines within the Social Sciences and Humanities are artificial, and (ii) the practitioner/scholar dichotomy is unnecessary as the bricolage allows practitioners a scientific basis from which to theorise about their practice.

This chapter has shown how victim offender mediation, as a form of restorative justice processing, could be used as an embedded/instrumental case with an external and five sub-units of analysis. The research journey and the learning about access were discussed, as well as the methods used to gather data.

CHAPTER SIX: DATA MANAGEMENT AND ANALYSIS

6. Introduction: Complex problem, complex analysis

This chapter sets out to explain the *process* of data management and analysis and sets out the methods used to collect, manage, reduce and analyse data to reveal underlying patterns, themes and ideas while chapters seven and eight set out the *product(s)* of data analysis that led to the findings. The within and between perspectives of participant groups (sub-units of analysis) provide complementary, overlapping and sometimes contradictory data (Lanza, Zeiss & Rierdon, 2009:413). While this opened up new lines of inquiry which in turn had the potential to deepen and thicken this analysis, it became necessary to manage and analyse the data carefully and to leave a trail of evidence that show that the themes are grounded in the data (Bazeley, 2009:17).

6.1 The analytical interviewing process

Chapter five focuses on data gathering procedures and this chapter highlights the detail of analytical skills used to understand the substantive part of interviews. The main aim during grouped, paired and individual interviews was to create an atmosphere where participants and I could engage in a relaxed manner so that relevant information related to the study could be discerned. I tried to achieve this by applying the soft communication and analytical skills that form part of the peace builder's repertoire. Note taking was kept to a minimum and only comments that pointed to a possible theme were written down. I used a recorder for every session (including the skype interview), after first obtaining permission from the participant. I wanted to understand the participant's perspective as fully as I could and this required my full attention, which I gave. Through active and analytical listening I focused on the way the story was told and tried to pick up on body language and non verbal cues to ensure that I understood the participant's perspective properly. Where I did not fully understand, I checked for understanding by paraphrasing and reflecting back facts, feelings, needs, intention and context as appropriate. Where information was understood, I encouraged the flow of conversation with micro movements of my head, hands, respectful eye contact and small encouraging sounds, making sure that overall communication created and maintained rapport with the participant. Where there was dissonance between body language and verbal communication I would slow down the conversation, maybe insert some humour and ask

the question in a different way to make sure that I understood the communication and the participant understood and was comfortable with the question.

I summarised and clarified at regular intervals and engaged in dialogue depending on the point that arose or the participant's desire or inclination to engage on a particular point. Where uncertainties about meaning occurred, this was clarified. I answered clarifying questions that participant's had about some of the interview questions which were quite involved and long. The two long questions were at the heart of the interview and not general or warm up questions. Where participant's appeared tired, I checked if we should stop the interview. It was possible to apply these active listening and analytical skills and maintain an open posture as all participants consented to the use of the Olympus voice recorder which enabled me to free up my body language considerably.

I believe that the communication and analytical skills that peace builders are trained in, together with note taking, recording, personally transcribing interviews, and making limited use of analysis software, enhanced the quality of the data and my understanding of it considerably. In addition, the willingness of some participants to engage in follow up communication assisted me to immerse myself in the data and where possible, engage them in dialogue about the emerging themes.

6.2 The process of recording and transcribing

Data was recorded and transcribed with the aid of a digital recorder. These interviews were transcribed using the soundscriber, an open source program which helps with the transcription of digitized sound files. The soundscriber program has a walk function which repeats short sections of the transcript. This enabled me to replay sections that were not clear as I tried to transcribe every word and sentence. Following La Pelle, (2004) the interviews were typed in tabulated form using MS Word. The table for the group interview with six prosecutors and three paired interviews had three columns – the first to identify the speaker and sequencing, the second for open coding and the third for questions and responses. Individual interviews were transcribed into a table with three columns. A merged document consisting of all transcripts was made that could be sorted into questions (which combined all answers to the same question) or according to individual participants.

6.3 Multiple methods of analysis

I used multiple methods of analysis at different stages of data analysis. The data was analysed in different forms using a variety of data analysis methods and lenses to lay bare the themes and sub-themes reported on in this thesis. I transcribed the interviews and started to apply open and ‘in vivo’ coding to the individual transcripts (Charmaz, 2006:55). I simultaneously commenced with an interim analysis in outline form. The initial thoughts were written in different colours on flipchart paper. At this stage, I did not do any conscious a priori coding, but I simply worked with the data as it presented and my impressions during interviews within the broad parameters of the conceptual framework. In this regard, Dey (1993:65) asserts that ‘the exhortation to beware of bias is not an injunction against prior thought’ and that we need ‘accumulated knowledge’ to enable us to analyse the data that we have collected. He argues for an open mind as opposed to an empty head under these circumstances. On the one hand, I agree with Seidel (1998:14) that the analysis of codes and relationships between codes is useful only in a heuristic sense because the answers we are looking for ‘are not in codes, but in ourselves and our data’ (web reference 26). On the other hand, I found the multiple themes heuristically generated by the conceptual framework and the perspectives from various sub-units useful as it provided a deeper and broader understanding of the link between peacebuilding, restorative and social justice and the significance of South Africa’s unequal, transitional context to the way peacebuilding and restorative justice are practiced.

6.4 Accumulated knowledge

My research approach was informed by sensitivity to the context within which the research question arose and was in part based on tacit knowledge accumulated during three periods:

- 21 years growing up and living on South Africa’s Cape Flats and specifically two ‘crime infested’ townships, Heideveld and Manenberg was used as data. On the one hand the majority of my peers went on to live law abiding, taxpaying lives. A handful of these peers have distinguished themselves in various careers but the majority did not undertake tertiary studies and many did not complete high school. On the other hand, some girls and boys that I attended primary and high

school with became involved in criminal behaviour over time and later joined gangs²³. For example, over the years I read in newspapers or heard that many of the boys I knew from primary school died violently or were in prison. This knowledge is equivalent to a longitudinal study on the lives of the ascribed ‘underclass’ and I deploy it as such in this study. South Africa’s prison statistics show that coloured people (as part of the black group) are overrepresented in prison and white people are underrepresented given that the coloured and white groups are closest to each other in terms of the number of people in the country. The coloured group constitutes 8.9%, white group 9.1%, African group 79.4% and the Asian group 2.6% of the country’s total population. Prison and population statistics are displayed in figures 9.1 and 9.2 and raise several questions about criminogenic conditions, criminogenic traits and the ease with which South Africans ignore the criminogenic role of trans-historical cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509), when responsibility for crime/social harm is individualised.

- Empirical observations and reflections over 18 years as a peacebuilding practitioner living with dissonance and under carceral conditions in middle class suburbia and noticing how my two black sons were profiled and treated with suspicion from the time they grew tall. ‘Black young men’ are regarded as ‘the face’ of crime in South Africa and constitute the majority of inmates in its prisons. These knowledge claims are important as it constitutes the driving force for this largely self funded research.
- Multi-disciplinary literature and knowledge gained from qualifications in four disciplines (Psychology, Education (Guidance & Counselling), Criminology and International Conflict Analysis) with one common thread – the pursuit of positive

²³ A composite of memories about these peers is a child who was usually hungry, usually stole the lunch of other learners, was usually in a fight, could not concentrate in class, was teased by other learners, had a runny nose, appeared neglected, whose parents were usually unemployed, never had completed homework, was picked on insulted and beaten by teachers (more than the rest of us), bunked school regularly, eventually left school, came to the school fence during lunch breaks to talk to former classmates, eventually got involved in petty theft and spiralled down from there. The majority of these children were boys. The girls that dropped out of school usually were pregnant or got pregnant soon after.

peace - at different levels of analysis and action (intra-personal, interpersonal, intergroup, national and international).

I am aware that this accumulated knowledge (Dey, 1993:65) informs how I notice, collect and think about data in an iterative and progressive way. Following Bazeley (2009:4), I do not think that *all* themes in the study are emergent, since the conceptual framework and the questions inspired by it, largely shaped the themes that were bound to be uncovered. I did however make a distinction between ‘emergent themes’ and emerging insights and ideas as the underlying grounded theory revealed itself over time. As the interviews and analysis progressed, I started to use both deductive and inductive methods of data analysis, bearing Dey’s assertion of ‘accumulated knowledge’ and the notion of ‘epistemic advantage’ (Hill Collins, 1998:121, hooks, 2004:153, Narayan, 2004, Bowell, 2011) in mind. The conceptual framework used at every stage of this research, except during the interim analysis, provided broad a priori categories which bounded the study. Inductive methods such as theme analysis combined with some general, less rigid ideas based on Charmaz’ (2006) approach to grounded research, helped me to familiarize myself with the minutest detail to ‘fine-grain’ the themes of this case (Ryan & Bernard, 2003:95). Instead of being a stumbling block, my familiarity with the field caused me to look out for disconfirming evidence rather than to be overly concerned to verify my assumptions. Flyvbjerg sums it up best in these words:

The case study contains no greater bias toward verification of the researcher's preconceived notions than other methods of inquiry. On the contrary, experience indicates that the case study contains a greater bias toward falsification of preconceived notions than toward verification. (Flyvbjerg, 2006:237).

I followed Dey (1993:66) who suggests that the ‘danger does not lie in having assumptions, but to be unaware of them’.

6.5 Member checking

Following Lincoln & Guba (1985:358), a summary of findings was sent to a sample of participants as a means of ‘member checking’. This was also intended to test whether my analysis realistically reflected the ground truth and whether it resonated with restorative justice stakeholders. An additional reason for disseminating these summaries was based on the ‘principle of no surprise’ referred to by Lincoln & Guba and to give participants

adequate time to provide disconfirming evidence (1985:358). None of the participants objected to the findings.

6.6 Another window on the ongoing reflection process

It has been suggested that the process by which a thesis is produced is largely invisible to the reader. Research is as much a process of acting in the field, ‘eyeballing’ (cf. Ryan & Bernard 2003) the data, thinking about the data and its effect on oneself, and writing.

Following Dey, before embarking on the process of open coding, I reviewed the original research proposal with my general knowledge of the research data in mind. I reflected on my reasons for undertaking the research and asked myself the following reflective questions derived from Dey (1993:67-68).

- Why am I interested in peacebuilding, social justice and restorative justice?
- Why am I interested in how people feel and live their lives?
- Why am I interested in how people resolve conflict?
- Why am I interested in how restorative justice contributes to social justice and peacebuilding?
- Do I want to look at the restorative justice, social justice, peacebuilding nexus from philosophical, psychological, sociological, anthropological, criminological, peace or conflict studies perspective or a combination of these?
- Why were the sites chosen? Are they in some way typical or exceptional? If so, how?
- Why did I choose restorative justice processing as an example of peacebuilding practice?
- Why is this important?
- Who will be reading this thesis? Will it be useful? For what?
- Who cares?
- So what?

These questions helped me to find a way to answer the overall research question while remaining grounded in the data. The process of reflection was repeated throughout the research write up period with different questions relevant to the research stage. Thinking through these questions helped me to contemplate whether my key themes were related. As stated before, this research included some elements of grounded theory which were combined with other qualitative approaches such as thematic analysis so that both inductive and deductive methods were used in an iterative manner as envisaged in the bricolage.

6.7 The coding process

Coding was used to reduce the data. Following Charmaz (2006:9), I adapted some of the practices of grounded theory by applying thematic analysis using *in vivo* and *a priori* codes. I commenced with open and ‘in vivo’ coding, followed by axial and later selective coding. From these, I selected two linked core categories – one related to the macro context of inequality and transition, and the other micro and related to what happens in the black box of restorative justice processing. These themes are discussed in chapter seven and eight. Other key codes were gathered around these core categories. These linked codes and categories from the ‘ground’ up, made the story concealed in the data explicit.

I used deductive and inductive reasoning sequentially and later combined the codes that were surfaced through these ‘top-down’ and ‘bottom up’ methods. This was done to complete the picture and to locate the study in the literature consulted. The questionnaire was based on the conceptual framework which was derived from empirical observations in the course of my work as a practitioner, and from multi-disciplinary literature. Data collection was bounded by the three interlocked concepts in the conceptual framework - peacebuilding, restorative justice and social justice.

6.7.1 Open coding

I initially changed the word documents (of the transcripts) to text files for use in the Weft QDA software, an open source qualitative data analysis software package. The Weft method, while useful, proved too cumbersome and I switched to La Pelle’s (2004) method of analysis. After doing a line by line reading of each interview, I coded key words, ideas and sentences and highlighted relevant paragraphs throughout the text. I tried to transcribe and code on the same day that I conducted interviews or as soon as possible on the days thereafter. The four interviews that I did not transcribe and code immediately were ones that did not add anything new. I later transcribed and coded two and listened to recordings of the final two that I did not transcribe, to deepen and thicken the analysis. This was done two weeks after the interviews were completed.

Instead of coding subsequent interviews with codes from previous interviews, I first coded each interview on its own to ‘form general impressions and intuitions’ (Dey,

1993:66). I did this to remind myself of each individual, their body language, how they came across, and what I thought and felt during the interview. This generated pages of codes, some of which were duplicates that were removed.

The reflective review process as suggested by Dey (1993:67) helped me to generate an interim analysis which in turn helped me to focus questions for subsequent interviews. In the two week period, before transcribing the last interviews, I 'pawed' (Ryan & Bernard 2003:88) the coded interviews on a daily basis. I sorted the codes in various configurations and wrote insights and memories about what body language, choice of words and silences at particular moments could have signified on two flipchart boards and in my note book which was always at hand. I used different coloured markers to write relationships, connections, singularities and similarities on the flipcharts as a thought or question occurred to me. When I compared each victim and offender's pattern of experience throughout the restorative justice processing period, I started to discern potentially serious ethical issues in one of the cases. I wrote to the organization seeking to clarify if my analysis was correct. I received no response and turned to my supervisor for advice. This issue is discussed in chapter seven, section 7.5.3 (a).

6.7.2 Axial coding

To prepare for axial coding, I highlighted open codes with similar characteristics in different colours. By opening two Microsoft word windows at a time, I could drag codes from the main list across to the other window and created documents for different coloured codes. These were then 'pawed' and pored over to see what name emerged for the theme. I kept a copy of the main colour coded list.

I then printed out all the individually coloured open and in vivo codes after enlarging the font. The codes were cut up and arranged on a long table. Duplicate codes were discarded and the rest were sorted into piles. These piles were put into folders and filed because no clear themes were emerging at that point.

Instead of returning to the Weft QDA software - which I found did not enable me to view the data from different angles - I decided to continue using Microsoft word as proposed by La Pelle (2004). The triangulated analytical process I was following was sufficient to lead me to key themes. Initial open, in vivo and axial coding of data led to a fine grained

analysis. I am aware that case study research is not regarded highly unless it is in depth and thick. My son assisted me by double checking my numbers and colour coding of word frequencies and linguistic connectors (Ryan & Bernard, 2003:91) using Microsoft Word. I focused only on words and phrases within the data that were relevant to the research question. The totals of word frequencies and linguistic connectors for each interview were typed onto the transcript and a key was developed for the colours assigned to each word. At my direction, he also created a document where all responses to the different questions for each sub-unit were cut and pasted together in word documents. These manipulations of the data are usually done using Qualitative Data Analysis software. I found the software too limiting and incapable of manipulating the data in the ways that I wanted it to. During the following week I created some distance from the data and attended to other aspects of the research while performing Bernard's (2000:445) tongue in cheek but effective 'interocular percussion test – which is where you wait for patterns to hit you between the eyes'. These insights 'hit' me over a period of time as I used various data displays to arrange the data so that I could see the patterns, themes and ideas that constitute the restorative justice/peacebuilding/social justice 'quilt' produced by the bricolage. The final insight 'hit' me after completion of the conclusion chapter, when I realised that the manifestations of denial that formed the patterns of denial referred to in chapter eight, were embedded in a culture of denial in South Africa. This denial is rooted in the master narrative of the 'miracle/rainbow nation' which results in many South Africans closing their eyes to anything that does not 'fit' the miracle/rainbow metaphor. As a result white beneficiaries of apartheid and market democracy; and black beneficiaries of market democracy are unable or unwilling to accept that trans-historical and growing inequality belies the notion of a 'miracle' for *all* those who live in the land. I revised the thesis according to this insight about the culture-pattern-manifestations of denial which resonates with a combination of Galtung's notion of 'cultural-structural-direct' violence (1996:2), Cohen's 'states of denial' (2001:25), Zerubavel's 'conspiracy of silence' (2010:32) and Liem's 'multi-layered model of the silencing of historical memories' (2007:172).

6.7.3 Selective Coding

During the selective coding stage, the links between themes became obvious as well as the similarities and differences within and between themes. At this point I checked to see

if the data was beginning to answer the overall research question and sub questions, by using the a priori concepts in the title and conceptual framework, as well as the research questions as organizing categories. I selected the core themes and the sub-themes to explain what the data was saying. By juxtaposing the sub-themes, the paradoxes, dilemmas and contradictions were laid bare as exemplified by the interplay findings in chapter eight.

6.8 Data Displays

Throughout the analytical process data was displayed in various ways (Bazeley, 2009:8, Miles & Huberman, 1994:11) as I attempted to understand first what each participant brought to the data and analysis and, second how this was linked with what others in the same sub-unit contributed. I then compared and contrasted these with other sub-units and across sub-units. Finally I linked codes from the bottom up to concepts in the conceptual framework. All these stages were displayed in visual form -

- On flipchart paper and whiteboards written in different colours,
- Concept maps using the open source Vue programme,
- Mind-mapping in notebooks and on flipchart paper,
- Microsoft word excel package, using different charts to display the data,
- Tables in Microsoft word,
- Matrices,
- Flow charts,
- Vertical plotting using eco-systemic drawings to plot the ecosystem around individuals,
- Horizontal plotting, by setting out trans-temporal factors that constitute the unequal, transitional context.

Some of these visual models have been combined to provide a visual display of the analytical process behind the conceptual and practical model, which this analysis provides to fill the interlinked gaps in contextual knowledge, conceptual tools, training and practice revealed by this research.

6.9 Conclusion

In conclusion, this chapter has listed the methods by which data was collected, reduced and analysed to reveal underlying patterns, themes and ideas. It has shown how the data was managed and analysed leaving a clear trail of evidence that shows how the answer to the research question is grounded in the data. Subsequent chapters will show how the analysis reveals contextual, conceptual, training and practical gaps in restorative justice processing that prevents it from making a strategic contribution to peacebuilding in South Africa.

A combination of research methods, strategies and approaches were used to generate appropriate data *and* ideas produced by the data (Bazeley, 2009:6) to construct an argument that answered the research question in chapter nine.

PART IV: EMPIRICAL FINDINGS AND DISCUSSION

Part four answers the research question. It presents the links, displays and discusses the empirical research findings as well as my interpretations and opinions which are based on chapters two, three and four, the conceptual framework and inductive analysis of empirical data.

Through description analysis and displays, chapters seven and eight show how minor and supportive findings were linked to build a comprehensive model of findings which is rooted in the data. Two broad themes that are linked to the broader peacebuilding theme of the study are foregrounded in this chapter. In chapter eight I juxtapose the two sub-themes of this study to reveal the blind spots and silences of restorative justice processing in South Africa's unequal, transitional context. These findings form part of the comprehensive model of findings illustrated in figure 7.1. I used the bricoleur approach to guide every aspect of this research. Cohen's theory of denial (2001:25), Zerubavel's sociology of denial (2010:32) and Liem's 'multi-layered model of the silencing of historical memories' (2007:153) helped me to get a clearer understanding and helped to explain the 'interplay' findings that arose out of this juxtaposition.

Chapter nine triangulates the main findings with research and theoretical literature and the conceptual argument constructed in chapters two, three and four. This discussion framed, extended and supported the overall argument and recommendations that emerged from this research - for restorative justice processing to be structurally responsive in order to be a peacebuilding tool.

CHAPTER SEVEN: GAPS AND DENIALS

7. Introduction

Chapters five and six set out the *process* of data collection and analysis. This chapter and chapter eight reveal the *products* of analysis through mainly description and displays that show how minor and supportive findings were linked to build a comprehensive model of findings which is rooted in the data. Two broad sub-themes that are linked to the broader peacebuilding theme of the study are foregrounded in this chapter. These broad themes are embedded in the data and relate to (i) knowledge about crime in context, and (ii) knowledge and restorative justice practice. According to Yin (2010:220), to embed a study in a broader theme (in this case peacebuilding) ‘provides one way of confronting the inevitable challenge of interpreting the findings of a qualitative research study’.

7.1 Comprehensive model of findings

Chenail (1995:2) proposes the notion of ‘data as star’ and suggests that data should be presented ‘in all its richness, breadth and depth’. I used the concepts ‘knowledge about crime in context’ and ‘knowledge and restorative justice practice’ to ‘make sense of, and present the data, then got out of the way so that the data could tell its own story’ (Patten, 2002:457). To achieve this, I chose the reporting format used by Sandelowski & Jones (1996:353-361) which is also one of two ways suggested by Burnard (2004:178 – 179). This format allows (i) the findings to mainly ‘stand on their own’; (ii) for the findings section to be ‘exhaustive in reporting the data’; and (iii) for the main links to be made to the literature, theory and practice in a separate discussion chapter. In addition, through ‘crude displays’ (Gavrielides, 2007:82) and descriptive analysis, I attempt to pin down and reveal the constitutive elements of, or elements that detract from, a comprehensive approach to peacebuilding.

The data, which represent separate and combined voices of participants and include some documentary evidence, are consciously placed at the centre of this study to temper the colonising role that qualitative research and researchers play in knowledge production. Importantly, to counter the silencing effect of coding, categorising, interpreting, paraphrasing, abstracting and other distancing research practices, excerpts from transcripts are used and/or displayed according to five of the seven purposes found in

Corden & Sainsbury's (2006:11-13) study on the use of excerpts in qualitative social research. These excerpts (a) amplify the voices of participants, (b) deepen understanding (of victim offender mediation as a form of restorative justice processing, and of restorative justice processing as a sub process of peacebuilding). The excerpts also serve as (c) evidence, (d) explanation, and (e) illustration, in support of main and general research findings. Combined accounts of victim offender mediation in Norway were used as a frame of reference and served as an additional, external/'keyhole' lens (Walk 1998:1) through which to view victim offender mediation in South Africa.

Following Miles & Huberman (1994:11), I have made liberal use of displays to 'compress' rather than reduce information relevant to peacebuilding, and because the authors suggest that 'you know what you display'. These displays enabled me to 'build a logical chain of evidence' (1994:260) with data from multiple perspectives (360°), and viewed through different lenses (the conceptual framework, key in vivo concepts, and restorative justice processing in Norway as an external lens). This approach, which resonates with Denzin & Lincoln (2011:5) and Kincheloe's (2008:37) understanding of bricolage, provides a micro- and macroscopic assessment of victim offender mediation as a form of restorative justice processing in an unequal, transitional context. Kincheloe suggests that by making use of 'diverse viewpoints from diverse disciplines, social theories, research methodologies and cultural perspectives', new forms of 'understanding, scholarly rigor, critical knowledge, cultivating the intellect and action for social justice can be devised' (2008:37). In this sense, my approach is political, I want to demonstrate a sensitivity to 'where knowledge comes from' Kincheloe (2008:3) and that I have the same regard for the practical labour and situated knowledge of participants, as I have for the intellectual labour and academic knowledge of published scholars. Therefore figure 7.1 illustrates the clues and linkages in the data that led to the comprehensive model of findings which are discussed in this chapter and in chapter eight. Chapter nine triangulates the main findings with research and theoretical literature, and the conceptual argument constructed in chapters two, three and four, to frame, extend and support the story that unfolds, but does not lead it.

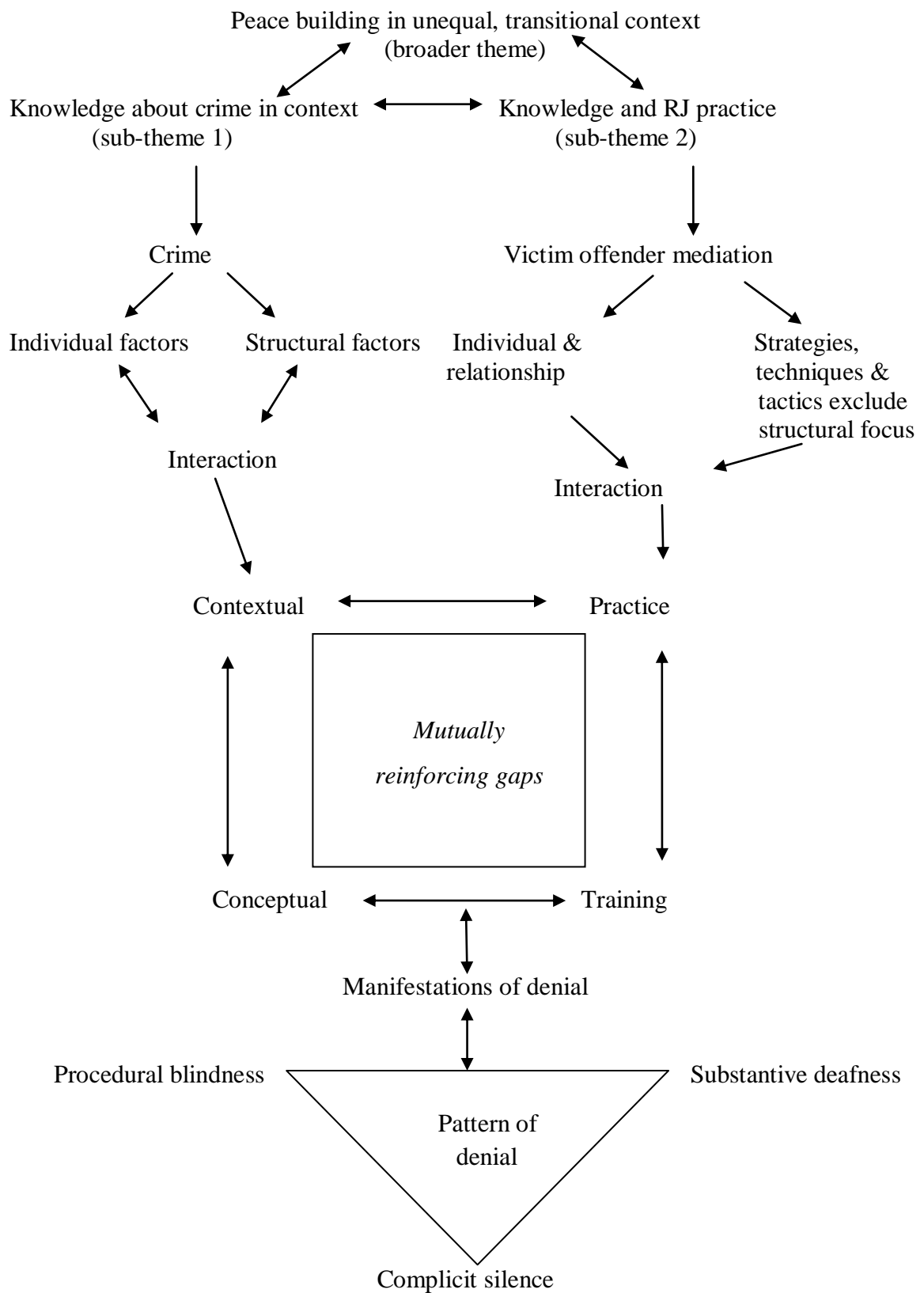


Figure 7.1 A comprehensive model of findings

7.2 *Deductive and Inductive analysis*

The findings of this study were identified through an iterative process of inductive and deductive analysis illustrated in figure 7.2 below. The letters (a) – (d) illustrate how the deductive, top down process, and (i) to (iv) the inductive, bottom up process of analysis were triangulated.

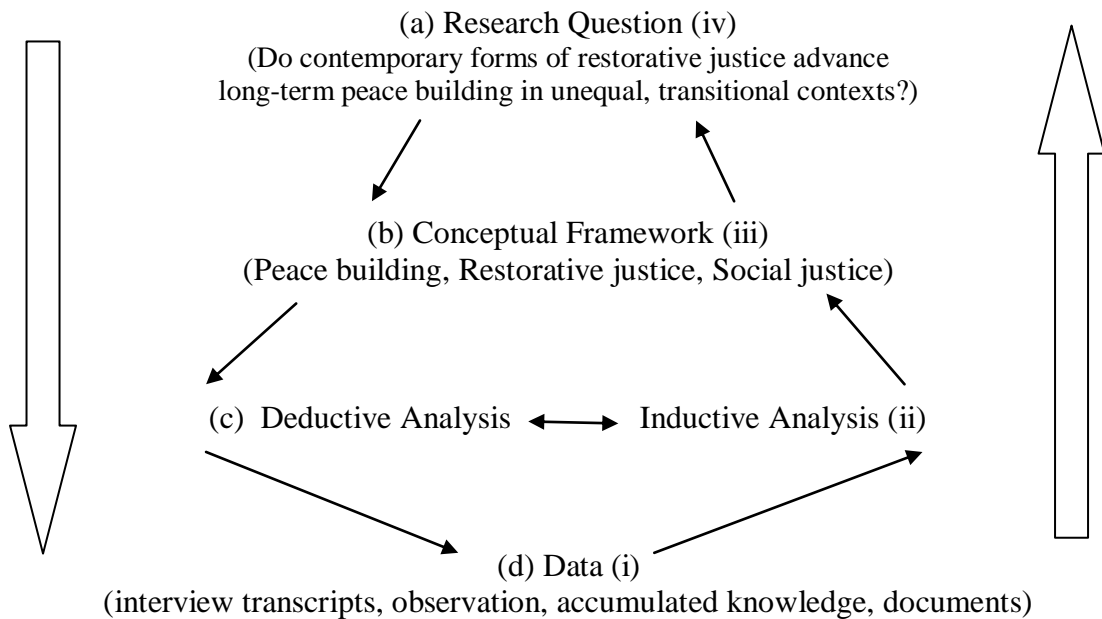


Figure 7.2 The deductive and inductive process

7.2.1 *Findings based on deductive analysis*

The conceptual framework, based on the theoretical underpinnings of the concepts peacebuilding, restorative justice and social justice, served as the boundary and focus for this study. As the purpose of this research is to understand whether restorative justice processing advances peacebuilding in an unequal, transitional context, all information pertaining to participant's understanding of crime in the South African context on the one hand, and the focus and contribution of restorative justice processing on the other hand, were 'extracted from the data' (Sandelowski & Jones, 1996:255). Taken together the extracts, viewed through these interlocked lenses, deepen understanding of the promise and limitations of what victim offender mediation, as a contemporary form of restorative justice, can contribute to peacebuilding in an unequal, transitional context.

7.2.2 Findings based on inductive analysis

Findings are based on two broad sub-themes that emerged from the data and contribute to building the answer to the research question from the data up, as illustrated in figure 7.2. These sub-themes reveal (a) ambiguous and tentative constructions of crime and the ‘criminal’ by participants, and (b) dissonance between constructions of crime on the one hand; and the strategies, techniques and tactics used, and levels at which restorative justice processing, specifically victim offender mediation is applied. These sub-themes form the basis of the thick descriptive analysis of the findings in this chapter and as it relates to the key theme of this study - peacebuilding in South Africa’s unequal, transitional context as illustrated in the conceptual framework depicted in figure 4.2.

7.3 Triangulating and displaying the data on which findings are based

In this section, the main findings are arranged according to the two sub-themes found in the data. These are:

Knowledge about crime in context: Data excerpts from participants’ accounts across sub-units, of the individual *and* structural factors that play a role in the commission of crime in general and in South Africa specifically, are displayed in figure 7.3. Data excerpts of implied and explicit references to the *interaction* of individual and structural factors in the commission of crime are displayed in figure 7.4.

Knowledge and restorative justice practice: General patterns of experience and interaction during restorative justice processing are discussed. The findings are based on excerpts of accounts across sub-units, of participants’ knowledge and experience of the restorative justice process, as well as my own observation of victim offender mediation process. Data from the Norwegian sub unit was used as an external/’keyhole’ lens (Walk 1998:1) through which to view victim offender mediation and to highlight some comparative elements that strengthen the findings.

7.3.1 Knowledge about crime in context

This section provides a descriptive analysis and displays, compares and relates (Bazeley, 2009:5-12) participants’ explicit and tacit knowledge which was accessed through open and probe questions based on the idea that individuals acquire ‘strong, or collective tacit

knowledge ... by being embedded in society' (Collins, 2010:11). Participants across sub-units mentioned *individual* and *structural* factors that lead to the commission of crime. Some participants explicitly mentioned the *interaction* of individual and structural factors that produce crime.

Four distinct notions are identifiable from the data displayed in figures 7.3 and 7.4:

- that *individuals* are responsible for the commission of crime, (which resonates with dispositional theories of crime). This includes the single account that stated 'crime is an anomaly'.
- that *structural factors* produce crime (which resonate with situational theories of crime);
- that it is the *interaction* of individual and structural factors that produces crime, which resonates with integrative theories of crime.
- that crime is a social construction (which resonates with social construction theory).

Participants mentioned individual and intra-personal factors that exemplify various psychological, developmental, rational choice, biological, substance abuse, spiritual and other factors. The social structural factors mentioned include relationship networks, economic, education, political, historical, social conflict, cultural and other social factors. A comment by a Norwegian restorative justice organisation leader sums up the underlying ambivalence portrayed in figure 7.3. She stated:

[T]he tendency is to say the individual has the responsibility and must make the choice to change... but on the other hand when you ask, everyone would say of course it is also the surroundings, the society.

Figure 7.3 displays extracts and words drawn from participants' responses. These extracts give insight into participants' constructions of crime and 'the criminal' which draw heavily on contextual factors.

Sub-units	Personal and Intra-personal factors	Social Structural factors
Victims	<ul style="list-style-type: none"> •stress •low self-esteem •hunger •alcohol abuse •drug abuse •'...anti-social factors definitely.' 	<ul style="list-style-type: none"> •economic factors •driven by poverty •<i>lack</i> of education •inter-generational negative <i>attitude</i> towards education •patriarchy/gender discrimination

		<ul style="list-style-type: none"> •bad parenting • vulnerable age when parents divorce •peer pressure •’... too many ‘taverns’
Offenders	<ul style="list-style-type: none"> • ‘...there are certain limits you can take inside...’ •’...as time goes on people change.’ •’...born angels...’ 	<ul style="list-style-type: none"> •economic (‘no food, no money, no job...’) •lack of education •drug abuse •friends
Prosecutors	<ul style="list-style-type: none"> •’...born innocent...’ •choice •moral values •’... people are hungry’. •‘committing an offence is a strange happening, an anomaly’ 	<ul style="list-style-type: none"> •admiration of criminals •media inspired consumerism •definition of ‘success’ is material •unemployment •inequality •breakdown in society •violent society •type of neighbourhood • abundance of negative role models/lack of positive role models •poor parenting •split families
Mediators	<ul style="list-style-type: none"> ••’... not from the beginning, All people have bad sides and some good sides but some people have more bad sides ’. ••’...bad feelings and anger.’ 	<ul style="list-style-type: none"> • consumerism •impressed by gangsters’ possessions •learnt behaviour •peer pressure <ul style="list-style-type: none"> ••family ••neighbourhood •• friends
restorative justice organisation/ programme leaders	<ul style="list-style-type: none"> •moral development not nurtured •choice •deficient needs satisfaction ••all born good. ••anger •• individual responsibility 	<ul style="list-style-type: none"> ••very aggressive market liberalism •poverty ••’Some are lucky to have good family networks and others did not win the lottery’. •domestic abuse ••’... the surroundings, the society.’
Key experts	<ul style="list-style-type: none"> •’psychological reasons’ •’...needs were not met’ •’... feel disempowered’ •• biological (eg. ADHD) 	<ul style="list-style-type: none"> •rabid capitalism ••’society is constructed to hypnotise/tempt people to buy and if they cannot buy, to steal.’ •conspicuous consumerism •socio-economic factors

		<ul style="list-style-type: none"> •lack of care as baby •lack of trust in adults •abuse •prior victimisation and lack of coping skills •• ‘criminality is something created by society, it is not a natural fact - only a social fact’
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Figure 7.3 Participants perspectives of the factors that contribute to crime

On the one hand, while participants in all sub-units mentioned individual *and* structural factors, in some instances the same participant would mention individual propensity and structural factors in the same sentence. However, the participant would not proceed to explicitly mention that there is, or could be an *interaction* between individual propensity and structural factors that produce crime.

On the other hand, several participants, despite their seeming ambivalence, implied that there is an interaction between individual and structural factors in the commission of crime, while others said so explicitly. The comment by an offender, who had experienced victim offender mediation twice for similar offences, and the insight of a key expert, exemplify the tacit and explicit knowledge about the interaction of individual and structural factors that participants hold:

Economic reasons, no job, no money, no food what can you do? Let me break the window of this car and take that thing and go and sell it.

I used to think it was all nurture, now I know, after some 26 years of professional work, that there is some influence on where we come from, what we experience in utero and what we receive genetically.

With regard to unequal societal contexts, Unvin (1998:136) who writes about the genocide in Rwanda, suggests that:

[F]or most of us, it is hard to imagine how tense and frustration-ridden a society must be when every day the large majority of the population is shown the lifestyle of the “developed” and exhorted to achieve it but is at the same time structurally excluded from this “good life,” with very little chance of achieving it. (Unvin, 1998:136)

These words were repeated, almost verbatim, in 1985 by South African lawyers and sociologists based at the University of Cape Town, in a collection of critical essays titled *Crime and Power in South Africa*. They argued in essence, that there is a need for a new paradigm within South African criminology as ‘social structures in South Africa create conditions that encourage criminality among those exposed to the demands of the capitalist economy but [are] simultaneously denied access to its benefits’ (Davis & Slabbert, 1985:9, 14). This resonates with the accounts of many participants in this study who made reference to inequality through economic exclusion, poverty, media driven conspicuous consumption and the messages it sends about what society regards as ‘success’ (amongst other reasons). Excerpts of the accounts of participants (that reflect tacit and explicit knowledge of individual and structural factors and the *interaction* of these factors in the commission of crime) are displayed in figures 7.3 and 7.4.

Prosecutors	Mediators	Restorative justice organisation & programme leaders	Key experts
<ul style="list-style-type: none"> •‘... inequalities, people go to bed without food, <i>it plays a role</i>... appear in court for shoplifting kimbies for a child... they don’t want to sell [it], but there is a need, people are hungry. •‘...there are no gangsters in Constantia but in Manenberg and Khayelitsha.’ •‘...some follow but you also find a child who says “I will never hit my wife”, <i>they copy what they see</i>. The environment and individual, there 	<ul style="list-style-type: none"> •‘... they see other people you know ‘successful’, being rich because of committing crime. <i>So they want to be like those people</i>. They are getting so impressed ...’ •‘Poverty for some people...’ •‘I personally believe that it is the situation that leads people to see themselves committing a crime...’ •‘They then <i>decide to copy</i> that way of living and now get involved with these criminal things... 	<ul style="list-style-type: none"> • ‘It is the perennial question of nature vs nurture. It is hard to say, I think many people would say it is an <i>interaction</i> ’ •‘... it could be the particular influences that they were exposed to growing up in terms of the role models that they had.’ 	<ul style="list-style-type: none"> • ‘Psychological factors are the point where biology might meet with external factors, because a person’s psychological makeup might make them more inclined to commit crimes but their <i>psychological make-up might be influenced by either biology or environment or both</i>.’ •‘... I think it falls somewhere in the middle ...’ •‘I used to think it was all nurture, now I know, after some 26 years of professional work, that there is

<p><i>is an interaction....'</i></p> <ul style="list-style-type: none"> • '<i>... goes back to being oppressed, [people] feel [they are] "not good enough"</i> • '<i>... domestic violence is seen as acceptable behaviour, it shapes how the child grows up, shapes choices.'</i> • '<i>... "moral values start in home and schools.'</i> • '<i>Yes, socio-economic whatever they may be.... determines who I am.'</i> • '<i>...environment can shape they say the individual, but not all are strong, certain people are strong and powerful, not everyone.'</i> • '<i>Under that system [apartheid], violence was the norm in society.'</i> 	<p>also the background from home.'</p> <ul style="list-style-type: none"> • '<i>...no explanation good healthy homes, stigma attached to...'</i> <i>I'm not the dude in this community' because I don't do what they do' ... so they just fall in line... peer pressure.'</i> 		<p>some influence on where we come from and what we experience in utero and what we receive genetically'.</p> <ul style="list-style-type: none"> •• '<i>e.g. debate in Norway that the school system is creating male losers because it is getting more and more theoretical. It suits girls but some boys it does not suit at all. ... There is an increasing dropout rate by young men. It's an example of exclusion processes that might "produce" criminality.'</i> •• '<i>... negative integration of foreigners ... many refugees integrate well also, but there is unfortunately a bit of overload of "foreigners" in Norwegian prisons, which I believe has to do with problematics concerning integration.</i>
<ul style="list-style-type: none"> • South African participants •• Norwegian participants 			

Figure 7.4 Excerpts that explicitly and implicitly suggest an interaction between individual propensity and structural factors in the commission of crime.

The excerpts and codes in figures 7.3 and 7.4, drawn from participants' accounts, establish that restorative justice stakeholders, in general, are at least tacitly aware that structural factors play a role in the commission of crime. Specifically, some of the key restorative justice stakeholders (prosecutors, mediators and restorative justice

organisation and programme leaders) have explicit knowledge of the *interaction* of individual and structural factors as exemplified by their statements in figure 7.4.

7.3.2 Knowledge and restorative justice practice

In the South African context, there is a gap between restorative justice processing and participants' tacit and explicit knowledge of the interaction between individual and structural factors that produce crime.

A further insight is that in South Africa, general patterns of experience of restorative justice processing vary from first contact with the criminal justice system - the referral phase - and are broadly similar during the pre-mediation and mediation phases.

Mediators, victims and offenders offer contradictory perspectives on the post mediation and follow-up phases as these phases are in many instances conflated and confused.

Findings from a keyhole comparison show that the South African victim offender mediation process is, with one key and two minor differences, almost identical to the process used in Norway.

From the accounts of all victims and offenders who participated in this study, they were generally impressed with the mediators and the restorative justice process. Based on their own experiences, most victims and offenders expressed the opinion that victim offender mediation processes will contribute to a more peaceful society and that they would recommend the process to others. In order to find out the 'what', 'why' and 'how' about the process that caused victims and offenders to report these positive feelings and opinions, the actual process is pieced together from different accounts, my own observation and accumulated knowledge as a practitioner.

7.4 Opening the 'black box' of the victim offender mediation process

Several restorative justice scholars have argued that there is a need to look into the black box of restorative justice processing (Messmer & Otto, 1992; Umbreit, Coates & Vos, 2002; Choi 2008). They suggest that '[i]f we lose the story of the program, of the victim and of the offender, then we have lost the heart of restorative justice (Umbreit, Coates & Vos, 2002:16). It has also been suggested that 'little systematic knowledge is available' on what happens within individual programmes (Messmer & Otto, 1992:8). For Choi (2008:58) 'the lack of participants' perspectives in empirical literature is particularly

pertinent'. The importance of this detailed investigation in answering the overall research question is that it opens the 'black box' (Umbreit, Coates and Vos, 2002:15; Messmer and Otto, 1992:8; and Choi 2008:170) of victim offender mediation. Choi (2008:170) states that 'what constitutes service delivery has been not been shown to outsiders'. It is an activity which is seldom undertaken by researchers according to Umbreit, Coates and Vos (2002:15). This observation is echoed and expanded by Messmer & Otto (1992:8) who state that findings of prior studies on procedural course are in the main simply descriptive and only a few deal with exchanges between restorative justice practitioners and parties or between parties. They argue further that inferences about the 'effectiveness' of restorative justice processing are derived from 'correlations between input and output variables and not what is inside the black box' (p.8).

Yet, an understanding of what happens inside the black box is pivotal to deepening understanding of the 'what', 'why', 'how' as well as the perceived separate and combined effects of the strategies, techniques, tactics, skills, values and philosophy that underpin and drive restorative justice processing. This is in line with specific aim 4.1.2 sub-sections i) - vi). In South Africa's unequal, transitional context, where mainly positive claims are made about restorative justice in general and mediation in particular, a close examination of what is inside the black box is essential. This will provide a more informed understanding of whether victim offender mediation, as a contemporary form of restorative justice, is compatible with, and contributes to peacebuilding in unequal, transitional contexts.

I begin with a keyhole comparison of victim offender mediation in Norway and South Africa based on participants' accounts of what restorative justice processing, specifically victim offender mediation entails. I then move to outline the phases and stages of this form of restorative justice processing from participants' combined accounts and observation of a victim offender mediation process.

7.5 Victim offender mediation in Norway as a 'keyhole' lens

The basic mediation model used in victim offender mediation as a restorative justice process is not responsive to the *interaction* between individual propensity and South Africa's unique blend of historic, political, economic, legal, social and cultural context(s)

that inform its unequal, transitional present. This insight came as a result of focusing on some key comparative elements of restorative justice processing in South Africa and Norway; I looked for ‘general patterns that transcend their specific instantiations’ (Zerubavel, 2007:133). I have found, from the accounts of participants, that the stakeholders, phases, stages and practice of victim offender mediation in both countries follow an almost identical basic pattern, with one key and two minor differences. Yet the contexts are vastly different, with South Africa being a grossly unequal society, and Norway one of the most equal societies in the world. The similarities and differences are displayed in figure 7.5 and are discussed hereunder –

<i>South Africa</i>				
Context	Referral from CJS to NGOs (partnership model)	Pre-mediation	Mediation	Post-mediation and follow up
<ul style="list-style-type: none"> •Unequal, divided, transitional, constitutional democracy •‘mixed economy’ •High ‘crime’ rates •HDI: 1992: 70 2011: 123 •Consistently ‘medium ranking’ •NGOs partner with the state who does the ‘rowing’, NGOs do the ‘steering’. •VOM is delegated 	<ul style="list-style-type: none"> •Interagency cooperation. •The data suggests that prosecutors or magistrates refer parties according to general criteria regarding first offence and seriousness of the offence. • (Offences regarded as ‘petty’ range from shoplifting to violence with intent to do grievous bodily harm). •There are attempts by the JCPS cluster /National Prosecuting Authority in partnership with NGOs to standardise criteria and procedures through 	<ul style="list-style-type: none"> •In some instances the mediators are present at court or at the offices of the restorative justice organisation and pre-mediation happens immediately, followed by mediation if parties agree. •From some accounts and my observation of a process, pre-mediation combines elements of informing parties of what the process entails, 	<ul style="list-style-type: none"> •In the case where parties are met at court or immediately arrive at the organisation after being sent by the prosecutor or magistrate, pre-mediation and mediation are rolled into one. •Mediation starts with the parties telling their stories in more detail. From my observation, the victim tells the story, the offender responds. •The mediator then directs 	<ul style="list-style-type: none"> •In this phase, the mediator monitors the agreement. •This period can take anything from a few weeks to a few months depending on the terms of the agreement. •Once the terms of the agreement are met, or violated, the mediator writes a report to court. •The final decision lies with the prosecutor. •As soon as

social control	national policy.	obtaining their consent to continue to the mediation phase, taking down administrative details, preliminary storytelling and analytical listening.	parties to talk to each other directly (dialogue). •The mediator intervenes when strong language and intimidatory gestures are made and keeps the parties on track with regard to a solution. •This culminates in a written agreement which is signed by both parties if they agree.	the matter is referred back to the CJS, the matter is ‘...out of my hands’, as stated by many mediators.
Norway				
Context	Referral from Police/Prosecutors (within State model)	Pre-mediation	Mediation	Post-mediation and follow-up conflated
<ul style="list-style-type: none"> •Social Democracy •Welfare state •Egalitarian society •Low ‘crime’ rates •HDI ranking: 1992: 3 2011: 1 	<ul style="list-style-type: none"> • According to the data police/prosecutors combined refer parties according to set guidelines. Interagency cooperation is built in. • The ‘barriers’ to these guidelines are sometimes crossed and more serious, violent cases are referred for victim offender mediation. 	<ul style="list-style-type: none"> •From the accounts of mediators (who are all part-time lay persons), the konfliktråd administration send documents to the mediator who makes direct contact with parties. •Parties are prepared and 	<ul style="list-style-type: none"> •From the accounts of participants, mediation is a separate phase with four discernible stages. These are: introductory; perspective; solution seeking and agreement stages. 	<ul style="list-style-type: none"> •From the accounts of Norwegian mediators, their role ends when they hand an agreement to the konfliktråd administration that does the follow-up work with the court.

<ul style="list-style-type: none"> •Consistently ‘very high ranking’. •Konfliktråd is part of the state system and social control. 		<p>informed about the mediation process either telephonically or via a separate meeting.</p> <ul style="list-style-type: none"> •Depending on distance, these pre-meetings are held at a mutually convenient location or at the offices of the konfliktråd. 		
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Figure 7.5 Keyhole comparison of victim offender mediation in South Africa and Norway

7.5.1 Country contexts

In column one I use, as a conceptual shortcut, information from the Human Development (HDI) indices of 1992 (the year in which restorative justice, in its contemporary form, was introduced in South Africa by NICRO) and 2011 (the time of writing this chapter). This information is used to illustrate the vast contextual differences in which victim offender mediation is applied in South Africa and Norway. While the conceptual shortcut is useful for the space provided, it is important to bear in mind that South Africa’s 1992 ranking obscures inequality along racial lines; and the 2011 ranking obscures the new and growing inequality along class *and* racial lines in South Africa. This aspect was explored in chapter four where the trans-historical nature of inequality was described. Despite the minor difference in position on the HDI (3 in 1992 and 1 in 2011), Norway remains in the realm of ‘very high ranking’ and South Africa remains in ‘medium ranking’ (70 in 1992 and 123 in 2011) despite the enormous change in position.

7.5.2 Criteria for referral to a restorative justice process

The importance of this part of the display in answering the overall research question is to open the ‘black box’ (Umbreit, Coates and Vos, 2002) of the victim offender mediation process. The data revealed the stakeholders involved, their roles and the actual strategies, techniques, tactics and skills applied during the victim offender mediation process. In South Africa and Norway the restorative justice process begins and ends with the Criminal justice system, despite the fact that the Norwegian model is part of the state structure and South Africa’s model is based on a ‘state/civil society partnership’. The notion of partnership obscures the real workings of restorative justice processing within the criminal justice system. In both countries a criminal justice official applies his/her discretion to decide which cases to send for restorative justice processing. From participants’ accounts, in Norway, the ‘barriers’ of written guidelines are crossed with criminal justice officials sending more violent cases for restorative justice processing. There does not appear to be succinct guidelines in South Africa, save for two broad criteria which, according to disconfirming evidence in the data, suggest that the ‘barriers’ are crossed, as in Norway. These criteria are, first offences, and minor offences. From the data it appears that individual prosecutors and/or magistrates use wide discretion to interpret these criteria. A restorative justice programme leader has this to say about criteria for referral to restorative justice processing:

Prosecutors have the belief that only minor cases should be referred. Minor offences are relative ... *crimen injuria*, theft, minor damage to property, assault with intent to do grievous bodily harm. In north America these crimes are serious, in South Africa they are regarded as minor with NPA [National Prosecuting Authority] criteria being (i) first time offences and (ii) minor offences. Practitioners’ criteria are different; we would not look at seriousness but at benefit for the offender.

This statement also gives a glimpse into the difference in emphasis on the part of criminal justice officials and NGO practitioners.

7.5.3 Victim offender mediation process – South Africa and Norway

In figure 7.5, columns two to five illustrate the similarity of the pattern of interaction in the phases and stages of the victim offender mediation model used in South Africa and Norway. The differences are negligible and do not detract from the finding that judging from the pattern, the same model is used in two very different contexts.

The following general patterns can be discerned from the data. The victim offender mediation process is divided into five phases (referral from court, pre-mediation, mediation, post-mediation and follow up phases). The actual mediation process consists of three, four or five stages depending on whether mediation happened on the same day as the pre-mediation or the practice of the organisation. The general pattern can be described as follows:

(a) Referral phase

There seems to be contradictory accounts by different victims and offenders as to whom they were referred by and at what stage of the criminal justice process. Victims and offenders generally say that they were referred ‘from court’, ‘by the magistrate’, and in one instance ‘by the judge’ (which was later clarified to mean the magistrate).

While mediators and restorative justice leaders were clear about the distinctions between the prosecutor and the magistrate, they did not seem familiar with the finer distinction made by the criminal justice system with regard to the conditions under which certain types of offences were referred for victim offender mediation. The Criminal justice system makes a distinction between pre-trial and pre-sentencing victim offender mediation which clarifies the more violent cases that are referred for victim offender mediation but which some participants appear unaware of. The Department of Justice and Constitutional Affairs booklet on restorative justice reads:

Petty offences may be diverted without a trial but offences which involve a level of violence may have to involve restorative justice process only before sentencing or after sentencing (2011:8)

This information is important as the Department of Justice makes a distinction between (i) ‘petty offences’ that provide the basis for victim offender mediation and (ii) ‘offences which involve a level of violence...’ that provide the basis for ‘pre-sentencing victim offender mediation’. Judging from the perspective of the restorative justice programme leader cited earlier, he appears unaware of the distinction. Part of his comment is repeated here to illustrate his view:

Minor offences are relative... *crimen injuria*, theft, minor damage to property, assault with intent to do grievous bodily harm. In North America these crimes are serious, in South Africa they are regarded as minor with

[National Prosecuting Authority] NPA criteria being (i) first time offences and (ii) minor offences.

This made it difficult to understand which cases were in fact ‘pre-trial’ and which cases ‘pre-sentencing’, but more importantly, what is regarded as ‘minor’ or ‘petty’ and why, in the context of South Africa which is labelled as a violent society. These confusions aside, from interview and documentary data there appear to be three broad criteria (i) first offence, (ii) petty offences, and (iii) offences which involve a level of violence.

In addition to the confusion generated by the uncertainty of some victims and offenders as to who exactly referred them from ‘court’, which led to the confusion about the severity of cases suitable for victim offender mediation, some parties gave different accounts of how and by whom they were referred for victim offender mediation.

In a case, that from the account of the victim could be described as attempted vehicular murder by an off-duty criminal justice official, she stated –

I opened a case at the [offenders’ name] police station. The case took so long, I even gave up... [T]hat’s when out of the blue [mediator’s name] called me and said ‘I am from [restorative justice organisation name] we have your case’.

The victim claimed that her case was not given any attention by the police for more than a year. This was a very serious offence and the offender was afraid of losing his job. She consented to mediation when she was called by the mediation organisation, because she did not believe that the criminal justice system would treat her fairly. It is not clear how and by whom this case was referred to the restorative justice organisation and my attempts at clarification, over a protracted period, were met with no response from the mediator.

- A married couple in a domestic violence case stated that they were referred for marriage counselling by a ‘judge’ when the wife stated that she would reconcile with her husband only if they could go for family counselling. On further inquiry it became clear that they were referred by a magistrate. The wife felt that her need for family counselling was not met and regarded the mediation process as a good start only. While her husband stated that he found it helpful to talk to others who have committed the same offence in a group workshop situation, the wife stated

that workshop situations are potentially embarrassing and that she did not attend the group workshop that her husband attended.

- A third victim stated that both he and the offender were subpoenaed to attend a victim offender mediation process. On further inquiry, I was advised by a programme leader that this is uncommon and that the victim probably misunderstood the nature of the correspondence.
- A fourth participant (secondary victim) stated that her daughter was detained for two weeks because she reported her for leaving her baby in the toilet. This parent was clearly a secondary victim in a mediation process with her daughter, but it is not clear how they arrived at the restorative justice organisation and all my subsequent enquiries for clarification were met with no response from the mediator.

Offenders generally stated that they were sent by the magistrate or ‘we went to court and from court we were sent here to [restorative justice organisation name]’. Neither victims nor offenders in this study mention the word ‘prosecutor’ and I understood reference to ‘sent from court’ to mean that they were sent by the prosecutor or magistrate and were unfamiliar with role players within the criminal justice system.

(b) Pre-mediation phase

All victims and offenders stated that it was the first time that they heard about restorative justice and the process of victim offender mediation and that the restorative justice process was explained to them by the mediators who first sought their consent, after which the mediation process started. This implies constructive coercion as restorative justice processing and what it entailed was not *explained* to victims or offenders ‘at court’ by the magistrate or the prosecutor but they were sent to the restorative justice venue. It is double coercion for the offender, as failure to consent to a restorative justice process would mean that the matter would go to trial or sentencing. A Norwegian restorative justice organisation leader referred to this as a ‘carrot and stick’ approach. Despite this finding of constructive coercion, victims and offenders who participated in this study were generally happy with the mediation process. Of concern here is the fact that victims and offenders appear unfamiliar with criminal justice processes and might not always

understand exactly what they are consenting to, as for many it is their first encounter with the criminal justice system.

From my observation of a victim offender mediation process in South Africa, the mediator addressed the parties together to explain what restorative justice processing is about. In Norway, because of the part-time lay person system, mediators receive their instructions telephonically or via post and make telephonic contact with parties and/or arrange separate meetings to explain the process. One mediator stated:

I receive a phone call from the administration or in the mailbox, the police papers and konfliktråd admin papers. Then I contact parties for individual pre-meetings and start to map the conflict of course something as happened before, a pre structuring. I talk to them on the phone meet them individually, inform them about what the process is about, what we can offer. I try to understand as much about the conflict as possible in order to facilitate the mediation for instance with what kind of support persons should be there, what kind of needs are there related to language. Normally it's in Norwegian so there's no problem, but often we need interpreters and so on. If they agree to meet, well in principle they have already agreed to meet when I get the mail in the box, but I'm checking of course the motivation and then we have the meeting.

(c) Mediation phase

- ***Introductory stage***

During the introductory stage, after the meeting, greeting and seating of parties, the actual mediation commences with the mediator suggesting ground rules for engagement and an explanation of what each party is required and/or entitled to do during the mediation event. From my observation, parties are encouraged to ask questions of clarification. In one South African organisation mediation follows immediately after pre-mediation while in Norway pre-mediation happens telephonically or in separate meetings with parties.

- ***Narrative stage/Opportunity to dialogue***

From the accounts of mediators, victims and offenders are afforded an equal opportunity to relate the incident in their own words, thereafter they are encouraged to address each other and work on an agreement. From the accounts of some victims and offenders, their experiences during this phase varied. Victim A stated:

I met with him for the first time since he hit me with the car. I would say he was remorseful because he was even crying he said 'no, if this thing goes to court I might lose my job'. I said, 'why did you do it because we left you in the street'. If you could just have gone to your place then none of this would have happened. He said 'no I'm prepared to pay for your medical fees please, please, please, please'. And then from there here at restorative justice gave us the court date. That's when we went there [to court]. I said no I forgive him, provided he pays for my medical expenses.

From this reconstruction, the mediation process provided a space for the offender (a criminal justice official), to influence the victim who offered conditional forgiveness provided her medical expenses were paid.

Victim B stated that both he and the offender were given an opportunity to give their version of events. This victim experienced the mediation process as an 'interview'. He observed:

In my particular case, I don't know, because it was just an interview. The other person had to talk, I had to talk. I know I spoke honestly for myself but I gathered in the other person he did not speak all the truth.

Victim C's account indicates that both victim and offender had an opportunity to talk:

[T]he judge gave us somebody we don't know where we can just tell what we feel like. Like, what I feel and what he feels and I can understand what his point of view is and he can understand what my point of view is.

One participant, (an offender) went beyond a description of what happened, to provide an analytical aspect of the process by stating:

We tried to find the root of the problem - why were we at the court in the first place and why we were at the restorative justice system.

From this excerpt it is evident that the offender felt that he and his wife (the victim) had agency and were involved in 'trying to find the root of the problem'. This participant admitted that he attended a second victim offender mediation process as he was arrested for 'fighting with his son'. He stated that he and his wife, who according to him 'drinks a lot' (the 'root problem' according to his analysis) were 'fighting', which caused him to become a 'victim of the law' and thus the offender in this case. He stated that they were referred to the Family and Marriage Association of South Africa (FAMSA) for

counselling, but that his wife walked out of the session with the counsellor. (The wife was not a participant in this study and we do not have her perspective).

One offender stated that ‘the first time we came here [mediator’s name] and then he sent the case to FAMSA’. The account of this participant suggests that he and his wife were ‘fighting’ physically for the first time in their long marriage. The fact that the mediator referred them to FAMSA for counselling seems to suggest that the problem went deeper than the version given by this participant. (The wife in this case was working and could not participate in the study).

Despite the differences in experience, it is evident that both parties have an opportunity to ‘talk’. In some instances it appears that there is an opportunity for dialogue, in others, it appears that the offender took the lead and the victim responded.

- ***Problem solving/Solution seeking stage***

During this phase the mediator facilitates a discussion that moves the parties towards a settlement. In some instances the settlement includes an apology, some form of reparation and/or an agreement with regard to referral to an expert agency. The criteria for referral and the frequency of referral to expert agencies are unclear. However, all mediators, organisational and programme leaders indicated that referrals, particularly for drug abuse, domestic and other violence are standard practice. Many could not immediately recall other agencies or the reasons why victims and offenders were referred to these agencies.

- ***Agreement stage***

Two participants (mediators) indicated that they take a non-directive stance with regard to the agreement. One participant stated:

but the crux, the ideas come from them. We read it [agreement] back to them and basically we just assist in putting into words what they say.

This statement was amplified by the other participant who said:

[there is]... no influence in agreement, no influence in any way. It is up to the parties.

One participant, (a victim) stated that the agreement did not contain any clauses pertaining to follow-up which seems to suggest that he required the mediator to be more directive during this stage. He observed:

There should be an extension of this programme first of all so that it becomes easily accessible to people in different areas and there should be a follow up as well.

At this point I asked a few probe questions triggered by the participant's statement 'there should be follow up', to which he responded as follows:

Probe : Was there follow up in your case?

Participant: No.

Probe : What was written in your agreement? Was there anything in the agreement that said for example, within two months we will monitor this, or ...

Participant: No, nothing, it just said you must avoid doing this, he must not intimidate me. Unfortunately I did not bring it [agreement] here. There was no, you know 'failing this it will be reinstated' and also, I mentioned this to [mediator's name] and the panel the other day but I can mention it to you... should people not adhere to the agreement that was made, I think the law should take that into account as well, that punishment should be more severe than the normal case, rather than starting off step one because all this effort has gone into it the person is given a free chance, but now he is still violating, it's like a second offence.

Other victims and offenders implied that they came to some sort of agreement, the terms of which were honoured in the post mediation phase:

- (a) One participant (a victim) received her payment of medical expenses in two parts as agreed. In response to the question if there was any follow up, she stated 'Yes, yes, yes, yes from [mediator's name]. I even know his voice. Whenever I pick up the phone I know his voice'.
- (b) Another participant (an offender) attended a workshop on violence which his wife did not attend. These workshops are facilitated by the mediators and qualify as follow-up in the post mediation phase. However, in this instance the follow-up was centred on the offender as the victim's need for couple and family counselling was not met.

- (c) On his way out of the office, after the interview, a participant (offender) expressed the expectation that someone from the restorative justice organisation should visit them unannounced to see if they are fulfilling the terms of the agreement, but they were left to their own devices.
- (d) One participant's (victim) daughter (offender) stopped going to taverns and improved her behaviour. Her expectation was that 'restorative justice must give people jobs'. She stated 'I live in a tin house in [name of informal community]. I only work on Tuesdays. I have HIV AIDS'.
- (e) Another participant's (offender) version goes beyond mention of an agreement to the lived reality after restorative justice processing which included counselling by an expert organisation he was referred to by the mediator. He explained:

I think it was 100% better for me that is why even today I am living allright with my wife. Ja, there's no problem, there's no fight. If she's got a problem then we sit down and talk. I think that counselling of there [FAMSA] that was the best one. Ja, because if you don't have counselling you will always fight and then you don't understand each other. At the end of the time it's whereby comes divorce. Divorce is not nice.

(d) Post-Mediation Phase/ Follow-up Phase

From the accounts of South African mediators, the post-mediation phase is the time between the agreement stage, during which the terms of the agreement have been met or have commenced, and when they send a report to court. Norwegian participants' accounts suggest that konfliktråd administration, monitor that the terms of the agreement are met and they liaise with the court. One Norwegian mediator was not sure what happens in the post-mediator phase as they are not involved in it. He stated:

Well, mediators they don't do anything but the administration they, I think in criminal cases the parties have to send in a form stating that the agreement has been fulfilled so that the konfliktråd can report to the police that the case is solved and can be closed as a criminal case. So in a few cases the konfliktråd administration calls the parties and checks but I'm not 100% sure there ... The main thing is that they check if the agreement is fulfilled or not...

In South Africa, many participants observed that follow up should be improved while mediators generally believed that follow up was excellent. In South Africa there is a mismatch in the understandings of what constitutes follow-up between parties and mediators. From the data, South African mediators generally see their role as bounded by referral of a matter from court at the front end, to a 'report back' to court to make recommendations after the restorative justice process and monitoring of the terms of the agreement. The matter is then regarded, in the words of one mediator, as being 'out of our hands'. On closer examination, this means that the court will take the mediator's recommendations into account, but the final decision ultimately rests with the prosecutor or magistrate. The following excerpts by mediators illustrate the boundaries within which restorative justice processing functions, which differ from the continuity that some victims and offenders expect, and sets limits on its peacebuilding potential. A participant (mediator) observed:

When we do our follow up the day before the adjournment date if there are no changes, the letter goes to court as successful. If there are, we change it.

And

Because of the workshops, we have to see that they attend. If the workshop was not attended, we include it there. So the court decides now ...

One mediator's account contradicts the accounts of some victims and offenders (quoted under 'agreement stage' above). She states:

[I]n two months time we do a follow up with both... see how relationship is between the two, because most of the time the offenders just say what they want to, to get out.

And she makes a statement that suggests agency on the part of parties:

There were some people who did not come to just one [workshop], they felt they learnt so much they came for four five months. They learnt and they changed and say yes, this is what anger does to us.

From the account of one mediator, it is clear that the follow up he refers to relates to an evaluation of the counselling victims and offenders received from the organisation they were referred to. He explains:

I have to call them again for a session or two to check if the program that side [referral agency] was relevant to them, was helpful to them, did it help them to grow, did they enjoy it, what things that they did not like about it. It's a process. There are still some tasks to give to them. Remember we

can't do everything for them. So we just acquire (sic) them with the skills to do some things. Then we keep on monitoring, checking all those things.

Another mediator's account reveals that monitoring at times goes beyond the court adjournment date:

Drug rehab etc. takes long. In long term matters like that where its long term rehabilitation, we monitor for three months. If they comply we send a letter [to court]. If for some reason they default, the organisation sends a letter [to the restorative justice organisation]. We then send a letter to court to say 'not complied'.

From this excerpt it is clear that the length of time mediators are involved post mediation, is case specific and monitoring in this instance is for a limited time. Whether the case is dealt with immediately or monitored for a few months, the mediator is still obliged to report back to court and it appears that the mediator's responsibility ends once the matter is referred back to court.

Community involvement was mentioned often by restorative justice stakeholders, but not one of the victims and offenders in this study were part of an extended process where community members were involved. Before the observation of the victim offender mediation process, I sat in the waiting room and was therefore aware that the offender was accompanied by a friend/family member, but he did not join the process, nor was he invited to. He waited in the waiting room until the process was completed. It could be argued that the victim offender model used in South Africa is flexible enough to include the community of family, friends, neighbours and other interested and affected parties in a process. However, as found in this study, the emphasis remains at the individual and relationship level as the intention of the expanded process, according to participants' accounts, is to effect healing of the harm done to parties and the community. Contrary to the belief by various restorative justice scholars that there is a significant difference in restorative justice processes such as victim offender mediation, circles and conferences, the patterns of interaction and experience within these processes are the same. The only difference is that more people (family, friends and neighbours) are included in the circles and conferences. It does not include the community as social actors who can effect social change through collective action post mediation. In any event, the notion of 'community' in South Africa is riven by historic, social, economic and political inclusions and exclusions within and between groups.

7.6 Conclusion

In conclusion, I take account of the fact that data and the conclusions we draw from them are based on participants personal perceptions and do not ‘... constitute universal and unchallenged truths’ as cautioned by Gavrielides (2007:147). However, by constructing a comprehensive model of findings which resonates with established academic methods like bricolage (which accommodated the use of *counterpoint* and *intersectionality*); and that is based on triangulated (i) theory; (ii) data sources; (iii) data collection; (iv) data analysis; and juxtaposition of the main findings, this study has gone beyond the data and individual perspectives to surface the findings.

In this chapter, the first sub-theme of the comprehensive model of findings - ‘knowledge about crime in context’ - revealed that, due to the fact that they are embedded in the society, participants have strong tacit and explicit knowledge of the interaction of individual and structural factors that produce crime. The second sub-theme ‘knowledge and restorative justice practice’ opened the ‘black box’ of victim offender mediation. The combined and blended data from all participants in the six sub-units of the study provided a ‘rich qualitative description of what is actually happening’ (Umbreit, Coates & Vos, 2002:16) in ‘actual mediation activities in individual programmes’ (Messmer & Otto, 1992:8); and laid bare ‘insiders’ perspectives on restorative justice (Choi, 2008:56). This revealed that the tacit and explicit knowledge restorative justice stakeholders have about the role of structural factors in the production of crime, is not deployed during the victim offender mediation process. restorative justice stakeholders focus exclusively at the intra-personal (individual) and interpersonal (relationship) levels and inclusion of ‘the community’ is the exception rather than the rule. There is thus a gap between practitioners’ knowledge and their practice. This is discussed in chapter nine. In chapter eight I juxtaposed the two sub-themes to understand the interplay between knowledge about crime in context and victim offender mediation practice.

CHAPTER EIGHT: 'SUPPRESSED VOICES, INVISIBLE FACTS'

8. Introduction: Diagnosing the problem

You are bothered, disturbed, even outraged, about what is happening, but for many reasons (fear of standing out, powerlessness, self-protection, the absence of a visible solution) you remain silent (Cohen, 2001:24).

To illustrate how the findings of this research relate to the broader theme of peacebuilding in unequal, transitional contexts, (a) *knowledge about crime in context* based on participants' tacit and explicit knowledge of how crime and the context in which it is produced, are juxtaposed with (b) *knowledge and restorative justice practice* which is informed by the strategies, techniques, tactics, skills and knowledge that mediators apply during the victim offender mediation process. The patterns of behaviour made visible through these accounts bring into focus the tacit and explicit knowledge mediators deploy on the one hand and filter out, on the other hand, during the victim offender mediation process. As Cohen (2001:44) suggests, '[w]ithout you knowing, the mind 'activates' your internal filter or censor. He states that '[o]ur 'smart filter' automatically scans our internal and external messages, letting through only the 'pertinent' stuff (p.45). This deepens understanding about the detail of how mediators remain 'structurally' unaware and is discussed further in chapter nine.

In this chapter I juxtapose the two sub-themes of this study to reveal the blind spots and silences of restorative justice processing in South Africa's unequal, transitional context. These findings form part of the comprehensive model of findings illustrated in figure 7.1. To guide every aspect of this research, I used the bricoleur approach to understanding situations in general, which resonates with the 360° evaluation (Lanza, Zeiss & Rierdon, 2009:413). This I discovered, in the course of the research, is similar to the intersectional approach used mainly by feminists but that is becoming more mainstream; and Edward Said's use of 'counterpoint' (Magome, 2006:73), which in turn is derived from music. Intersectional analysts and Said, however, go a step further - not only do they take a multiplicity of perspectives into account, but they also look directly at the interaction of various elements. According to Magome (2006:73) Said practised 'contrapuntal reading, thinking and writing' in order to 'realise suppressed voices, invisible facts and other hidden elements'. I appropriated these aspects of contrapuntal analysis 'without its

musical and historical specificity’ as applied by Said (Lachman, 2010:3). Instead of a ‘partial analysis’ which focuses only on the findings foregrounded by the two sub-themes, it is precisely the often neglected and largely elusive ‘interplay of diverse ideas and discrepant experiences’²⁴ that come under scrutiny in this chapter. As Baxter (2011:152) suggests, a ‘contrapuntal analysis focuses on the interplay of contrasting discourses ... in spoken or written texts.’ She suggests a general analytic question for contrapuntal analysis, which is “[w]hat are the competing discourses in the text and how is meaning constructed through their interplay?” To the analysis of competing discourses in spoken and written texts, I added an analysis of restorative justice *practice, training* and *the context* in which it is conceived and practiced. I used a combination of Cohen’s theory of denial (2001:25), Zerubavel’s sociology of denial (2010:32) and Liem’s ‘multi-layered model of the silencing of historical memories’ (2007:153) to understand and explain the ‘interplay’ findings that arose out of this juxtaposition of discourses, practice, training and the context in which it occurs.

8.1 Micro-level ‘interplay’ findings

Denial is ‘the perplexing state of knowing and not knowing at the same time (Cohen, 2001:25)

[M]ost practitioners of restorative justice have not been trained to think of their work within a systemic, structural frame of reference, by default, they tend to carry out their role as if “peace and conflict in one’s life (were purely) personal responsibility and prerogative“ and not a function of contextual forces (Mika, 1989, p.4)’ cited in Dyck (2006:240).²⁵

Participants’ accounts reveal explicit and tacit knowledge of the interaction of individual and structural factors in the commission of crime (sub-theme 1). However, there is a lack of fit between the appropriate action required to bring structural factors into the frame of

²⁴ This description of what Said meant by contrapuntal thinking was used as part of an advertisement for a three day colloquium in November 2008 called ‘Counterpoints: Edward Said’s legacy’ held by the University of Ottawa and Carleton University.

²⁵ Dyck quoted the ‘unpublished text of a presentation by Dr. Mika in session K12. Theoretical and Comparative Issues in the Analysis of Conflict Resolution Practices at the North American Conference on Peacemaking and Conflict Resolution. Montreal, Quebec by H. Mika 1989 titled *Cooling the mark out? Mediating disputes in a structural context*’

analysis and action, as alluded to by Dyck (2006:240) on the one hand; and the policies and practices of the criminal justice system and restorative justice organisations, on the other hand. These policies and practices and the mediation model (sub-theme 2) result in mediators focusing exclusively on intra-personal (individual) and interpersonal (relationship) levels of analysis and action, to the exclusion of structural factors and how these interact with individual propensity to produce crime. This resonates with Mika's (1989) contention that 'most practitioners of restorative justice have not been trained to think of their work within a systemic, structural frame of reference'.

Baxter's (2011:153) primer on contrapuntal analysis refers to 'dialogically' expansive and 'dialogically contractive' discourses. From the evidence of the four identified notions of crime in the empirical data (as shown in chapter seven section 7.3.2 and supported by excerpts in figures 7.3 and 7.4), it can be argued that, 'multiple competing discourses [about crime are] at play' in the data. This suggests that the discourse is 'dialogically expansive'. However in practice, on the evidence provided in chapter seven on the 'black box' of victim offender mediation, the discourse and practice are 'dialogically contractive', which suggests a 'single monologic perspective' that holds individuals to be solely responsible for crime (2011:153). On the one hand, Baxter suggests that '[d]ialogically contractive texts are worthy of attention from a critical lens, focusing ... energies around identifying the discursive practices by which some discourses are marginalized and dismissed' (2011:153). On the other hand, she states that 'dialogically expansive texts, in which multiple voices are at play ... are fruitfully analyzed in order to examine how meaning emerges from the interpenetration of various discourses' (2011:153). The initial suggestions of denial in the data justified a combination of both ways of analysing these discourses as they fall between dialogically contractive and expansive on the continuum from monologic to fully dialogic discourses proposed by Baxter (2011:153). Therefore, when participants' knowledge about crime and context was compared to victim offender mediation practice, that is, the strategies, techniques, tactics, skills and restorative justice theory applied by mediators; and when this practice was examined in terms of training of mediators, further findings emerged that correspond with notions of denial as argued by Cohen, (2001:25), Zerubavel, (2010:32) and Liem (2007:153). These are:

8.1.1 *We know, but ...*

An indication that participants' tacit and explicit knowledge (about micro and macro factors that produce crime) are not translated into practice (that deals with the interaction of individual and structural factors in South Africa), was discerned from the accounts of several participants. Following Cohen (2001:33), this kind of denial – 'knowing-and-not-knowing – is '[d]enial as "the need to be innocent of a troubling recognition" [where] we seem to have access to reality, but choose to ignore it because it proves convenient to do so.' As Zerubavel (2010:33) has stated '[r]ather than simply failing to notice something, denial too involves an effort to actively avoid noticing it.' This suggests that it could be a trained blindness in some instances, where professional training can lead to filtering out of some information and including those that are consistent with a particular discourse. This is illustrated in the account of one South African restorative justice organisation leader who stated that the transformation conception of restorative justice touches on 'the issue of the inter-relation between micro and macro' and that:

'Most practitioners and maybe especially most social workers tend to have a micro focus... I think that is a real challenge. How do you translate that into broader issues?'

From his question, it is evident that this participant is at least cognitively engaging with the idea of influencing change at a broader level. He stated further:

'When you are looking at the transformative [conception] then you are looking at structures in society and you are trying to be aware of their impact on the micro level and how can you feed back so you can influence change at a broader level?'

While this participant is aware of the interaction of individual and structural factors in the production of crime, and appears to be willing to do something about it, he stated that their organisation is 'in survival mode', which limits what they are able to do, thereby marginalizing a more expansive discourse.

Lack of resources was amplified by another participant. A restorative justice programme leader from another organisation in South Africa stated that their organisation has funding constraints. He was one of the few participants who referred explicitly to the underlying 'nature/nurture' debate and that there is an *interaction* between intra-personal

and structural factors. After a follow up email exchange I asked a probe question in which I juxtaposed his insight about interaction and the actual practice of restorative justice practitioners which is focused at individual and relationship levels, he conceded -

I think you hit the nail on the head - dealing with the structural aspects of violence, conflict, dispute is just too difficult, so we deal with the individual interpersonal matters!

This suggests awareness, and a confession of how leaders avert their gaze and marginalise a more expansive discourse. He continued:

I would like to engage you in this dialogue more. However, the topic is just too big and too important to do it justice at this moment. So, can we park this for now, and get back to it at a later time?

This excerpt shows avoidance and deferring of the subject to an unspecified time which again marginalizes the more expansive discourse and falls short of dismissing it. These excerpts exemplify the interplay of conceptual and financial constraints coupled with work pressure and constant adherence to funder conditionalities which result in organisations limiting what *needs* to be done, and focusing at the intra- and interpersonal levels which suggest a ‘contractive discourse’ as suggested by Baxter. Applying Baxter’s (2011:153) primer on contrapuntal analysis to the evidence of the four identified notions of crime in the empirical data, it can be argued that analytically, ‘multiple competing discourses [about crime are] at play’ in the data which suggests that the discourse is ‘dialogically expansive’. However in practice, on the evidence provided in chapter seven, the discourse is ‘dialogically contractive’, which suggests a ‘single monologic perspective’ that holds individuals to be solely responsible for crime (2011:153). The suggestion of denial in the data justified a combination of both ways of analysing these discourses as they fall between dialogically contractive and expansive on the continuum from monologic to fully dialogic discourses proposed by Baxter (2011:153). These excerpts offer the first glimpse into what model of mediation mediators are trained to apply in practice. It also provides insight into the commitment of participating organisations on the one hand and their trained blindness, deafness and silence in the way they talk about and practice their craft and marginalize a more expansive discourse and practice, on the other hand.

8.1.2 *'Knowing and not-knowing'*

From the excerpts in figures 7.3 and 7.4, participants have shown that they have tacit and explicit knowledge of individual and structural factors and/or the interaction of these factors in the commission of crime. This study thus found that mediators 'know' (expansive discourse). This form of denial is described by Cohen (200:251) as the 'need to be innocent of a troubling recognition' which serves as the guiding definition of this form of denial in his book *States of Denial: knowing about atrocities and suffering*. The strategies, techniques and tactics that mediators apply during the victim offender mediation process, which keep them focused exclusively on intra- and interpersonal factors, suggest that mediators 'do not-know' (contractive discourse).

This finding leads to another finding further up the chain – that mediators are not trained, analytically or practically, to include structural factors and/or the interaction of dispositional and situational factors into their frame of analysis and action. This finding links to a further finding that due to the contractive discourse, mediator training in South Africa is not context specific and that a similar model of mediation is used in both South Africa and Norway, two vastly different contexts. Muncie's (2001:27) warning with regard to policy transfer and partial implementation in diverse contexts, referred to in chapter three section 3.4, becomes salient.

Further links were found that led to a chain of findings which indicate that there are interlinked contextual, conceptual, training and practical gaps:

- between South Africa's contemporary peacebuilding requirements and the model of mediation used in victim offender mediation;
- between the insights of restorative justice organisational and programme leaders, the training they offer mediators, and the levels at which their victim offender mediation projects focus;
- between restorative justice theories and victim offender mediation practice; and
- between the tacit and explicit knowledge of mediators and the strategies, techniques and tactics they use to focus exclusively at the individual and relationship levels during victim offender mediation processes.

Given that skills, strategies, techniques and tactics on how to deal with structural factors and/or the interaction of structural and individual factors (expansive discourse and practice) are not part of their training; and given that mediators have at least tacit knowledge of the role that structural factors play in the commission of crime, the following findings show the mechanisms of denial that mediators apply throughout the mediation process.

8.1.3 Knowing and not-seeing

Based on their accounts South African mediators and their organisations are found to turn a blind eye to constructive coercion inherent in restorative justice processing as part of criminal justice processing. They do not object to the carrot (no criminal record) and stick (the case will be returned to court) approach implied in pre-trial and pre-sentencing referrals for victim offender mediation and actively co-operate with it. As Cohen (2001:294) argues, “[t]urning a blind eye” does not ‘literally mean not looking – it means condoning, not caring, being indifferent’. Physical vision, according to Cohen, ‘is a metaphor for moral vision’ and, he argues, some people only ‘take in’ the anguish and suffering of restricted and selective groups of people’, which suggests that ‘some moral fields resemble physical vision’ (p.294). Cohen argues elsewhere that ‘[t]he *objective threshold* of perception (where the mind detects and registers a stimulus) is lower than the *subjective threshold* (conscious awareness of this)’. He suggests that ‘this is, perhaps the nearest ‘scientific’ evidence for denial as seeing, yet not knowing *what* and even *that* you have seen’ (2001:43). This finding, ‘knowing, but not-seeing’ on the part of mediators, is confirmed by the accounts of victims and offenders about their passage from the criminal justice system to the restorative justice office. It is also exemplified by the accounts of mediators themselves, which reveal that victim offender mediation as a restorative justice process is not an *alternative to* the criminal justice process, but an *alternative within* the process. As one mediator stated:

We have a specific date with regard to the court case; we do it one day before the remand date. If we find that the agreement was not kept, we have the one day before to send a letter to court the next day to inform them what happened. [...] if there is an agreement reached, we put a letter in our box. The day of the trial the letter from our office goes to court. So we have from the day we do the mediation to the day of the trial to change that. So when we do our follow up the day before the adjournment date, if there are

no changes, the letter goes to court as successful. If there is, we change it. Because of the workshops, we have to see that they attend. If the workshop was not attended, we include it there, so the court decides now ...

From this account it is clear that whether mediation is successful or not, the mediator must report back to court which suggests that victim offender mediation is delegated social control, with the mediator and the organisations they are a part of, acting as an extension of the state. According to Quinney (1964:19), '[a]ny interest group with the ability to get in a strategic position can determine the content of the criminal law'. He argues that criminal law, as an instrument of social control, is characterised by its "politicality" which is one of the consequences of the process of public policy formulation and administration. It appears that restorative justice practitioner's do not maximise their strategic position to help formulate policy that would take account of the South African context and its interaction with individual propensity to produce crime. Another mediator explained:

[W]e find agreement [time] goes longer, say there's monies to be paid, we can ask the court for an extension until it's complied with. You give them a chance ... if the agreement is complied with, then we send a letter [to court]. The offender does not get away easily... [the case] can be put back on the roll. We are really fair to the offender and the victim. It is restorative in which way we are also compliant, that is important.

And

We are the first line of defence; they will go to the next step, prosecute or send to higher authorities, that is, Social Development. We reinforce this, we tell them and now they are aware of it... the matter goes back onto the court roll, they lead evidence alone, we do not appear in court because of confidentiality ... it goes to trial... courts will decide what to do.

The reference to 'higher authorities – Social Development' reveals that there is a hierarchy of processes with mediation serving as the 'first line of defence' as stated by the mediator above. Mediators thus consciously or unconsciously align their activities to fit within the criminal justice paradigm and do not 'see' beyond the limitations of criminal law that focuses on the individual as sole producer of crime. Even while restorative justice practitioners position themselves as the 'discursive counterpoint' to criminal justice discourse, the dominance of the criminal justice system positions them as an *alternative within* rather than an *alternative to* the system.

The account of a mediator from an organisation in a different province illustrates that the procedures in different provinces are similar, despite the fact that no national policy framework was in place in South Africa at the time²⁶. The mediator explained:

Then after that [the restorative justice process] we have to report back to court, because it was referred by court. Now we do our part as professionals on our own and then we write a report. The report can have two recommendations, whether we can recommend withdrawing the case based on the outcome of the process from the beginning until the end. We are looking at whether the outcomes are positive, are these people co-operative more especially the side of the one with the problem... [T]hen at the end of the report we just make a recommendation that the court may withdraw the case against Mr. x. [T]hen if it is a case of not withdrawing and to proceed with the case, that is something else now, out of my hands ... you can take a horse to water but you cannot force the horse to drink.

On the other hand, despite the hierarchical relationship between criminal justice officials and mediators exemplified in this account, this participant also revealed that mediators could exercise some agency in the relationship:

We try not to be put under pressure by the Court. What is important here is not the court case; it's the people that can be helped. We give them a return time of six weeks. Within those six weeks if you feel that you are still busy with the program, you can indicate to the court that you request an extension. The court understands.

And

[U]ntil one of them decides 'no this thing is not working for me' and withdraws from all these things. So the person from FAMSA will communicate with me and ... and refer the matter back to me. So I have to call them again and to see what else we can try after this. So in the midst of that the court case is next week and I have not addressed everything that I wanted to. So then I have to communicate with the court that we are still experiencing some little bit of problems here but I'm still working on the case. Then now we give it another postponement until then things have been attended to properly.

These accounts suggest that victim offender mediation is an *alternative within* the criminal justice process and an integral part of the criminal justice process. In addition, it

²⁶ According to a restorative justice organisation leader, the National Policy Framework for restorative justice was finalised by the JCPS cluster in February 2011, and he was a member of the working group.

was found that mediators also play a co-ordinating role in a network between the criminal justice system, the restorative justice organisation and organisations to which they in turn refer certain parties.

Having established that mediators and their organisations have a degree of agency in their relationship with the state, it is not clear *why*, other than the funding constraints quoted, they limit their gaze to intra- and interpersonal factors and filter out structural factors.

8.1.4 Knowing and not-hearing

A standard component of mediator training is devoted to communication skills, of which listening skills form a pivotal part. The training outline for mediators in organisation A indicates that practitioners are trained in emphatic listening. The Norwegian organisation's documentation on mediator training includes 'communication and communication skills' but does not specify the type of listening skills. A reference to listening in their recruitment requirements states amongst others that applicants should have a 'calm and confident manner and ability to listen, so that the parties can speak openly'. While one South African organisation did not submit written information with regard to their training after several requests (although their director gave permission), participant accounts provided sufficient information to thicken the data from other sources that this finding is based on. These data sources are mediators', victims' and offenders' accounts and my observation of victim offender mediation processing. From mediators' accounts it is evident that they apply empathic listening skills and that they devote a lot of time to allow parties to tell their stories and work through their emotions. Mediators do not appear to apply active listening which results in them filtering out references to structural factors. Empathic listening is attuned to the intra-personal and interpersonal levels (as used mainly by psychologists and social workers) and active listening includes empathic listening as well as analytical listening which results in 'listening for context' (as used in peacemaking). As one mediator stated:

You must be someone to listen to people, you must listen to everything,
because even a little thing is very much important to the process.

While listening *to* 'everything' and 'even a little thing' appears to be inclusive of context, the use of modest versions of restorative justice processing, and mediation outcomes which do not include structural remedies (judged from the accounts of participants)

seems to suggest that mediators do not in fact listen *for* everything, thereby marginalising a more expansive discourse and practice.

This mediator also stated:

We normally sit here, when I have a very serious conference, we sit here till late, seven, eight o'clock but now I don't feel like no this is not my problem I mean half past four I should knock off ...the more it gets in deeper that is the more the emotions get in there, so we must be patient enough, you know, have the heart to deal, accommodate all sorts of emotions because that process is quite an emotional process. For me I believe I've got that heart for it.

The focus here is on talk therapy and emotion work to attain catharsis (a process of releasing deep emotions) with regard to listening and does not indicate an analysis that would fit the story with patterns that emerge in the stories of other victims and offenders.

One mediator explained some of the techniques they use to get parties to 'pour everything out' (emotion work). She also makes reference to time which suggests that mediators are deeply attuned to the emotional pain of the parties:

We give them time, we give them time to unload whatever. It is not a quick fix to say we just want to listen to what happened here and just get into an agreement. No, we give them quality time. Also [when] we find it becomes a little bit tense, we separate the participants. We start off together with them and we separate especially in domestic violence cases where one party is not able to say ...in fact, the husband may be the offender in this case but he's been beaten up and he's also going through a stressful time where he never got a third person sitting there and listening ... not only the wife. So we separate them get them each one ... and they pour out everything that they were not able to do ...

From the above it is evident that these mediators listen for facts and feelings pertaining to the behaviour that gave rise to the crime *incident*. The following accounts provide a clue that mediators do not 'see' or 'listen for' any contextual and/or structural factors that could provide a deeper understanding of *why* the crime was committed:

A senior mediator stated:

Social context shaped, I agree with that ...we don't take all that into consideration, it is only the context of the matter that counts... not holistic ... otherwise we would have to delve very much deeper into the past, and

the present and the future and you know the family history and stuff like that. It's too much in depth and they don't want to talk about it.

Here the mediator makes assumptions on behalf of the parties and uses this as a reason for her failure to bring relevant factors into the frame of analysis. Another mediator's response is ambiguous:

Yes it [context] is a big part because our approach to them has to coincide with where they've grown up. We cannot speak to a person who lives in the shack and treat them the same as someone who went to a private school.

This excerpt suggests that the mediator's emphasis is more on her tactics and techniques during the restorative justice and mediation process. It does not reflect sensitivity to the historical and contemporary inequalities in South Africa in a way that causes her to bring it into her frame of analysis (except how she is supposed to treat them differently depending on their class). This suggests that this mediator does not have an understanding of the triadic relationship between cultural, structural and direct violence. Following Galtung's (1996) conceptions of violence, *aspects* of cultural violence provides justification and legitimization of structural violence (examples of which are trans-generational inequality and its consequences) and direct violence (one manifestation of which is crime).

A key expert suggested that:

'[s]ocial injustice will not necessarily be resolved through a restorative justice process because the parties go back to their lives, and the structural injustices that are there continue. However, a purely punitive approach generally does less to resolve social injustice.'

In the first sentence, this key expert acknowledges structural injustices and reflects her doubt about whether or not restorative justice can resolve it. Her next sentence, that 'a purely punitive approach ... 'does less' to resolve social injustice' suggests that she thinks a restorative justice process 'does more' than a purely punitive approach. She makes no attempt to give an opinion on how structural factors can be taken into account during restorative justice processing. This suggests that the notion of dealing with structural violence is an issue that is not seriously entertained and constitutes a tacit acceptance of the status quo.

From these accounts, it is evident that parties are not restricted from ‘pouring out’ their stories and that ‘every little thing’ is regarded as ‘important to the process’, at least in the mind of this mediator. Some of the participants quoted above have expressed vague opinions on *why* larger contextual and structural factors are not taken into account and/or became defensive by resorting to comparisons between punitive and restorative approaches. Even in instances where participants were presented with very direct probe questions (depending on the tacit knowledge revealed) about the interaction of individual and structural factors, some of the participants revealed that they are overwhelmed by the ‘too huge’ challenges presented by structural violence.

What is not evident from these accounts is *how* mediators filter out some information and select what they give attention to. In an effort to ascertain how mediators select what they give attention to, I triangulated the accounts of victims, offenders, organisational and programme leaders.

8.1.5 Knowing and not-acting

From the account of one victim, it appears that the mediator did not probe the account of the offender and thus did not get beyond the story that he told. The victim did not feel free to dispute what the offender had to say, which suggests that the space was not ‘safe’ – a basic requirement in mediation processes:

Although (mediator’s name) was experienced, she did not have the power to get into it. She told him to carry on talking and not to ask any questions. She did not ask any unnecessary questions. ... [a]ll his characteristics did not come out. There was no room for it; you know this is my frank opinion. I spoke honestly for myself and ... everything came out, but here we had to rely on what he had to say and I was in no position to disrupt it or question him.

From the account of another victim, her need for individual family counselling was not heard or met when they were sent to a workshop on anger management after a domestic assault:

In my opinion they should have more counselling with couples. The counsellor needs to sit and discuss the matters that’s happening at home because sometimes as parents we don’t like to... we tend to argue or fight or maybe there is a certain problem in the house or the family or whatever. But I feel there should be more counselling regarding that issue especially when

it comes to family like a husband, wife and children. They should have more of that quite often because it builds up a stronger bondage (sic) between the father, the children and mother.

This participant conveyed her feelings about the inappropriateness of the standard post mediation workshop to their specific need for family counselling that she expressed to the magistrate who referred them to the restorative justice programme:

I feel they should have more and more sessions of those things instead of having a lot of workshop programmes and all that stuff. That is more important than anything else... I prefer that they have it individually, sitting and talking individually. It is much better that way than having it in a group because some couples might just feel embarrassed or some of them might just feel you know what, 'I'm scared to go and speak out'...

This victim did not accompany her husband to the workshop after the one mediation session. While she did not give her reason for being absent from the workshop, except to say 'he went, I could not come', her repeated expression of the need for counselling and the inappropriateness of group workshops suggests that her need was not *heard* and therefore not acted on by the mediator. Her husband, the offender in this instance, found the workshop useful. His opinion of the mediation and workshop was:

This restoration thing is a good thing. Helps people with violence against wife and so on. You hear other people's points of views, maybe the view that other people give you can use it somehow. Maybe the view that I give can help you. So I think it is justice, get everything straight.

This excerpt illustrates the intrapersonal focus of workshops (anger management) in a group process which is in line with social work and some psychological approaches that seek to make people resilient to cope with the structural violence they suffer from – because it is 'better than' the punitive system as implied by one key expert.

8.1.6 *Knowing and a 'Conspiracy of Silence'*

The excerpts in this section suggest that restorative justice stakeholders maintain a 'conspiracy of silence' which Zerubavel (2010:32) describes as '[b]eing both aware and (at least publicly) unaware of something'. He suggests that a 'sociology of denial' would draw attention to the interpersonal dynamics of preventing information from entering public communication. This is, according to him, different from the 'intrapersonal dynamics of blocking information from individual's awareness' (p.32). Since the

interview data is based on tacit and explicit knowledge - this is clearly not exclusively psychological denial as tacit knowledge is in the area of the conscious and not the unconscious.

From the account of a restorative justice organisation leader, 'apart from the limitations of the facilitator and the resources available in that given context...', there is no reason not to take individual characteristics *and* social context into account. He noted:

I don't think we follow a totally non-directive model ... in our context I don't think that's appropriate. So I think the facilitator definitely has to be impartial but that's not to say that they can't be a resource as well in terms of making the group aware of possible resources and leaving it up to those people then to decide how to use those resources.

The word 'impartial' in an unequal context, on the one hand points to an embrace of the dominant mediation paradigm in which most conflict resolution practitioners and people engaged in peacebuilding are trained. Yet impartiality and neutrality in the context of inequality, 'translates into support for the status quo' (Henkeman, 2010:733) and tacit support for the status quo ante. On the other hand, the words 'making the group aware' reveals a tacit discomfort about trans-historical cultural-structural-direct violence (Galtung, 1996:2) and the notion of counter-violence (Gil, 2006:509). He suggested further that it would depend on the 'mindset as well as the skill' of the facilitator and it was evident that he is grappling with the question of structural injustices on a personal level. He stated further:

So if we notice them [structural factors that contribute to crime], but there's a big gap in the resources that we need to refer to and there's a pattern emerging and there's no one to do certain things, what do we do about that? Do we automatically try to take it on ourselves or do we engage in wider processes to initiate and support building those kinds of resources.

The account of this organisational leader reveals that he has a clear understanding of what needs to happen with regard to a victim offender mediation process that focuses on all contributing factors to the production of crime, (thereby revealing an expansive discourse). His final comments reveal some of the requirements necessary for a mediator who is able to 'hear' and respond to structural issues that surface in the mediation process. His account emphasises 'suitability' of mediators, continuous learning, tracking of patterns and a referral network. He stated:

Let's go right to the start, to attract suitable staff, to retain suitable staff, to continually equip them and then to work reflectively with them so that one can track those patterns. I mean at a guess – management team would probably not agree with me - but my feeling right now is that maybe four out of ten is how we are doing on that now. Are we helping to build? ... well we do try and make use of other resources, we refer a lot to FAMSA and SANCA for example.

(The two referral organisations mentioned most often by name by participants are FAMSA and the South African National Council on Alcoholism and Drug Dependence (SANCA). When I enquired about other referral agencies, participants were not immediately able to recall any names). Despite his knowledge of what is required to act expansively with regard to crime production in an unequal, transitional context, this participant revealed that their organisation was not able to deal with structural issues because they are in 'survival mode'. By implication, they are hamstrung by diminishing resources for restorative justice processing by NGOs. The lack of resources does however not account for the silence and inaction about the interaction of structural and individual factors (what Baxter, refers to as the marginalisation or dismissal of competing discourses (2011:153)). The words of a Norwegian key expert/mediator are instructive in this regard:

There is a lot of reflection amongst mediators, many of them are highly educated as middle class people and they find it meaningful to do this job. They do not do it for the money, it is low pay, it is symbolic pay. I find the mediators I know fantastic people who do a very good job, very capable of discussing these matters but they are very seldom discussed.

Also, some problems are so huge that delimiting the problem solving to one particular 'crime' or unaccepted action (as Nils Christie prefers to call it, roughly translated) can be a small but important step in the big picture where the problems are so huge that the people themselves and the child welfare service does not have the capacity or resources to deal with 'the big picture' at once.

The account of this participant gives a glimpse into the phenomenon Cohen (2001:25) refers to as 'states of denial', and Zerubavel (2010:32) terms a 'conspiracy of silence' - which mediators slip into - as well as possible reasons why mediators do so in practice and their leaders via policy. The effect is that expansive discourses and practice are marginalized and dismissed.

From all accounts including my own experience as a practitioner, and observations during the period of this research, mediators are generally very dedicated people who are sincere about social justice and less concerned about money. Yet, from this account, very capable and idealistic people do not discuss structural issues nor do they bring it into their frame of analysis during the mediation process. Instead they filter structural information out through a highly sophisticated process which they appear to be aware/unaware of. The second paragraph confirms the finding of ‘denial’ and what mediators unconsciously (?) ‘settle’ for in the context of limited ‘capacity or resources’ to deal with problems that ‘are so huge’.

8.2 Flipping the lens: macro-level denial

In this section I juxtapose the conceptual argument (made in chapters two, three and four about the intersection of cultural-structural-direct violence (Galtung, 1996:2); with the comprehensive model of findings (of the empirical research). Through the conceptual argument it has been established that restorative justice is a peacebuilding tool based on the convergences with peacebuilding practice as discussed elsewhere in this thesis and argued in chapters two, three, and four. On this view, victim offender mediators are peace-builders-by-default by virtue of the state/civil society partnership to effect transformation as envisaged in the Constitution (1996), which was the product of South Africa’s peace process. The juxtaposition is done to make micro-macro linkages between victim offender mediation as peacebuilding practice at the micro level; and broader phenomena that flow from South Africa’s unequal, transitional context at the macro level. It can thus be argued that the deductive-inductive approach as illustrated in figure 7.2 had two iterations during this study. Deductive analyses were done through two lenses – (i) theoretical (which comprised of cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) linkages), and (ii) historical (consisting of a wide range of secondary sources that provided a multi-focal lens made up of the main concepts trans-historical inequality, transition and its sub-concepts, that sensitised this study to the intersection of economic, political, social, psychological and other relevant phenomena). Inductive analyses happened at three levels. The first was the micro-level analysis of what happens in the black box of restorative justice as discussed in chapter seven; the second was a juxtaposition of the two sub-themes of the comprehensive model of findings as discussed in sections 8.1 to 8.6 and the third was to bring together the micro-

level findings with the overall *conceptual* argument about trans-historical, uninterrupted inequality in South Africa. The combination of inductive and deductive analyses revealed that the manifestations and patterns of denial found in victim offender mediation, are reflected in a larger, societal *conspiracy of silence* (Zerubavel, (2010:32) and thus a *culture of denial* as delineated by Cohen (2001:293). This finding resonates with the idea mooted by Liem (2007:153) of a ‘*multi-layered model of the silencing of historical memories*’ that points to the complexity and sophistication of large-scale denial and a deep desire for the master narrative to be ‘the truth’ for everyone.

The analysis which follows makes the argument, from the ground up, by linking the *manifestations* of denial, to the *patterns* of denial which raises the question about a *culture* of denial about the effects of inequality (as an example of structural violence) and its relationship to crime/social harm (as a manifestation of direct violence) in South Africa. Analysed from South Africa’s colonial and apartheid *past*, I argue that there appears to have been a culture of violence that fomented structural violence and thus direct and counter violence. Analysed from South Africa’s *present*, I argue that growing inequality (structural violence) does not ‘fit’ with the master narrative of the miracle nation with its transformation agenda, and therefore a culture of denial seems to have been coupled with the culture of violence as the unacknowledged driving force against comprehensive peacebuilding. At the same time, the coupling of these cultures causes the culture of denial to eclipse the culture of violence from view. It can thus be argued that:

- (i) viewing neoliberal economic orthodoxy as a major influence in making the ruling party *appear* as if they ‘talk left/walk right’ (cf. Bond, 2004);
- (ii) the conspicuous consumerism that neoliberal economic orthodoxy encourages; combined with
- (iii) uninterrupted trans-historical inequality from the colonial, apartheid and market democracy eras,

provide a deeper and broader understanding of crime/social harm, protests and strikes by poor people, and the conspiracy of silence by the middle and upper classes in South Africa. The manifestations and patterns of denial at the micro level with regard to victim offender mediation as peacebuilding practice, is a mirror image of a culture of denial at the macro level in South Africa. It could thus be argued that because the culture of violence lies in the shadow of the culture of denial, this can explain why the state is increasingly using force through the criminal justice system *and* threats of using the

defence force, to deal with its myopic analysis of direct and counter-violence (Gil, 2006:509) (contractive discourse). This applies to both the national ANC government and the provincial DA government, who deploy the militarised police against protesting and striking citizens. The middle classes turn to private security to protect themselves against direct and counter-violence (Gil, 2006:509), thereby fulfilling the notion of a de facto emerging militarised society for poor people who are under constant surveillance, and a carceral society for privileged people. Following Cohen (2001:293) this state of affairs exemplifies the ‘physical reproduction of the conditions of denial’ with ‘enclaves of winners, in their guarded shopping malls, gated communities and retirement villages’ barricading themselves against the ‘losers’. Yet, if South Africans were to really confront its past and the unbroken cultural and structural violence (trans-historical inequality) that results in direct and counter-violence (Gil, 2006:509) (crime/social harm) – its trajectory would arguably be different from the one it is on now. Unless the real miracle happens in the hearts of political leaders and every South African, or at least a critical mass of South Africans, human inequality, exemplified by economic and social inequality along racially patterned lines, is going to be its undoing.

8.2.1 Manifestations ↔ patterns ↔ culture of denial?

Seen from the bottom up, this research has shown that victim offender mediators as peace builders by default, exhibited several manifestations of denial which revealed three broad patterns of denial. From the top down, the unintended consequence of the way South Africa has dealt with its past based on a logic of compromise, is a culture of denial which is replicated at the micro level as exemplified by the patterns and manifestations of denial in the black box of victim offender mediation. I argue that compromises are more focused on dealing with negative peace in the short term. Many scholars and politicians focus more on the fact that South Africa ‘averted’ the (black/white) civil war it was on the ‘brink’ of, than on the trans-generational consequences of cultural and structural violence on those who were victimised. Attempts at creating positive peace in the long term are uncoordinated and largely ignore factors that fall outside of the master narrative and ‘global solutions’. This combination of factors provides ideal conditions for a culture of denial to flourish.

8.3 Conclusion

Attentional tricks may be shared between people... distortions and self-delusions are most often synchronized - within families, intimate relations or organizations. Whole societies have unmentioned and unmentionable rules about what should be openly talked about. You are subject to a rule about obeying these rules, but bound also by a meta-rule which dictates that you deny your knowledge of the original rule (Cohen, 2001:45).

The findings show that restorative justice stakeholders have tacit and explicit knowledge of structural factors that interact with individual propensity to produce crime, but do not or cannot act on this knowledge for a variety of reasons summarised as (i) procedural blindness as illustrated by the accounts of participants in figures 7.3 and 7.4; (ii) substantive deafness as exemplified by the analysis of participants' accounts, and observation of a victim offender mediation session; and (iii) a complicit silence which is not explained by the lack of funds and resources. The words 'survival mode' to explain the lack of action with regard to structural injustices, are instructive and is discussed in chapter nine as it reveals much about the power that external donors, and the state as donor, exert in what gets attention. It also reveals the weakness of NGOs that fail at pooling their resources to combat injustices, thereby watering down their individual organisational actions. One restorative justice organisation leader responded to a probe question about how restorative justice organisations co-operate as follows:

If I have to rate that, not very well. In 2008 for example we nearly closed. We went through four months of 10% salary reduction. My point is that the reality is that much of the time most organizations are in survival mode and so it is difficult to even track...

The 'survival mode' that these organisations are in raises a question about government's role in creating an enabling environment to ensure that the constitutional goals of social justice, fundamental human rights and equality are met. The manifestations and patterns of denial that were revealed by an examination of the black box of victim offender mediation, were found to be linked to a larger conspiracy of silence which has become a culture of denial about information that is dissonant with the master narrative of the 'miracle nation'.

CHAPTER NINE: BEWARE OF THE CHASM

Stern-faced ministers stand on pulpits every Sunday to heap loads of blame on black people in townships for their thieving, housebreaking, stabbing,

murdering, adultery [...] No one ever attempts to relate all these vices to poverty, unemployment, overcrowding, lack of schooling and migratory labour. (Biko & Stubbs, 1978:61).

[W]hile restorative justice is a humane alternative to adversary, punishment and retribution driven models, it fails in practice and scholarship to confront social structural violence, and the privilege and corollary injustice they beget. Its *post hoc* orientation plays only a limited role in anticipating and preventing harms, and often seeks interpersonal accommodations within a structurally violent and unjust social context. (Dyck, 2006:344).

9. Introduction: Multiple and simultaneous intersections

The main findings of this research, contained in the comprehensive model of findings displayed in figure 7.1, are interpreted and explained using the background provided by the overview of concepts in chapters two, three and four, which gave rise to the conceptual framework and argument for this study. The *meaning* of these findings, in the context of trans-historical inequality and its main consequences from the colonial and apartheid eras and transition to a market democracy, is discussed. Links are made to relevant research and multi-disciplinary theoretical literature. In the course of the discussion, alternative explanations for the findings are considered. Limitations of the study are acknowledged and suggestions for further research are made. This chapter also responds to the questions that constitute the underlying hypothesis summarised in chapter five, and it answers the overall research question.

9.1 Answering the research question

Does victim offender mediation, as a contemporary form of restorative justice advance peacebuilding in unequal transitional contexts like South Africa?

Questions on which the underlying hypothesis is based	Summary of findings related to the underlying hypothesis
<p>1. Are restorative justice processes, practices and outcomes aligned to the peace building and social justice agenda embedded in the South African Constitution (1996)?</p>	<p>At the discursive level only. No empirical findings to support this idea were evident neither in data that reconstructed practice; nor during observation of victim offender mediation processing; nor from the accounts of participants. The test for this question lies in whether practitioners take structural factors (mainly inequality and its consequences) into account in the construction of crime/social</p>

	harm as direct violence) – which they did not.
2. Do criminal justice and NGO stakeholders discern links between restorative justice, South Africa's peace building process and the correlation between inequality and crime?	Not consciously nor directly for the majority of participants at first. However, analysis of transcripts showed that probe questions surfaced rich information on the tacit and explicit knowledge of participants
3. Does restorative justice processing as practiced in South Africa, address the interaction of personal <i>and</i> structural causes of crime?	No. Not currently. The focus is on personal and interpersonal levels. Structural causes of crime are not taken into account during the restorative justice process, nor is the <i>interaction</i> of individual and structural causes.
4. What is the function of restorative justice within the criminal justice system? Sub-process or alternative paradigm?	Alternative <i>within</i> the criminal justice system, not alternative <i>to</i> the system. It functions as delegated social control and facilitates constructive coercion of victims and offenders in the way it is currently implemented in South Africa.
6. What is the theoretical or other basis for the frameworks, process, strategies, techniques and tactics employed by restorative justice practitioners?	Victim offender mediation in South Africa is based on orthodox theories of crime, a modest conception of restorative justice, and the dominant mediation paradigm that promotes neutrality. Ethics of caring for individual and relationships, are not balanced with critical consciousness about micro-macro linkages between cultural (symbolic), structural (uninterrupted inequality) and direct (crime/social harm) violence.
7. What are the characteristics, knowledge base, role, function and skills of mediators?	Lay people, mainly committed community activists who draw mainly on a social work knowledge base. Mediation role, strategies and skills are based on the standard mediation model used in conflict resolution and peace building. Mediator functions as a focal person for criminal justice system in a network between court and referral agencies.
8. What is the role of the mediator during the process and beyond the agreement stage of restorative justice processing?	During the process the mediator is a neutral process facilitator. Beyond the agreement stage, the mediator writes reports on cases or refer cases back to court or to organisations in the referral network.
9. Does restorative justice processing have an impact on structural injustices that facilitate crime?	Not as currently practiced in South Africa. The focus is at the individual and relationship level only.
10. What, in general, does restorative justice offer to unequal, transitional societies in the long term?	Talk therapy and non-violent problemsolving skills to those constructed as criminals and victims by the criminal justice system. Structurally responsive training for restorative

	<p>justice stakeholders and practitioners can <i>potentially</i> inform structurally responsive policy. Subsequent agency on the part of practitioners could lead to victims and offenders being made structurally aware. Realistically, restorative justice can make a small contribution over time through awareness and consciousness raising, information sharing and education. The more significant contribution could be through policy change.</p>
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The answer to the overall research question is thus a qualified ‘no’. Contemporary forms of restorative justice do not currently advance peacebuilding in South Africa’s unequal, transitional context in a meaningful way. It is not responsive to the *relationship* between cultural violence (which according to Galtung legitimises and justifies structural and direct violence), structural violence (of which inequality is an example) and direct violence (a manifestation of which is crime/social harm). Practitioners currently follow a model of mediation that favours orthodox theories of crime combined with a modest conception of restorative justice that focuses on individual level factors while ignoring cultural factors that legitimise and justify structural and direct violence; and structural factors that produce crime/social harm (as manifestations of direct and counter violence). Zehr (2011) argues that ‘like the criminal justice system itself, it [restorative justice] may focus too narrowly on putting a band-aid on interpersonal relationship while neglecting underlying causes such as structural injustices’ (web reference 27).

9.2 Why restorative justice processing does not address structural violence

The wider look at the unequal, transitional context within which crime occurs and within which restorative justice processing happens (set out in chapters two to four); and deeper examination of victim offender mediation (set out in chapters seven and eight), showed up the shortcomings of restorative justice processing in South Africa. These shortcomings became clear when I examined what happens inside the black box of victim offender mediation in the South African context. This section provides a clearer understanding of the meaning of the linked gaps between the context of crime, theories of crime on which restorative justice rests, mediator training and mediation practice in that context. It also

sheds light on the manifestations and patterns of denial that flow from these mutually reinforcing gaps found in this study.

As Mika (2012) argues, '[s]tructural violence in everyday life remains ... a significant challenge to peacebuilders. It is more pervasive and tenacious than the momentary, episodic violence with distinctive political stripes.'²⁷ The multi-perspectival approach taken in this study allowed for the depth and breadth that provided a better understanding of the interaction of structural and individual factors that produce crime in South Africa; and the restorative justice response to it. Micro examination of the pattern of activities within the black box of victim offender mediation, confirmed Dyck's (2006) contention that restorative justice practitioners lack the conceptual tools necessary to provide a structurally responsive process that deals with criminal conflict (p.530). This suggests that restorative justice processing, in the way it is currently deployed, does *not* make a meaningful contribution to long-term peacebuilding in South Africa's unequal, transitional context. The implication of this finding is that the strategies, techniques and tactics restorative justice practitioners use, are not aligned to the goal of attaining structural peace because of the built in bias towards individual level constructions of crime and the criminal. This means that mediator training should be structured to equip mediators to recognise and respond to the relationship between cultural, structural and direct violence, of which crime/social harm is one manifestation.

On the one hand, restorative justice is linked to political transformation processes in the criminal justice system through policy and discourse. It is therefore linked to systemic transformation processes in the rest of government and society as part of South Africa's transitional project. On the other hand, findings based on the examination of the black box of victim offender mediation, show that the intra- and interpersonal levels at which restorative justice is focused, causes it to exclude cultural and structural violence from its frame of analysis. This places limits on the achievement of social justice – which is central to restorative justice and peacebuilding discourse and to the master narrative of

²⁷ Email correspondence with author 30 July 2012. I wrote to the author to ask for a copy of his conference presentation (1989) referred to in Dyck (2006). He did not have a copy of it anymore. I therefore quote him cited by Dyck in other references to that presentation in this thesis.

the 'miracle nation'. Social justice is also one of three goals of the South African Constitution (1996), which sets the tone for peacebuilding in post-apartheid South Africa. The explanation for this micro-level focus is based on several related reasons discussed in chapter seven, that constitute the mutually reinforcing elements of the four gaps which led to the manifestations and patterns of denial discussed in chapter eight.

It is clear that the contemporary model of victim offender mediation used in South Africa was transferred from western countries, without adjusting it to South Africa's historically unequal racial, social and economic conditions. Findings based on the general patterns in victim offender mediation processing in South Africa and Norway - one of the most egalitarian countries in the world - confirmed that the same model of mediation, which focuses at the intra- and interpersonal levels only, is used in these diverse contexts as discussed in chapter seven and displayed in figure 7.5. The findings about the four interlocked gaps, and the manifestations of denial that resulted from it, led to the three summary findings discussed in chapter eight. These findings are *procedural blindness* to the constructive coercion of victims and offenders and restorative justice processing functioning as delegated social control; *substantive deafness* to information that could alert mediators to patterns of cultural-structural-direct violence; and a complicit silence about the *interaction* of individual and structural factors that produce crime as discussed and illustrated in figure 7.1.

The conceptual gap between practice and knowledge of the *constructed invisibility* of historical inequality and its consequences, dating from the colonial and apartheid eras to the period of market democracy, is the major finding of this research. The further distinction found in this South African study, is that the interlocked gap has contextual and training, as well as the theoretical/practical aspect found by Gavrielides (2007). Whether trainers and trainees fully understand the theoretical framework of restorative justice or not, the aggregated and disaggregated responses by participants of this study point to strong tacit and explicit knowledge of South Africa's unequal, transitional context and its relationship to crime/social harm. South African mediators do not bring this tacit and explicit knowledge to bear in practice. The volume of responses to various interview questions that revealed this tacit and explicit knowledge, suggests that participants could be drawing from another source of knowledge that is unrelated to

formal theory and the knowledge practitioners derive from practice. It has been suggested that individuals acquire ‘strong or collective tacit knowledge’ because they are embedded in society (Collins, 2010:11).

It is therefore reasonable to infer that practitioners would reflect on their practice in light of the unequal, transitional context in which they are embedded, and adjust their practice accordingly. It is also reasonable to assume that if restorative justice practitioners fully understood the expansive restorative justice theoretical framework, coupled with their knowledge of individual and structural factors that produce crime; it should be reflected in their practice – unless they are in denial. However, the second sub-theme related to the first, revealed that there is no evidence that mediators *apply* their tacit and explicit knowledge of the interaction of individual and structural factors that produce crime, during the facilitation of victim offender mediation processes as discussed in chapters seven and eight. Even in the case where ‘the community’ is involved, the sole role of the community is to restore social harm to social harmony and repaired relationships. It has been suggested that, ‘according to scientific research’, communities do not have the power to counter the ‘policies and market forces causing criminogenic community structures and cultures’ (Sherman, 2003).

It was also found that the limited way in which mediator strategies, techniques and tactics are deployed, help individuals to communicate and engage, but rules out the possibility of them reaching the social justice objective embedded in restorative justice discourse. This suggests that the means used by restorative justice practitioners are not aligned to their implicit goal – structural peace. As Pavlich (2005:109) has noted, restorative justice is ‘structured around the impossible’. He suggests that ‘an alternative that defines itself in relation to, and uses the concepts of, the very approach it seeks to replace is either a parasitic or a non-distinct venture’ (p.109). He argues that restorative justice ‘constitutes its identity largely by deferring to the very criminal justice institutions it seeks to replace, reform, alter...’ and that this is what makes it unsuitable as an alternative (p.111). It is however not clear what South African restorative justice practitioners seek to do, as the discourse straddles restorative justice talk and criminal justice do. From this perspective, structurally responsive restorative justice training, as suggested by Dyck, (2006), might assist practitioners to use structurally responsive means that are compatible with their

objective to achieve social justice. The patterns of denial that flow from the four interlinked gaps, are discussed in chapter eight. The next section considers possible reasons for the manifestations of denial displayed by restorative justice practitioners.

9.3 Possible reasons for denial

Various scholars referred to in chapter eight have shed light on the notion of denial which provides a plausible explanation for the behaviour of practitioners who have tacit and explicit knowledge of how crime is produced in South Africa, but fail to apply this knowledge in practice. In addition to this, I argue that peacebuilding and restorative justice practitioners fail to discern rhetoric from reality with regard to South Africa's political economy. This failure to learn about historical antecedents and present economic policy decisions by government, cause practitioners to delink cultural and structural violence from direct violence which manifests as crime. The constructed invisibility of the effects of inequality in the broader society, causes practitioners to find it acceptable to limit their gaze to intra-personal and interpersonal levels of analysis and action. This is true even as 'service delivery' protests have increased over the past few years. The fact that pre-trial and pre-sentencing restorative justice processing is locked within the criminal justice system which individualises crime, does not strike practitioners as anomalous in a country where the line between political protests, counter-violence (Gil, 2006:509) and crime have become completely blurred. This suggests that practitioners do not interrogate the inconsistency between their own rhetoric which implies an expansive conception of restorative justice; while their practice matches a modest conception based on a criminal law definition and individual (dispositional) theories of crime.

Supportive findings (discussed in chapter eight) on the patterns of denial exhibited by mediators which lead to their failure to act on their tacit and explicit knowledge constitute new knowledge. These patterns were revealed by the multi-perspectival approach taken in this study and would not have been captured by a single lens or 'partial analysis' as argued by Said (1993:318). The combination (triangulation) of the 360° research method, embedded (Yin, 1994:41), instrumental (Stake, 1995:4) case study with sub-units and the multi-perspectival approach (which incorporated Said's contrapuntal reading, thinking and writing method), helped to lay bare invisible and hidden facts and elements (Nagy-Zekmi, 2006:73) which led to manifestations of denial displayed by

mediators. The micro behaviours by which restorative justice practitioners achieve this ‘coherence of blindness’ (Miller, 2008) are well documented by several scholars under the concept of ‘denial (cf. Cohen, (2001:25), Zerubavel, (2010:32) and Liem’s (2007:153) ‘multi-layered model of the silencing of historical memories’.

These gaps and denial, together with a sense of powerlessness by organisational and programme leaders, in the face of ‘huge’ obstacles in South Africa’s unequal, transitional context, interfere with restorative justice practitioners’ ability to make a significant contribution to long-term peacebuilding. Despite this perceived lack of power, restorative justice organisations and practitioners continue to facilitate criminal justice directed processes.

From the extracts in figures 7.3 and 7.4 and the absence of a mediation model that is responsive to South African conditions, it is clear that restorative justice stakeholders are in a state of denial (Cohen, 2001) and/or have learned helplessness (Evans & Cohen, 2004) in the face of perceived uncontrollable factors. According to Evans & Cohen:

Attempts to cope with uncontrollable environments can result in learned helplessness. Individuals who try to abate a negative environmental condition and are unable to do so eventually learn that their efforts to control their environment are fruitless. They become unmotivated to assert control (motivational consequences) even when it is feasible to do so, unable to learn that subsequent challenges they confront that are subjectively controllable can be controlled (cognitive consequences). (Evans & Cohen, 2004:817).

Whatever the name of the condition, whether it is a collective blindspot, a state of denial, a conspiracy of silence or learned helplessness, there is a question mark behind the gap in the average peacebuilding practitioner’s knowledge of the effects of inequality in the South African context and their practice. The notion of peacebuilding in South Africa makes sense only if the trans-temporal links and effects of colonialism, apartheid and the market democracy are understood. If restorative justice and other peacebuilding activities in South Africa are delinked from a trans-temporal understanding of cultural (symbolic) violence, structural violence (trans-historical inequality) and its relationship to direct violence (crime/social harm) , then these activities do not advance long-term peacebuilding in South Africa. This is echoed in La Plante’s argument that ‘if the underlying socioeconomic structures that lead to violence are not addressed, sustainable

peace will remain beyond our reach' (2008:333). The fact that she argues for transitional justice to expand its concept of justice to include 'structural violence', suggests that 'the entrenched socioeconomic conditions that cause poverty, exclusion and inequality' was hitherto excluded from the transitional justice frame. This exclusion in part explains why restorative justice stakeholders in South Africa similarly limit their concept of justice, as many restorative justice stakeholders use the TRC (a transitional justice mechanism) as their frame of reference. The TRC in turn operated within political boundaries. Following Mamdani's (2001:xii-xiii) logic about the conflation of state, political, epistemological and knowledge boundaries, I argue that the field of transitional justice is constructed along political boundaries and these political boundaries became an epistemological boundary which only serves to interrupt a trans-temporal understanding of colonial-apartheid-market democracy harms in South Africa. I argue that the multiplicity of 'fields' within the broader peacebuilding project serve to contribute to the blindness about the fact that discontinuity and fragmentation contribute to the intractability of direct violence and hides its link to trans-historical cultural and structural violence.²⁸ Transitional justice and the epistemological boundary it erects, contributes to the culture of denial in South Africa by inserting discontinuity where there is none – particularly in the areas of economic oppression and historical trauma.

Farmer (2005:9-10) argues that civil rights cannot really be protected if social and economic rights are not, and that many, even those who staunchly support civil and political rights, regard social and economic rights better suited as a letter to Santa Claus. He contends that 'to study Mayan widows without exploring the mechanisms that transformed them from wives to widows would be to miss the opportunity to reveal the inner workings of structural violence' (p.13). Similarly, in the South African context, for practitioners to respond to crime/social harm without exploring its relationship to trans-historical cultural and structural violence, constitutes an injustice. According to Farmer, 'some of this erasure is a result of the distortions of disciplinary focus'. He argues that

²⁸ While I make reference to transitional justice in this thesis, I prefer a conception of trans-temporal justice as transitional justice boundaries are limited and limiting. I argue that given the TRC's limited focus on the consequences of direct violence within a specified time frame, transitional justice boundaries obscure more than they reveal about the relationship between structural and direct violence.

‘the degree to which literate experts ... choose to collude with ... chicanery should be the focus of brisk and public debate’ and he suggests that the perspective of poor people should be taken (p.17) rather than those who purport to speak on their behalf. Farmer’s standpoint resonates and is applicable to the race and class biases that underpin the choice of dispositional, situational or interactive theories of crime in the execution of restorative justice processing.

9.4 Factors leading to interlinked gaps in restorative justice processing

On the one hand, the contextual information that mediators had knowledge of, resonates with *unorthodox* theories of crime on which expansive views of restorative justice rest. Expansive views of restorative justice include structural and direct violence within its frame of analysis. On the other hand, the model of restorative justice processing found to be in use in South Africa, resonates with *orthodox* theories of crime. This is in line with criminal law and its individual focus, together with the more modest views of restorative justice, which focus at the intra- and interpersonal levels only.

The finer distinctions - between knowledge about context as well as orthodox and unorthodox theories of crime on which restorative justice rest – provide a clearer understanding of the complexity of issues that present during mediation. This close examination provided insight into mediators’ constructions of crime and the criminal in the context of trans-historical inequalities and its multiple and simultaneous consequences, from the colonial and apartheid eras to the current market democratic era captured in chapter four. It was found that the relationship between historic and contemporary inequality, crime and the criminal, was rendered invisible by mediators’ focus at the intra- and interpersonal levels. This means that individuals are held solely responsible on contested grounds, since several theories and studies suggest that there *is* a relationship between inequality and crime.

9.4.1 The case for interaction between inequality and crime

It has been suggested that there is an interaction between social and individual factors that produce harmful behaviour (Zimbardo, 2007²⁹; Mika, 2010, Li-On, 2009 and Neves, 2009). According to Zimbardo (2007:289) ‘social forces can prompt normal people to perform horrific acts; and as suggested by Mika (2010:340) ‘structural and historical conditions ... portend justice yet produce harms.’ It has also been stated that mediations at the individual level appear inadequate to bring about transformation and social justice (Li-On, 2009:456, and Neves, 2009:489). Based on more than 30 years’ research on inequality, Wilkinson & Pickett argue that unequal societies have more violence, imprisonment, and numerous other social ills compared to more equal societies (web reference 28). The findings of a study on the effects of inequality on crime in South Africa by Demombynes & Özler (2005:312) are consistent with economic theories that relate inequality to property crime; and sociological theories which suggest that inequality leads to crime in general. In his book on inequality, crime and public policy, Braithwaite (1979) agrees with Marxists that ‘working within the capitalist system places structural limitations upon what is likely to be achieved in crime reduction through egalitarian policies’. However, he suggests that the overthrow of capitalism does not constitute a panacea for crime, as crime knows no limitations (p.243). From a political and educational perspective, Freire (1974:6) has argued that if people are not able to critically perceive the ‘themes of their time’, and if they do nothing to ‘intervene actively in reality’, they are inevitably ‘carried along in the wake of change’. He argues that even if people see the changes in society, they are overwhelmed by the change and oblivious to its magnitude (p.6). He argues that:

[A] society beginning to move from one epoch to another requires the development of an especially flexible, critical spirit. [...] the time of epochal transition constitutes an historical-cultural ‘tidal wave’. Contradictions increase between the ways of being, understanding, behaving, and valuing

²⁹ Zimbardo conducted the well known ‘Stanford experiment’ with college students. He constructed a ‘prison’ with guards and inmates and over days the ‘guards’ became increasingly evil. The experiment was ended after 6 days.

which belong to yesterday and other ways of perceiving and valuing which announce the future (Freire,1974:6).

Freire's (1974) insightful reading of transitional societies, suggests that these contexts are particularly volatile. This suggests that standard models (such as the mediation model used in South Africa) which were developed from and for more egalitarian or stable societies should be adjusted for these shifting conditions. His argument that the lack of a growing critical consciousness amongst practitioners who are unable to integrate themselves into the transitional society, which is marked by intense contradictions and change (1974:12); provides further insight into the denial manifested by mediators in this study. In addition, the constructed invisibility of structural violence makes it plausible for practitioners to believe that their goodwill and activism build peace, as exemplified in the accounts of all participants who stated that restorative justice contributes to peacebuilding. From a political and educational view, South Africa's history of structural and direct violence makes the South African case one where unorthodox formulations of restorative justice processing should be the rule and not the exception.

Daly (2002:20-21) has stated, 'restorative justice must be tied to a political process if it is to succeed in unequal societies' and that 'a more just society will come largely from policies of redistributing wealth and political power, along with changes in divisions and value of labour, not from justice system policies'. Dyck (2006: 539) cites Curle (1971) who suggested that 'unless the disempowered and more powerful parties begin to recognise the structural nature of their problems, dialogue can actually be counter-productive to building peace'. Yet restorative justice can be developed to reduce the structural violence of high imprisonment rates imposed on black citizens which is vastly different to the imprisonment rates of white citizens which has the effect of increasing intergroup inequality and increasing poverty. Imprisonment increases nested inequality by increasing crime, exacerbating poverty traps, and widening punishment to the families of those imprisoned. A South African study of the effects of imprisonment on children and caregivers conducted by NICRO (2008), found amongst others that 'the imprisonment of the parent has impacted negatively on the family who perceive themselves to be more vulnerable to several challenges'. These challenges, in order of severity are 'lack of family income, children repeating grades at school, children dropping out of school, increased vulnerability to gangsterism, lack of food,

unemployment; and the stigma attached to parental imprisonment'. To minimise these negative effects, data on structural violence can be used in two strategic ways during restorative justice processing. It can be used to sensitize both 'disempowered and the powerful parties' to structural aspects of their problems in the case of serious crimes. For most minor crimes, offenders need not be detained with the detail of structural factors during processing, but the patterns can be recorded by restorative justice stakeholders to add to the body of knowledge on structural violence. This knowledge in turn can be used to inform policy, training and practice. In addition, while the departments that comprise the criminal justice system cannot directly change income, wealth and political power; it can begin the process of learning to understand and deal with nested forms of inequality that constitute economic, social and political correlates of crime. By (i) requiring that patterns of interaction that produce crime be recorded, (ii) making appropriate policy changes in its own department, and (iii) making policy recommendations to other government departments in different clusters, the department of justice and constitutional development can maximise its partnership with NGOs.

For restorative justice to advance peacebuilding, this suggests that practitioners need to be trained in ways to discern when and how to facilitate the raising of awareness and consciousness of the parties they engage with and when to refrain from doing so. Gil suggested an overall professional strategy for restorative justice practitioners which, he argues:

[I]nvolves efforts by 'radical' restorative justice professionals to 'deviate' in their professional encounters from system-reinforcing messages and behaviours, to pose challenging questions, and to engage people in reflection and dialogue concerning the consequences of prevailing social, economic, political, and cultural realities for the quality of their lives and their behaviours. (Gil, 2006:509)

As Gil argues, 'expanding critical consciousness in everyday social encounters, as well as in professional service settings, involves political discourse'. However, practitioners should sharpen their discretion to assess which cases will benefit most from breaking complicit silence.

9.4.2 De facto societal criminalisation of (poor) black people

In the South African context, the criminal justice system was complicit in criminalising blackness and privileging whiteness throughout the colonial and apartheid periods. This tendency seems to continue under the surface during the market democratic era. The 2011 prison statistics show that the racial profile of South Africa’s prison population remains largely black (in its diversity) (web reference 29). Figure 9.1 is a simplified version³⁰ that includes only males – females (of all races) make up only 2.3% of the total prison population (3762/162,162).

	Total population		Prison population	
	No.	%	No.	%
Asian	626, 690	2.6	.727	0.5
Coloured	2, 188, 782	8.9	27, 689	17.5
Black	19, 472, 083	79.4	127, 543	80.5
White	2, 227, 526	9.1	2,441	1.5
Total	24, 515, 081	100.0	158.400	100.0

Figure 9.1 Combined 2011 Census and Correctional Services statistics

In a more stark form, figure 9.2 displays the trans-historical, mutually reinforcing cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) that the society and its criminal justice sector ignore by a blinkered focus on individual responsibility – without questioning why these individuals are mainly black (diverse) and why the number of white people in prison is consistently lower than the aggregated and disaggregated black group (African, Asian, coloured).

³⁰ Thanks to Professor Harris for suggesting this simplified version which includes only males.

Group	% of total population group in prison	No. per 5 000 males in prison
<i>Asian</i>	0.12	3
<i>Black</i>	0.66	16
<i>Coloured</i>	1.27	31
<i>White</i>	0.11	3

Figure 9.2 Percentage and number of people per 5, 000 males in prison per group

It is clear from these prison statistics that the group who represents those who perpetrated and benefitted from cultural-structural-direct violence (Galtung, 1996:2) (manifested by colonialism, and apartheid which was considered a crime against humanity by the United Nations) and who still benefit under the market democracy, do not need to live in fear of the criminal justice system. The constitution protects the property rights of past beneficiaries, the criminal justice system provides protection from the direct and counter-violence (Gil, 2006:509) of the dispossessed, and trans-generational inherited wealth protect the majority of beneficiaries from becoming ‘the poor’. Where the front-end of the criminal justice system (police force) fail to provide protection to property and life, private security fills the gap and routinely infringe the rights of ‘the poor’ – thereby entrenching criminalisation of black people.³¹ Those who respond with direct and counter-violence (Gil, 2006:509), are met with the full might of the militarized criminal justice system, while most privileged South Africans (black and white) maintain the denial that the historical lot of poor black people *is de facto* collateral damage for the continuity of colonialism-apartheid-market democracy.

³¹ This point is informed by my accumulated knowledge as data, based on my own and the experiences of my two black sons (from the time they became tall and qualified as ‘black youth’), our family, my sons’ friends and their families, and the families of my friends and acquaintances (both black and white – with white people being witnesses on different occasions, to the differential treatment meted out to their black friends – simply because they are black). Black security guards have internalised the ‘face of crime’ and focus their surveillance on black (diverse) people. This reinforces the invisible uninterrupted privilege of ‘whiteness’ as white people can glide through malls, airports, suburbs and other spaces without fear of routine harassment and even violence from those who enforce ‘law and order’.

These comparisons show up the extent of denial that must exist for the status quo to continue, as the statistics seem, amongst other more likely explanations, to suggest that –

- Black (diverse) people, in general, have criminogenic genes and white people do not – which is spurious; and/or
- White people, in general, do not commit crimes on the same scale as other race groups - which calls into question the definition of ‘crime’; and/or
- The crimes white people commit are not generally reported and are therefore not prosecuted; and or
- Mainly black (diverse) people’s crimes are reported or detected and prosecuted; and the crimes white people commit are *not* generally detected and therefore not prosecuted; and/or
- The crimes white people commit do not warrant imprisonment; and the crimes black (diverse) people commit warrant imprisonment; and/or
- The criminal justice system treats black (diverse) people harshly; and the criminal justice system treats white people leniently; and/or
- White people can afford expensive lawyers; and/or
- Black(diverse)/ poor people are overrepresented in the criminal justice system, and cannot afford expensive lawyers to represent them; and/or
- White people do *not* have many or the same criminogenic *influences* as the black (diverse) group; and black (diverse) people have an overabundance of criminogenic influences; and/or
- The conceptual argument of this thesis which emphasises the cultural-structural-direct links between the triad of violence which suggests that crime in South Africa has more to do with its unequal racial, political, social and economic past, than it has to do with race and individual blacks (diverse). It suggests that crime is a political and legal construct. It also suggests that social harm is a more appropriate way to understand and deal with the direct violence and counter-violence generated by this society’s criminally violent past; and present crime against its black (diverse) population first by ignoring the trans-historical intergenerational links and second by continuing to treat the poverty of black people as collateral damage.

The combined prison and population statistics suggest that restorative justice practitioners must go beneath the surface, to interrogate the reason why the historically most marginalised members of society constitute the overwhelming majority of their client base. It also suggests that restorative justice stakeholders should interrogate the law and the brand of criminology that they embrace. As Quinney has observed with regard to construction of the criminal:

The decision as to who is the criminal is made in the interpretation and enforcement of the law, as well as in the formulation of the law. [...] criminality is not inherent in behaviour, but is a property conferred upon individuals by others in the enactment, enforcement, and administration of

the law'. It is only recently that sociologists and criminologists have turned with any seriousness to the study of social (and extra-legal) factors that operate in the administration of the criminal law. (Quinney, 1964:19)

Quinney's argument suggests that like sociologists and criminologists, restorative justice practitioners need to turn to the study of South Africa's unequal, transitional context with seriousness if they seek to contribute to structural peace in South Africa. As Muncie & Goldson have suggested:

[R]ather than treating phenomenon such as 'socio-economic advantage or unemployment as specific causal factors, among many others, it is necessary to view such phenomena as consequences of wider structural features of a society. To address ... crime therefore requires that analysis shift from simple multi-factorial analyses, to consideration of the generative social processes that give rise to and exacerbate particular 'risk factors'. (Muncie & Goldson, 2006:103).

The case for taking a holistic view of how crime and the criminal are constructed in the South African context is sound in the context of restorative justice processing. To ignore the story that these statistics tell, in the context of trans-historical cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509), is to retard the country's peacebuilding efforts. As Dyck has argued, '[s]erving the ends of right relationship between individuals while simultaneously, perhaps unconsciously, buttressing the systemic wrongs that give rise to the problem between those individuals is logically incoherent, morally hypocritical, and practically ineffective' (Dyck, 2000:553). This resonates with Muncie & Goldson's contention that individual propensity and structural factors interact to produce crime. They argue that:

At an immediate concrete level why certain ... people commit certain crimes is answerable by consideration of their personal life history, their immediate life circumstances and their position in the wider social structure. [...] but in theoretical terms these distinct individual biographies can be seen to be socially patterned. As a broad generalisation, they reflect deep structural inequalities and social divisions that predispose certain classes or groups of children and youth to live and to behave very differently than their more privileged peers. (Muncie & Goldson, 2006:103).

It seems that practitioners in South Africa are unconscious of the consequences of focusing only at the intra- and interpersonal levels while believing that restorative justice contributes to peacebuilding by keeping individual offenders out of prison; without a

criminal record or in some instances reducing recidivism (repeat -offending or -arrest or -sentencing or -imprisonment). Regardless of these efforts, victims and offenders return to the criminogenic conditions that contain the original determinants and triggers that provided the context for them to commit crime/social harms in the first place. As Wortley confirms with regard to situational and dispositional factors:

Just as the acquisition of behavioural traits is best understood as involving both biological and environmental factors, so too is the performance of behaviour best understood as involving both dispositional and situational factors. Furthermore, we can similarly expect dispositional and situational factors to interact – different people will respond to the same situation in different ways. (Wortley, 2011:93).

Wortley (2011:113) argues that if someone has criminogenic traits, it puts them ‘at an increased risk of committing crime, but that risk may not be realised until that individual encounters conducive situational conditions’. He also suggests that when ‘criminogenic situations and criminogenic traits do coincide; the risk of crime is multiplied’.

Zimbardo (2007:289) casts doubt on the notion of criminogenic traits in only ‘some’ people, when he suggests that all ‘good people’ can be broken down over time and can commit the most atrocious deeds if prompted by social forces. This suggests that everybody has the potential to be ‘good’ or ‘evil’, depending on the set of circumstances they find themselves in. It is not my intention to resolve the longstanding and binary nature-nurture; structure-agency; micro-macro, nor the debate about whether individuals have criminogenic traits or not. My intention here is to show that both individual and structural factors intersect and interact to produce crime/social harm or social harmony. The main idea is to illustrate micro-macro linkages to show that restorative justice must be based on a sound understanding of the complex nature of the macro level structural problem it seeks to solve with micro-level social work methods. As Muncie & Goldson (2006:104) have suggested, ‘there appears to be little analysis of historical, political and economic context within which social life occurs’ and that ‘much of risk literature is mainly understood as individual and family failure’ – therefore the micro level approach. By using a multi-perspectival approach this study has attempted to take all these dimensions into account as far as is possible.

According to Li-On (2009:456) the tendency exists to ‘view all disputes as problems in interpersonal communication, rather than as social conflicts’ (p. 456). Neves (2009:489) states that individual level mediation appears to have obscure and limited effects for collective empowerment and social change. For him, ‘collective impact requires collective targets and not just accumulation of individual effects’ and he suggests that people need to be trained in order for them to alter their mind-sets (p.490).

9.5 Locating the findings in multidisciplinary theoretical and research literature

The comprehensive model of findings provided empirical confirmation of many abstract ideas and observations by scholars from various disciplines (quoted throughout this thesis) regarding the relationship between structural and direct violence (and crime as a manifestation of direct violence). It also casts light on the restorative justice response to structural violence as illuminated by the work of scholars (quoted throughout this thesis) which provide complementary perspectives on denial that inform the findings on manifestations of denial. As Gavrielides (2007:236) avers, ‘research findings that identify ... gaps can never be deemed complete, or even adequate, if they merely disclose a gap and call to mind it’. He suggested that scholars should question why the space exists and this study answers that call in part.

Although this study makes the finer distinction between orthodox and unorthodox theories it still confirms the findings of two empirical gap studies. These are Daly’s (2002) *Mind the Gap: Restorative justice in Theory and Practice*, and Gavrielides’ (2007) *Restorative justice Theory and Practice: Addressing the Discrepancy*. Daly’s (2002:7) results showed ‘a gap between the ideal and the reality of conferences’ conducted by a South Australian project. Gavrielides’ (2007: 236) study was international and according to him, had a more wide-ranging and holistic approach which ‘put it in a distinctive position compared to the few studies that preceded’ it. Gavrielides’ (2007) findings consisted of a discrepancy with regard to the ‘use and meaning of restorative justice’ (p.133), issues in training, education and accreditation (p.133), and problems with the way restorative justice work is funded (p.40).

The findings from these studies reinforce the findings of this research which relate to the existence of a gap caused by the denial of structural influences in the commission of crime; a gap between restorative justice theory and practice; a gap in training and a gap in practice. In this study the reference to funding (by two organisational leaders) plays a secondary role as it does not create the gap, but causes practitioners to prioritise interventions rather than training. In my opinion funding might be an obstacle to expanding services or hiring new staff, but it is not an obstacle to training, as training can happen in-house. From the accounts of practitioners in Norway and South Africa, there is continuous in-house training. This suggests that training about structural violence is not a priority in either society as there is no lack of opportunity to introduce the role of structural violence. Judging by the idealism of participants in both societies, this lack of prioritisation is not due to a lack of caring, but rather a lack of understanding of theories of crime that inform modest and expansive forms of restorative justice processing.

9.6 Implications for restorative justice practice

These arguments serve as confirmation that an intersectional and pragmatic response to structural violence and direct violence, which includes cooperation by government and broader civil society actors, is needed for restorative justice to make a contribution to long-term peacebuilding. Since restorative justice practitioners are in partnership with the state to deal with crime more holistically; it follows that these partners should point out the hitherto 'invisible' interaction between individual and structural factors, as well as make appropriate policy recommendations. Restorative justice practitioners are in a position to render structural violence visible through the cases they mediate. Specifically, the dialogic and deliberative nature of mediation puts restorative justice practitioners in a better position than magistrates, to piece a fuller picture of crime together, by using a deeper and broader view of crime. Failure to do so is counterproductive and exposes the superficial nature of restorative justice processing - if it is delinked from the policymaking processes of government - as a collective social transformation and thus a peacebuilding tool. The alternative is for restorative justice processing to remain an instrument of delegated social control rather than the force for social justice that restorative justice stakeholders believe it to be. One participant indicated that he was part of the policymaking process (as a civil society partner with government) and a chief drafter of national restorative justice policy). This suggests that restorative justice

practitioners in South Africa are powerfully placed to influence government policy. Unfortunately, restorative justice NGOs do not appear to always co-operate with each other as the precarious funding environment causes them to compete rather than collaborate. In addition, foreign donors, with their country strategies, funding cycles and preferences, wield a powerful influence in recipient countries and can (and have) littered the environment with abandoned pilot projects. This has the effect of limiting the potential role that these organisations can play.

Based on progressive training and education literature, the interlocked gap can be filled by offering 'structurally responsive' restorative justice training (Dyck 2000, 2006) that is based on, information sharing, awareness raising as well as education and action to *build critical consciousness*. With regard to critical consciousness, I concur with Freire, (1974:6) who believes that transition is a time for personal and societal development. The lack of a growing critical consciousness amongst practitioners who are unable to integrate themselves into the transitional society, which is marked by intense contradictions and change (Freire, 1974:12), explains the denial manifested by mediators in this study.

In contrast to the views expressed in this research, the meta analysis and review conducted by Latimer, Dowden and Muise (2005) and Sherman & Strang (2007) report that restorative justice is effective as discussed in chapter three. The weakness of these research findings for unequal transitional contexts, is that these studies make no reference to structural factors at all. At best, it is in line with Habermas' notion of 'communicative action as a source of social justice' as suggested by Neves (2009). He argues that while mediation is 'probably incompatible with direct defence of specific social causes, it can indirectly contribute to social justice through enhancing communication between the parties' (p.491). In addition he states that mediation includes many values and procedures that societies lack with regard to the way they are organized, thus to promote mediation values could be regarded as relevant social intervention (p.492). Given that trans-historical inequality and other examples of structural violence span more than three and a half decades, the value of 'communicative action' is wearing thin in many quarters in South Africa where violent protests, with dire consequences and loss of life are becoming more frequent.

9.7 Towards structurally responsive restorative justice

The contextual gap and the gap in practice during victim offender mediation, suggest that mediators need training in the difference between individual, structural and integrative crime theories. This will assist them to make the link between their tacit and explicit knowledge about their society and the appropriate theories for that situation. The practice gap (strategies, techniques and tactics) suggests that mediators need training in how to analytically and practically apply their knowledge about the context in which crime is produced. Additions to the training curriculum that will result in mediators who are structurally responsive will close the training gap. These actions will close the interlinked gaps depicted in figure 7.1. As discussed in chapter eight, taken together, these interlinked gaps gave rise to the micro manifestations of denial by mediators which led to the findings of procedural blindness, substantive deafness and a complicit silence about the limitations of restorative justice processing. If the gaps are filled through education for critical consciousness about crime production in South Africa's unequal, transitional context, the manifestations of denial will be dealt with. More aware, conscious and appropriately trained practitioners will facilitate processes that have a better chance of advancing long-term peacebuilding in the South African context.

In the absence of radical redistribution of wealth and drastic changes in the economic and social system; an incremental approach, based on reflexive practice, can begin to turn the tide with regard to how crime and the criminal are constructed and responded to. If practitioners are not trained to become structurally aware and responsive, the processes they facilitate will not contribute to long-term peacebuilding in any meaningful way. The need for mediators to become critically conscious is thus important, as, from the data, it appears that restorative justice practitioners believe they are already working towards a peaceful society. The findings of this research contain the information on which to base training material necessary to strengthen the restorative justice link to long-term peacebuilding. As argued in chapters two, three and four peacebuilding and restorative justice converge on the fact that each deal with the interaction of structural and individual dynamics that lead to crime/social harm. It also converges on social justice, mediation strategies, techniques and tactics, cultural-structural- direct violence (even if this is not evident from the model used during victim offender mediation where structural violence is left outside of the frame of analysis and action). According to the literature, inequality

is an example of structural violence which in turn is linked to direct violence of which crime/social harm is a manifestation (Schirch, 2008:6). This logically suggests that restorative justice theories and processes chosen for use in South Africa, should take structural factors that contribute to crime into account. It should also take into account that most parties return to criminogenic environments that contain the determinants and triggers which caused individuals to commit crime in the first place.

The discussion about individual, structural and interaction theories of crime in chapter three shows that an expansive view of restorative justice, which is based on an interactionist theory of crime, is the most logical fit for South Africa. This statement is based on the deeper and broader analysis of trans-historical inequality and its nested effects in South Africa over time as set out in chapter four. In addition, South Africa's prison statistics show that the percentages of black (diverse) and white prisoners reflect the trans-historical nature of inequality along racial lines, where the state is increasingly relying on its monopoly on force via the criminal justice system where its 'shoot to kill' and restorative justice rhetoric co-exist.

9.8 Dealing with the conceptual and contextual gaps

On the one hand, the model of findings suggest that practitioners lack conceptual tools, with which to understand the role that violence plays in the production of crime in general, and in South Africa's unequal, transitional context in particular. On the other hand the combined lack of theoretical and contextual understanding causes practitioners to exhibit manifestations of denial during the mediation process. Unless they are trained, most restorative justice practitioners do not have the conceptual tools (Dyck, 2006:530), that enlarges their frame of analysis enough to include multiple and simultaneous intersections of horizontal, vertical and cross-cutting phenomena that contribute to crime. The collective result of such a limited gaze over time leaves structural violence intact while practitioners deal only with its symptoms in a limited and limiting way. Denial by restorative justice practitioners, in the face of these phenomena, therefore suggests that they need conceptual tools with which to process information that the society is trying to suppress. It also places limits on the contribution that restorative justice can make to peacebuilding in unequal, transitional contexts. This indicates a need for the mediation

model to be enriched to respond to unequal, transitional contexts and for practitioners to be trained to be 'structurally responsive' as suggested by Dyck (2006:530).

The conceptual tools provided by orthodox restorative justice theorists are not adequate for unequal, transitional contexts; and even the tools provided by the most radical western restorative justice theorists need to be made contextually specific. Wing (2009:400) has argued that mediation needs to lend selectively from other paradigms. I argue that since victim offender mediation uses the same dominant model used in peacebuilding processes, the model needs to be enriched to make it responsive to the South African context. This means that mediators *must* be trained and that the notion of lay persons needs re-examination, particularly in the context of pre-trial and pre-sentencing victim offender mediation.

The particular notion of lay-orientation popularised by Nils Christie (1977:11), who is regarded as one of the grandfathers of restorative justice, is downright dangerous in an unequal, transitional context. This is particularly true for criminal justice directed restorative justice processing like victim offender mediation. Christie's version of lay participation, while modelled on a process he witnessed in Tanzania, was developed and adapted for Norway's egalitarian context (p.2). He argued that:

Specialisation in conflict resolution is the major enemy; specialisation that in due-or-undue- time leads to 'professionalisation'. That is when the specialists get sufficient power to claim that they have acquired special gifts, mostly through education, gifts so powerful that it is obvious that they can only be handled by the certified craftsman. (Christie, 1977:11).

Christie's notion of specialisation is qualified in the second sentence where he shows his disdain for the 'certified craftsman'. His goal is clarified later 'let us reduce specialisation and particularly our dependence on the professionals within the crime control system to the utmost' (p.11). The danger referred to with regard to lay practitioners is in part Christie's dislike of the 'specialised non-specialist'; and the fact that 'some are even trained, given special courses or sent on excursions to foreign countries to learn about how to behave as a lay judge' (emphasis in the original)(p.11). The findings of this research have shown that a lack of adequate and contextualised training; alternatively a lack of application of such training, leads to a practice that neither acknowledges, nor responds, to lingering structural violence.

In sum, by dealing with the conceptual gap through awareness- and consciousness raising, provision of information and education about the links between individual (modest), dispositional and interactionist (expansive) theories of crime and agency on the part of practitioners, the contextual gap can be dealt with.

9.9 Dealing with the training and practical gaps

In South Africa and currently in Norway (despite Christie's misgivings) lay people are trained in mediation skills, the basics of restorative justice processing and additional courses on how to mediate in domestic violence and other anger and violence related cases. However, the overall training lacks a module on analytical skills training that would enable practitioners to critique and adapt the models they use to fit their context, and the types of cases they deal with. More importantly, practitioners are not trained to recognise and record patterns of interaction of individual and structural factors in the cases they mediate, nor are they trained to make victims and offenders aware, conscious, informed and educated about the social forces that create the environments they live in.

Braithwaite (1996:2), a leading restorative justice scholar, agrees with Christie and argues that lawyers, as part of the western criminal justice system, have 'on balance, been corrosive of deliberative democracy'. He suggests that through restorative justice, *deliberative control of justice* is restored to citizens (p.2). I argue that while this deliberative control might increase democracy at the micro level, it does not provide people with the conceptual tools to understand how structural factors interact with individual factors to produce crime. In addition, people do not have the power to change structural conditions on their own, they need the cooperation of the state which is 'a tool to achieve collective social transformation' (Pithouse, 2012, web reference 31) in transitional contexts. Braithwaite acknowledges that restorative justice 'cannot resolve the deep structural injustices that cause problems like hunger' (p.2). He suggests that restorative justice 'must not make structural injustice worse' but offers no way to consider how restorative justice practitioners might assist in drawing government's attention to the contributing role that 'deep structural injustices' play in producing crime. His hope is that restorative justice might provide 'micro-measures that ameliorate macro-injustice' where possible, and for the remedies 'to take account of underlying injustices' (p.2).

Structural awareness and responsiveness are not straightforward. Practitioners need to be trained in a way that sharpens their analytical ability to discern patterns and connections in the knowledge they already have about the society they are embedded in; *and* to recognise new instances of these patterns. I argue that this training should complement rather than replace existing skills that ‘focus on affective, interpersonal, individual accommodations...’ which are limited in terms of its potential to address structural causes of crime (Dyck, 2006:530). Dyck also draws our attention to the fact that ‘an inappropriate emphasis on the immediate issues, persons, events, and locations in conflict [...] leaves us largely unable to recognize structural illnesses observable over time and geographic distance’ (p.530). A crisis-responsive ‘long-term, process-oriented approach to our everyday troubles’ rather than a crisis-driven approach (p.530), is precisely the approach that would bring restorative justice practice out of an exclusively ‘law and order’ reactive approach and into a peacebuilding framework of justice.

Many restorative justice theorists talk about structural injustices in the abstract while others simply ignore it. Dyck (2006) has gone a step further to suggest ways in which restorative justice practitioners and mediators generally, can be trained to take structural injustices into account during restorative justice processing. He provides some food for thought with regard to the conceptual gap found in this study. Dyck argues that as many mediators do not have the conceptual tools to examine the conflicts they are processing ‘from Mika’s ‘longer and deeper’ vantage point, there is a tendency to define problems in shallow simplistic, linear, cause-and-effect terms’. This, he suggests, leads mediators to ‘pathologise’ specific individuals without recognising or addressing ‘the way in which ‘problem people’ reflect larger systemic problems’ (p.530). In South Africa, the fact that black people (in their diversity) are presently, and have always been overrepresented in prison, is not understood in historical context. There is a general hush about the low percentage of white people in prison, their near total absence from restorative justice processes and accounts about processes (except for one account, in this study, where a white person was referred to as a victim). This is a complicit and politically correct societal silence, what Liem (2007:153) refers to as the politics and psychology of memory and voice, Cohen, (2001) as a ‘culture of denial’ and Zerubavel, (2010:32) as a ‘conspiracy of silence’, that is reproduced in the restorative justice process. In this regard it is worth reproducing Quinney’s (1964:19) opinion here:

[R]ace is an important factor in the disposition of criminal indictments for adult offenders; race enforcement varies from one type of geographical area to another; certain laws such as vagrancy laws are used for diverse purposes; cliques and systems of informal relations among lawyers affect the referral of clients, legal advice, and the availability of outside assistance in criminal cases; and accused persons are persuaded to plead guilty to lesser charges in order that the prosecution will obtain a conviction [and]... the background and affiliations of judges affect the decisions in criminal cases. (Quinney, 1964:19).

In South Africa the issue of race is further complicated by historic inequality (and its multiple effects) along racial lines, as discussed in chapter four. In addition, from the findings, the strategies, techniques and tactics used by restorative justice practitioners in the 'black box' of restorative justice, as set out in chapter seven; corresponds with the dominant mediation model taught in the wider field of conflict resolution and peacebuilding. Wing (2009), Neves (2009) and Li-On (2009) all question the dominant mediation paradigm. They focus on similar and distinct aspects of the mediation model. Wing (2009:400) argues that there is a need to explore the politics of mediation and the fact that it can produce inequality. This, she suggests, challenges the field to reassess the paradigm and the strategies that are used to maintain its values. Her argument includes practices such as victim offender mediation when she says:

Whatever arena we focus our mediation activities in, we can see the perpetuation of inequality in mediation experiences as both an urgent call to do something different as well as a rich opportunity to broaden our perspectives by learning from other paradigms and seeking answers to the problems of power inequity within societies and also within our field (Wing, 2009:400).

Wing developed a training programme titled *Social Justice Mediation Institute* which draws on critical race, social justice and narrative theories to deal with the inequalities produced and reproduced during the mediation process. It is described as '[a] mediation training designed to explore how identity and power imbalances affect the development and resolution of conflict' (web reference 32). This suggests that training to counter manifestations of denial must be combined with awareness- and consciousness-raising, information and education about structural violence (of which trans-historical inequality is an example) and its relationship to direct violence (of which crime is an example).

The finding that restorative justice practitioners focus only at the individual and relationship level does however not mean that a post hoc analysis of their records will be void of structural material. It simply means practitioners do not have the conceptual tools to identify the patterns of interaction that produce crime, and to place this in a broader and deeper societal context. Neves suggests that mediators can extend and deepen the effect of their work when they identify 'recurring conflict between similar types of social actors' and thereafter approach these conflicts 'in their structure and not just in their individuality' (p.492).

The findings with regard to the null curriculum (the absence of structurally responsive training) suggest that this gap produces the *trained* procedural blindness, substantive deafness and complicit silence exhibited by practitioners. The hidden curriculum (mediation values and norms) powerfully produces mediation devotees (of which I was one) who unconsciously reproduce the status quo through their process and practice. The outcome of victim offender mediation simply means that 'harmonious' parties are reinserted into a criminogenic environment, as inequality and its nested effects are growing in South Africa.

In sum, by closing the training gap through the provision of conceptual tools to understand the interaction between individual and society, the practical gap will also be filled.

9.10 Restorative justice within a peacebuilding and social justice framework

As discussed in chapters two, three and four, peacebuilding, restorative justice and social justice come together analytically on the themes of inequality as an example of structural violence, and crime/social harms as direct violence. In real world situations, interactions between the various strands of the three components of the conceptual framework are closely connected. As Dyck (2006) suggests, these factors are 'framed within an overarching goal of long-term peacebuilding for socio-economic and psycho-spiritual transformation' (p.256). He argues that it affirms the need for education, advocacy, consciousness raising, as well as dialogic aspects of mediation training (p.256). This resonates with the conception of long-term peacebuilding discussed in chapter two of this

thesis, and constitutes an appropriate approach to restorative justice in the South African context.

The restorative justice approach used in South Africa, which rests on established orthodox criminological theories, does not advance social justice, as it is not responsive to the interaction of individual factors and lingering cultural-structural-direct violence (Galtung, 1996:2), counter-violence (Gil, 2006:509), and historical trauma amongst other interacting factors. It therefore does nothing to render visible and contribute to transformation of the deeper structures that produce criminal behaviour in South Africa's unequal, transitional society. This finding is supported by 'a review of the affinities and tensions between restorative justice and classicism, individual positivism and 'law and order' conservatism' by Mantle, Fox and Dhami (2005). They conclude that the link between social justice and criminal justice cannot be ignored and argue that 'perhaps the major limitation of restorative justice is that, to date, it has paid little attention to the causes of crime.' They argue that 'restorative justice might never be successful unless radical changes were made in existing social structures and processes' and that the relationship between criminal and social justice cannot be skated over' (p.27). Because of its affinities with peacebuilding, restorative justice processing is one area where inroads can be made. Realistically though, even structurally responsive restorative justice practice can only make a limited contribution if national and global structural violence remain intact. As Gil (2006:506) argues with regard to structural violence:

[r]epressive social-structural violence tends to obscure rather than reveal the real sources and dynamics of violence. It denies, by implication, the social-structural sources of counter-violence and the need for fundamental changes in values and social institutions aimed at reversing the vicious circles of violence. (Gil, 2006:506).

It would be extremely naïve to believe that a more progressive approach to restorative justice can or will *eradicate* the centuries old consequences of structural and direct violence(s) in the criminal justice system. However, peacebuilding practitioners, who do not reflect on their practices, unwittingly uphold the status quo and contribute to obscuring the 'social structural sources of counter-violence' as suggested by Gil, (2006:506). Awareness, consciousness, information and education about the interaction of inequality (structural violence) and crime (direct violence), and the individual level

theories that underpin restorative justice, will confront restorative justice practitioners with a choice – to recognise their patterns of denial and carve a way forward, or to ignore it and continue in Plato’s cave.

9.11 Further reflections on the overall findings

Three broad concerns become immediately obvious from the findings, which suggest that restorative justice is a misnomer in the South African context. One is theoretical and general; and the other two are specifically relevant for South Africa’s historically unequal, transitional context.

- (i) Criminal justice related Victim Offender mediation in South Africa, as in other contexts, is based on a criminal law definition which individualises crime. In turn, the criminal law definition is based on theories of crime that favour dispositional over situational factors. This ensures a built-in and convenient blindness to structural violence as it is simply rendered invisible;
- (ii) Koen (2006:24) draws attention to a truism with regard to the present, and the reality of capitalism. He argues that: ‘restorationists fail to comprehend that our common humanity is permanently fractured by the facticity of class and the inevitability of class conflict’. This is also a reminder to peacebuilders more broadly, who seek to build positive peace in the context of the national and global economic and political system which depend on the status quo for it to prevail.
- (iii) In addition, restorative justice practitioners ignore five key related factors about South Africa’s past and the correlation with social harms in the present:
 - that the perceived political *historic compromise* which led to South Africa’s democracy, did not mean that multiple and simultaneously inflicted economic, social, psychological, spiritual and other wounds of oppressed people have automatically healed and that everyone was on an equal footing. It also does not mean that political freedom is not appreciated when symptoms, such as social harms, generated by other intersections of past oppression, manifest in the present.

- Restorative justice writ large through the TRC proceedings has excited more interest amongst scholars and researchers than it has delivered continuity to deliver *national reconciliation*. According to Archbishop Tutu, the TRC was intended to ‘start’ a process of reconciliation. Past privilege and poverty ensure that nested inequality will continue for generations to come, despite the surface *deracialising* of the middle class, mainly through Affirmative Action and Black Economic Empowerment, that again favour a few. The slow pace of land reform through ineptitude and corruption, allows the status quo ante to remain largely the same. As Alexander states with regard to reconciliation and nation-building:

‘[i]t is abundantly obvious that through the policy of reconciliation, the nation-building strategy of the liberation struggle has been hijacked by the capitalist class in South Africa; the very same people, in other words, who under apartheid supported, actively or passively, the brutal system of racial division, racial stigmatisation and oppression. (Alexander, 2002:64)

- On the larger canvas of South African society, the direct and indirect oppressors and beneficiaries of apartheid have been forgiven without *restoring* or acknowledging any of the ‘similarly gross’ compounded harms that fell outside of the TRC’s definition of ‘gross violations of human rights’. All that was required was an individualised narration of collective political motive, and the individual shame of it being televised. The new state provided amnesty to the aggressors and demurred about reparations to the small ‘representative’ sample of colonialism and apartheid’s victims who were ineradicably harmed by apartheid crimes.
- There is a correlation between intergenerational, nested inequality caused by structural crimes of the past and direct violence (crime/social harm) in the present; and
- Historical trauma (the soul wound of colonised, dispossessed and oppressed people) is arguably correlated to many instances of personal and social harms that are committed in the present and dealt with by ‘blind’ criminal justice

that does not take the interaction of cultural-structural-direct violence and counter-violence into account.

9.12 Limitations of the study

This research had three limitations related to access, literature and methodology which were overcome in part as discussed hereunder:

9.12.1 Access to participants

Although the research objective and specific aims were reached, the study was limited by the fact that access to participants was difficult. Victims and offenders were hard to reach, access to prosecutors was made difficult by red tape, one South African organisation changed their policy about research students and gave access to juveniles in a different centre (juveniles were not part of this research). A second South African organisation erected various barriers but finally consented. The third South African organisation was accommodating but the process to get permission was lengthy. More than 18 months elapsed before interviews and observations were set up. At a time when no South African interviews seemed possible, Norway was included at short notice, as a possible alternative. However Norwegian victims and offenders were not keen to be interviewed, I could not get access to prosecutors, and interviews were limited to one mediator, one mediator/key expert, one project leader and one organisational leader/key expert who also supplied various documentation. The data which constitutes the external keyhole lens thus excludes the perspectives of Norwegian victims, offenders and prosecutors.

A further limitation arises from the fact that the South African organisations in two different provinces compiled the lists of victims and offenders. Apart from the difficulty in contacting some parties, the list limited me to parties chosen by these organisations. I did not get the number of victims and offenders I had planned to interview. Instead of 10 victims I eventually interviewed six primary and one secondary victim, and instead of 10 offenders, I eventually interviewed four offenders. Most cases by accident rather than design, turned out to be domestic violence cases.

As I did not interview any victims and offenders in Norway, and a smaller number in South Africa, I abandoned some questions that the University of KwaZulu Natal Human

and Social Science ethics committee required me to rephrase, that would have provided information on the immediate and medium term effect of mediation on victims and offenders.

These limitations were overcome in part when the inductive part of the research turned the focus of the study firmly in the direction of the mismatch between tacit and explicit knowledge about the interaction of structural and individual factors that produce crime. For that, the perspectives of any number of victims and offenders who had experienced a restorative justice process was sufficient, as these were added to other perspectives to provide as full a picture as is possible of victim offender mediation. The Norwegian sub-unit became an external keyhole lens on what happens in the black box of victim offender mediation – and added some comparative elements, rather than a full comparison of restorative justice processing in the two countries.

9.12.2 Literature related limitations

This research started with a perceived gap in practice and had deductive and inductive aspects. Rather than a traditional literature review, an overview of concepts was done to construct the conceptual framework, which provided ‘sensitising concepts’ for the empirical study (Charmaz, 2006:169). Following the technique suggested by Charmaz (2006:168 I thought ‘beyond the immediate substantive area to connections with other areas’ based on themes generated by the empirical study, to locate the research within multidisciplinary literature.

The limitation for this research was that library access was difficult to negotiate with the local university in Cape Town and off-campus internet access to the University of KwaZulu Natal library was not always smooth over the period of the research. A literature intensive study like this should ideally be conducted on campus as it will shorten registration time and reduce internet expenses.

9.12.3 Methodology

My intention was to observe a few mediation processes. Two observations were diarised by one organisation but participants did not arrive for the first session. This limitation of observing one session for this study, was overcome by my experience of observing previous restorative justice processes as well as my own experience as a practitioner. In

addition, the perspectives of seven victims, four offenders and six mediators who were personally involved in these processes, added nuanced data to mine with regard to victim offender mediation strategies, techniques and tactics. Mediation literature also shed light on victim offender mediation practices.

9.13 Further research

The benefit of using the conceptual framework based on the multi-perspectival, approach, is that it heuristically generated many interrelated themes that provided a deeper and broader view of the relationship between restorative justice and peacebuilding. The limitation of a PhD thesis is that only key themes can be reported on and discussed, but it does not render the other themes less important. This research generated two other significant sub-themes that require further research.

9.13.1 These flow from the sub-theme related to the relationship between *inequality and crime*. Several accounts made reference to conspicuous consumerism and its relationship to crime.

9.13.2 The second, related sub-theme is *historical trauma* which is a response associated with dispossession and oppression that contributed to trans-historical inequality in the South African situation. As far as I am aware, research on the consequences of inter-generational trauma and its relationship to crime/social harm has not been conducted in the South African context. The prison statistics cited in chapter nine show a picture of the racial profile of prisoners that require further examination.

These two themes speak to micro-macro factors that lie at the heart of long-term peacebuilding. The heuristic research approach taken in this study served the purpose of generating themes and pointing out the gaps in peacebuilding practice. Further research, taking account of subjugated knowledge, will fill out the picture more, provide a clearer understanding of direct violence (crime/social harm) and will shed light on its relationship to historically unbroken structural violence and the culture that legitimises and justifies it.

The body of knowledge on these two correlates of crime/social harm - inequality and historical trauma - will help to fill out the overall picture with regard to the fact that global neoliberal economic orthodoxy exacerbates situations in societies that are already hamstrung by its own history of inequality and its trans-generational consequences.

9.14 Conclusion

In conclusion, this chapter provided an answer to the research question. The main findings were interpreted and explained. The *meaning* of these findings, in the context of trans-historical inequality and its main consequences from the colonial and apartheid eras and transition to a market democracy, was discussed. Links were made to relevant research and multidisciplinary theoretical literature. Limitations of the study were acknowledged and suggestions for further research were made based on the grounded theory of this research, that the manifestations-patterns-culture of denial obscure the links between cultural, structural, direct and counter-violence.

PART V: CONSCIOUSNESS AND CHANGE

This section concludes the thesis and takes into account the grounded theory of this research which suggests that the manifestations-patterns-culture of denial laid bare in this study, obscures the links between cultural, structural, direct and counter-violence. Chapter ten, commences by pointing out the limitations of micro-level social change in the absence of simultaneous macro-level social change. It proceeds by making recommendations for structurally aware restorative justice practice that will lead to conscious engagement with the dynamics of cultural-structural-direct violence thereby confronting the manifestations-patterns-culture of denial that render practitioners blind, deaf and silent about the South African context. The chapter ends by showing the contributions that this thesis has made to knowledge and practice.

CHAPTER TEN: CONCLUSION

Designing restorative justice models and approaches (including training) focused on systemic and structural issues related to conflict and peacebuilding will be requisite for the social change possibilities envisioned by advocates and practitioners. (Mika, 2010:344).

10. Introduction: Agency/structure, nature/nurture, micro/macro

In this chapter, I summarise the main findings of this study and draw some conclusions.

The following caveats apply:

- (i) Inequality and its consequences are global phenomena. As part of the ‘family of nations’ in an interconnected and interdependent world, South Africa cannot escape the ripple effect of global economic, environmental and other problems. The knock-on effects of global inequality presents a near impossible situation for states to manoeuvre themselves out of a situation where they increasingly (choose to) use deadly force against their own citizens who protest or strike to be included into the ‘developed’ lifestyles that they are structurally excluded from on the one hand. On the other hand, consumerism is encouraged and ordinary people are bombarded with aspirational messaging via media and throughout society where conspicuous consumption is ‘normalised’. Unless the entire society is reoriented towards normalising equality rather than inequality, and the media and conspicuously wealthy are targeted to contribute to a more inclusive society, the structural violence of inequality and its direct consequences will continue to escalate. This might even mean that South Africa needs an economic convention along the lines of the Convention for a Democratic South Africa (CODESA).³²
- (ii) Long-term peacebuilding processes that do not take the mutually reinforcing nature of different forms of violence (cultural/symbolic, structural/political and economic; direct and counter-violence) into account, will not achieve positive peace and

³² The idea of a ‘second transition’ mooted by the ANC; and an economic ‘CODESA’ mentioned by the DA and other commentators, is increasingly being floated in the media during 2012. On 12 March 2009 I made reference to an economic ‘CODESA 2’ in a M&G *Thoughtleader* blog comment as an alternative, to short circuit complaints about the divisiveness of AA and BEE, and to focus the discussion on inequality and its consequences for all South Africans (web reference 35).

struggle to maintain negative peace. On this view, progressive policies and practices by individual organisations or individual practitioners will not contribute meaningfully to peacebuilding in the short, medium or longer term unless the state, in partnership with civil society, seeks to *understand* and *deal* decisively with the cultures of violence and denial, uninterrupted and growing inequality and its link to crime/social harm. The efforts of individual organisations might influence individuals which is positive with regard to their own agency; but most individuals have a limited reach and influence. For its part, Restorative Justice cannot undo all social injustices, but it can make a difference to an important structural driver of inequality – the high imprisonment rates of black people, which leads to increased intergroup and other nested forms of inequality. If the Rwandan example of structural violence in the form of gross inequality over time, which led to genocide is anything to go by; and if the reasons for protests, the number of protests, strikes and retaliatory ‘war’ on protestors and strikers in South Africa escalate; the following recommendations become purely academic.

10.1 Overall objective and specific aims

The overall objective of this research was to examine victim offender mediation, as a contemporary form of restorative justice, to assess whether it contributes to long-term peacebuilding in South Africa’s unequal transitional context.

The overall objective was achieved by combining a conceptual framework to capture the macro-level and an empirical study to capture the micro-level dimensions of this study. Juxtaposition of these dimensions revealed visible and invisible variables that would otherwise remain unaccounted for in research findings. Restorative justice was used as an embedded (Yin, 1994:41) instrumental (Stake,1995:4) case (with five sub-units, in a 360° formation around victim offender mediation, as well as one external keyhole lens in the form of the Norwegian konfliktråd), to learn more about peacebuilding in the context of inequality and transition. Peace studies, as the core discipline, allowed micro-macro linkages to be made inductively and deductively by drawing on criminological, sociological, psychological, peace research and educational literature, theories and

methods. The conceptual context for this study rested on a descriptive analysis of cultural-structural-direct violence (Galtung, 1996:2) and counter-violence (Gil, 2006:509) in South Africa by tracing the trans-historical nature of inequality along racial lines, from pre-colonial, colonial and apartheid eras to the era of the market democracy in chapter four. Chapter two provided distilled, context-specific conceptions of long-term peacebuilding and in chapter three restorative justice is discussed to show how these concepts are linked to each other. The conceptions and analyses show that both peacebuilding and restorative justice converge on social justice on the one hand and cultural violence (which legitimises and justifies structural and direct violence); structural violence (of which trans-historical inequality is an example) and direct violence (of which crime/social harm is a manifestation) on the other hand. These convergences constitute the macro-level conceptual argument about uninterrupted inequality from colonial and apartheid eras to the period of market democracy and points at a peaceful way for restorative justice to be structurally responsive. The conceptual argument that emerged was simply that trans-historical inequality is a structural feature of the South African landscape and has multiple trans-generational effects that need to be taken into account for a clearer understanding of crime and the criminal in the South African context. Peacebuilding and restorative justice processing also share the same patterns of interaction, behaviour and experience in the mediation/conflict resolution process phases and stages. The micro-level empirical investigation, which examined the black box of victim offender mediation, revealed that restorative justice processing in South Africa is *not* responsive to the historical antecedents and present manifestations of inequality (as an example of structural violence) and its interaction with crime/social harms (as manifestations of direct violence), but has the potential to do so. This resonates with Wing's reason for developing the Social Justice Mediation Institute 'in response to the pattern that has emerged in the field of mediation revealing that mainstream mediation is not equally serving all segments of the population'. On the institute website, Wing argues that 'despite the demonstrated success of mediation, recent research shows that it also routinely reproduces privilege both structurally within the institution and interpersonally between disputing parties'.

Specific Aim 1, Macro level: To construct a conceptual framework based on a close reading of South Africa's history of inequality, its transition to democracy, and future goals as contained in the Constitution of 1996, and relevant multi-disciplinary literature.

This aim was addressed in chapters two, three and four in which the conceptual framework was constructed based on an overview of the three main concepts in this study – peacebuilding, restorative justice and social justice. Chapter two dealt with peacebuilding and chapter three dealt with restorative justice, to render visible how these concepts converge on cultural, structural and direct violence, social justice, mediation strategies, techniques and tactics and the interaction of individual and structural dynamics that produce crime/social harm. In chapter four the concept social justice was deconstructed and inverted to provide a descriptive analysis of South Africa's history of structural and direct violence. This provided a historical context for the *underlying* theme of the relationship between inequality and crime/social harm and the *overarching* theme of long-term peacebuilding that should logically inform the focus of pre-trial and pre-sentencing victim offender mediation as a form of restorative justice.

Specific Aim 2 Micro level: Using the conceptual framework, to investigate victim offender mediation in micro detail; to understand if and how it contributes to social justice in South Africa's unequal, transitional society by examining:

What theoretical and practical process frameworks, strategies, techniques and tactics are used by restorative justice practitioners and to what end.

The perspectives of South African victims and offenders on their experience of victim offender mediation and their views on crime in the South African context.

The perspectives of South African Criminal Justice officials on their knowledge and experience of victim offender mediation in particular and crime and restorative justice in the South African context ,

The perspectives of restorative justice organisation and programme leaders in South Africa and Norway on their perspectives of victim offender mediation in particular and crime and restorative justice in general;

The perspectives of victim offender mediators in South Africa and Norway of their knowledge and experience of victim offender mediation in particular and restorative justice and crime in their contexts.

The perspectives of key experts in South Africa and Norway of crime and restorative justice in their contexts.

The previous section discussed construction of the conceptual framework; this section shows how the 360° perspectives were combined to provide a clearer understanding of restorative justice practice. The achievement of this aim is discussed in full in chapters seven and eight and is summarised as follows:

It was found that restorative justice practitioners use a version of victim offender mediation that is based on orthodox theories which place emphasis on dispositional rather than situational causes of crime. One of the strategies used is the inclusion of secondary victims of family and community members that simply widens the relationship level focus from the parties to a wider community. The techniques and tactics that practitioners employ are adjusted to fit within the criminal law definition of crime, which places responsibility solely on the individual. Chapter eight shows that practitioners exercise different manifestations of denial by the way they avert their collective gaze with regard to the constructive coercion of victims and offenders between the criminal justice system and the restorative justice offices. Practitioners adjust their practice to fall in line with the delegated social control function they have within the criminal justice system where they are an alternative *within*, rather than an alternative *to*, the system. This dilutes the social justice agenda espoused by the restorative justice movement. Specifically, practitioners apply selective listening during which structural factors are filtered out and intra- and interpersonal factors become the main focus. The issues are ‘unconsciously’ framed to fit into the limited constructions of crime set by criminal law. Practitioners take a ‘better than the status quo’ approach during which restorative justice processing is stripped of its founding values. What remains is a controlled dialogic process where the practitioner sets the limits and parameters within which parties can come to voice. Examples of how these manifestations of denial happen are contained in chapter eight.

This section will respond to specific aim 2 ii) to vi) combined. The opinions and accounts of all participants in the six subunits are disaggregated in figure 7.3 and 7.4 but have been combined and blended for the purpose of analysis, given that the main focus of this study is the contribution of restorative justice to peacebuilding in the South African context. The function of the 360° formation of perspectives was to provide as complete a picture as is possible of restorative justice processing for an assessment of whether and how it advances peacebuilding. Unlike Gavrielides' (2007) study which included only practitioners, and Daly's (2002) study which focused only on parties, this study included the perspectives of every stakeholder in the restorative justice process. The combined accounts of participants allowed the picture of how crime is constructed to emerge through probe questions which revealed their tacit and explicit knowledge. These combined perspectives provided one of the main findings – 'knowledge about crime in context'. Combined with the observations, these combined accounts also shed light on the second main finding – 'knowledge and restorative justice practice'. These accounts, together with my own observation and prior knowledge allowed me to piece together what happens in the black box of victim offender mediation in minute detail. Juxtaposition of the two sub-themes led to the interplay findings that revealed the manifestations of denial discussed in chapter eight. In sum, the comprehensive model of findings revealed that participants had tacit and explicit knowledge of the interaction of structural and individual factors that produced crime in South Africa's unequal, transitional context. However, practitioners did not apply their knowledge to their practice. Juxtaposition of the two sub-themes about knowledge and the black box of restorative justice practice revealed manifestations of denial categorised as procedural blindness, substantive deafness and complicit silence on the part of restorative justice practitioners.

Specific Aim 3 Process: to use the conceptual framework as a guiding structure in all aspects of this research and to refine it progressively during all research stages, as new information emerges and becomes knowledge.

This aim was achieved by initially using the three main concepts to provide a foundation on which to build the conceptual framework during the overview of concepts in chapters two, three and four. In chapter five, the framework was used to provide parameters for empirical work and informed the choice of research methodology to fit the multi-perspectival approach. The embedded (Yin, 1994:41) instrumental (Stake,1995:4) case with six sub-units in a 360° formation was the most appropriate choice to fit the conceptual/empirical approach to this study. In chapter seven, the framework and its sub-concepts were applied to guide deductive analysis of the transcribed data and led to the findings about the gap between context, theory, and practice. In the same chapter, the data was analysed inductively and revealed the gap between training and practice. Taken together, the inductive and deductive methods led to findings about the finer distinction between the use of orthodox and unorthodox theories of crime on which restorative justice is based and how this relates to South Africa's unequal, transitional context. This generated new knowledge about denial in the course of restorative justice processing. Overall the combined methods revealed the interlinked contextual-conceptual, training and practical gaps.

Specific Aim 4 Integration: to use the knowledge that emerges from the findings and relevant literature to –

In the event of a positive answer to the research question, to draft appropriate conclusions to the study.

In the event of a negative or qualified answer to the research question, to use the conceptual framework and research findings as a basis for recommendations that would complement current restorative justice practice so that it contributes to long-term peacebuilding in unequal, transitional contexts.

The conclusion under this aim is that the strategies, techniques and tactics that constitute restorative justice practice, and the theoretical knowledge it is based on, are necessary but

not sufficient for restorative justice processing to contribute to long-term peacebuilding in unequal, transitional contexts. This has led to a qualified answer to the research question and therefore specific aim 4: ii) will be addressed. This aim can be achieved by basing recommendations on the information and knowledge produced by construction and application of the conceptual framework contained in the comprehensive model of findings.

10.2 Broader theme: peacebuilding in unequal, transitional contexts

Based on the conceptual argument developed in chapters two, three and four, and the comprehensive model of findings, I conclude that a conspiracy of silence exists in South Africa, about the nexus between trans-historical *cultural* violence which legitimised and justified *structural* violence (uninterrupted inequality) and its relationship to direct *violence* (crime/social harm). Fuelled by the master narrative of the ‘miracle nation’, this macro-level denial manifests at present, in a warmaking approach to crime/social harm perpetrated by mainly black (diverse) South Africans. This denial is replicated at the micro level as exemplified in the practice of restorative justice processing evidenced in victim offender mediation. The conspiracy of silence about the trans-historical culture of violence legitimises and justifies patterns of denial at the micro level, which manifest as procedural blindness, substantive deafness and a complicit silence on the part of mediators.

On this view, restorative justice practitioners need training on the relationship between cultural, structural and direct violence and its manifestations. Specifically, South Africa’s history of uninterrupted inequality, as an example of structural violence; and its relationship to crime/social harm as manifestations of direct violence. This training should be based on research that shows the relationship between inequality and crime/social harm as discussed in chapter nine.

A training programme should include information and education about the different theories of crime on which different versions of restorative justice are based; as well as which version of restorative justice processing is the most appropriate for the South African context. Following Baxter (2011:153), contractive discourses should be replaced with more expansive discourses and practice.

As victim offender mediation is based on the model of mediation used in the broader conflict resolution field, the current model needs to be adjusted to respond to the South African context, as set out above and in chapter nine. Specifically a training workshop should include awareness raising, consciousness raising and education about the culture-patterns-manifestations of denial as it pertains to the micro choices that practitioners make to marginalise and dismiss discrepant discourses. The following sections draw conclusions and make recommendations with regard to the contextual, conceptual, training and practice related interlinked gaps found in this research

10.3 Sub-theme 1: knowledge about crime in context

Participants have exhibited tacit and explicit knowledge of the interaction between structural and individual factors that produce crime as a result of the fact that they are embedded in South African society. Awareness and consciousness raising are recommended as part of training so that practitioners can *consciously* apply their knowledge, and enhance the strategies, techniques and tactics on which they base their practice. The facilitation techniques developed by Paulo Freire (1974) are appropriate for a process of awareness- and consciousness raising.

10.4 Sub-theme 2: knowledge and restorative justice practice

This research offered a look into the black box of victim offender mediation practice. Despite the tacit and explicit knowledge that participants had about the interaction of individual and structural factors, this knowledge did not translate into structurally responsive practice. Specifically, the failure to apply their contextual knowledge caused them not to question the intra- and interpersonal levels they focus on. This failure is exacerbated by the criminal justice focus on the individual and the modest version of restorative justice theory that practitioners were applying in a context where a more expansive view is required. It is recommended that practitioners be trained to understand the modest and expansive views and practices of the restorative justice movement. That is, that the modest version of restorative justice draws on theories of crime that focus on individual propensity while the more expansive view includes structural factors. This allows for the application of interactional theories of crime which take the interaction of structural and individual factors into account.

10.5 Denial: procedural blindness, substantive deafness, complicit silence

The manifestations of denial that practitioners displayed flow directly from the four interlinked gaps discussed above and in chapter seven. The training components recommended above, seek to fill the contextual-conceptual gap through training. It is expected that the practice gap will be filled when the new consciousness and knowledge is applied in practice. The consequences of awareness- and consciousness-raising is intended to deal with the manifestations and patterns of denial discussed in chapter eight which were summarised as procedural blindness, substantive deafness and complicit silence on the part of practitioners.

10.6 Concluding remarks

[A]s the purpose ... is to promote peace, not only peace studies, a non-positivistic epistemology is indispensable, with explicit values and therapies, rather than stopping once the diagnosis has been pronounced (Galtung, 1996:vii)

In this research I took a ‘non-positivistic epistemology’ to mean an inclusive epistemology that incorporated positivist methods without according it ‘gold standard’ status, as long as it functioned to illuminate rather than prescribe ‘values and therapies’ necessary to solve the diagnosed problem. Based on a close reading of structural and direct violence from the colonial and apartheid eras to the present period of market democracy, and an examination of the black box of victim offender mediation, the conceptual argument made in this thesis is that restorative justice and peacebuilding converge on six points as set out in chapter four section 4.8.

The conceptual framework revealed the interlinked contextual, conceptual, training and practice gaps and the manifestations of denial that resulted in the patterns of denial that prevent restorative justice processing from advancing peacebuilding in the South African context. In the process, it made conceptual and methodological contributions to the body of knowledge about the detail of the limitations of restorative justice (victim offender mediation) practice in unequal, transitional contexts. The research also provided new knowledge about the relationship between a culture of denial rooted in the master narrative of the ‘miracle nation’ at the macro level; and the link with patterns and manifestation of denial at the micro level exemplified in the information from the black box of victim offender mediation. This new knowledge, if applied to adapt victim

offender mediation, could result in a more strategic, structurally responsive contribution to long-term peacebuilding in unequal, transitional contexts.

Further contributions of this study are related to research methodology, a contextual-conceptual model for analysis and action, and adaptation of mediator training and practice:

10.6.1 Research methodology

The following contributions were made to research methodology

The critical bricolage – enabled linking of the three main concepts peacebuilding, restorative justice and social justice in a conceptual framework. This replicated the South African context at a conceptual level. It also illustrated ‘that the boundaries between traditional disciplines no longer hold’ (Lincoln & Denzin, 2011:5). The conceptual framework allowed the nexus between peacebuilding, restorative justice and social justice to be rendered visible as set out in chapters two, three and four, and provided the basis for the overall conceptual argument made in this thesis.

The methodological bricolage – enabled the combination of the 360° research method with the embedded (Yin, 1994:41) instrumental (Stake, 1995:4) case study method and its sub-units. This combination allowed for a multi-perspectival understanding of what happens in the black box of victim offender mediation during the deductive data *analysis* stage. The bricolage also enabled the technique of juxtaposing the findings (using Said’s contrapuntal reading, thinking and writing) on contextual factors and restorative justice practice, to examine whether practice is responsive to the context in which it is being applied.

The interpretive bricolage – the displays of the conceptual framework, figure 4.2 and the comprehensive model of findings, figure 7.4 provided what Denzin & Lincoln (2011:6) term ‘a set of fluid, interconnected images and representations’ which connect parts to the whole.

10.6.2 Conceptual/theoretical framework

The visibility of macro level factors (facilitated by the conceptual framework) led to a clearer understanding of the strategies, techniques and tactics employed by practitioners in the South African context. The research confirmed previous studies and clarified the different theories of crime that underpin different versions of restorative justice. This clarification led to a refined understanding of the mismatch between orthodox theories of crime (on which modest theories of restorative justice practice rest) and restorative justice practice. It also led to the conclusion that the more expansive version of restorative justice, which brings the interaction of individual and structural factors into the frame of restorative justice practice, is better suited to the South African context, as discussed in chapter nine. This knowledge can contribute to closing the conceptual gap found in the study.

10.6.3 Implications for training and practice

The conceptual framework depicted in figure 4.2 and the comprehensive model of findings illustrated in figure 7.1 together with the conceptual arguments made in this thesis, provide a conceptual understanding of the master narrative of the ‘miracle nation’ and the culture of denial that accompanies it. The contextual-conceptual model constructed in this study provides the means for analysis and action with regard to identifying and closing the gaps in restorative justice training and practice. If the contextual, conceptual, training and practice gaps are closed (as discussed in chapter 9) restorative justice practitioners will be better placed to be more strategic in making a structurally responsive contribution to long-term peacebuilding in unequal, transitional contexts. At the very least, once aware, conscious, informed and educated about the micro-macro linkages between trans-historical inequality and crime/social harm, restorative justice practitioners might form part of a constituency who draw attention to the culture of denial in which South African society is locked, and how patterns and manifestations of denial serve to obscure the culture of violence in which South Africa seems trapped.

References

- Abrahams, Y. (2007). *Ambiguity is my middle name: A research diary in Women in South African History: Basus'iimbokodo, Bawel'imilambo /They Remove Boulders and Cross Rivers*. Cape Town: HSRC Press.
- Abrahams, Y. (2007). *The Khoekhoe Free Economy in Women and the Gift Economy: A radically different world view is possible*. Toronto: Inanna Press.
- Abrams, L.S. (2010). *Sampling 'Hard to Reach' Populations in Qualitative Research: The Case of Incarcerated Youth*. *Qualitative Social Work*. 9: 536. Sage Publications.
- Achebe, C. (1994). *Things fall apart*. New York: Anchor Books.
- Adam, H., van Zyl Slabbert, F., & Moodley, K. (1998). *Comrades in business: post-liberation politics in South Africa*. Utrecht: International Books.
- Adam, H. (2002) *Peace-making in divided societies: the Israel-South Africa analogy*. Cape Town: Human Sciences Research Council Publishers, 2002.
- Adebajo, A., Adedeji, A., & Landsberg, C. (2007). *South Africa in Africa: the post-apartheid era*. Scottsville, South Africa: University of KwaZulu-Natal Press.
- Adhikari, M. (2010). *The Anatomy of a South African Genocide: The Extermination of the Cape San peoples*. Cape Town: UCT Press.
- Alexander, N. (2002). *An Ordinary Country: Issues in Transition from Apartheid to Democracy in South Africa*. Pietermaritzburg: University of Natal Press.
- Altbeker, A. (2008). *A country at war with itself: South Africa's crisis of crime* (Reprint. ed.). Johannesburg: Jonathan Ball.
- Amin, S., Chitala, D., & Mandaza, I. (1987). *SADCC: Prospects for disengagement and development in Southern Africa*. Tokyo, Japan: United Nations University ;.
- Arnold, J. C. (1998). *The lost art of forgiving: stories of healing from the cancer of bitterness*. Farmington, PA: Plough Pub. House.
- Aronowitz, S., & Giroux, H. A. (1991). *Postmodern education: politics, culture, and social criticism*. Minneapolis: University of Minnesota Press.
- Arrigo, B.A., (2000). *Social Justice and critical criminology: on integrating knowledge*. *Contemporary Justice Review*, Vol. 3(1) pp. 7-37.
- Audi, R. (1998). *Epistemology: a contemporary introduction to the theory of knowledge*. London: Routledge.
- Ballard, R., Habib, A., & Valodia, I. (2006). *Voices of protest: social movements in post-apartheid South Africa*. Scottsville, South Africa: University of KwaZulu-Natal Press.

- Barak, G. (2000). *Repressive versus restorative and social justice: a case for integrative praxis*. Contemporary Justice Review, Vol. 3(1) pp. 39-44.
- Barnett, M., Kim, H., O'Donnell, M., & Sitea, L. (2007). *Peacebuilding: What Is in a Name?* Global Governance 13 (2007), 35–58.
- Baxter, P., & Jack, S. (2008). *Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers*. The Qualitative Report Volume 13 Number 4 December 2008 544-559
- Baxter, L. A. (2011). *Voicing relationships: a dialogic perspective*. Thousand Oaks, Calif.: Sage Publications.
- Bazeley, P. (2009). *Analysing Qualitative Data: More Than 'Identifying Themes'*. Malaysian Journal of Qualitative Research, 2009, 2, 6-22.
- Bercovitch, J., & R. Jackson. (2009). *Conflict resolution in the twenty-first century: principles, methods, and approaches*. Ann Arbor: University of Michigan Press.
- Berger, Peter L. (1963). *Invitation to sociology*. New York: Anchor books.
- Bernard, H.R. (2000). *Social Research Methods: Qualitative and Quantitative Approaches*. Thousand Oaks, Calif.: Sage Publications.
- Bertram, E. (1995) *Reinventing governments: the promise and perils of United Nations peace building in* Journal of Conflict Resolution, Vol.39, No.3.
- Biko, S., & Stubbs, A. (1978). *I write what I like*. New York: Harper & Row.
- Bond, P. (2004). *Talk left, walk right: South Africa's frustrated global reforms*. Scottsville, South Africa: University of Kwa-Zulu-Natal Press.
- Boonzaier, E. (1996). *The Cape herders: a history of the Khoikhoi of Southern Africa*. Cape Town: D. Philip.
- Boraine, A. Levy, J. & Scheffer, R. (1997). *Dealing with the Past: Truth and Reconciliation in South Africa*. Cape Town: IDASA.
- Boulding, E. (2003). *The Other America: The Forgivers and the Peacemakers*. Peace & change, Vol. 28, No. 3, July 2003.
- Boyes-Watson, C. (2000). *Reflections on the Purist and Maximalist Models of Restorative Justice*. Contemporary Justice Review 3(4): 441-450
- Braithwaite, J. (1979). *Inequality, Crime, and Public Policy*. London and Boston, Routledge & Kegan Paul.
- Braithwaite, John (1996). *Restorative Justice and a Better Future*. Dorothy J. Killam Memorial Lecture. Dalhousie University,

- Braithwaite, J. (2002). *Restorative justice & responsive regulation*. Oxford: Oxford University Press.
- Brave Heart, M. Y. H., Chase, J., Elkins, J., Altschul, D.B. (2011). *Historical Trauma Among Indigenous Peoples of the Americas: Concepts, Research, and Clinical Considerations*. *Journal of Psychoactive Drugs*; Oct-Dec, Vol. 43 Issue 4, p282-290.
- Buettner-Schmidt, K., & Lobo, M. (2011). *Social justice: a concept analysis*. *Journal of Advanced Nursing*. Volume 68, Issue 4, pages 948–958.
- Burnard, P. (2004). *Writing a qualitative research report*. *Accident and Emergency Nursing* 12. Elsevier.) 12, 176–181
- Charmaz, K. (2006). *Constructing grounded theory: a practical guide through qualitative analysis*. London: Sage Publications.
- Chenail, (1995). *Presenting Qualitative Data*. *The Qualitative Report*, Volume 2, Number 3.
- Choi, J.J. (2008). *Opening the “black box”: a naturalistic case study of restorative justice*. Unpublished PhD thesis.
- Christie (1977). *Conflicts as property*. *British Journal of Criminology*. 17 (1): 1-15.
- Chua, A. (2003). *World on fire: how exporting free market democracy breeds ethnic hatred and global instability*. New York: Doubleday.
- Cohen, R. L. (2001). *Special issue: regret, reconciliation, and restorative justice*. Dordrecht: Kluwer Academic.
- Cohen, S. (2001). *States of denial: knowing about atrocities and suffering*. Cambridge, UK: Polity.
- Collins, H. M. (2010). *Tacit and explicit knowledge*. Chicago: The University of Chicago Press.
- Cooke, M. (2006). *Re-presenting the good society*. Cambridge, Mass.: MIT Press.
- Corden, A., & Sainsbury, R. (2006). *Using verbatim quotations in reporting qualitative social research: researchers' views*. York: University of York.
- Crais, C. (2011). *Poverty, War, and Violence in South Africa*. Cambridge University Press.
- Curle, A. & Dugan, M., (1982). *Peacemaking: Stages and Sequence, Peace and Change*, Vol. 8, (Summer 1982) 19-28.
- Daly, K. (2002), *Mind the Gap: Restorative Justice in Theory and Practice*.
- Daly, K. (2008). *Seeking justice in the 21st century: towards an intersectional politics of justice*. In Ventura Miller H. E. (ed.) *Restorative Justice: From Theory to Practice* (Sociology of Crime, Law, and Deviance Series, Vol. 11). Bingley, UK : Emerald Group

Publishing.

Darby, J. 2007. *Violence and peace processes*. In (eds) Rao, A., Bollig, M., & Böck, M. (2007). *The practice of war: production, reproduction and communication of armed violence*. New York: Berghahn Books.

Davis, D. (1985). *Crime and power in South Africa: critical studies in criminology*. Cape Town: David Philip.

Davies-Vengoechea, X. (2007). *A positive concept of peace*. In G. Kemp & D. Fry (Eds.), *Keeping the peace: Conflict resolution and peaceful societies around the world*. (pp. 11-18). New York: Routledge.

Demombynes, G. & Özler, B. (2006). *Crime and Local Inequality in South Africa*. In *Poverty and Policy in Post-Apartheid South Africa* (Eds.) Bhorat, H. & Kanbur, R. Cape Town: HSRC Press.

Denzin, N.K. (2010). *Grounded and Indigenous Theories and the Politics of Pragmatism*. *Sociological Inquiry*, Vol. 80, No. 2, 296–312.

Denzin, N. K., & Lincoln, Y. S. (Eds.) (2011). *The Sage Handbook of Qualitative Research*. (4th ed.). Thousand Oaks: Sage Publications.

Dey, I. (1993). *Qualitative data analysis: a user-friendly guide for social scientists*. London: New York, NY.

Dolo, S. S. (2005). *Afrikan marriage versus slave marriage and the destruction of Black American family values*. Bloomington, Ind.: AuthorHouse.

Drake, P., & Heath, L. (2011). *Practitioner research at doctoral level developing coherent research methodologies*. London: Routledge.

Duck, S., & McMahan, D. T. (2009). *The basics of communication: a relational perspective*. Thousand Oaks, Calif.: Sage.

Dunn, D. J. (2005). *The first fifty years of peace research: a survey and interpretation*. Aldershot, England: Ashgate.

Duran, E. (2006). *Healing the soul wound: counseling with American Indians and other native peoples*. New York: Teachers College Press.

Dyck, D. (2006). *Reaching toward a structurally responsive training and practice of restorative justice*. In Sullivan, D., & Tifft, L. *Handbook of restorative justice: a global perspective*. London: Routledge.

Elias, R. (1991). *Crime control as Human Rights enforcement*. In *Criminology as Peacemaking*. Bloomington: Indiana University Press

Ellington, L. (2011). *Analysis and representation across the Continuum*. In Denzin & Lincoln (Eds.) *The Sage Handbook of Qualitative Research*. (4th ed.). Thousand Oaks: Sage

Publications.

Evans, G. J. (1993). *Cooperating for peace: the global agenda for the 1990's and beyond*. St. Leonards, NSW, Australia: Allen & Unwin.

Evans & Cohen, 2004. *Environmental Stress*. In *Encyclopedia of applied psychology: Volume 1 – Spielberger, C.D. (ed.)*. Elsevier.

Fanon, F. (1967). *Black skin, white masks*. London: Pluto.

Farmer, P. (2005). *Pathologies of power: health, human rights, and the new war on the poor: with a new preface by the author* ([2005 ed.]). Berkeley: University of California Press.

Feinstein, C.H. (2005). *An Economic History of South Africa: Conquest, Discrimination, and Development*. New York. Cambridge university press.

Fisher, R. J. (1997). *Interactive conflict resolution*. Syracuse, N.Y.: Syracuse University Press.

Flyvbjerg, B. (2006). *Five misunderstandings about case-study research* *Qualitative Inquiry*, Volume 12 Number 2. 219-245

Freed, M. (2009). A multiperspectival conceptual model of transformative meaning making. Found at <http://gradworks.umi.com/3391149.pdf> on 15 May 2012.

Freire, P. (1974). *Education for critical consciousness*. London: Sheed, Ward.

Freire, P. (2000). *Pedagogy of the oppressed* (30th anniversary ed.). New York: Continuum.

Friedrichs, D.O. *Restorative justice and the Criminological enterprise*. In Sullivan, D., & Tift, L. (2006). *Handbook of restorative justice: a global perspective*. London: Routledge.

Fugelli, P. (2003) *The general practitioner and the spirits of time*. In Lakhani, M. K. (2003). *A celebration of general practice*. Abingdon: Radcliffe Medical Press. 173-86.

Galtung, J. (1967) *Theories of peace: A synthetic approach to peace thinking*. International Peace Research Institute, Oslo.

Galtung, J. (1996). *Peace by peaceful means: peace and conflict, development and civilization*. Oslo: International Peace Research Institute.

Galtung, J. (1998) *The peace movement: an exercise in micro–macro linkages*. Volume 50, Issue 157, *International Social Science Journal*. Oxford: Blackwell Publishers.

Gastrow, P. (1995). *Bargaining for peace*. Washington, D.C: United States Institute of Peace Press.

Gavrielides, T. (2007). *Restorative justice theory and practice: addressing the discrepancy*. Helsinki: European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI).

- Gelb, S. (2003). *Inequality in South Africa: Nature, causes and responses*. The Edge Institute.
- Gil, D.G. (2006). *Toward a 'radical' paradigm of restorative justice*. In Sullivan, D., & Tift, L. (2006). *Handbook of restorative justice: a global perspective*. London: Routledge.
- Gumede, W. M. (2007). *Thabo Mbeki and the battle for the soul of the ANC* (updated ed.). London: Zed Books.
- Habib, A. (2003) *State-Civil Society Relations in Post-Apartheid South Africa*. Paper presented at Anthropology and Development Studies Seminar.
<http://ccs.ukzn.ac.za/files/habib.pdf>
- Hayek, F. A. (1978). *New studies in philosophy, politics, economics and the history of ideas*. Chicago: University of Chicago Press.
- Henkeman, S.R. (1998). *Post-conflict (re)construction: An evaluation of events leading to structural change and the 'reconciliation process' in South Africa*, Unpublished MA dissertation.
- Henkeman, S.R. (2010). *Mediator's dilemma: Mediation in South Africa – an unequal, deeply divided, transitional society*. In Tidsskrift for Norsk Psykologforening. Oslo. 47. 731–733.
- Hill Collins, P. (1998). *Fighting words: Black women and the search for justice*. Minneapolis: University of Minnesota Press.
- Hill Collins, P (2000). *Black feminist thought: knowledge, consciousness, and the politics of empowerment* (Rev. 10th anniversary ed.). New York: Routledge.
- Ho, K. (2007). *Structural Violence as a Human Rights Violation*. Essex Human Rights Review Vol. 4.2.
- hooks, b. (1989). *Talking back: thinking feminist, thinking black*. Boston, MA: South End Press.
- hooks, b. (2000). *Feminism is for everybody: Passionate politics*. Cambridge, MA: South End Press.
- hooks, b. (2010). *Teaching critical thinking: practical wisdom*. New York: Routledge.
- Jansen, J. D. (2009). *Knowledge in the blood: confronting race and the apartheid past*. Stanford, Calif.: Stanford University Press.
- Johnstone, G. (2008). *The agendas of the restorative justice movement*. In Ventura Miller H. E. (ed.) *Restorative Justice: From Theory to Practice* (Sociology of Crime, Law, and Deviance Series, Vol. 11). Bingley, UK : Emerald Group Publishing.
- Jung , C.G. (1953). *The collected works*. Princeton, N.J.: Princeton University Press.

Keating, T. F., & Knight, W. A. (2004). *Building sustainable peace*. New York: United Nations University Press.

Kellner, D. (1995). *Media culture: cultural studies, identity, and politics between the modern and the postmodern*. London: Routledge.

Kincheloe, J.L., McLaren, P., & Steinberg, S.R. (2011). *Critical pedagogy, and qualitative research: moving to the bricolage*. In Denzin & Lincoln (Eds.). *The Sage Handbook of Qualitative Research*. (4th ed.). Thousand Oaks: Sage Publications.

Kincheloe, J. L. (2008). *Knowledge and critical pedagogy an introduction*. Dordrecht: Springer.

Klein, N. (2007). *The shock doctrine: the rise of disaster capitalism*. New York: Metropolitan Books/Henry Holt.

Koen, R. *The antinomies of restorative justice*. In Van der Spuy, E., Parmentier, S., & Dissel, A. (2007). *Restorative justice: politics, policies and prospects*. Cape Town: Juta.

Lachman, K. (2010). *The allure of counterpoint: history and reconciliation in the writing of Edward Said and Assia Djebar* in *Research in African Literatures*, Vol. 41, No.4 (Winter, 2010).

Lambourne, W. (2004). *Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation*. *Peace, Conflict and Development – Issue Four*.

Lanza, M.L., Zeiss, R.A., & Rierdan, J. *Multiple Perspectives on Assault: The 360-Degree Interview*. (2009). *Journal of the American Psychiatric Nurses Association*. Volume 14 (6): 413 Sage publications.

La Pelle, N. (2004). *Simplifying Qualitative Data Analysis Using General Purpose Software Tools, Field Methods*, Vol. 16, No. 1. Sage publications.

La Plante, L. (2008). *Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework*. In *Transitional Justice*, Volume 2, Issue 3. *Oxford Journals Law & Social Sciences*, International Transitional Justice.

Latimer, J., Dowden, C., & Muise, D. (2001). *The effectiveness of restorative justice practices: a meta-analysis*. Ottawa: Research and Statistics Division.

Latour, B. (2004). *Why has critique run out of steam? From matters of fact to matters of concern*. *Critical Inquiry* 30.

Lederach, J. P. (1997). *Building peace: sustainable reconciliation in divided societies*. Washington, D.C.: United States Institute of Peace Press.

Lederach, J. P. (2005). *The moral imagination: the art and soul of building peace*. Oxford: Oxford University Press.

- Lederach, J.P., Neufeldt, R., & Cuthbertson, H. (2007). *Reflective peacebuilding a planning, monitoring, and learning toolkit*. Joan B. Kroc Institute for International Peace Studies. University of Notre Dame, Indiana.
- Liem, R. (2007). *Silencing Historical Trauma: The Politics and Psychology of Memory and Voice*. *Peace and Conflict: Journal of Peace Psychology*, 13(2), 153–174.
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. Beverly Hills, Calif.: Sage Publications.
- Li-On, L. (2009). *The Politics of Community Mediation: A Study of Community Mediation in Israel*. *Conflict resolution quarterly*, Volume 26, Issue 4, pages 453–479, Summer 2009. Special Issue: Colloquy Edition: Challenging the Dominant Paradigms in Alternative Dispute Resolution.
- Llewellyn, J. (2008). *Restorative Justice and Peacebuilding in Post-Conflict Societies*. Paper presented at the International Studies Association Annual Convention, San Francisco, CA. March 26-29, 2008
- Lucas, G. (2004). *An archaeology of colonial identity power and material culture in the Dwaars Valley*, South Africa. New York: Springer.
- Madikizela, P., & van der Merwe, C. (2009). *Memory, narrative, and forgiveness: perspectives on the unfinished journeys of the past*. Newcastle upon Tyne, UK: Cambridge Scholars Pub..
- Madlingozi, T. (2007). *Good Victim, Bad Victim: Apartheid's Beneficiaries, Victims, and the Struggle for Social Justice*. Pretoria: Pretoria University Law Press.
- Magnusson (2005) *The Hidden Structure of Interaction: From Neurons to Culture Patterns*. In L Anolli (ed) *Understanding social interaction: discovering hidden structures with models and algorithms* USA & Canada: IOS press.
- Magome, K. (2006). *Edward Said's Counterpoint in Paradoxical citizenship: Edward Said*. Nagy-Zekmi(ed). Lanham: Lexington Books, 2006..
- Mantle, G., Fox, D. & Dhami, M.K. (2005). *Restorative justice and three individual theories of crime*. *Internet Journal of Criminology IJC*. Found at www.internetjournalofcriminology.com on 12 March 2012.
- Mamdani, M. (1996). *Citizen and subject: contemporary Africa and the legacy of late colonialism*. Princeton, N.J.: Princeton University Press.
- Mamdani, M. (2001). *When victims become killers: colonialism, nativism, and the genocide in Rwanda*. Princeton, N.J.: Princeton University Press.
- Mandela, N. R., & First, R. (1965). *No easy walk to freedom*. Cape Town: Heinemann.
- Marais, H. (2001). *South Africa: limits to change : the political economy of transition*.

London: Zed Books.

Maxwell, J.A. (2006). *Literature reviews of, and for, educational research: A commentary on Boote and Beile's "Scholars before researchers"*. *Educational Researcher*, Vol. 35, No. 9, pp. 28–31.

Mbazira, C. (2009). *Litigating socio-economic rights in South Africa: A choice between corrective and distributive justice*. Pretoria: PULP.

McCutcheon, R. (2006). *Rethinking the war against Iraq* in *War and Peace Anthropologica*, 48:1 (ed) Judd E.R. 11-22.

McFarlane, C. (2006). *Advanced Introduction to Critical Social Theory*. <http://www.theoria.ca/research/files/cstcomp.pdf> on 7 April 2012.

Memmi, A. (2003). *The colonizer and the colonized* ([3rd ed.]). London: Earthscan.

Messmer, H., & Otto, H. (1992). *Restorative justice on trial: pitfalls and potentials of victim-offender mediation : international research perspectives*. Dordrecht: Kluwer Academic Publishers.

Metcalf, M. (2003). Author(ity): *The Literature Review as Expert Witnesses*. *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research*, 4(1), Art. 18.

Miall, H., Ramsbotham, O., & Woodhouse, T. (1999). *Contemporary conflict resolution: the prevention, management and transformation of deadly conflicts*. Cambridge, UK: Polity Press.

Miers, D. (2001). *An international review of restorative justice*. London: Home Office, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate.

Mika, H. (2010). *Finding justice, step, by stagger, by lurch*. *Contemporary Justice Review* Vol. 13, No. 3, 339–345. Routledge, Taylor & Francis Group.

Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: an expanded sourcebook* (2nd ed.). Thousand Oaks: Sage Publications.

Miller, Z. (2008) *Effects of Invisibility: In Search of the 'Economic' in Transitional Justice*, Volume 2, Issue 3. *Oxford Journals Law & Social Sciences, International Transitional Justice*

Morin, E. (2001). *Seven complex lessons in education for the future*. Paris: UNESCO.

Morris, R. (2000). *Stories of transformative justice*. Toronto: Canadian Scholars' Press.

Mpofu, E. (2011). *Counseling People of African Ancestry*. New York: Cambridge University press.

Muncie, J. & Goldson, B. (2006). *Comparative Youth Justice*. London: Sage Publications.

- Muncie, J. (2001). *Policy Transfers and 'What Works': Some Reflections on Comparative Youth Justice*, Youth Justice 1: 27-35
- Muncie, J. (2006). *Criminology*. London: Sage Publications.
- Muncie, J. (2000). *Decriminalising Criminology*. British Criminology Conference: Selected Proceedings. Volume 3,
<<http://www.lboro.ac.uk/departments/ss/bsc/bccsp/vol03/muncie.html>& gt;.
- Murithi, T. (2009). *The ethics of peacebuilding*. Edinburgh: Edinburgh University Press.
- Muthien, B.F (2008). *The Khoesan and partnership, beyond patriarchy and violence*. Unpublished MA dissertation. University of Stellenbosch.
- Nagy-Zekmi, S.(2006). *Paradoxical Citizenship: Edward Said*. Lexington books.
- Narayan, U. (2004). *The project of feminist epistemology: perspectives from a nonwestern feminist*. In Harding, S. G. The feminist standpoint theory reader: intellectual and political controversies. New York: Routledge.
- Neves, T. (2009). *Practice Note: Community Mediation as Social Intervention*. Conflict Resolution Quarterly Special Issue: Colloquy Edition: Challenging the Dominant Paradigms in Alternative Dispute Resolution Volume 26, Issue 4, pages 481–495.
- Novak, M. (2000). *Defining Social Justice. First things*.
<http://www.firstthings.com/article/2007/01/defining-social-justice-29>
- Ntsebeza, L. (2007). *Land redistribution in South Africa: the property clause revisited* in (eds) Lungisile Ntsebeza, Ruth Hall. *The Land Question in South Africa: The Challenge of Transformation and Redistribution*. Cape Town: HSRC Press.
- Patten, M. L. (2002). *Understanding research methods: an overview of the essentials* (3rd ed.). Los Angeles, CA: Pyrczak Pub.
- Pavlich, G. C. (2005). *Governing paradoxes of restorative justice*. London: GlassHouse Press.
- Porta, D. & Keating, M. (2008). *Approaches and methodologies in the social sciences: a pluralist perspective*. Cambridge , New York: Cambridge University Press.
- Prasad, P. (2005). *Crafting qualitative research: working in the postpositivist traditions*. Armonk, N.Y.: M.E. Sharpe.
- Quinney, R. (1964). *Crime in political perspective: Formulation of criminal law administration of criminal law* . The American Behavioral Scientist (pre-1986) 8,4
abi/inform global. 19 – 22.
- Stevens, G., Seedat, M. & van Niekerk, A. (2003). *Understanding and preventing violence*. In Social Psychology: identities and relationships Ratele, K. & Duncan, N. Cape Town: JUTA .

- Reitan, R. (2007). *Global activism*. London: Routledge.
- Ricigliano, R. (2003). *Networks of Effective Action: Implementing an Integrated Approach to Peacebuilding*. Vol. 34(4): 445–462. Sage Publications.
- Runde, C. E., & Flanagan, T. A. (2010). *Developing your conflict competence: a hands-on guide for leaders, managers, facilitators, and teams* (3rd ed.). San Francisco: Jossey-Bass.
- Ryan, G. W. & Bernard, H. R. (2003) *Techniques to Identify Themes* Field Methods, Vol. 15, No. 1. Sage Publications.
- Said, E. W. (1993). *Culture and imperialism*. New York: Knopf.
- Sandelowski, M. & Jones, L.C. (1996). 'Healing fictions': stories of choosing in the aftermath of the detection of fetal anomalies. *Soc. Sci. Med.* Vol. 42, No. 3. Pergamon.
- Saunders, C. C., Dzinesa, G & Nagar, D. (2012). *Region-building in Southern Africa: progress, problems and prospects*. London: Zed Books.
- Schirch, L. (2008). *Strategic Peacebuilding: State of the Field* in Peace Prints: South Asian Journal of Peacebuilding, Vol. 1, No. 1: Spring.
- Seekings, J. (2007). *The mutability of distributive justice attitudes in South Africa*. South African Review of Sociology. 38(1).
- Sen, A. K. (2008). *Violence, Identity and Poverty*. Journal of Peace Research. 45; 5. Sage Publications. 5–15.
- Shearing, C. *Transforming Security: A South African Experiment* in Strang, H., and Braithwaite, J. (eds). Restorative justice and civil society. Cambridge UK: Cambridge University Press, 2001.
- Sherman, L. W., & Strang, H. (2007). *Restorative justice: the evidence*. London: Smith Institute.
- Sherman L. W. (1996). *Communities and crime prevention*.
file:///C:/Users/Public/Documents/a%20restorative justice%20&%20PB/restorative justice%20&%20OTHER%20%20RESEARCH/1%20sherman%20-%20comm%20and%20crime%20prev%20structural%20causes%20of%20crime.htm
- Shohat & Stam (2005). *Unthinking Eurocentrism: multiculturalism and the media*. London ; New York: Routledge.
- Skelton, A. (2008). *Tapping indigenous knowledge: traditional conflict resolution, restorative justice and the denunciation of crime in South Africa* in Doxtader, E. & Villa
- Vicencio, C. (Eds). (2004). *To repair the irreparable: reparation and reconstruction in South Africa*. Claremont: David Philip Publishers.
- Smith, L. T. (1999). *Decolonizing methodologies: research and indigenous peoples*.

London: Zed Books.

Sooka, Y. (2000). *The Unfinished Business of the TRC. From Rhetoric to Responsibility: Making reparations to the survivors of past political violence in South Africa*. Paper presented at the conference, Reparations & Memorialisation: The Unfinished Business of the TRC.

Spies, C. (2002) *South Africa's National Peace Accord: its structures and functions in Conciliation Resources* found on 5 June 2012 at <http://www.c-r.org/accord-article/south-africa%E2%80%99s-national-peace-accord-its-structures-and-functions>

Stake, R. E. (1995). *The art of case study research*. Thousand Oaks: Sage Publications.

Stiglitz, J. E. (2002). *Globalization and its discontents*. New York: W.W. Norton.

Strang, H., & Braithwaite, J. (2001). *Restorative justice and civil society*. Cambridge UK: Cambridge University Press.

Sullivan, D., & Tifft, L. (2001). *Restorative justice: healing the foundations of our everyday lives*. Monsey, NY: Willow Tree Press.

Sultana, F. (2007) *Reflexivity, Positionality and Participatory Ethics: Negotiating Fieldwork Dilemmas in International Research*. *ACME: An International E-Journal for Critical Geographies*, 6 (3), 374-385.

Terreblanche, S. J. (2002). *A history of inequality in South Africa, 1652-2002*. Pietermaritzburg: University of Natal Press ;.

Triegaardt, J.D. (2006). *Poverty and inequality in South Africa: Policy considerations in an emerging democracy*.
<http://www.dbsa.org/Research/Documents/Poverty%20and%20inequality%20in%20South%20Africa%20Policy%20considerations%20in%20an%20emerging%20democracy.pdf>

Tutu, D. (1999). *No Future Without Forgiveness*. Ebury Publishing,

Umbreit, M. S., Coates, R. B., & Vos, B. (2002). *The impact of restorative justice conferencing: a review of 63 empirical studies in 5 countries*. St. Paul, Minn.: University of Minnesota Center for Restorative Justice & Peacemaking, School of Social Work, University of Minnesota.

Unvin, P. (1998). *Aiding violence: the development enterprise in Rwanda*. West Hartford, CT: Kumarian Press.

Van Wormer, K. (2009). *Restorative justice as social justice for victims of gendered violence: a standpoint feminist perspective*. *Social Work*. 54(2).

Volkan, V. (2006). *The next chapter: consequences of societal trauma*.
<http://www.vamikvolkan.com/The-Next-Chapter%3A-Consequences-of-Societal-Trauma.php>

- Walk, K. (1998) *How to write a comparative analysis*. Harvard Writing Center.
- Warnat, A. (2012). *Intersectionality and Employment Equity in South Africa*. Unpublished MA dissertation, University of Cape Town.
- Webster, J. & Watson, R.T. (2002). *Analyzing the Past to Prepare for the Future: Writing a Literature Review*. MIS Quarterly, (26: 2) pp. xiii – xxiii.
- Welsh, *Negotiating a democratic constitution in Spence, J E, Change in South Africa*, London, Royal Institute of International Affairs/Pinter Publishers, 1994.
- Welch, K. (2009). *Howard Zinn's critical criminology: understanding his criminological perspective*. Contemporary Justice Review, 12: 4, 485 — 503.
- Wikström, P. & Sampson, R.J. (2006). *The explanation of crime: context, mechanisms, and development*. Cambridge, UK: Cambridge University Press.
- Williams C. R. (2008). *Compassion, suffering and the self: A moral psychology of social justice*. *Current Sociology*. Vol. 56(1): 5–24
- Wilkinson, R. G., & Pickett, K. (2010). *The spirit level: why greater equality makes societies stronger*. New York: Bloomsbury Press.
- Wilson, F., & Ramphela, M. (1989). *Uprooting poverty: the South African challenge : report for the Second Carnegie Inquiry into Poverty and Development in Southern Africa*. New York: W.W. Norton.
- Wilson, J. (1963). *Thinking with concepts*. Cambridge: University Press.
- Wing, L. (2009). *Mediation and inequality reconsidered: Bringing the discussion to the table*. Conflict Resolution Quarterly, Special Issue: Colloquy Edition: Challenging the Dominant Paradigms in Alternative Dispute Resolution. Volume 26, Issue 4, pages 383–404.
- Worden, N. (2012). *The Making of Modern South Africa: Conquest, Apartheid, Democracy*. Sussex:Wiley-Blackwell.
- Wortley, R. (2011). *Psychological criminology an integrative approach*. New York: Routledge.
- Wozniak (2002) *Toward a Theoretical Model of Peacemaking Criminology: An Essay in Honor of Richard Quinney*. Crime & Delinquency, Vol. 48, No. 2, 204-231. Sage publications.
- Wright, H. K. (2006). *Are we (t)here yet? Qualitative research*. International Journal of Qualitative studies in education. pp. 793–802. Routledge.
- Yin, R. K. (1994). *Case Study Research: Design and Methods*. Thousand Oaks, CA: Sage.
- Yin, (2010). *Qualitative research from start to finish*. New York, NY: Guilford Press.

Zernova, M. (2007). *Restorative justice: ideals and realities*. Aldershot, Hants, England: Ashgate.

Zerubavel, E. (2007). *Generally Speaking: The Logic and Mechanics of Social Pattern Analysis*. *Sociological Forum*, Vol. 22, No. 2.

Zerubavel, E. (2010). *The social sound of silence: toward a sociology of denial*. In *Shadows of War: A Social History of Silence in the Twentieth Century* (eds.) Ben-Ze'ev, E., Ginio, R. & Winter, J. New York: Cambridge University Press.

Zehr, H. (2009). *Wrongdoing (and heroism) in context*. <http://emu.edu/now/restorative-justice/2009/12/31/wrongdoing-and-heroism-in-context/>

Zimbardo P. G. (2004) *A situationist perspective on the psychology of evil: understanding how good people are transformed into perpetrators* in Miller, A. G.(ed) *The social psychology of good and evil*. New York: Guilford press.

Zimbardo, P. G. (2007). *The Lucifer effect: understanding how good people turn evil*. New York: Random House.

Zolkos, M. (2006). *The Conceptual Nexus of Human Rights and Democracy in the Polish Lustration Debates 1989–97*. *Journal of Communist Studies and Transition Politics*, Vol.22, No.2, June 2006, pp.228–248.

Web references

1. Alexander, P. (2012) *A massive rebellion of the poor* in Mail & Guardian found on 18 July 2012 at <http://mg.co.za/article/2012-04-13-a-massive-rebellion-of-the-poor>
2. Gentle, L. (2012). *The Massacre of Our Illusions...and the Seeds of Something New* found on 7 September 2012 <http://www.sacsis.org.za/site/article/1402>
3. Oppelt, P. (2012) *Like PG [Pravin Gordhan, minister of finance], let's start a real debate on barriers to employment* found on 9 September 2012 at <http://www.timeslive.co.za/opinion/2012/03/11/like-pg-let-s-start-a-real-debate-on-barriers-to-employment>
4. Hassen, K. (2011). *Unemployment in South Africa: Feel It, the Ticking Time Bomb Is Here* found on 17 February 2012 at <http://www.sacsis.org.za/s/story.php?s=584>
5. Gumede, V. (2010). *The most critical moment continues*. Found on 9 September 2012 http://www.vusigumedethinkers.com/pages/blog_log/blog22.html
6. Bowell, T.(2011) *Feminist standpoint theory*. Internet Encyclopedia of Philosophy (IEP). Found on 15 March 2012 at <http://www.iep.utm.edu/fem-stan/>
7. <http://www.khulumani.net/khulumani/in-the-news/item/315-apartheid-victims-win-right-to-sue-companies-in-us.html> accessed on 23 August 2011.
8. Scharf, W. *The Challenges Facing Non-State Justice Systems in Southern Africa: How do, and How Should Governments Respond?* Found on 4 April 2011 at <http://www.csvr.org.za/wits/confpaps/scharf.htm>

9. TRC website <http://www.justice.gov.za/trc/> accessed on 19 August 2010.
10. South African San Institute <http://www.san.org.za/index.php> accessed on 8 July 2012.
11. Wilson, F. (2007) *History's hand must inform our thinking*. The Cape Argus, 3 July 2007. Found on 11 March 2011 at http://blogs.uct.ac.za/blog/saldru/2007/07/05/towards_2010_historys_hand_must_inform_our_thinking
12. South African History Online <http://www.sahistory.org.za/article/1800s> accessed on 2 October 2010 - 21 February 2012.
13. South African History Online <http://www.sahistory.org.za/article/1800s> accessed on 2 October 2010 - 21 February 2012.
14. South African History Online <http://www.sahistory.org.za/article/1900s> accessed on 2 October 2010 - 21 February 2012.
15. South African History Online <http://www.sahistory.org.za/1900s/1910s> accessed on 2 October 2010 - 21 February 2012.
16. South African History Online <http://www.sahistory.org.za/1900s/1920s> accessed on 2 October 2010 - 21 February 2012.
17. South African History Online <http://www.sahistory.org.za/1900s/1930s> accessed on 2 October 2010 – 21 February 2012.
18. South African History Online <http://www.sahistory.org.za/1900s/1940s> accessed on 2 October 2010 – 21 February 2012.
19. South African History Online <http://www.sahistory.org.za/topic/1950s> accessed on 2 October 2010 – 21 February 2012.
20. South African History Online <http://www.sahistory.org.za/1900s/1960s> accessed on 2 October 2010 – 21 February 2012.
21. South African History Online <http://www.sahistory.org.za/1900s/1970s> accessed on 2 October 2010 – 21 February 2012.
22. Zimbardo, P. *The Lucifer Effect: understanding how good people turn evil*. Found on 9 June 2012 at http://www.lucifereffect.com/about_preface.htm).
23. Meersman, B. (2012). *An apartheid beneficiary's guide to the budget*. Found on 28 February 2012 at <http://www.thoughtleader.co.za/brentmeersman/2012/02/27/an-apartheid-beneficiarys-guide-to-the-budget/>
24. National Planning Commission Vision. Found on 13 July 2012 at <http://www.npconline.co.za/medialib/downloads/home/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf>
25. 'Shabangu's shoot-to-kill comments condemned'. Found on 19 April 2008 at <http://mg.co.za/article/2008-04-18-shabangus-shoottokill-comments-condemned>
26. Seidel, J. V. (1998) *Qualitative Data Analysis*. Found on 28 January 2011 at <ftp://ftp.qualisresearch.com/pub/qda.pdf>

27. Zehr (2004). *Wrongdoing and heroism in context*. Found on 15 January 2009 at <http://emu.edu/now/restorative-justice/2009/12/31/wrongdoing-and-heroism-in-context/>
28. Wilkinson & Pickett <http://www.equalitytrust.org.uk/why> accessed between 15 January 2009 – 8 October 2012.
29. South Africa's prison population found on 13 August 2011 at <http://www.dcs.gov.za/AboutUs/StatisticalInformation.aspx>
30. Statistics South Africa's 2011 population estimates found on 13 August 2011 at <http://www.statssa.gov.za/Census2011/>
31. Pithouse, R. (2012). *On Corruption*. Found on 18 July 2012 at <http://www.sacsis.org.za/site/article/1365>
32. Leah Wing, *Social Justice Mediation Institute* <http://people.umass.edu/lwing/>

INTERVIEW SCHEDULE 1**CRIMINAL JUSTICE OFFICIALS**

1. What is your experience and knowledge of restorative justice?
2. What, in your opinion is restorative justice based on?
3. Will restorative justice will lead to a more peaceful Society. If so, why? If not, why not?
4. Are individuals born criminals or do other factors play a role. What are those factors?
[open ended probe questions to understand if respondent thinks there is an interaction between offender characteristics and societal context, based on response].
5. Do you think that restorative justice processes take individual characteristics and social context into account e.g. South Africa's history of inequality in terms of politics, socio-economic and gender inequality? If so, how?[clarify concepts without leading]
6. Why, in your opinion, do prosecutors send some cases for mediation and not others?
7. What, in your opinion, does restorative justice offer to Society?
8. What does restorative justice contribute to your work? [Probe question to find out how restorative justice contributes].
9. What criteria do you use to divert certain cases to a restorative justice process?
10. What process do you follow to prepare Victims and Offenders for a restorative justice process?
11. Is restorative justice an alternative or a sub process within the Criminal Justice System?
12. Is there any connection between restorative justice processes, practices and outcomes and the peace building and social justice agenda embedded in the SA Constitution (1996)?
13. In your opinion, does restorative justice have an impact on social conditions?
14. What does restorative justice offer to victims?
15. What does restorative justice offer to offenders?

INTERVIEW SCHEDULE 2**RESTORATIVE JUSTICE PRACTITIONERS & KEY EXPERTS**

1. What is your experience and knowledge of restorative justice?
2. What, in your opinion is restorative justice based on?
3. Will restorative justice lead to a more peaceful Society. If so, why? If not, why not?
4. Are individuals born criminals or do other factors play a role. What are those factors?
[open ended probe questions to understand if respondent thinks there is an interaction between offender characteristics and societal context, based on response].
5. Do you think that restorative justice processes take individual characteristics and social context into account e.g. South Africa's history of inequality in

terms of politics, socio-economic and gender inequality? If so, how?[clarify concepts without leading]

6. Why, in your opinion, do prosecutors send some cases for mediation and not others?
7. What, in your opinion, does restorative justice offer to Society?
8. Please explain where your role starts and ends from your first contact with victims and offenders. [probe questions to understand step by step process]
9. What training did you get to become a restorative justice practitioner?
10. Is restorative justice an alternative or a sub process within the Criminal Justice System?
11. Is there any connection between restorative justice processes, practices and outcomes and the peace building and social justice agenda embedded in the SA Constitution (1996)?
12. What in your opinion should the characteristics and skills of a restorative justice practitioner be?
13. What does restorative justice offer to victims?
14. What does restorative justice offer to offenders?
15. Where does the role of the end?
16. Are restorative justice processes, practices and outcomes aligned to the peace building and social justice agenda embedded in the SA Constitution (1996)?

INTERVIEW SCHEDULE 3

VICTIMS

1. What is your experience and knowledge of restorative justice?
2. What, in your opinion is restorative justice based on?
3. Will restorative justice will lead to a more peaceful Society. If so, why? If not, why not?
4. Are individuals born criminals or do other factors play a role. What are those factors?
[open ended probe questions to understand if respondent thinks there is an interaction between offender characteristics and societal context, based on response].
5. Do you think that restorative justice processes take individual characteristics and social context into account e.g. South Africa's history of inequality in terms of politics, socio-economic and gender inequality? If so, how?[clarify concepts without leading]
6. Why, in your opinion, do prosecutors send some cases for mediation and not others?
7. What, in your opinion, does restorative justice offer to Society?
8. What did you think about the entire restorative justice process? [sensitive probe questions about overall experience – from the time the prosecutor suggested restorative justice]
9. In general, what do you think should be improved about the entire process?
10. Would you recommend a restorative justice process to other victims? Why?

INTERVIEW SCHEDULE 4

OFFENDERS

1. What is your experience and knowledge of restorative justice?
2. What, in your opinion is restorative justice based on?
3. Will restorative justice will lead to a more peaceful Society. If so, why? If not, why not?
4. Are individuals born criminals or do other factors play a role. What are those factors?
[open ended probe questions to understand if respondent thinks there is an interaction between offender characteristics and societal context, based on response].
5. Do you think that restorative justice processes take individual characteristics and social context into account e.g. South Africa's history of inequality in terms of politics, socio-economic and gender inequality? If so, how?[clarify concepts without leading]
6. Why, in your opinion, do prosecutors send some cases for mediation and not others?
7. What, in your opinion, does restorative justice offer to Society?
8. What did you think about the entire restorative justice process? [sensitive probe questions about overall experience from the time the prosecutor suggested restorative justice]
9. In general, what do you think should be improved about the entire process?
10. Would you recommend an restorative justice process to other victims? Why?

[Additional question for those who experienced restorative justice 12 months or more after the process.]

- *11. Have you been acquitted or convicted of another offence in the 12 months after restorative justice processing?
- *12. Why did you/did you not commit another offence?

*To avoid legal ramifications, before posing these questions, I will clearly explain to the respondents the difference between 'conviction' and 'arrest' and caution them not to reveal any crimes that they have not been convicted or acquitted of in accordance with research ethics.

INTERVIEW 22/05/2011 & Response by interviewee	
Interviewer Questions, probes & Summaries Participant Responses	NB CONCEPTS / THEMES
What is your knowledge and experience of restorative justice	
<p>Experience 2 years mediator in konfliktrådet, short course 2 x 3 days with observations in-between, start with a more experienced mediator; after mediation reflection and feedback with each other. Learn all the way by experience.</p> <p>Knowledge: PhD student, Nils Christie nb, Braithwaite, Zehr, SA book Skelton & Batley, researchers and thinkers; comparative lit from Anthropology on indigenous justice.</p> <p>Easy in theory and difficult in practice. Not difficult intellectually, it's a simple model; complex things broken down to bare bones... simple and intuitive... know but not always as easy to do in practice, experience not finished learning curve, difficult in practice understanding and practicing different from any other role in society therefore sometimes difficult ... in my experience it is also a sometimes paradoxical role. We are not supposed to tell people what to do or think, they must own their own conflicts..In a way you put a lot of premises into the dialogue...As mediator you exercise power whereas the ideology says that you are not supposed to ... but still you are a facilitator ... I'm not saying it's a bad thing but its like a balance and I think its very important to reflect on that continuously and also how the context and criminal justice process is affecting the whole situation and the parties' experiences of their needs of what has to be done</p>	
What in your opinion is restorative justice based on?	
<p>In my opinion it's normative ... its because what I think it should be and it in many cases is. A way of ...first of all its structured dialogue, facilitated dialogue that has transformative potential if the parties are motivated and I think rj basically is about a different kind of justice than what crim justice is providing because it's a more contextual kind of justice ... in the situation I think there's a philosopher Conrad Brunk'Paradoxes of Criminal Justice Philosophy. restorative justice is meeting these Phil objectives in a better way. There are two main strands in the theory of justice, a) punishment theories (ok its fair to punish it's a way of taking individuals, show them respect...people have to pay for what they have done wrong; acknowledge people as subjects). Whereas b) utilitarians say it is necessary ... then you are misusing people in order to achieve a higher goal ... human subject. Utilitarian.</p> <p>I'm not trying to solve that dilemma but rj is meeting both ends (according to Brunk, and I tend to agree with him, at least in principle), it's a way of making working relations / sustainable relations or whatever you might call it that meets the end of justice where perpetrators take responsibility to restore or make things better ... utilitarian perspective: its useful because it works, they are using punishment as means for deterrence ... not as an end in itself ???</p> <p>Agree with C Brunkthat rj at its best meets both the utilitarian and philosophical theory of punishment because punishment theory is not about punishment but treating people respectfully as human indiv but not by letting them pay of course its not about punishment I don't think rj is about punishment at all but there can be an element of it but that is up to the parties I'm not saying that rj is about self justice but</p>	

<p>I think perps often punish themselves I mean what is punishment is a question of definition</p>	
<p>Will rj lead to a more peaceful soc</p>	
<p>Yes. I'm quite sure. Because 90% of all cases mediated in konflikrode are resolved 95% of 90% are being fulfilled. The facts are convincing end in agreements and are fulfilled – quantitative. pragmatic and empirical answer. Almost all cases are in one way or another successful but then of course we can be critical of what is a successful mediation. I can add: 9/10 who has taken part of a konfliktrådprocessIs happy about it, will recommend it to others, and prefer it above a CJ-process, ref:</p> <ul style="list-style-type: none"> • Eide, Ann Kristin, and Hege Gjertsen. 2009. Med! Eller? Virkninger av, og utfordringer ved gjenopprettende rett som alternativ eller supplement til straff. In <i>NF-rapport</i> edited by Nordlandsforskning: Nordlandsforskning. <p>In my experience, as a mediator, in most of the cases people are happy with the process, something good has come out of it because it has created some sort of dialogue and reflection and people are willing to face the 'other' either in terms of recognition , understanding and more also doing something in order to meet the other's needs. Its working very well in that sense but its also ... I'm very, very, very positive to restorative justice but it is also important to be critical on how it is implement. I think kr is a good arrangement but I do not think kr alone can reach the fullest potential of rj in Norway at all. I think its ?? because its dealing mainly with criminal cases and its ... I can mention a number of challenges as I understand them one is challenge of the bureaucracy, it's a very cheap process compared to cj of course, but still the way cases are counted, the way it is expected that you are supposed to finish off a case without dragging too long, sometimes you have to use a lot of time on a case because a party may need time they may need ... several meetings, they may withdraw; ?? setting, set of people the processual work I've often felt I needed because it something you do and also as a lay person in Norway – its pretty clear the ideology here that its supposed to be lay people doing it on their spare time that is also a factor that makes it difficult to do as thorough work as you sometimes want to because you simply don't have time but its also the bureaucratic factor they are being measured by how many cases that are done within a period ... its counted according to the number of cases so the bureaucratic way of dealing with rj can undermine its potential also the way cases are being transferred from policeand pros and people come with predefined roles vic and perp which are translated into kr parallel opposing role ... person laying claim and person [klager and påklaget] it's a way of predefining roles to begin with</p> <p>the background here is that kr is a civil arena for voluntary participation and in principal any person can ask kr for help either in your own or in a different case but most cases are being transferred from the police either as crim cases or civil case. So then crim cases are very strongly appearing on the premises for reconciliation and conflict resolution. It's a strong motivating factor it does not say that although the degree of voluntariness is of course less in a crim case because also the opposite of mediation is court and maybe prison at least punishment often something good can come of it anyway as long as the parties are somehow motivated to meet the other and think in some cases it's a useful mechanism to I don't think its not reaching its fullest potential as rj because I think it should be offered also as a supplement to punishment in a much higher degree ... mediation as supplement to cj is very,veryseldomly happens in N .. there are some few cases initiated by idealist policemen etc. '?Wiseman Ottawa?? But is not a system for that, the system is not arranged for that.</p>	

<p>Clarification by interviewer: re parallel process by comparing contrasting with SA diversion as per Nicro</p>	
<p>I think the either or arrangement is useful in many cases. But in some cases where the criminal case will go anyway, I think it should be offered as a ... that's according to the guidelines of the un actually, they recommend offering rj at any moment of the cj process chain at any time during the process ... its getting more and more mediation for prisoners ... very useful I think .. but before that time I think a lot of ??opaque?? And a better way is offered as a parallel, as a supplement ... but that is also supplement to the arrangement we have today.</p>	
<p>I'm positive to any kind of arrangement but I think we need to be critical of the particular setup and see that??? to come back to the critical perspective that I'm working with, is that the particular setup of rj through the kr is a very clever way of controlling citizens with cheap means under the umbrella of democracy, decentralizing , participating, local comm. . Participation, liberalizing and so on and so on when in fact it goes into a social dynamic where state control is being decentralized and becoming very difficult to grasp and see because its so decentralized and diffused and I think the need to have very critical discussions about the concept of power what kind of power is being exercised in these decentralized processes and sometimes I think "kids" are being treated very badly in kr ...because there is telling them ... or maybe its not the mediator that Is a bad guy but..., its like a kid and headmaster and the power imbalances of course the mediators are trained to try and balance these kind of situations but its also a system problem and I think it's a problem of monopoly kr has monopolized rj for good and bad and I think its useful to spread the competence... but that's leading into a big discussion now and we can leave it there</p> <p>Ok; here I mess several arguments together. The problems as I see it</p> <ol style="list-style-type: none"> 1. The state power exercised in decendralised mediation processes is quite invisible: we need a critical discussion on this matter both policially and in mediator traning etc. 2. KR are in a monopoly situation when it comes to dealing with criminal cases, and in practice, also sivil cases transferred from the police. The problem is, as I see it, that KR are not always "neutral" or "impartial" for the parties. This is relative to the case. 3. KR being part of a beurocracythat is implying 'reduction' vs. restorative justice aims of 'complexity': To what extent are the restorative justice-goals achieved within this system? 4. KR are only mediating in <i>alternative to punishment-cases</i>, not as supplement too: If restorative justice is to become a real democratic tool that will also shed light on structural societal injustices we need a much wider concept of restorative justice. The current form if restorative justice in Norway through the KR-setup these kinds of structural injustices is not taken into account. The consequence is that "small, young, marginalized parties" are being punished (as before, but with different means) for the consequences of structural differences and injustices. 	
<p>Off the record discussion ... structural impediments, happy oppressed people ... interaction between indv propensity and social system ... resilience, externalizing, internalizing, third group ... trying to understand... academia puts a grid on ... puts us in a straitjacket, want to break out of straitjacket</p>	
<p>We can call it structural violence – maybe it's a very harsh word ... it's a form of control, strong hard control where people are feeling in a way happy although they are in a way squeezed. I think it's a dilemma there that needs to be taken out... I think the way or is set up defines itself in opposition to cj whereas it is within cj I</p>	

would say.	
Rj alternate or Sub process within cj	
To a large extent I think its sub process which is achieving same goals as cj process but a cheaper means and without the whole difficult insecure investigation and prosecution process which is far from sure about success... a lot of cases are being dropped they just start the cj process and they send it to the kr and its there with a cheaper form of crime control in many cases its good I mean it protects people sometimes it keep down the violence that a good think but in some other cases its .[net widening] and if you look at the people who are in the kr the parties and participants the mediators are middle class and the participants they're lower: that's at least a blunt generalization...	
Sub question Say the mediators are middle class and the perpetrator and victim are not always middle class; who are you referring to people who come from police and prosecutors or people who come in by themselves. Would you say the same thing applies to those come on their own?	
That's a good question. As mediator I have mediated cases that are transferred from the police either as criminal cases then an agreement must be fulfilled in order for the criminal case to be dropped, or as a civil case it is still transferred/diverted from the police where the criminal case is dropped because of lack of evidence but they still see ok its useful for mediation then it's a civil and actually those are much easier to deal with because the motivation is more real because then the parties are interested in the process to deal with what is important for them to deal with ... but ja to ... I mean, to your question again – in the kr for the civil cases I know of that are not criminal cases those that are dropped as criminal cases in the kr are those that as criminal cases from the police they are transferred to the kr or cases reported by schools for instance or neighbor fights and so on	
Clarification 'so when a crim aspect is dropped, what is the content of the civil case?	
There is still problematic relationships Yes. The starting point in "sivil cases" is that a) there is a conflict or unmet needs among the parties, b) willingness to meet the other(s) in order to try and find solutions.	
Clarification: So they deal with problematic relationships (in eg in SA people take civil cases through their lawyer and sue the other party but here you get a civil agreement?	
Possible misunderstanding ... the way I use civil I don't mean civil court case but I meant as a 'civil' (this is a KR-category, as opposed to "criminal cases" mediated as alternative to punishment. The last is mainstream in KR)..its not civil as public as not as a court case but as a civil or a voluntary public arena. Either you have criminal cases being diverted or if agreement is met the criminal case is dropped. Or when you have a certain amount of cases in kr which are not criminal cases but so-called civil cases but they are not dealt with by lawyers as a civil case in court. The big picture as I see it the parties' participants in kr that are being... they are ... what do you called it .. 'proletariat' so its like people that do not fit in its either immigrants or youth or its lower classes, marginalized people of various ... I mean people who are objects of social control for instance, I think that's true	
Follow up question: And the middle class cases, what kinds of things do they come with ... do they come out of their own or is it also police or court directed? What kind of percentage compared to the 'proletariat'?	
I can't come with numbers there I personally dealt with very few of those kinds of cases. These cases where people end up in a bar fight and things like that, alcohol related violence which can happen ???so to speak. That's kind of middle class kind of	

cases you get and also neighbor fights and so on. However 85 % of cases are diverted from the police, 15 % come directly from people themselves. This last number also include institutions such as schools etc	
Clarification: And who brings it to the kr, the police of the people themselves?	
When its violence its normally police cases	
Follow up question: So that would be a way of avoiding them getting a record or [Ja response] or is it too small for the police to handle?	
Ok those cases, the violence cases they are criminal cases and it's a very neat way to deal with ... I mean it's a very cheap way to deal with criminal cases instead of, I mean it's a very economic way to deal with it. I means it's the one timers, they're getting the lesson you know... and its kind of 'Norwegian word' ... its like a golden truth within the practice of rj in Norway as I understand it that in about 90% of the cases like a finger or a warning is enough in order to prevent it happening again - deterrence and to prevent re-occurrence. For like a teenage boy who has done something wrong ending up in kr is probably enough for him to think twice about what he's done but for the people who are in deeper shit so to speak it's a different case (that is the rest, 10 %)	
Clarifications re first offence: SA first offence and record ... not typed.	
Are individuals born criminals or do other factors play a role, if so what are those factors	
Criminality is something created by society, its not a natural fact - only a social fact -... according to my point of view. Criminalization, if something happens to you as an individual if you are told you are a criminal and you adopt that identity and you going into a dynamic there which can be quite destructive. There are many factors that are forming people into crim activity, socio-economic, can be biological issues (eg. ADHD), can be ... lets take a recent discussion in Norway some are stating that t he school system are creating male losers because its getting more an d more theoretical primary and secondary educations it offers suits girls but some boys it does not suit at all some boys are slower in the theoretical development and mature later in that area. So there is an increasing drop out rate by young men and of course they in Norway most people are ok and of course for many they can have difficulty finding jobs getting social states that can of course affect ways of dealing with problems and for some obviously violence is a way of dealing with conflict I'm not saying it's the only explanation but its an example of exclusion processes that might "produce" criminality. Also there are obvious examples of negative integration of foreigners, and in particular young refugees/asylum seekers. I think the policy on this field is very questionable and challenging. Eg. Young people who get out of the asylum seeker centres and go straight into criminal activity (in particular selling of drugs, hashish) – a very sad example that for many there are few ways to integrate into Norwegian society. However, this is of course not the total picture – many refugees integrate well also, but there is unfortunately a bit overload of "forreigners" in Norwegian prisons, which I believe has to do with problematics concerning integration. Which is also a social responsibility.	
A different example is shoplifting that is where konfliktrøde started small things like shoplifting (Konfliktrådet was established to give young people in petty crimes a second chance, as well as taking off some of the workload for the police) and still there are a lot of those cases its less and less in Oslo because there are more severe cases like violence cases. In Kristiansand for instance there's a lot of shoplifting cases. They have rep from shop and young girl or boy often a girl makeup or knickers or whatever and I think its also Nils Christie that pointed out that the whole society is constricted to tempt peo9ple and almost hypnotise people into buying and if you cant buy it then steal it and consumerism is not being questioned in these kind of cases how are the shopping malls organized for instance, how many people work there in	

<p>order to control, is there a responsibility also to control it So these questions are not being taking into account in mediation and its just an example of how social structural problematic of issue are not being ... I mean it's a potential in rj but in practice the social dynamics are not being questioned that are producing the effects of criminality (or what we term criminality)</p> <p>I think this is both good and bad. On the one hand it's good for the people in question to get "a new chance" and get away with a free criminal record. Also, some problems are so huge that delimiting the problemsolving to one particulare"crime" or unaccepted action (as Nils Christie prefers to call it, roughly translated) can be a small but important step in the big picture where the problems are so huge that the people themselves and eg. The child welfare service does not have the capacity or resources to deal with 'the big picture' at once.</p> <p>On the other hand, it is a problem that KR/restorative justice in the 'limiting way' can result in individualizing of problems that belong to the society in itself. If this happens, restorative justice continues to reproduce what CJ has done all years – finding and defining the "useful scapegoats" (in parallel to 'enemy pictures') that leads the public focus away from underlying social issues that produce the crime in the first place.</p> <p>There's a lot of reflection amongst mediators, many of them are highly educated as middle class people and they find it meaningful to do this jog they don't do it for the money its low pay its symbolic pay its compensation and I think it not enough discussed and not through the education of the mediators the board, I did an interview with them and they say ok the mediator is an exerciser of power as a state professional whereas the perspective of kr which is traditional being promoted also in training is that a mediator is a lay person who does voluntary who is representing you and me the person in the street a range of the population and neutral, not exercising power whereas we are part of a system where we are exercising power and I strongly urge kr to get more discussion of that even though it might be problematic for recruitment of mediators because then it might be more difficult to do the job. I find the mediators I know fantastic people do a very good job very capable of discussing these matters but they are very seldom discussed.</p>	
<p>Do you think that rj processes take individual characteristics and social context into account</p>	
<p>To a certain extent but I wish more and the bureaucratic dynamics that I mentioned earlier on is effectively preventing more profound rj processes because of lack of time and money and always making it more effective looks very good on statistics, we have short time for proceeding that other cases [standard time?] (there are guidelines; the administration tells us what is average and hence expected time for VOM and conferencing) All mediators have supervisors one from admin that you can always consult during cases, I have had very flexible supervisors who think very much in aprocessual perspective and supports me always in doing those two methods it's the mediation and conferencing circles. Its not a strict – you get told this is normal time for mediation and for conflict circles stats are being told so you always know what is 'normal' and you are supposed to keep within the expected time. The bureaucratic dynamic which is putting a frame on the processual thinking mediators which is hopefully all of them.</p>	
<p>[sub question: context, proletariat person – relapse triggers]</p> <p>Again wishing for more discussion on what is a good outcome of mediation. For me I think there are many different possible positive outcomes of a process. You have the victim and you have the offender of these people and you have the offender of the offender. It can be like the father who was never there for his kid. In a good r process you have the offender and the victim and significant others and support</p>	

<p>persons who can help both transform their perspectives and help them to fulfill their aims that they put/makefor the future out of the mediation process.</p> <p>For the question you are posing I think its very difficult because sometimes its very useful for the victim maybe to hear that if the perpetrator is showing or is taking in what the victim is saying it can be healing for the victim, It can also be healing for the perpetrator but of course it might not change him totally but it can be one small change of angle it can be one of several factors that achieve that positive change but does not necessarily change that person or whole way of life for that person.</p> <p>Example: young woman and young man early twenties they were earlier a couple and were no longer a couple. To Muslim young people from different mosques. She accused him of trying to rape her and he accused her of kind of blackmail not with money but at least pressing him and destroying his name and making all this up and so on so forth. It went to the police several times and they did not have enough evidence to go to court. They sent it to kr and I got the case. I try, I had a long process almost 8 months altogether. The guy wanted to meet her face to face and wanted to tell her what she had done wrong and reestablish his name and face so to speak where she wanted to close the case put things behind her and move on and she did not want contact, but she did not want to see him face to face, she did not dare to, she felt sick just to talk about him. They never met there was never no agreement but I talked to them many times and passed on messages, once she wrote a letter to him, he read it but he did not answer. I think they tried to manipulate each other with different means. He was obviously the strongest verbally and socially but she also had her ways. Of course it was not up to me as a mediator to be a judge here but I tried to facilitate communication in one way or another and in one way or another they communicated. But I found especially with him very difficult to communicate because he was Mr. perfect and had never done anything wrong at all ... of course he had done something wrong, but not really, no not at all. And that's ok and I think he learnt nothing of the process he continued his life. Ok its his life and for her in the end it ... as mediator I asked has this led to anything for you. Yes it had been good for her, it was not an agreement, they had not met, they had not agreed on anything at all except I had identified that they agreed on some things but did not write it down, they did not want to see each they did not to have contact, did not want each other to misuse each others names to talk bad about each other they wanted to put things behind them and live their lives independent of each other, look forward, to put it behind that they had in common and in the end they accepted yes that we have in common but they did not write it down so it was from the perspective of the kr it was not successful it was closed as unfinished ... but for at least for her something very good had come out of it because she had a lot of trauma, she said at least and I have to trust her on that that it was a good process and she had communicated both by words through me as mediator and by her action/decissionNOT meeting him face to face because that would be on his premises and she had communicated she did not want contact. [criteria for success very narrow bureaucratic logic – as long as it was good for her, I'm happy as the mediator, if he didn't learn a thing well its up to him its his responsibility to take it or not and this was not a "criminal case" (as defined by the police and KR)</p>	
<p>Clarification: it took 8 months – what is the normal time for other kinds of cases? Maximum time?</p>	
<p>You call them, you meet the parties, ideally its good to have a face to face individual pre-meetings. Mediation takes maybe one to two hours (in the less complicated cases)... but it depends so much on the case and of course the more energised the</p>	

<p>conflict the longer it takes and the more people you take into account ... maximum time is not defined. Average lets say 5 hours (you should rather check with KR-admin). I'm probably one of the mediators that uses the most time ... its not because of the money, but its because I need to speak with them and I always check whether other people should be here (support persons, other affected) and I work a lot on their motivation But for the conferencing circles it can be up to 24 hours (or more) it can be a very big job. The kinds of cases that go to mediation and conflict circles is a dialogue between mediator and administrator ... examples of cases that go to circle e.g. boy 17 beaten by 10 other boys, all families present. One criteria is obviously incidences affecting a lot of people multiple parties that 's at least my understanding; how many people affected by the conflict so it can be in principle just one misdeed or one happening between 2 persons but it can affect a lot of people.... Primary and secondary victims</p>	
<p>Why do prosecutors refer some cases and not others</p>	
<p>I ask that question myself. I believe the police the head of police in one municipality said that its totally up to the interest of the prosecutor, the law person, the police prosecutor his interest in and understanding of restorative justice, so its very ... its by accident ... that's my understanding but of course there are lots of variations around the country but its also there in this konflikrode law of rj in Norway ... you can find it on the internet.... It says something about the legal frames I mean certain when it comes to I told you about the 2 15 year olds who fought and because he had to go to hospital then per definition legally its to be prosecuted and hence not diverted to konflikrode but that the frame but in practice it's a different story very often more serious cases go to kr I think both due to lack of resources in the police maybe lack of information and difficulties in investigation so its also a resource question then again the interest and understanding for rj of the prosecutor, the police prosecutor and also information to the parties of course who is giving them info about the kr. If they tell Madame Hansen that Madame you should ... this is no good for kr then she will listen to it. "Madam Hansen" is an idiomatic expression of an elderly lady and if the police tells the old lady well you should go to kr with this or you should not do it – she will probably listen to that advice. So the person who is informing about kr has of course a lot of effect on whether the case is being diverted or not as well. So that's very, very wobbly... knowledge, resources. To make it clear: it is the police who informs about restorative justice/KR as an option of choice. How they present the option is probably very significant whether the parties choose KR or not.</p>	<p>Discretion</p>
<p>What in your opinion does rj offer to society</p>	
<p>I definitely don't think its only state control and so on, the negative, the critical issues that's why I am engaged in it as a mediators and also researcher and practitioner is that I strongly believe, I have experienced it myself the kind of resolution that happens is so important for the people participating. It prevents so much harm. It's a question about health, to quote one of my favourite people in the kr who has quit ... It's a question about health, an intelligent way to deal with social challenges more emotionally intelligent than the traditional punitive systems that you find in cj system but you also find in work places and in schools and so on and so forth which is very strong in many sectors of society but I think itsits very challenging because I think rj challenges authorities and authoritarian systems and that's why the authoritarian systems need to control this potentially dangerous restorative justice-ideology and practice and that's how we end up with the kr of Norway which is good for many in many cases but its not reaching its full potential</p>	
<p>Institutionalised?</p>	
<p>Its institutionalised within the cjs period in Norway. In a way I am optimistic because well, careful optimist, we need to be critical but I think when the understanding and content of rj spreads and it spreads more and more, there's more and more interest I</p>	

<p>see it every day around in Norway and I believe its for the good because everybody who has participated in a strong rj process understands intuitively the profoundness of that. And I also strongly actually believe, it's a big question, big discussion, I strongly believe also it has a very interesting potential in terms of intercultural conflict resolution because you can find similar kind of processes in most cultural traditions so it has a resonance but it does not mean that the Norwegian concept of kr is then necessarily the best format so to speak. I think that has to be worked on but I think that's a very interesting question to be worked on in the future.</p>	
<p>Nils Christie – State steals conflicts- *captured conversation -</p>	
<p>Please explain where your role starts and ends</p>	
<p>Phone call from administration or in mailbox police papers and kr admin papers. Then contact parties (individual pre-meetings) and start to map the conflict of course something as happened before a pre structuring I talk to them on phone meet them individually inform them about what process is about what we can offer and I try to understand as much about the conflict as possible in order to facilitate the mediation for instance with what kind of support persons should be there what kind of needs are there related to language to normally its in Norwegian so there's no problem but often we need interpreters and so on and if they agree to meet, well in principle they have already agreed to meet when I get the mail in the box but I'm checking of course the motivation and then we have the meeting. [venue?] Mostly I/we use the offices of the kr but sometimes other arena due to practicalities... The arena has to be somehow 'neutral'. if parties live outside of town we sometimes need other venue. A strong principle neutral venue not home base of one of the parties which it was in the beginning of kr in first trials with kr in Norway the meetings were held at the home place of the victim normally so that has change so its normally at the kr</p>	
<p>Who trains the mediators ... is there a manual?</p>	
<p>Leader of kr (there is a leader and KR-office in all counties in Norway), maybe not all of them but several of them are trainers. We get a manual which has everything in a way and during the training ... its mainly role-plays of mediation after we have learnt the basics, what to ask what not to ask, where to put the parties, table non tables, how to arrange them in the room, whom to invite and so on and also we get not so much training on pre meetings but we get more info and training on that later on.</p>	
<p>What happens in post mediation stage</p>	
<p>Not much. Well mediators they don't do anything but the administration they, I think in criminal cases the parties have to send in a form stating that the agreement has been fulfilled so that kr can report to the police that the case is solved and can be closed as a criminal case. So in a few cases kr administration calls the parties and checks but I'm not 100% sure there ... The main thing is that they check if the agreement is fulfilled or not and if they say yes.</p>	
<p>Characteristics and skills of rj practitioner</p>	
<p>A friend of mine is quite critical of what he calls 'happy amateurs' in kr it's a lay role in Norway that's defined by law. I think it's a good principle because its about avoiding stealing the conflicts as professionals from the people in other words giving the conflicts back to the people I mean the mediators are also part of the local society in a way so in order to give the conflicts back then its also a matter of spreading competence by having a turnover of the mediators so that competence is spread in society. But to your question then, characteristics ... I think the lay person ideology is good that you don't need to be a professional that you need to be somehow have a strong backbone and an engaged grown-up normal decent person like most people are I think with an interest in the rj process I think, that's the characteristics I think, some ability to communicate and to listen and to go out of your own prejudices (very important). That's easier to say than to do, I know, but at least be open to that, being willing to be criticized in a very personal intimate sense by your co-mediator not that</p>	

<p>you are a bad person but being criticized on a concrete thing at least have a discussion on that because there is also the leering [open to feedback but that can be quite tough on these matters]</p> <p>When it comes to competence/skills of course training, you need a good training, you need the mediation technique, facilitation techniques [so its strategies, techniques and tactics?Ja] At least you need to know something about it, it's a competence, and it comes with experience. So you also need supervision or prior learning, you need constant feedback on your practice and I also think that is something that kr should emphasise more than they do today. They have a lot of seminars for mediators but they're not really counseling its more like talk talktalk and discuss cases but its not like real supervision or competence building based on concrete feedback and guidance from a person who knows more than you (or a supervisor/mentor that have the ability to mirror you in a constructive way). So although it's a lay role in Norway, I think it has a lot to do with competence and its not for everybody. However, I think most people with interest, real interest can learn it. Its not magic, its not that difficult but fore sure its err ...</p>	
<p>[would you agree that its an art and a craft? An art meaning you can have natural abilities and refine your skills in it and a craft meaning that anyone can just learn it and be able to do a process? [e.g. Brilliant surgeon and someone who can do it technically – a technician]</p>	
<p>Yes I think you can say so, ja. Art and craft.</p> <p>To be clear: it's an art in the sense that some people have a personality/personal competence that is more fitting the mediator role than others. And it's a competence in the sense that there are certain things you need to learn as well. The personal competence has to be distilled and, in my opion, a mediator is never fully educated. The learning curve never ends. That's also why, I guess, many mediators lovetheir assignment.</p> <p>In street mediation young people are being educated as mediators and there we see it all the time it lots of young, young people and they get it and they grow in it and they take it as part of their identity. But that's for some not for all but just to say that it is not necessarily a complex or 'academic' art but its still in a way an art and a craft that even young people can learn. The earlier they start the learning curve the better, I tend to believe. It has also a lot to do with courage and ability to build trust to the parties.</p>	
<p>What does rj offer to victims</p>	
<p>It can be many things, it can be a way of letting off steam. Meeting the "monster" and 'de-monster' it. It can be a way of getting justice, getting recognition of the pain from the offender and from other people as much as the offender, can be a way to ... forgiveness is not always that important but sometimes if you are able to forgive for real, then I think you do something very good for yourself and it's a way to get out of the victim role which can be very destructive I think the last point is the most important I think , it can be very unhealthy in the long run. Clarification: there are for sure real victims out there, but the victim role can be rather dangerous to stay in for long. Mediation can bring about transformation here.</p>	
<p>What does rj offer to offenders?</p>	
<p>Of course it's a way to get away with a (first) crime but from my experience I think it's a way of paying for what you have done this way or that way which can be good sometimes, sometimes they feel its not all that just but its better than going to court. Sometimes they really feel that its great to be able to somehow compensate or restore something, sometimes you find these moments where the victim and the offender transform the relation maybe not friendship (although sometimes also new friendship) but they recognize that they are somehow connected and can get out of the defining, polarizing roles (victim – perpetrator) and maybe even help each other depends on the</p>	

<p>case of course sometimes the victim has to help the offender as well, so in a way I think its about justice [which is more than criminal justice?] oh yes, I think justice as a philosophical or a humanistic project. Ja. But a particularistic justice, different than the universal concept of justice within cj</p> <p>Clarification: justice is a relative and empirical concept. I believe in good restorative justice-processes justice is met, but in a rather different way than CJ, although restorative justice have the potential to include some of the CJ-ideals (such as pay for your deeds). So I would say that restorative justice encompasses CJ, and offers a more relational and particular kind of justice that takes the complexities of the concrete case/needs into account.</p>	
<p>Where does the role of the mediator end? (not administration - for you?)</p>	
<p>Formally its when the parties decide that they want to make an agreement or decide that they do not want to make an agreement – then my job is over. [soits at the agreement stage?] Yes. But we (at least I) often tell the parties – at least in cases that are not so well resolved – that they are always welcome back to KR, on their own initiative as ‘sivil case’.</p> <p>...but I think there’s more to that question – it’s a big question. It depends on your perspective on thee mediator’s role I think... I’m a bit ...I mean I realize that we have to be pragmatic In society we have all the jobs and roles and so on but I think that my perspective is that the role is something that you never finish working out, they to challenge and develop in a way that you are willing to go quite far and out of the box trying to facilitate peaceful conflict transformation. For instance one of the mediators at kr, an elderlylady, in her late sixties; she went out to try and find one of the parties. He was a drug user sitting somewhere on the streets of Oslo. She found him and facilitated a meeting which was very important for him and the other one as well and that was totally out of the box. And I don’t think it should be the mainstream or the rule so to speak but I think being open to do these kinds of deeds as a mediator - not trying to help or save or try and be the big saviour, and don’t believe in that (clarification: the mediator is different from the ‘saviour’/helper role) but sometimes stretch a bit in order to meet the needs of the parties. I am always asking myself ‘could I have done something more to facilitate or how could I have facilitated it better and I think most facilitators and mediators they ask themselves that. So I think its important to be reminded upon that so that’s a good question.</p>	