Youth violence in South Africa: the case for a restorative justice response

Janine Natalya Clark*

Department of Politics, University of Sheffield, Elmfield, Northumberland Road, Sheffield S10 2TU, UK

(Received 25 January 2011; final version received 3 November 2011)

Crime presents a fundamental challenge in South Africa. Particularly disturbing is the prevalence of violence committed by and against young people. The main purpose of this article is to look at how South Africa should deal with the issue of youth violence. It argues that while structural violence constitutes a significant contextual cause of the phenomenon, a more proximate and specific cause lies in young people’s exposure to direct violence in their schools, homes and communities. In many cases, therefore, simply sending young people to prison – where they may experience even greater levels of violence – is not the answer. This article thus examines the potential merits of restorative justice as a response to the problem of youth violence, focusing particularly on the 2009 Child Justice Act. This research is based on fieldwork in South Africa and draws upon both the author’s qualitative interview data and a range of surveys with young people conducted by the Center for Justice and Crime Prevention in Cape Town.

**Keywords:** South Africa; youth violence; structural violence; criminal justice; restorative justice; Child Justice Act

The stark reality for many young people in South Africa is that violence and crime is a way of life; it insidiously infiltrates every aspect of their lives with both direct and indirect effects on their psychological, emotional, developmental and physical well being. (Burton, Leoschut, & Bonora, 2009, p. 1)

**Introduction**

Every city has its more unsavory parts that are best avoided. In South Africa, cities such as Cape Town, Johannesburg, and Durban have particularly large numbers of ‘no-go’ areas. In Cape Town, ‘top deck’ – the upper floor of the central train station – is a hot spot for muggings. Crime is also widespread in the city’s numerous townships, among them Guguletu and Khayelitsha. In Johannesburg, the significant number of high-crime areas means that large parts of the city center are almost deserted. Central Johannesburg, moreover, is typically not a place where you will see white people walking through the streets; they are afraid of becoming victims of crime.

It must be emphasized that crime is by no means a new problem in South Africa. Since the end of apartheid, however, crime has migrated and is no longer

*Email: janine.clark@sheffield.ac.uk
confined to the country’s townships. Crime has also become increasingly violent.\(^1\) The result is that today, crime can be considered ‘among the most difficult of the many challenges facing South Africa’ (Demombynes & Özler, 2005, p. 265).

What is most disturbing is that it is those between the ages of 12 and 22 who ‘constitute a considerable percentage of both victims\(^2\) and perpetrators of crime, and in particular violent crime, in the country’ (Burton, 2007, p. 1). As of 31 May 2010, for example, 57,145 young people between the ages of 14 and 25 were incarcerated in South Africa’s prisons (Department of Correctional Services South Africa, 2010). This means that 35.4% of the country’s prison population is under the age of 25. Furthermore, the majority (28,390) of these young offenders are in prison for aggressive crimes. Since 26% of the country’s population is 24 years old or younger (Burton, 2007, p. 1), it is clear that ‘Youth criminality is one of the primary challenges facing contemporary South Africa’ (Leoschut & Bonora, 2007, p. 89). How South Africa should deal with the challenge is the central question that drives this research.

It is virtually impossible to effectively address a problem without understanding its causes. South Africa’s size and diversity, however, contribute to the difficulty of identifying precise causes of youth violence. To gain real insight requires a significant amount of fieldwork and case study-based analysis concentrated on specific areas (urban and rural) or particular towns and cities. The fieldwork upon which this research is based does not allow for any authoritative claims to be made regarding the micro causes of youth violence in South Africa, and indeed this was not the aim. Focused on the meso- and macro-level, this article contends that structural violence – and in particular poverty – provides a critical contextual framework within which to understand the phenomenon of youth violence in South Africa. While structural violence is an important factor in all forms of violence, its specific relevance to youth violence lies in the fact that young people are being subjected to this violence. Exposure to violence in schools, homes and communities, it is argued, is in turn a significant causal factor of youth violence in South Africa.

Based on this analysis, simply sending young offenders to prison will often not be the answer and may only serve to push them further into a life of crime. This article thus advocates a restorative justice-based approach to dealing with youth violence. Restorative justice is not a panacea\(^3\) and should be viewed as a complement, rather than as a direct alternative, to the criminal justice system.\(^4\) As an approach focused on needs rather than deeds, however, and as a more tailored and individualized response to crime,\(^5\) restorative justice has a potentially valuable role to play in dealing with the challenge of youth violence in South Africa. In view of this, the 2009 Child Justice Act, which is heavily based upon restorative justice principles and values, is to be welcomed as a positive development in the country’s approach to tackling the issue.

This research is based on fieldwork in South Africa in July and August 2010. Working mainly in the area of transitional justice, I traveled to South Africa to look at whether and to what extent the country’s truth and reconciliation commission (TRC), formally in existence from 1996 until 1998, had a positive impact on interracial reconciliation within the country. This was my primary focus. It quickly emerged, however, that crime poses a major obstacle to reconciliation. High walls, bars over windows, panic buttons in the home, gated communities, and a flourishing security business – these all testify to understandable fears of becoming a victim of violent crime.
A physical and psychological divide exists between the (mainly white) middle classes, and the poor, which in turn limits the possibilities for contact – an important component of reconciliation – to take place (Staub, 1989, p. 278). Reduced crime levels, therefore, would arguably facilitate South Africa’s reconciliation process. The difficulty, however, lies in knowing how to address the country’s crime problem, particularly when minors are heavily involved. In order to gain insights into the scale, causes and possible ways of dealing specifically with youth violence in South Africa – an issue that has received far less attention than violent crime in general – semi-structured interviews with members of civil society and faith-based organizations working on this issue at some level were conducted.

Soraya Solomon is the director of the National Institute for Crime Prevention and Reintegration of Offenders or NICRO (Cape Town); Patrick Burton heads the Center for Justice and Crime Prevention (CJCP) (Cape Town); Hugo van der Merwe works for the Center for the Study of Violence and Reconciliation (Cape Town); Miriam Fredericks leads the Trauma Center for Survivors and Victims of Torture (Cape Town); Martin Struthmann is the director of the Quaker Peace Center (QPC) (Cape Town); Mike Batley directs the Restorative Justice Center (Pretoria); Tshegofatso Maswabi also works at the Restorative Justice Center in Pretoria; Lance Thomas is the country coordinator of the Damietta Peace Initiative (Pretoria), and Sister Aine Hughes is the director of Caritas South Africa (Pretoria). In addition to the above, Judge Dikgang Moseneke, South Africa’s Deputy Chief Justice and a strong supporter of restorative justice (Johannesburg), was interviewed. Each interview lasted between one and two hours and all except two took place in the interviewees’ offices. Cape Town was the focus of this research for two main reasons – the fact that so many relevant organizations are based here, and the more practical consideration that in comparison to cities like Johannesburg and Durban, it is far safer to walk the streets of Cape Town as a lone female.

Two obvious limitations of the research must immediately be acknowledged. The first is that the small sample reflects a relatively narrow range of opinions. The sample, for example, does not include police officers, probation officers, or others working on the front line. Such individuals could be expected to be less open to restorative justice initiatives and more in favor of retribution than advocates from civil society and faith-based organizations. In other words, the choice of interviewees may well have biased the interview data in favor of restorative justice. It should also be emphasized, however, that during periods of fieldwork, compromises often have to be made. In this case, time in the field was limited to six weeks and the primary focus of the research was on the TRC’s impact on reconciliation; youth violence emerged as a subsidiary topic during fieldwork. Part of the purposive strategy adopted, therefore, was to select interviewees who could speak authoritatively on both topics (a total of 34 people were interviewed overall). While this was advantageous in one sense, the trade-off was that the interview sample was not as rich and diverse as it could have been.

The second limitation of the research is that it does not involve any interviews with young people themselves. Gaining access to youth raises a host of ethical, practical, and in some cases safety issues (e.g. when access requires visits to the townships). Various preparations – seeking approval, establishing contacts and so on – could have been made prior to entering the field but this did not happen since it was not in the original research design to interview young people. Once in the field, moreover, the work required to organize such interviews would have demanded significant attention and would have detracted from the main focus of
my research. To compensate for this gap, I draw heavily upon youth-based surveys carried out by the CJCP in Cape Town.

Notwithstanding the limits of this research, it provides much-needed insights into an issue that has received surprisingly little attention to date; much of the extant literature on youth violence typically focuses on the USA (see, e.g. Cook & Laub 2002; Kennedy, Piehl, & Braga, 1996; Staub 1996). The research also speaks to much broader issues regarding violence by and against children and the role of restorative justice therein.

Exploring the causes of youth violence in South Africa

Galtung (1969) distinguishes between structural violence and direct violence. While the latter entails the infliction of physical violence, ‘... the general formula for structural violence is inequality, above all in the distribution of power ...’ (p. 175). While structural violence is a less visible type of violence, its prevalence within South Africa – notably in the form of poverty and inequality – helps to explain the country’s high levels of direct violence.

In Cape Town, leafy middle-class suburbs like Constantia and the City Bowl are predominantly populated by whites. The former is close to the stunning Kirstenbosch Botanical Gardens while the latter offers spectacular views of the city, with Table Mountain providing a dramatic backdrop. The houses are large and well-maintained, surrounded by high walls and fences. The city’s black and colored populations, in contrast, continue to live in the poverty-stricken Cape Flats, in townships such as Nyanga and Guguletu, and in deprived working-class suburbs, among them Woodstock and Salt River – the first two stops on the scenic train journey from Cape Town to Simon’s Town, South Africa’s main naval base. Such vast inequalities between the haves (predominantly white, although a significant black middle class has developed since the end of apartheid) and have-nots (primarily though not exclusively blacks and coloreds), however, are not unique to Cape Town. In this regard, the city is merely a microcosm of the rest of South Africa. In 2009, for example, the country’s Gini coefficient stood at 0.70 per capita income (Woolard, Leibbrandt, & McEwen, 2009, p. 99). Thus, according to a 2009 World Bank Report, ‘South Africa is the eighth most unequal country out of the 140 countries for which data were available’ (Woolard, Leibbrandt, & McEwen, 2009, p. 100). A study in 2007–2008 by the Bureau for Market Research at the University of South Africa, for example, revealed that ‘75 percent of South Africa’s population earns less than 4000 Rand per month [approximately £363.6 at the current exchange rate], whereas almost 4 percent earns more than 60,000 Rand per month [approximately £5454.5]’ (Jammine, 2009, p. 10).

South Africa’s townships, street children, and beggars are some of the most visible indicators of poverty. So too are the statistics. In 2008, for example, 54% of the population was classified as poor, based on a poverty line of 515 Rand per capita per month. Using a higher poverty line of 949 Rand, 70% of the population was categorized as poor (Woolard et al., 2009, p. 98). A significant percentage of the population is thus dependent on social assistance; 12.4 million people live off government grants (QPC, 2009, p. 4). Others do whatever they can to survive and make ends meet, which may entail theft and other criminal activities.

The causes of poverty are multiple and include unemployment, the country’s open-borders policy, and HIV/AIDS. Unemployment levels in South Africa are
high, particularly among the young. In June 2009, 48.1% of the population between the ages of 15 and 24 was unemployed (Presidency of the Republic of South Africa, 2009, p. 21). Exacerbating the problem is that due to the ‘vastly inferior “Bantu education”’ (Aliber, 2003, p. 475) delivered during the apartheid era – and to some extent to this day still – many black and colored people are ill-equipped for the job market. Unable to find work, they have little opportunity to escape from the poverty trap and ‘often experience high levels of frustration …’ (Jefthas & Artz, 2007, p. 44). Frustration, in turn, may manifest itself in violence and crime.

Despite the lack of jobs, each year large numbers of economic migrants from countries such as Zimbabwe and Somalia flock to South Africa in search of work and a better standard of living. For many, however, the country is not the land of milk and honey that they expected and instead they find themselves forced to live on the street in social ghettos like Hillbrow in Johannesburg or in informal settlements. With competition for scarce jobs so fierce, the migrants’ presence often generates resentment among the local population and, in some cases, leads to xenophobic violence. During one wave of xenophobic attacks in May 2008, more than 60 people were killed and thousands were displaced from their homes. More recently, in July 2010, violence against nonnationals erupted in the Western Cape. Further contributing to socioeconomic problems is the HIV/AIDS epidemic; ‘South Africa, with a population of about 50 million, has more people living with HIV and AIDS than any other country in the world’ (Russell, 2009, p. 203). If a family loses its main breadwinner to the illness, this can have an enormous and devastating financial impact (Aliber, 2003, p. 482).

While there is much debate about the causes of poverty in South Africa, data strongly indicate that there is a link between structural violence and crime. As of 31 May 2010, for example, of the total 161,496 inmates in South Africa’s prisons, 129,913 (80%) were black, 28,063 (17.4%) were colored, 2705 (1.7%) were white, and 815 (0.5%) were Asian. The majority of prisoners were black males (78.9%), followed by colored males (16.9%), and black females (1.2%) (Department of Correctional Services South Africa, 2010). Nevertheless, the nexus between poverty and crime should not be overstated. Altbeker (2007), for example, underlines that ‘... socio-economic conditions in South Africa, though always likely to produce crime, cannot tell us why South African crime is as violent and pervasive as it is’ (p. 130). Nor can they tell us why it is that ‘... plenty of impoverished countries in Africa and other continents are far less violent than South Africa ...’ (Russell, 2009, p. 114). Perhaps most importantly, while poverty and structural violence help to account for direct violence in general, they are not sufficient to explain youth violence in particular. Poverty, unemployment, and resultant frustrations form an important socioeconomic backdrop for approaching the issue of youth violence. A more proximate cause of youth violence, however, is young people’s exposure to the high levels of direct violence which result in widespread structural violence. Young people are routinely exposed to violence in the classroom, at home, and in the community.

**Exposure to violence in the classroom**

Schools in South Africa, like many of the houses, are surrounded by high walls with security gates. Increasingly, however, the danger comes as much from within
as it does from without. The data on crime and violence in the country’s schools make for grim reading. According to the CJCP’s 2005 National Youth Victimization Survey, 36% of respondents had had property stolen at school, 12.8% had been threatened at school, and 5.8% had been assaulted at school during the past 12 months (Pelser, 2008, p. 3). What is more, ‘... the classmates of the victims were identified as the primary perpetrators of school violence’ (Pelser 2008, p. 3). Compounding and exacerbating the problem is the reported ready availability of alcohol, drugs such as marijuana, and weapons (Burton, 2008b, p. xii). 17

It is not only young people, however, who commit violence in schools. The perpetrators often include teachers and principals themselves. In 2007, the CJCP conducted a National School Violence Study involving 12,794 learners, 264 school principals and 521 educators in 245 primary and secondary schools in all nine provinces. What this research showed is that ‘... in South Africa, two out of five school principals report at least one incident of educators verbally abusing children, and one in four principals receive reports of educators physically abusing learners at school’ (Burton, 2008a, p. 2). The CJCP’s 2008 National Youth Lifestyle Survey further revealed that 51.7% of the 4391 respondents had been hit, caned, or spanked by educators or the principal (Leoschut, 2009a, p. 3). More significantly, according to a 2006 CJCP survey on youth resilience to crime, 55.6% of nonoffenders had been physically punished by teachers or principals for their wrongdoings, compared to 72.9% of offenders (Burton, Leoschut, & Bonora, 2009, p. 62).

It is crucial, therefore, to tackle the problem of violence in schools, and indeed there are various organizations currently working on this issue. Two will be mentioned here. The QPC in Cape Town has a Non-Violent Schools Campaign which began in 2007. Focused on township schools in the Western Cape, it seeks to build nonviolent schools ‘by having the message of nonviolence embedded in the curriculum and taught across the curriculum, so better equipping learners to recognize, deal with, and avoid violence in all its forms and enlarging their world view’ (QPC, 2009, p. 9). The campaign includes the formation of school peace clubs and the training of teachers in peace education. According to Martin Struthmann, the QPC’s director, ‘The problem of violence is endemic in schools. There is a culture of violence. Teachers routinely beat pupils in the townships, they are often underqualified and they do not know how to deal with difficult situations’ (author interview, Cape Town, 13 August 2010). That 12 new schools joined the campaign in 2009, in addition to the original eight schools involved, can be viewed as a positive development.

Caritas South Africa, which works in partnership with the Franciscan-based Damietta Peace Initiative in Pretoria, has developed a peace-building program that is currently operating in schools throughout South Africa, including 12 schools in KwaZulu-Natal. The program started in 2008 and seeks to give children the tools for dealing with their anger and frustration in a constructive way. According to Caritas director Sister Aine Hughes, the program was designed not only to help learners but also educators, in the sense that ‘It enables them to get in touch with their own inner conflicts. Teachers often take out their own pain and hurt on their students’ (author interview, Pretoria, 26 July 2010). Despite the valuable work that organizations like the QPC and Caritas are doing to combat violence in schools, the challenge is that young people are not only being exposed to violence in the classroom. Rather, the scale of their exposure is far broader. Highlighting the problem,
Hughes laments that, ‘Violence is rife in society and in the home, and so children act this out in schools. It is all they know’ (author interview, Pretoria, 26 July 2010).

**Exposure to violence within the home and the community**

In 2008, Childline South Africa received 3428 calls relating to physical abuse, compared to 1775 in 2006 and 2538 in 2007 (Van Niekerk, 2009, p. 1). Forty percent of women admit to beating children under the age of three with a stick or belt (QPC, 2009, p. 4); and according to the CJCP, exposure to physical violence within the home and the community is more often than not ‘the norm rather than the exception . . .’ (Leoschut, 2009a, p. 3).

Young people are being exposed to violence not only as direct victims, but are also being made to witness acts of violence perpetrated against others. In 2008, 53.4% of the respondents said that family members often lost their temper and 11.1% disclosed that they had seen family members intentionally hurting each other (Leoschut, 2009b, p. 16). Similarly, 50.5% of respondents had watched people in their community deliberately harming each other (Leoschut, 2009b, p. 28). Further highlighting the importance of socioeconomic contextual factors, more colored youth (16.3%) had seen physical altercations between family members than blacks (11%), Indians/Asians (8.9%), and whites (7.3%) (Leoschut, 2009b, p. 17). Similarly, ‘...coloured youths (64.4%) were significantly more likely than their counterparts to witness violent incidents in the areas in which they live’ (Leoschut, 2009b, p. 17).

The ready availability of alcohol and drugs is also helping fuel violence. In the township of *Imizamo Yethu* (Our Struggle) in Cape Town, for instance, there are approximately 3800 households and 63 pubs (*shebeens*). This means that there is one pub for every 60 households. The apartheid era, and the brutality with which it was synonymous, may further help to account for the prevalence of violence in South African society today. In the words of one commentator, ‘It is hard to avoid concluding that centuries of race-based repression, applied for the last half of the twentieth century with scientific and brutal rigor, embedded a culture of violence . . .’ (Russell, 2009, p. 115). The apartheid regime, moreover, had a very damaging impact on families and according to Miriam Fredericks, the director of the Trauma Center for Survivors and Victims of Torture, this impact can still be seen today. In her words, ‘Apartheid broke up families and made them feel disjointed. The forced removal of families from District Six20 is just one example. One of the consequences is that today, there are no family values and this is a massive problem’ (author interview, Cape Town, 16 August 2010).

While the causes of violence within families and communities require further research, exposure to such violence appears to have a significant influence on the behavior of young people in South Africa. According to the CJCP’s 2008 National Youth Lifestyle Study, for example,

Respondents who had seen family members intentionally hurting one another were found to be 2–8 times more likely to have carried a weapon, 2.1 times more likely to have physically fought with someone and 4.4 times more likely to have threatened or injured someone else with a weapon in the past year than those who had not been exposed to violence in their family environments. (Leoschut, 2009b, p. 62)
More strikingly, in the CJCP’s 2006 survey of youth resilience to crime, while 26.8% of respondents within the nonoffender sample witnessed family members intentionally hurting each other, the respective percentage of respondents within the offender sample was 43.4%. Similarly, although 8.9% of nonoffenders said that family members sometimes hit each other when they became angry, the percentage of offender respondents giving the same answer was considerably higher at 27.4% (Burton, Leoschut, & Bonora, 2009, p. 34).

There were also some differences between the nonoffender and offender samples in terms of their exposure to community violence. Within the first group, 70.9% of respondents had been exposed to violence within the community, in contrast to 89.8% of respondents within the offender group (Burton, Leoschut, & Bonora, 2009, p. 41); and while 51.7% of nonoffenders said that they personally knew individuals in the community who made a living from crime, a substantially higher 80.1% of respondents within the offender sample gave the same answer (Burton, Leoschut, & Bonora, 2009, p. 44, 46). Moreover, only 13.6% of nonoffenders had family members who had been in prison, compared to 41.8% of offenders (Burton, Leoschut, & Bonora, 2009, p. 35).

This research has sought to demonstrate that exposure to violence – in the classroom, in the home and in the community – constitutes a significant cause of youth crime in South Africa today (further research is needed to identify more micro, case-specific causes). Minimizing the levels of daily violence to which young people are subjected and exploring why they resort to crime are thus critical steps in tackling the issue. It is argued, therefore, that retributive justice – with its emphasis on punishment – is a counterproductive approach to the problem of youth violence. While restorative justice may not always be appropriate – for example, in extreme cases of violence – it should complement the criminal justice system, rather than being a substitute for it. While the limitations of retributive justice are not sufficient to justify recourse to restorative justice, they nevertheless provide a useful starting point. As one commentator astutely observes, ‘... if South Africa is required to turn the cultural tables, make “normal” crime and violence “abnormal”, make it exceptional rather than “routine” and “everyday”, then there are much better places to start than the criminal justice system’ (Pelser, 2008, p. 10).

**Why retributive justice is often not the answer**

The limitations of retributive justice are well documented and do not require extensive discussion or elaboration here. In constructing a case for restorative justice, however, it is useful to briefly highlight four particular issues that raise questions regarding the appropriateness of retributive justice as a response to youth violence in South Africa. The first issue is that keeping offenders locked up in prison is enormously expensive. The average cost of incarceration is estimated at 123.37 Rand per day (Department of Correctional Services South Africa, 2010), which amounts to 45,030 Rand per year. As of 31 May 2010, moreover, there were 161,496 people in prison in South Africa (Department of Correctional Services South Africa, 2010). This means that the cost of keeping them all there is 727,217,2955 Rand (approximately £661,106,632) per year. In a country where so many people are living in abject poverty, an obvious question is whether such vast sums of money could be better spent elsewhere.
The second issue is overcrowding in prisons; as of 31 May 2010, levels of overcrowding in South Africa stood at 136.68% (Department of Correctional Services South Africa, 2010). That overcrowded prisons can become extremely violent and lawless places means that their suitability for young offenders must be questioned. According to NICRO in Cape Town, ‘Prisoners are almost always exposed to rape, violence and the influence of gangs. They run the very real risk of becoming hardened criminals and “graduating” with even more criminal skills’ (NICRO, 2009a, p. 1). The fact, moreover, that there are large numbers of young people currently awaiting trial – 23,274 as of 31 May 2010 (Department of Correctional Services South Africa, 2010) only exacerbates such problems. This is because very often the facilities do not exist to detain young offenders separately from adults. Hence, ‘... rather than curbing these children’s violent tendencies, the prison environment is likely to reinforce their socialization into aggression’ (Ward, 2007, p. 15).

The third limitation of retributive justice, linked to the above, is that locking up young offenders is simply a short-term, quick-fix solution that in many cases will not have any beneficial effects. To cite the director of NICRO, ‘It is a well known fact that the majority of released offenders will return to a life of crime ... Usually offenders who enter prison illiterate and unemployable will leave the same way’ (Solomon, 2009, p. 4). Furthermore, since the criminal justice system is primarily concerned with punishing those who violate the law, offenders may also leave prison with the same attitudes and moral values that helped to put them behind bars in the first place. In effect,

... the South African justice system was not designed with young people in mind and does not act in ways likely to win their allegiance or change their attitudes. The reason for this, at least in part, is our inheritance of a legal system designed for control and not for social restoration or personal transformation. (Pinnock, 1997, pp. 7–8)

An obvious fourth limitation, therefore, relates to the issue of deterrence. According to the CJCP (2006), many of the focus group participants were not first time offenders, and ‘As they had prior experience of being in prison, they knew exactly what to expect and were therefore not concerned about being sent there again’ (Leoschut & Bonora, 2007, p. 106). This is in keeping with the findings of the Pinheiro (2006a, p. 200) report, according to which ‘Children subjected to detention are more likely to commit offenses in the future than children placed in diversion programmes.’ In short, simply punishing young people is not the solution; more is needed.

The case for restorative justice

On 25 August 1993, 26-year-old Amy Biehl, a Fulbright Scholar from California, was killed in the township of Guguletu in Cape Town, in an act of mob violence. Four years later, Amy’s parents set up the Amy Biehl Foundation in order to honor the memory of their daughter and to work toward bringing about the sort of positive change that Amy gave her life advancing. The mission of the Foundation ‘is to prevent youth violence through a holistic approach to community development in socio-economically disadvantaged communities in and around Cape Town.’ To this end, it seeks to provide young people between the ages of six and 18 with a safe space where they can express themselves and be creative. Currently supporting
1500 township children, the Foundation offers a number of different after-school programs which include a creative arts program, sports development, a music program, HIV/AIDS peer education, and film-making.26

What is perhaps most remarkable about the Amy Biehl story is that after being convicted and sentenced to 18 years of imprisonment, the four young men who murdered Amy went before South Africa’s TRC – itself an example of restorative justice – to ask for amnesty. Amy’s parents supported their application, which meant that their daughter’s killers were released from prison in 1998. What is even more incredible is that the Amy Biehl Foundation now employs two of these men. Aside from the valuable work that it is doing, therefore, the Foundation also represents an important example of restorative justice, ‘a process whereby parties with a stake in a specific offense resolve collectively how to deal with the aftermath of the offense and its implications for the future’ (Marshall, 2003, p. 28). Amy’s parents played a deciding role in what should happen to the four young men who ended their daughter’s life, and they ultimately favoured a nonpunitive, more restorative-based response. If, as two restorative justice experts argue, ‘[T]he evidence suggests that RJ [restorative justice] starts with the common premise that offenders should somehow try to make the world a better place than they left it after they committed a crime’ (Sherman & Strang, 2007, p. 32), Amy’s parents courageously gave their daughter’s assailants – and particularly the two who now work for the Foundation – the opportunity to do this.

The fact remains that in a society where 50 people are reportedly murdered every day (Altbeker, 2007, p. 36), restorative justice is not uncontroversial. South Africa’s Deputy Chief Justice, for example, acknowledges that ‘Restorative justice is not working as well as it could. At the edges, yes, but not for hard-core crime. For such crimes, it is very difficult to say that the victim and the perpetrator must have afternoon tea together. It is not always practical’ (author interview, Johannesburg, 13 July 2010). For his part, Patrick Burton, the director of the CJCP, opines that ‘Restorative justice is not as widely used as it could or should be. There is a mental block among the public against it, due to fear. Because the crime rate is so high, people err towards a punitive approach’ (author interview, Cape Town, 10 August 2010). According to Mike Batley, however, the director of the Restorative Justice Center in Pretoria, in many cases, such fear is misplaced. In his words, ‘Restorative justice is not a soft option. It is more about the offender taking responsibility by doing community service, by giving the victim an apology, by paying compensation and so on’ (author interview, Pretoria, 19 July 2010). As a response to the problem of youth violence in South Africa, moreover, restorative justice has at least four particular merits.

**The benefits of restorative justice**

It is important to note at the outset that even among advocates of restorative justice, there is disagreement as to what exactly the concept means and entails. To cite Roche (2002, p. 516), ‘While support for restorative justice may be easy to find, its meaning remains much more elusive. “Restorative justice” is used to describe a bewilderingly diverse range of practices and programs.’ Echoing this, Monaghan (2008, p. 90) observes that ‘... the concept of “restorative justice” is not a unitary
one nor does it propose a singular academic theory of crime or justice. Consequently, it is a difficult concept to define.’

These definitional issues aside, there is nevertheless broad agreement regarding some of the key elements of restorative justice, including its particular concern more with the harms that result from crime than with the criminal act per se. This in turn highlights the first potential merit of restorative justice approaches to youth violence. If, as this article maintains, young people’s repeated exposure to violence in their schools, communities and homes constitutes a significant proximate cause of youth crime, this may have desensitized them to violence (Monaghan, 2008, p. 86). This desensitization could critically impair their ability to appreciate and understand how their own violent behavior affects and impacts their victims. Precisely because restorative justice ‘shifts the traditional view of crime from the violated norm to the harm caused to the individuals most affected by the crime’ (Gabbay, 2005, p. 357), however, it can potentially facilitate a process of resensitization. Restorative justice encourages the offender to take responsibility for the crime committed by confronting him/her with the reality of the situation.27 In this way, it may help to limit further acts of violence by creating opportunities for the offender to learn from and rectify his/her behavior.28

A second important merit of restorative justice is that in contrast to the criminal justice system, which is punitive and focused on giving offenders their just deserts, restorative justice is a needs-based approach concerned with the needs of victims and offenders alike (as well as with the needs of affected communities) (Zehr, 2002, p. 18). In this way, restorative justice does not draw clear-cut distinctions between victims and perpetrators, instead recognizing the inherent fluidity and porosity of these categories (Sherman & Strang, 2007, p. 12). This renders it a particularly suitable approach for dealing with South Africa’s problem of youth crime, where ‘the distinction between being a victim and being a perpetrator of crime is often blurred. Indeed, young offenders themselves are often exposed to high levels of victimization and may live under significant adverse social and economic conditions’ (Burton, Leoschut, & Bonora, 2009, p. xiii). Victims of violence may themselves become perpetrators in order to regain a semblance of control over their lives. Yet while crime can provide only a transitory sense of empowerment, a short-term fix, restorative justice can potentially create genuine and lasting empowerment through its efforts ‘to restore the victim’s security, self-respect, dignity and, most importantly, sense of control’ (Morris, 2002, p. 599). The critical point is that as an approach that emphasizes needs rather than retribution, restorative justice can make more subtle and refined distinctions between victims and offenders that recognize the interplay and interaction between these two identities. This, in turn, means that restorative justice can be more attuned to the causes of crime, rather than simply its symptoms.

A third reason why restorative justice is an appropriate response to youth violence in South Africa is that in order to counter young people’s overexposure to violence, it is critical to expose them to alternative norms, values, and problem-solving skills/strategies that do not revolve around conflict and violence. NICRO, for example, whose work is based on restorative justice principles, runs a community service program, an intensive drug rehabilitation program (Matrix) and a ‘Me and My Family’ program, which is specifically aimed at young male offenders and explores the intergenerational effects of deviant and criminal behavior.29 The largest percentage of NICRO’s work is devoted to youth diversion – that is, to ‘diverting’
young people away from the prison system. NICRO’s Diversion Programme, which was launched in 1992, includes a Youth Life Skills programme that ‘focuses on promoting positive attitudes, reducing risk factors and developing skills that will help young offenders avoid committing crime’ (NICRO, 2009b, pp. 1–2); restorative group conferencing that brings offenders and victims together in a safe environment; and ‘The Journey’, an intensive therapeutic program for those who have committed more serious offenses or who are identified as being at high risk of turning to crime. What these programs highlight is that restorative justice solutions can be specifically tailored to the particular needs and requirements of individual offenders, thereby underscoring why restorative justice is such an important complement to the more formulaic criminal justice system.

As an approach to dealing with youth violence, the fourth and final value of restorative justice is that it is already being used in South Africa as a tool for addressing social problems and resolving conflict. The Community Peace Program (CPP), for example, was established in 1998. Operating within South Africa’s townships, a critical component of the CPP is the creation of peace committees comprising members of the local community. These peace committees have two main functions: peacemaking and peace-building (Roche, 2006, p. 231). In their peacemaking capacity, peace committees bring together victims, offenders, and community members in a collective effort to resolve problems and disputes including domestic violence, noise complaints, and the nonrepayment of debts. In their peace-building capacity, the committees attempt to bring about positive social changes, for example through the building of playgrounds and the provision of loans to fund micro-enterprises (Roche, 2002, p. 525). Also in 1998, the Guguletu Community Forum was officially established in the township of Guguletu in Cape Town. A hierarchical structure with street committees at the bottom and the Forum (consisting of approximately 20 elected representatives) at the top, the Forum deals with a wide variety of disputes and disagreements, including domestic violence, assault, and burglary. Like the CPP, the Guguletu Community Forum is firmly based on restorative justice principles; ‘The Forum aims to help those in conflict arrive at a remedy that restores the parties to a situation as close as possible to where they were before the conflict arose’ (Monaghan, 2008, p. 96).

Beyond these two examples, moreover, it is apparent that the possible benefits of restorative justice are slowly being recognized in South Africa. There has been a Restorative Justice Center in Pretoria since 1998; in 2003, the Association of Regional Magistrates made the decision to apply restorative justice principles where appropriate; in 2004, the Department of Justice and Constitutional Development recognized restorative justice as a valid sentencing option (Sherman & Strang, 2009, p. 6); and ‘… restorative justice has moved from the margins to take its place as a subject of serious academic debate in criminal justice’ (Skelton & Batley, 2008, p. 37). The context is ripe, therefore, for further expanding the application and use of restorative justice, and in this regard the recent adoption of the Child Justice Act represents a significant and research-worthy development.

**The Child Justice Act**

The Child Justice Bill was introduced for parliamentary debate in 2003. However, ‘… official nervousness about its implications – and a country baying for the incarceration of criminals – saw it continually rewritten and sidelined in the parliamen-
ary mill’ (Pinnock, 2009). The Child Justice Act was therefore enacted six years later on 11 May 2009, but it represents a fundamental endorsement of restorative justice as an approach for dealing with youth violence and young offenders. It is thus in keeping with the recommendation of the Pinheiro Report (2006b, p. 29) that ‘States should . . . establish comprehensive, child-centered, restorative juvenile justice systems . . .’

Divided into 14 chapters, the Act embodies a strong restorative justice ethos. According to its preamble, the Act aims to ‘expand and entrench the principles of restorative justice in the criminal justice system for children31 who are in conflict with the law, while ensuring their responsibility and accountability for crimes committed.’

It should therefore be reiterated, to echo Director Batley’s earlier point, that restorative justice is not a lenient option or a sell-out. It does not exonerate offenders. It holds them accountable33 but in ways that are not dependent upon punishment. Furthermore, it holds them specifically responsible to victims and affected communities, rather than to an abstract entity like ‘the state.’ In other words, ‘This is a far more personal approach, which sees the offense as something that has happened to people . . .’ (Tutu, 1999, p. 52). It should also be reiterated, as the Act’s preamble makes clear, that restorative justice is not an alternative to the criminal justice system but an auxiliary to it. Hence, it is not a matter of choosing restorative justice over retributive justice, or vice versa. It is about recognizing that ‘justice is bigger and more complex than both “legal justice” and legal ethics and includes a set of values in addition to those commonly associated with legal justice’ (Menkel-Meadow, 2002, p. 1767). The Act accordingly makes provision (in Chapter 10) for a range of restorative justice sentences, namely family group conferencing, victim–offender mediation, or ‘any other restorative justice process which is in accordance with the definition of restorative justice’ (Section 73[1]).34

In keeping with its restorative justice essence, the Act places a strong emphasis on diversion. The objectives of diversion, according to Section 51, are, *inter alia*, to ‘meet the particular needs of the individual child,’ ‘promote the reintegration of the child into his or her family and community,’ ‘prevent stigmatizing the child and prevent the adverse consequences flowing from being subject to the criminal justice system,’ and ‘prevent the child from having a criminal record.’ Diversion, in other words, can potentially correct some of the problems that arise from resorting to the criminal justice system, and this is important because, as Section 58 of the Act makes clear, the two systems work in tandem. If, for example, a child fails to comply with any diversion order, s/he can be required to appear before the magistrate, inquiry magistrate, or child justice court, and if the failure to comply with the diversion order is found to be the child’s fault, the prosecutor ‘may decide to proceed with the prosecution’ (Section 58[3][a]).

Aside from the Act’s strong support for diversion, its commitment to restorative justice principles is further evident in its emphasis on *ubuntu* – the notion that ‘a person is a person through other people.’ *Ubuntu*, in other words, ‘acknowledges the interconnectedness of humanity at all times’ (Murithi, 2008, p. 26), and hence it can be viewed as an extension or macro-version of restorative justice. The latter, through its focus on needs, acknowledges the interconnectedness between offenders, victims, and communities. Highlighting this close link between *ubuntu* and restorative justice, Archbishop Emeritus Desmond Tutu (1999) has articulated that in restorative justice, ‘the central concern is not retribution or punishment but, in the
spirit of *ubuntu*, the healing of breaches, the redressing of imbalances, the restoration of broken relationships’ (pp. 51–52). While the Act reinforces this nexus between the two concepts, what is particularly interesting is the way in which it invokes *ubuntu*. Traditionally, *ubuntu* is a form of dispute resolution (Murithi, 2008, pp. 26–27; Omeje, 2008, p. 89). One of the Act’s objectives, however, is to ‘promote the spirit of *ubuntu* in the child justice system’ (Section 2[b]). The Act thus represents a novel and innovative application of *ubuntu*, conceptualizing it not simply as a conflict resolution strategy in the strict sense but also as a much broader societal mechanism for dealing with young offenders and youth violence.

For all of the above reasons, the Child Justice Act constitutes a key piece of legislation. A representative of UNICEF South Africa, for example, maintains that ‘The Act is of critical importance to the 100,000 children in South Africa who are arrested each year, and also to the communities in which they live’ (UNICEF, 2009). One of the Act’s authors goes even further. According to him, ‘If the Child Justice Act does no more than keep adolescents out of prison, it will have the effect of reducing crime. But it aims to do much more.’ In his view,

> By involving communities in solving the problem of delinquency, forcing wrongdoers to face their victims, diverting children from punitive justice and providing them with a context in which to change their antisocial ways, it stands to lay the foundations for a much safer, healthier society. (Pinnock, 2009)

Since the Act only came into effect in 2009, it is too soon to gauge its effects, to evaluate its impact, or to reach any definitive conclusions regarding its strengths and weaknesses. What is clear, however, is that the Act represents a major test for restorative justice in South Africa, the outcome of which could have a considerable impact both on how the general public views nonpunitive forms of justice and on the prevalence and scale of youth violence within the country.

**Conclusion**

Bonginkosi (not his real name) is 19 years old. He lives in Durban, on the beach, where he has lived for five years. He survives by making sand art. He is sitting next to a sand version of Jennifer Lopez, which he is very proud of. During the high season, he can make enough money to get by (i.e. to buy food and the bare essentials), but when the tourists and the visitors return home there are days when he earns nothing at all. When you live in this way, he says, ‘You do what you can to survive. You have to.’

It is late afternoon in Mpophomeni, a township on the outskirts of Pietermaritzburg in KwaZulu-Natal. There is music blaring from various dwellings, a large group of men are drinking outside a small house, children are playing games in the streets, undernourished dogs are sleeping in gardens and under hedges as inquisitive goats search for food. A middle-aged couple walk by. The man is staggering. He is drunk and he is angry. He shouts at the woman and pushes her to the ground. She gets up and they carry on up the hill. Nearby, there are a group of children playing football. They stop to witness this scene and then continue with their game.

Structural violence and poverty provide a critical socioeconomic context for understanding the problem of youth violence in South Africa, while exposure to violence – in schools, homes, and communities – constitutes a more immediate
proximate cause. Through meso- and macro-level analysis of some of the general causes of youth violence, this article has sought to demonstrate that the criminal justice system has critical limitations as a response to this issue. By extension, the possible benefits of more restorative-based solutions as an adjunct to the criminal justice system are apparent.

While there is still resistance in South Africa to the notion of restorative justice, the concept is clearly gaining ground, as highlighted by the Child Justice Act. The adoption of the Act, which constitutes a very significant development, raises a number of important questions. If, for example, the concept of *ubuntu* ‘adds a crucial African appeal to the call for restorative justice . . .’ (Louw, 2008, p. 171), will the Act’s emphasis on *ubuntu* help to facilitate the public’s acceptance of restorative justice? Will the Act inject new life into *ubuntu* as a concept, and can this help to lower levels of community violence to which so many young people are exposed? Ultimately, will the Act demonstrate that restorative justice is a valid and legitimate response to crime, even in such violent countries as South Africa? These are questions that are beyond the scope of this article but they are important avenues for further research which it is hoped that others will explore.

**Acknowledgment**

I would like to thank all those who helped me with this research. Special thanks go to the Center for Justice and Crime Prevention and its director, Patrick Burton. I would also like to thank two anonymous reviewers for their constructive and very useful comments.

**Notes**

1. Russell (2009, p. 110), for example, writes that ‘In 2007 there were over nineteen thousand murders and more than fifty thousand reported rapes, and more than eighteen thousand people were the victims of violent robberies, including the hijacking of cars.’
2. Leoschut (2009b) notes that, ‘. . . young people in South Africa are still being victimised at rates significantly higher than those observed among their adult counterparts’ (2009a, p. 2). According to a lifestyle survey conducted by the Cape Town-based CJCP, for example, in the 12 months between February 2008 and February 2009, 27% of the 4409 respondents (between 12 and 22 years old) said that they had been a victim of crime. The two most frequently mentioned crimes were theft (10.7%) and assault (8.4%) (Leoschut, 2009b, p. 33).
3. To cite Daly (2008, p. 143), ‘. . . all justice practices, including RJ [restorative justice], are limited.’
4. According to the United Nations Economic and Social Council (2002, para. 19), ‘. . . restorative justice practices should be seen as complementing established justice systems and not as a replacement for them’.
5. Gabbay (2005, p. 357) underlines that ‘The restorative justice paradigm shifts the traditional view of crime from the violated norm to the harm caused to the individuals most affected by the crime’.
6. According to Altbeker (2007, p. 66), ‘. . . crime, and the fear it generates, has helped to sustain the racist fear of black people . . .’
7. Mike Batley and Tshegofatso Maswabi were interviewed in a coffee shop in Sunnyside, Pretoria.
8. The issue of child soldiers is one obvious example (see, e.g. Harris, 2010). On the subject of children and violence, Paulo Sérgio Pinheiro, an independent expert for the United Nations, produced a very comprehensive report in 2006, looking at the global problem of violence against children (Pinheiro, 2006a, 2006b).
9. Galtung (1969, p. 173) observes that, ‘Structural violence is silent, it does not show . . .’
10. The term ‘colored’ is in common usage in South Africa and is widely accepted. It is therefore used in this article.
11. In 1966, in accordance with the 1950 Group Areas Act, which divided the country into ethnically distinct areas, District Six in Cape Town was proclaimed as a ‘whites-only’ area. By 1982, over 60,000 people had been forcibly uprooted from District Six and moved to the wind-swept Cape Flats. In central Cape Town, the District Six Museum chronicles the experiences of those who endured these forced removals. The Flats, whose inhabitants are exclusively blacks and coloreds, are a sprawling mass of shacks, informal settlements and makeshift dwellings. Situated next to the airport, they are one of the first sights to greet visitors to the city.

12. Guguletu and Nyanga were built in 1945 to house an influx of black workers who migrated to the city looking to find employment. Today, the townships are depressing, overcrowded places where living conditions are poor and where crime and social problems – including gangs, drugs, and alcoholism – are rife.

13. The Gini coefficient measures inequality within a country, with 0 representing perfect equality and 1 representing perfect inequality.

14. The Rand is South Africa’s national currency.

15. According to Aliber (2003, p. 473), ‘… there remain significant gaps in our knowledge about the incidence and causes of poverty, and even greater gaps in our knowledge of what practical measures work’.

16. Even some of the most rudimentary township dwellings are often surrounded by some sort of fencing although less as a security measure than to keep out the neighbors’ goats.

17. According to the results of the CJCP’s National School Violence Study in 2007, 34.5% of learners in secondary schools personally knew people who had been drunk at school, 32.4% personally knew people who had been high at school and 52.3% personally knew people who smoked dagga (marijuana) at school (Burton, 2008b, p. 47).

18. Echoing this point, Pinheiro’s (2006a, p. 111) report on violence against children throughout the world underlines that ‘The levels and patterns of violence in schools often reflect the levels and patterns of violence in countries, communities and families’.

19. The author was given this information by a local community worker during a visit to Imizamo Yethu on 14 August 2010.

20. See Note 11.

21. In Pollsmoor prison, for example, some 25 km from Cape Town, ‘… the ratio of guards to prisoners [more than 7,000] is roughly 1:100 … With such a dangerously low ratio of guards to guarded, the warders in Pollsmoor don’t even carry guns – the risk of inmates snatching them is too great’ (Kemp, 2008, p. 179).

22. Of these, 423 were between the ages of 14 and 18 and 22,851 were between 18 and 25. Since 2005, the number of sentenced detainees has been increasing in South Africa but so too has the number of detainees awaiting trial. For example, while there were 44,936 detainees awaiting trial in 2005, this figure rose to 49,802 in 2008 (Presidency of the Republic of South Africa, 2009, p. 66). Within the total prison population in South Africa, as of 31 May 2010, there were 112,466 sentenced offenders and 49,030 detainees awaiting trial (Department of Correctional Services South Africa, 2010).

23. In 2006, the South African Supreme Court of Appeal remarked that ‘[h]istorically the South African justice system has never had a separate, self-contained and compartmentalized system for dealing with child offenders. Our justice system has generally treated child offenders as smaller versions of adult offenders’ (cited in Skelton, 2011, p. 417).

24. Bazemore and Umbreit (1995, p. 300) underline that ‘Retributive justice … may have several counterdeterrent effects on offenders, including stigmatization, humiliation and isolation that may minimize prospects for regaining self-respect and the respect of the community.’


27. This is in contrast to the punitive criminal justice system, where ‘At no time is he [the offender] encouraged to be responsible or to make decisions which can positively improve his situation’ (Dissel, 1997, p. 6).

28. On the issue of restorative justice and recidivism, Gabbay (2005, p. 366) points out that ‘Currently, most empirical studies conducted in this area show that restorative processes
have a positive effect on recidivism rates’ (see, e.g. Latimer, Dowden, & Muise, 2005). Gabbay (2005, p. 366), however, notes that ‘some studies do not share this conclusion and, of those, some even show an increase in recidivism rates.’

29. NICRO works primarily with young people between the ages of 14 and 19. Of its total clientele, 63.36% are black, 27.77% are colored, 6.75% are white, and 2.12% are Asian (Dawson, 2009, p. 14).

30. It should be noted that there has been a notable increase in the overall use of diversion in South Africa from 14,808 cases in 2002–2003 to 46,469 cases in 2007–2008. This represents a growth of 213.8% (Presidency of the Republic of South Africa, 2009, p. 65).

31. According to the Act, ‘‘child’’ means any person under the age of 18 years and, in certain circumstances, means a person who is 18 years or older but under the age of 21 . . .’ (Section 1).


33. On this point, it is important to note that the Act raises the age of criminal capacity from 10 to 14.

34. The Act defines restorative justice as ‘‘. . . an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation’’ (Section 1).

35. According to Omeje (2008, p. 89), ‘It is within the philosophical context of ubuntu and comparable practices in other parts of Africa that traditional African methods of conflict resolution are essentially situated’.


References


