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**The Case of Uyinene Mrwetyana: A Restorative Justice Approach to Gender-Based  
Violence:**

While applying to study abroad at the University of Cape Town in South Africa, I heard about the case of Uyinene Mrwetyana during the fall of 2019, and I received my acceptance into the University of Cape Town shortly after. Uyinene was only a year younger than I am, and she had her whole college career and life ahead of her. She simply went on a trip to the post office, a place where you would think it would be safe for any woman to go alone, but she was raped and killed by a post office worker. Claremont, where the incident occurred, was only a short seven minute drive from where I lived in Rondebosch, Cape Town, South Africa. Claremont is a very affluent White area, and it is not a place you would anticipate being unsafe. There are many shops & restaurants, and the University of Cape Town is a ten minute drive away from the post office. The post office area is a very busy part of town, and it is off of the main road, and many people are constantly walking and going shopping. Claremont and Rondebosch are known as the safer and wealthier areas because they are both located in the Southern Suburbs of Cape Town. The post office is also right next to the police station, a place where everyone should be protected. After hearing about Nene's case, I was afraid to go to a place where gender-based violence was such a national problem. This case made me realize that no woman is safe in South Africa. Even during the day, many women are harmed or killed.

As a person who identifies and looks like a Black American woman, I never looked out of place in South Africa. I looked like a coloured woman from Cape Town, and I was approached many times by coloured people who expected me to speak Afrikaans. Many people were surprised when they heard my American accent. Yet, despite fitting in, I was often scared of being in the wrong place at the wrong time and being harmed. On the University of Cape Town website, a sign says, “Remembering Nene and all those affected by sexual and gender-based violence in our society” (Commemorating Uyinene). On my first day on campus, I saw signs that said “practice consent” on the stairs leading up to Sarah Baartman Hall, noting the prevalence of gender-based violence on campus as well. One night, I remember getting into an uber to a friend’s house because it is not safe for women to walk alone at night. The uber took another route than the one pictured in the uber app, and I thought the driver was going to take me somewhere else to harm me. When we arrived at my friend’s house, the driver asked me where I was going and what I was going to do that evening. I told him I was going out with my girlfriends to get some dinner. Luckily, he unlocked the door and let me leave his car, but the fear of possibly being harmed or killed never left me.

Uyinene’s case of gender-based violence shifted the views of South African society, and many people realized that no woman is truly safe in South Africa. Many community members were very happy about the offender going to prison for the rest of his life, but what is being done so that this culture of gender-based violence does not continue in the future? How does the criminal justice system properly address gender-based violence cases? Is there any sense of reconciliation, justice, and healing for the community? How could gender-based violence cases be looked at through a restorative justice lens? The role of restorative justice in Africa is to provide support for victims, their supporters, the community, and for the offender in order to

prevent conflict in the future and to restore relationships between the victim, offender, and the community. The idea of restorative justice is to put the victim in the center of the justice system where they can address how the crime made them feel, share their thoughts with the offender, and where they can have a chance to heal. There is also an aspect of understanding, learning, and healing for the offender as well where the offender can be reintegrated back into the community. Many African countries, including South Africa, have relatively low crime and incarceration rates compared to other countries like the United States and other European countries. The incarceration rate in South Africa is 334 people per 100,000 inhabitants, while the United States has 760 people incarcerated per 100,000 inhabitants (Elechi 74). What are the ways in which that restorative justice has helped lower the incarceration rates in African countries?

After taking the class “Justice in Africa” with Professor Adam Ashforth, I became intrigued by the idea of restorative justice as a way to achieve justice and healing in a society rather than using the criminal justice system. In this paper, I focus on gender-based violence, and the case of Uyinene, and I explore the possibilities and limitations of restorative justice. I reflect on the possibility of merging the criminal justice system and restorative justice system to achieve justice, healing, and reconciliation for the victim, offender, community, and society at large.

### **I. The Case of Uyinene Mrwetyana:**

The Uyinene Mrwetyana case was a case that challenged the typical notions about gender-based violence. This case took place in broad daylight right next to the Claremont police station, so I think that it made people realize that no woman is safe in South Africa. I heard about the case of Uyinene Mrwetyana before I studied abroad, and I have many South African friends who were friends with her. They told me how much the case affected them, the University of Cape Town (UCT) community, and the surrounding communities near UCT. Uyinene Mrwetyana

was born in East London, in the Eastern part of South Africa. She attended high school at Kingswood College, and she studied film, media studies, politics and governance at the University of Cape Town (Ndamase). The community and investigators searched for days after she went missing after collecting a parcel from the post office at 2pm on August 24, 2019. The offender told her to come back later after the power came back on, and when she came back, the offender and Uyinene were there alone. He then locked her inside, and then raped and killed her (Meyer). Anger and outrage followed after prosecutors discovered her body...on August 26, 2019. The UCT Vice-Chancellor Mamokgethi Phakeng said “it is not right that now women have to think twice before they go into the public, into the streets...We want to live freely, we want to walk freely...in 1994, when we voted, we thought we are voting for our liberation, but it seems like we went into another form of bondage.” Because of Uyinene’s age and because the murder and rape of Uyinene happened in such a normal public setting, it sparked a movement called #AmINext, and many women and men took to the streets to call on the government and men to take action and to be better men. Her name will be remembered through a UCT scholarship for women studying humanities (#IamNene).

According to Unathi Nkanjeni who is a writer for TimesLive, found out that the offender’s confession was, “that child gave me a hard time, she took a long time to die” (Nkanjeni). After the offender was put into jail, Nkanjeni and the community found out that the criminal record of the offender was known to post office officials, and that if the officials had not ignored his record, Uyinene would still be alive.

Uyinene Mrwtyana deserves to be alive today. Her life must be honored by preventing other women from suffering a similar fate. How might restorative justice achieve a sense of healing for the community and for the victim’s family, and how can it prevent future harms?

Professor Adam Ashforth calls South Africa “the rape capital of the world” (Lecture). According to the Klynveld Peat Marwick Goerdeler (KPMG) company which is a global network of professional firms providing audit and tax services based in Johannesburg, South Africa, claims that gender-based violence is violence that is directed on the basis of one’s gender, and it can happen as a result of the unequal power distribution between genders which can take many forms including violence against a stranger or domestic violence. Most GBV cases usually take place when men inflict harm or violence on women because of the unequal power structure between men and women. Furthermore, women are less likely to be able to escape GBV because they do not have the same economic opportunities, and they are less likely to be able to escape abusive situations. GBV is a direct violation of the constitution in South Africa, and it takes away women’s right to freedom, safety, security, and non-discrimination. Violence against women “ranks higher than smoking, obesity or high blood pressure” as the cause of sickness, disability, and death. Victims who are children have “lower educational attainment,” and “female victims of violence exhibit risk taking behavior like unhealthy feeding habits, substance abuse, alcoholism, and even suicidal behaviors.” Furthermore, when a child witnesses violence in their family, they are more likely to be perpetrators of violence in their lives (KPMG 7-12).

According to Hannah E. Britton in “Ending Gender-Based Violence: Justice and Community in South Africa,” she believes that children who witness or experience GBV might not exit a violent relationship in the future. She also looks at societal factors when looking at the causes of gender-based violence. People that abuse alcohol and drugs, have a family history of violence, or are affiliated with gangs are more likely to be perpetrators of GBV. If a person is poor and lacks basic services, lives in inhumane conditions, has food insecurity, unemployment, or they are illiterate, then that person is more likely to be a perpetrator of GBV. Britton

interviewed many community members to get their views on the causes of GBV in South Africa, and some believed “that GBV was being used to put women and LGBTQ people “back in their place.”” A government official that Britton interviewed believed that “strong laws to reduce access to alcohol, combined with counseling services for survivors and perpetrators, could work together to address GBV.” A former Black police officer in Bokang, a Black township, noted that substance abuse and especially the use of the drug Nyaope, a mixture of a range of illegal substances, leads to many assault cases. Britton stated that “many women killed by their partners had ‘high blood alcohol concentrations’ when they were killed, and ‘most’ of their male partners who murdered them were ‘similarly intoxicated.’”

In terms of gang activity, the rates of rape were higher in coloured populations; Jewkes and colleague noted that “this difference might be related to the higher levels of gang activity in those communities and particular forms of masculinity and socialization that appear based in violence and control” (qtd. in Britton 35). Poverty and inequality is also linked to a potential cause of gender-based violence in South Africa, and South Africa also has “one of the highest levels of income inequality internationally” noting the ties to apartheid legacy and racial inequalities. Many Black people live in townships where poverty is visceral; many people live in tin houses right next to each other with no proper heating, electricity, sewage, and privacy. The families therefore have to witness any violence that occurs in the household. The racial inequality also contributes to poverty; “the unemployment rate for whites is 7.2 percent...and blacks, 30.1 percent.”

In a study in KwaZulu-Natal and the Eastern Cape in 2010, the 27.6% of men who said that they had raped someone had said that they felt sexually entitled which is “linked to the ideas

of men's ownership of women." GBV is "used to block women from politics, economic opportunities, and educational opportunities." In an interview with a White South African woman who managed a counseling center, she noted that when a woman is submissive and follows the guidelines of the community by letting the men dominate in society, then the woman will be less likely to be a victim of GBV, but when the women is more academically, politically, or economically involved, then violence is accepted by the community to put her in her place. Women are also seen as the blame when they are raped in their relationships, and "nearly two-thirds of women in South Africa believe that spousal abuse is sometimes acceptable, and over 50% of men believe it is acceptable to beat their wives." An older Black man who is an officer in the Bokang station stated that males have gender jealousy because of women now being the breadwinners of their households (Britton 29-40).

To understand the need for drastic societal change and the need for restorative justice to prevent future crimes against women, the community must understand the costs of gender-based violence. According to KPMG, "gender-based violence costs South Africa between R28.4 billion and R42.4 billion per year." Female homicide rates in South Africa is 5 times the global rate, and domestic violence is twice the rate in the United States. GBV drains resources from all sectors of society not just the victim; costs can include court and health costs for the victim, lost taxes for the community, and there are also added costs of children who commit these crimes as a result of witnessing GBV crimes in their own lives. Women can also lose their potential years of life lost if they are killed by someone else, and if they are injured and disabled, then that also contributes to a higher cost of GBV.

Trying to estimate the costs of gender-based violence nonetheless presents challenges. The costs of GBV are highly underestimated because doctors and police do not necessarily

record those cases as GBV, but instead they record them as general incidents of violence. The potential effects of GBV on the economy include a loss of earnings, a loss of revenue & tax revenue, diverted resources, as well as a loss of opportunities. When the economy is in a depressed state, strikes by unemployed people contribute to increased levels of GBV, which contributes to a further decline in the growth of the economy. There is also a multiplier effect, meaning that a rand lost does not just mean a rand is lost; it means that others have lost their opportunities to save and spend in order to circulate more money through the economy. If GBV was reduced or eliminated in societies around the world, resources and money can be applied to other causes. The money that is used for gender-based violence could be used to provide youth wage subsidies for 100% of youth who are currently unemployed, build over a half a million government subsidized houses, pay all child support grants for 8 years until 2022, and fund over 200,000 primary school teacher salaries for one year (KPMG 1-5).

In South Africa, “there is one rape...every 83 seconds” and “a woman is killed by her intimate partner every eight hours” (Armstrong 36; qtd. in Colpitts 426-7). Heather Reganass, the Director of South Africa’s National Institute for Crime Prevention and Rehabilitation of Offenders, believes that rape is tied to the White supremacist system of apartheid. She says that White men were not executed for raping Black women, but Black men were hanged for raping White women, so the raping of Black women was not seen as a serious crime. As a result of Black women being discriminated against economically, politically, and culturally, they were abused by White and Black men, but that is not the only cause of gender-based violence in South Africa. Additionally, Heather states that Black women were considered worthless, and there was no urge to consider their abuses against them as important. No Black woman would go to the police stations before apartheid ended because they could be seen as informants to the police and



be killed. Furthermore, in 1993, most Black women were afraid to go to the doctor because of societal norms which say that domestic violence was seen as normal because it was seen as the wife's fault for not "perform[ing] her duties." In South Africa, "women are made vulnerable by poverty, the distorted South African justice system, prejudice, alcohol abuse, and other sorts of abuses that you see in desperate, impoverished communities." Rape often happens when young girls leave their homes and go to school, and many men practice jackrolling, or abducting girls and forcing them to have sex. Men and boys "are in part motivated by the desire to intimidate girls from attending school, as a way of asserting male authority [because] education plays a key role in allowing an individual to gain access to and control of assets and resources, and may thus pose a potential threat to gender power relations." Rape causes girls to stop going to school, to turn to prostitution, and they are often kicked out of their houses. Rape can be seen in South Africa "as the ultimate means of forcible prevention of women's participation in the public sphere beyond the household." Rapists are then "not interested in sexual gratification, but in the infliction of injury and intimidation" (Armstrong 35-38). Rape is an act of a person wanting power in the educational sphere, workplace, or in their communities. Now that we know about the history of rape in South Africa, the statistics and costs of GBV, and the case of Uyinene, I will delve into the ideals of restorative justice which began with the creation of the Truth and Reconciliation Commission.

## **II. What is the Truth & Reconciliation Commission?**

In order to understand the use of restorative justice in South Africa, we have to start at the beginning with the Truth and Reconciliation Commission after apartheid ended. To give some context, apartheid "has come to stand for any and all forms of social separation and exclusion," but in South Africa, apartheid was a "program to exploit and oppress the black masses in the

interests of white supremacy” (Ashforth 369-72). In the “Submission to the Truth and Reconciliation Commission,” in 1996, Mr. Frederik Willem de Klerk, the 7th former president of South Africa, details why the Truth & Reconciliation Commission was created in the early 1990s in South Africa. It was created in order for everyone to know the truth about apartheid and the roles that perpetrators played in various crimes against humanity. Additionally, the National Party granted amnesty to every perpetrator who told the truth in crimes “associated with political objectives.” By giving the perpetrators of apartheid crimes a chance to share their truth about the crimes that they committed, the government could “promote national reconciliation.” They said that the crimes of the past “should be dealt with “on the basis that there is a need for understanding... a need for reparation, but not for retaliation, a need for ubuntu but not for victimization”” so this was the beginning of restorative justice in South Africa. Ubuntu is a Zulu word meaning I am because you are, and it means that we have common compassion and humanity where we value ourselves and everyone around us because we are all a part of each other. After decades of apartheid laws and policies, during the period of 1978 and 1990, revolutions were taking place across the nation, and then the apartheid system was eliminated, and after February 2, 1990, the National Party membership was then opened to all races in South Africa. After apartheid ended in South Africa, a constitution was created for the first time, which guaranteed the social and political equality of all citizens (de Klerk).

### **III. Restorative Justice Approaches: Benefits & Limitations:**

According to Brady T. Heiner and Sarah K. Tyson in “Feminism and the Carceral State: Gender Responsive Justice, Community Accountability, and the Epistemology of Anti Violence”, they stated that most people think that the proper way to achieve justice is to punish someone “whether [that is through] confinement, execution, or other forms of physical, civil, or

social death” (2). The ideals of restorative justice may seem odd and impossible to pursue when comparing it to criminal justice systems around the world, but we have to imagine a world where the criminal justice system is not based on incarceration or punishment, but instead on peace, reconciliation, and justice. In “Justice and Reconciliation in Post-Apartheid South Africa” by Mia Swart, she outlines why reconciliation was a powerful way to pursue justice. She says that the justice and reconciliation became key terms during the transition to a post-apartheid South Africa. This idea of justice and reconciliation raised many questions because it threatened “to inhibit the pursuit of justice.” Most people think of justice as putting an offender in prison for many years, but the truth and reconciliation was in direct opposition to this idea. When apartheid ended in the 1990s, mostly White and a few Black people were able to tell the truth about the political and racial crimes that they committed and most of them received amnesty rather than prison sentences. Swart says that reconciliation can be powerful because it is “based on a realization that others are owed life chances too, and owed by those who already have them, simply because ... they belong to the same community” (Swart 3-7).

In “Restoring Justice (Ubuntu): An African Perspective” by O. Oko Elechi, he outlines the ideals of ubuntu and the restorative justice process which includes the victim, offender, and community. Many African people believe that offenders can be transformed through the teaching of morals. They believe that people with a strong family and community connection are more likely to value others rather than others who do not have a strong bond in their lives. Elechi says ubuntu is treating others how they would like to be treated (Elechi 75). Ubuntu also means that “an injury to one is an injury to all,” noting the importance of the victim and how the community is also harmed when a victim is harmed.

In the restorative justice process, Elechi notes that victims are usually supported by family members and other members of the community, and they have a chance to explain how the offender harmed them. When the victim, other supporters of the case, and the community have a chance to share how the crime made them feel, it gives the offender a chance to recognize and take responsibility for his actions. The offender can understand how the victim was affected by the crime. Many African people believe that human beings are capable of change, and they believe that restorative justice gives people an opportunity to teach offenders rather than inflict pain on them. African people also believe that offenders can make amends for their actions, and that the family and community is responsible for a person's actions because "it is strongly believed...that human behaviors reflect their upbringing" (Elechi 74-78).

The term restorative justice was used by Albert Eglash in several articles in 1958, and he noted that restorative justice is the only type of justice which involved the victim and focused on the offender's actions to repair the relationship between the offender, victim, and the community. This could then lead to the causes of the crime, which would lead to more healing and safety for the community members and victims. In Martin Wright's 1991 book, *Justice for Victims and Offenders*, suggests that "such a model might be constructed by creating two governmental departments. The first, responsible for crime prevention, would emphasize deterrence through enforcement rather than deterrence through punishment. The second department would be responsible for a just response to crimes when they do occur. This would include victim support, mediation, and reparation, as well as courts that emphasize restitution" (qtd. in Van Ness & Strong 24).

Restorative justice can include many elements including "community policing, community prosecution, community courts, and community corrections.". Community policing

involves police officers that come from the community rather than officers who are outsiders. They build bonds with the community rather than incriminating community members. Community prosecution is where there is active problem solving where the community has a say in what they would like to happen to the offender rather than the state determining the final outcome. Community courts involve the community and victim in the process of decision making to determine the offender's rights and obligations to the public. Community corrections also offers victims and society members a chance to be involved in the sentencing process (Van Ness & Strong 22-6).

The criminal justice system falls short in many ways where restorative justice could be used, but restorative justice did not emerge simply because of the shortcomings of the criminal justice system. According to Kelly Richards in "A promise and a possibility: the limitations of the traditional criminal justice system as an explanation for the emergence of restorative justice," when offenders are thrown into prison, offenders do not have access to the outside world, and they "are cut off from their families and other communities of care, and thrown into an environment where violence is the primary means of conflict resolution." Prisons are not meant to help people; they cause people to "return to a life of crime" when they get out of prison (Richards 125). In Tomasic and Dobinson's text called *The failure of imprisonment*, the authors "promoted a range of alternatives to traditional incarceration, including work release programs, halfway houses, open prisons, suspended sentences, periodic detention, community service orders and fines, as well as restitution and diversionary programs" instead of putting someone in prison for years with no hope for improvement or help from their family or community at all (qtd. Richards 129).

Three programs have influenced the ideals of restorative justice. The first one is victim-offender mediation where victims can explain to the offenders how they were impacted by the crime. It was first used in a case in Elmira, Ontario in 1974 in the case of two intoxicated men who “vandalized the houses and cars of 22 people” and pleaded guilty rather than putting them in jail or prison, the offenders had a chance to hear from the victims where the judge found that these meetings had positive outcomes. The judge continued to use these meetings to resolve relationships and reintegrate the offenders into society in other criminal cases after it was used in this case. The community-based program helps victims and offenders to heal. Victim-Offender dialogues then began to be used in North America, Europe, and many other countries around the world.

The second type of program is called conferencing, which was first used in 1989 in New Zealand, where “the Children, Young Persons, and their Families Act created the family group conference and used it to replace the Youth Court for most young offenders.” In New Zealand, the Maori people believe that the children are the most important people of the family, and they believe that “the family of the offender [must] assume responsibility for making things right with the victim and the victim’s family.” The family of the victim, the victim if possible, government representatives, and other supportive community members are able to come to the meeting. This method has been used in youth cases and adult offenses as well.

The third method is called circles, which is known to have an indigenous history in Canada and can also be referred to as “sentencing circles, community circles, and healing circles.” The first case involved a 26 year-old man who was an alcoholic with 43 criminal convictions, and he needed substance abuse treatment and rehabilitation services which he never received, so the courtroom members were put into a community circle with all of the law

enforcement officers, victims, and other supportive members. At the end of the meeting, the community “agreed to help the offender and his family as he dealt with his substance abuse, [and] the offender agreed to a three-part program of treatment” (Van Ness & Strong 26-29).

According to Van Ness & Strong, victims who participate in the restorative justice model are better off mentally than those who do not, and offenders are less likely to commit the same crimes over again, especially in the cases of violent crimes, which could then be used in gender-based violence cases to deter offenders from repeat offending. Furthermore, restorative justice makes victims and the community less likely to fight back against the offender because it gives them a sense of healing. In order to prevent gender-based violence cases and other crimes, the community and government must work to prevent those crimes by rebuilding the relationship between the victim and the offender, and by building a sense of safety, peace, and order between the government and the community. This process of rebuilding the relationship between the victim and the offender also includes healing and redress for the victim, and rehabilitation, and fairness for the offender in the restorative justice model as well (Van Ness & Strong 53-57).

Victims, or in Uyinene’s case, the family or her supporters can be a part of every stage of criminal proceedings in the restorative justice model. The victim usually works with the prosecutor to apply the appropriate charges for the offender. In this pre sentencing phase, victims can order restraining orders or ask that the offender “be released on bail in order to continue work and increase the likelihood of collecting future restitution.” In the plea bargain phase, there is “an agreement among the prosecutor, defense counsel, and the accused to plead to reduced charges resulting in a lighter sentence” (Van Ness & Strong 134). The victim’s interests and the prosecutor’s interests may align, or they may not; the victim is looking to maximize the restitution, meaning the monetary value he or she could gain in the sentencing process.

Restorative justice can address the disparities in sentencing by not allowing judges to give out sentences at all (Richards 135-6). According to Stephan Terblanche, and Geraldine Mackenzie in “Mandatory Sentences in South Africa: Lessons for Australia?,” they noted that a Criminal Law Amendment Act was put in place in 1997 in South Africa to provide mandatory minimum sentences for every crime; it was put in place to deter people from committing crimes, but it was not effective in deterring crime (Terblanche 402-6). The regional courts can sentence up to 15 years of imprisonment for every charge of the accused, and the High courts have “unlimited sentence jurisdiction, but in practice are limited to life imprisonment” (Terblanche 403). The impact of mandatory minimum sentencing is not beneficial in any way; it just increases the prison population, and it does not reduce crime rates (Terblanche 404). In 1994/1995 to 2005/2006, “the crime rate for rape remained reasonably constant at about 115 per 100,000” which shows that it did not deter people from committing this crime (Terblanche 408). Murder and rape usually prompt recommendations of life imprisonment for the offender; the only time the sentence is changed is when “the sentencer becomes convinced that the prescribed sentence would amount to injustice, [then] an alternative sentence should be imposed” (Terblanche 409). This South African legislation was made for temporary use, and it was poorly drafted; it also causes the overcrowding of prisons and lengthy sentences that do not necessarily correlate to the crime at hand (Terblanche 411). Mandatory sentences affect how restorative justice could be implemented in South Africa, and sentences are seen as a necessary component of the criminal justice system.

According to Van Ness & Strong, in “one study of burglary victims, three basic components make up victims’ understanding of ‘fairness’ when it comes to sentencing: the punishment the offender will be given, the compensation the victim will receive, and the



rehabilitation services that will be made available to the offender” (134). Restorative justice can use these three programs in gender-based violence cases, and offer the offender the opportunity to hear from the family of the victim and the victim’s supporters to listen to what they think would be best for themselves and for the community as a whole.

I wonder how the offender would feel if he knew how the community felt, if he knew how this crime not only harmed Uyinene, but her friends, family, UCT students and professors as well. The offender could hear these thoughts from the community and take responsibility for his actions. After Uyinene’s body was discovered, the post office in Claremont closed because of a walk-in by the community. According to TimesLive journalist Tanya Farber who wrote “Post office where UCT student Uyinene Mrwetyana was killed closes its doors after walk-in,” she noted that the community wondered why the business stayed open after Uyinene’s body was found. Community members wanted the post office to close out of respect for the other traumatized female employees who worked there. Veronica Smith, who works at a store across the street from the post office said “I work Monday to Friday. Our children are killed. I thought there would have been a mass protest already. If this was in the township, the community would be here fighting tooth and nail for it to be shut down.” Other comments from the small crowd gathered included: “Out of respect for Uyinene, this place should be closed.” Another woman said: “These employees should be allowed to mourn and go home. It was their own colleague who asked the girl to come back and then he raped and killed her.” Said another: “If something like this happened to my child, I would kill the man myself.” One woman, who did not want to be named, said: “He came to work on Monday as if nothing had happened. We came into the post office and saw him. Only later we heard from the guy who works directly opposite at the pet shop that it’s the guy we all know and see here every day.” Local resident Dr. June Bam, a

lecturer at the University of Cape Town, spoke to TimesLIVE and said, “I live here so it is sad for me. This is just horrific. I think this place should not be open this morning. The staff should be sent home. There is also a school across the road [Livingstone High School]. The women who work at the post office are scared not to work as this is their bread and butter. But they are traumatised. And the government is ambivalent” (Farber). Many community members like the ones quoted above may want the offender to stay in prison for the rest of his life, but there may be a time when he is released eventually, and he will have to be reintegrated into the community.

The next step of the process is reintegration after the offender has completed their sentence. When past offenders are released, they are called an ex-convict regardless of the crime that they committed. According to Van Ness & Strong, “some released prisoners face hostility and potential violence when they return to their communities because of unresolved matters with their victims or the fear of people in the community.” As a result of their status as an ex-convict, they will automatically face discrimination in the workplace, and they will lack enough money for their necessities like “food, clothes, reliable transportation, suitable shelter, adequate education, psychological counseling, and drug treatment.”. Prison also causes prisoners to have an “institutionalized mentality” where they have a hard time making decisions because all of their decisions were made for them when they were incarcerated. After committing a crime and serving their time, the offender deserves to reintegrate into their community, which means that the community members must accept the offender. It means finding ways for offenders to be contributing members of society instead of deeming them as people who are unworthy of being a part of the community anymore. Braithwaite suggests that reintegration can take place if there is “mutual respect for one another, mutual commitment to one another, and intolerance for--but understanding of--deviant behavior” (Van Ness & Strong 102-4). The former offender must agree

to never commit crimes against humanity again and to be a responsible and honorable member of society.

Despite the many positives of restorative justice, it still falls short in many different ways for addressing certain adult violent crimes in Ireland. To get a sense of how restorative justice can work in South Africa, we have to look at how restorative justice has been used in other countries. In “A promise and a possibility: the limitations of the traditional criminal justice system as an explanation for the emergence of restorative justice” by Kelly Richards, she noted that the Australian cases, restorative justice is mainly used “in the realm of youth justice, and/or as a diversionary measure in cases of minor and/or non-violent crime, and most restorative programmes and practices were developed to meet these aims,” so it may not be able to be used as an alternative to incarceration as in the case of Uyinene and her offender (Richards 134). In “Restorative Justice and the Critique of Informalism in Northern Ireland In Northern Ireland,” by McEvoy and Mika, they stated that two restorative justice programs were created in 1998, and they worked with “paramilitaries to promote and provide a non-violent, lawful alternative to paramilitary punishment violence” (McEvoy and Mika 2001). Accused offenders were encouraged to use the two projects in place. According to Anna Eriksson in “Justice in Transition: Community Restorative Justice in Northern Ireland,” they noted that “[t]hrough a series of meeting, discussions, and/or conferences, project staff attempted to work with local residents, paramilitary members, victims, and alleged offenders, to encourage alleged offenders to take responsibility for their actions and repair the harm they had caused” (Eriksson 2009). These projects could intervene in youth cases, but they could not do so in cases of sexual offences or in cases involving the sale of drugs (Winston 1997; McEvoy and Mika 2001). Although these projects were effective in reducing paramilitary violence, the State ``increased

their oversight and regulation of these projects, as well as their own use of restorative justice” so any country or community has a risk of the restorative justice projects being taken over by the government when they are independent of state agencies (Hogg & Butler 692 & Campbell et al. 2005). Projects then were regulated by the state and they had to report crimes to the police, and the Public Prosecution Service had to give them approval if they could work on certain cases (NIO 2007). Typically, the state only allowed them to handle youth paramilitary cases (McEvoy and Mika 2001). There are also concerns that the state views these projects as a complement to the state’s services rather than as a separate entity to handle paramilitary and criminal cases, and there are also suspicions among people who work with the restorative justice program that the use of restorative justice has declined as a result of the state taking over (Chapman 2012; Chapman et al. 2016). In a study of a restorative justice project in Northern Ireland, Lauren Hogg and Michelle Butler found that after the restorative justice project became state-accredited, the number of cases referred to their project went from 42 cases to 0 cases. There was a bias toward using the Youth Justice Agency rather than using the restorative justice project in place (Hogg & Butler 695-696). This can happen in any country that wants the criminal justice system to dominate. According to Gail Super in “LIKE SOME ROUGH BEAST SLOUCHING TOWARDS BETHLEHEM TO BE BORN: A Historical Perspective on the Institution of the Prison in South Africa, 1976—2004,” she noted that despite the move in South Africa to a democracy that incorporated all races in the government sector, there was an increase in long-term imprisonment. Prisons in South Africa are still very much influenced by the legacy of apartheid, and the majority of prisons in South Africa are “poor and non-white.” In 2003, Black women made up of 69.7% of the prison population, and Black men made up of 76.6% of the prison population. There have been some improvements since apartheid ended though. Prisons

are now called correctional centres, so it is a place that is now viewed as a place for rehabilitation and reintegration, and the state could believe that correctional centres can rehabilitate offenders better than the restorative justice programs can, which would cause the criminal justice system to take over as it did in Northern Ireland. Despite correctional centres dominating the criminal justice sphere, “in 2002, at the precise point in time at which SA has the top incarceration rate in Africa, and one of the highest in the world, the department introduced a restorative justice approach that ‘aimed at facilitating the mediation and healing process between offenders, victims, family members, and the community.’” This new program recognized the human rights of offenders rather than deeming them as incarcerated people who are undeserving of the same rights that non-incarcerated people have. South Africa uses rehabilitation “as a way to justify imprisonment and reintegrate those who have erred back into society, provided that the offender is willing to take responsibility for his/her wrongdoing.” The incarcerated people who are not cooperative and who do not take responsibility for their actions are subject to the more harsher forms of punishment while they are in correctional centres (Super 201-18).

Despite restorative justice being a victim centered program, in the early 1990s, in New Zealand, victims attended less than half of the conferences, and in Britain, victims attended less than 7% of the conferences. During the early cases of restorative justice, the attendance of the family and the offender was valued much more, and the victim was not seen as a necessary component of the program (Richards 131-2). In a case like Uyinene, where she is no longer alive, how can her needs as the victim be centered? They cannot, so in this case her family, friends, and the community would be centered in achieving justice and healing. This 1990s earlier form of restorative justice could then be used in this case because the victim is not able to share her pain with the offender.

Research from the United States shows that in domestic violence cases that “when a batterer intervention program (BIP) is combined with clinical elements...subsequent incidents of violence can be reduced.” Another program that was used was cognitive behavioral theory (CBT). The BIP used the Duluth model of treatment, and it was developed in the early 1980s for intimate partner violence (IPV) cases “with a focus on male offenders and female victims.” This approach teaches “offenders to find non-violent alternatives as well as to change attitudes regarding the gender imbalance between men and women and the accompanying power and control evident in abusive intimate heterosexual relationships.” The length of treatment is 24-26 weeks, and each session is 1 to 2 hours. “Modules that address issues such as substance abuse and anger management are also often integrated into the BIP curriculum.” The offenders are central to the treatment plan which could be used in the case of Uyinene. One 4-year study shows promising outcomes; the study involved 854 male offenders, and they found that there was “a clear de-escalation of assault and other abuse over time, with the vast majority of men reaching sustained non-violence.” Women also felt safer after the program ended. Additionally, CBT treatment was very effective and the results showed “fewer incidents of physical and emotional abuse.” Combining restorative justice and BIP is very promising because it can involve the victim in the process of healing and treatment, and it “can accommodate a range of offender characteristics or factors that might otherwise be ignored or neglected, including heterosexual female and lesbian, gay and gender-non-conforming offenders who might have unique treatment needs.”

Offenders were put into two groups; one was “18 weeks of BIP treatment or 12 weeks of BIP plus 6 weeks of circles of peace.” Circles of peace (CP) focuses on “events leading up the arrest, family history of abuse, triggers of violence, methods for addressing triggers and other

factors that might be relevant to the offender's circumstances, including gender identity, race, culture, religion, and socio-economic status." This model "uses social compact, signed by circle participants, including the offender, that holds him/her accountable for his/her behaviors each week," and it seeks to "empower those who are victimized, allow for the expression of feelings; clarify facts about the crime, provide an opportunity to address the impact of the crime on the survivors and those around them, and come to an agreement about how the offender can make amends." Although there are many positives to restorative justice, many critics argued that restorative justice should not be applied to DV cases on the grounds that they are concerned that victim safety could be jeopardized due to offender participation; others have argued that these approaches perpetuate the state's role in instigating violence against women." Despite the critiques of restorative justice, "there had been an increased interest in applying restorative justice principles to DV criminal cases, including in...South Africa." Additionally, BIP combined with CP has "not only reduced recidivism [by half]...but also increased satisfaction, addressed particular offender crimes and characteristics, incorporated an offender's readiness for change and remorse and engaged victims" as well. The circle of peace is a "intensity of interaction, and an organized process of dialogue, both with people known to the offender as well as through others the offender comes to trust." The study concluded that the BIP combined with CP rather than just BIP-only approach was much more effective, and they also concluded that the crimes that do occur after a BIP with CP approach are less severe (Mills 1284-90).

Despite the many positives of restorative justice being in many countries around the world, many people still do not see it as a legitimate form of power to reduce or end GBV. In January 2002, in "the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)" with the Fiji and the United States, Fiji representatives presented their

practice of bulubulu, (a form of reconciliation used outside of the court room) which resulted in tension because it was not seen as appropriately addressing GBV because of its cultural roots (Merry 59). Some local communities may criticize South Africa and other country's use of restorative justice to address gender-based violence. The committee did not want Fiji and their representatives to address gender-based violence cases in this way; they wanted rape cases to stay in the courtroom. This is a key problem because "the experts concluded that the custom was the problem because they saw "customs" as harmful practices rooted in traditional culture" (Merry 59). Furthermore, they believed that "customs oppress women and need to be changed" (Merry 59). But, if the court is not appropriately addressing the victim and the offender, then the customs must change in order to benefit both of them and society as a whole. There is also "a general assumption that problems such as violence against women are the responsibility of the state and that local culture is an excuse for non-compliance" (Merry 59). Therefore, the reason why gender-based violence cannot be applied on a global scale is because each country and community views the law and crime in different ways, which is why South Africa must have a very individualized strategy of restorative justice. The restorative justice strategy in South Africa is not going to address any other country or community besides their own.

#### **IV. Responses:**

Heather Reganass believes that the key to addressing and solving the rape and gender-based problem in South Africa is "change social attitudes towards women's status, [and that] men must no longer view women as their inferiors, and violence as an appropriate means of enforcing male superiority" (Armstrong 38). She argues that "the best protection against violence and abuse of power...is healthy family and community life...You've got to start with young



children, teaching them to respect women, teaching them to respect people, talking to them about violence” (Armstrong 39).

Institutions must be changed in order to appropriately serve and protect women in South Africa. In “Engaging men and boys to prevent gender-based violence in South Africa: possibilities, tensions, and debates” by Emily Colpitts, she discusses the Gender and Development (GAD) theory which does not just add women into existing patriarchal institutions, but actually transforms institutions into structures that serve women as well. GAD does not view GBV as a women’s issue, but views it as a structural issue as well as a man’s issue. Addressing hegemonic masculinity, she says, is a key way to prevent GBV. If men are aware of the detrimental effects of hegemonic masculinity, then they could be motivated to transform the structures of oppression for women. At the University of Cape Town, Colpitts interviewed 18 people, 11 of which were women, and 7 of which were men. The participants found that it is important to engage men in GBV discourse because all men are complicit in GBV whether they are perpetrators or not because they could also be “contributing to a system that allows violence to occur.” The participants also agreed that it is necessary to work with boys aged 4-15 in order to deter men from being perpetrators of GBV and to continue to work with men in their adult years to address their “own experiences of violence and vulnerability.”

There are many organizations in South Africa that are working to counter GBV. Sonke Gender Justice Network (Sonke), is an NGO that is “supporting men and boys in taking action to promote gender equality, prevent domestic and sexual violence and reduce the spread and impact of HIV and AIDS.” They mainly focus on prevention, and they emphasize the importance of community education. There is also the Agisanang Domestic Abuse Prevention and Training, the National Institute for Crime Prevention and the Reintegration of Offenders, and the South

African Faith and Family Institute, which address GBV and men's roles in GBV (Colpitts 424-36). These organizations are not an exhaustive list of all organizations addressing GBV, but there is a lot of effort being put in to eliminate GBV in all sectors in South Africa.

For gender-based violence cases, deterrence through enforcement could look like teaching young men about the proper ways to treat women in elementary through high school. Schools could also teach girls and boys about the key role of consent, and the ways in which violence in South Africa has been used to control and disadvantage Black people as well as control a woman's place in society, and how violence should not be used against anyone. Police could offer victim support and healing, and offenders could hear from the victims to realize their wrongs. Offenders could also hear from members of their community if the victim is no longer alive, and this could prevent them from committing the same crime again. If the offender does not have the means to pay the victim or the victim's family, they could do community service or provide resources to the victim, family, or community at large.

I think restorative justice could also be used in gender-based violence cases because the federal court should not apply in these cases. A person who commits a gender-based violence crime should apologize to the victim and community at large, and the police and court judges and prosecutors should also be members of the community rather than outsiders. If you have outside police officers, lawyers, and prosecutors who do not live in the same community where the crime took place who are taking care of the case at hand, how do they know what the community is going through if they are not from the community? How can they properly address the victim and the offender if they do not understand the reasons why the offender committed the crime? Police officers should be from the community in order to understand what the community members are going through. For example, if you are a police officer in Khayelitsha, a poor Black

township, and you are from Rondebosch, a White wealthy suburb, how can you understand the economic, social, and systemic disadvantages that Black people have in Khayelitsha? The police, the courts, and the justice system must understand the community or else no justice will be achieved.

In “Feminism and the Carceral State: Gender Responsive Justice, Community Accountability, and the Epistemology of Antiviolence” by Brady Heiner and Sarah Tyson, they note the importance of community accountability (CA). They note that offenders must take responsibility for their actions as well as “the community at large for the practices and discourses that cultivate a climate conducive or productive of gender violence (including rape culture, everyday misogyny, and the denial of leadership roles to women, transgender, and queer people); violent, colonial, white supremacist, and heteropatriarchal social and state institutions;...and the survivor(s)” (18). The offender is not the only person or entity who is responsible for GBV. The legacy of apartheid, the unequal power dynamics between men and women, and the wealth gaps between Black and White people are some of the contributors of GBV in South Africa. The fact that men see women moving up in society as a threat to their own male dominance is a problem, and it is one of the reasons why men attack women. Men, and especially Black men, want more power in South Africa, and I believe many offenders like Uyinene’s rape and kill women because they think it is a way to inherit power that they have never had. Apartheid’s legacy of not caring for and protecting Black women has transformed into women being raped and killed on a daily basis, and it is something that must be addressed and changed so that women can live long healthy lives. Gender-based violence is deeply entrenched in South African communities, the former racist and unequal institutions, and the cultural roots in South Africa is why the community must be held accountable for their complicity in all GBV crimes.

The victim's desires are also put at the forefront rather than the state's desires for punishment. Offenders are treated as human beings who are capable of change, and they are more willing to continue with the community accountability program because of the way that they are treated. In "The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex" by INCITE! Women of Color Against Violence, provides evidence that the non-profit models of social justice contributes to more economic inequalities, and non-profits keep the existing social and racial order in place "by derailing revolutionary decolonial social movements led by people of color" (qtd. 18-9). This shows that many non-profit organizations that attempt to provide what the government is supposed to provide is a result of the existence of mass incarceration. The one way to genuinely help people by using a non-profit organization is to code-switch. Creative Interventions, a non-profit, which is based in Oakland, California, had to claim to be doing "community organizing and mobilizing work," in order to please the White funders, but they were really doing "community teach-ins which aimed to undermine institutional oppressions that directly contribute to sexual violence" in order to help people of color (19). By undermining institutional oppressions, it can lead to generational healing, especially for Black and people of color in South Africa, and it can uncover the reasons why GBV exists in South African society. Rather than the state institutions determining the proper outcome for the offender, "CA invites the people close to the violence to respond to that violence together" (20). Community members also have a chance to learn about why violence occurs, and they have a chance to build community during this process. Community accountability is also "transforming the roots of violence," and it is a liberatory process which "enters unbuilt ground" (qtd. in 21). It is truly creating a completely new environment which will heal the victim, the offender, and the community. It will also give the community answers to why the offender did

the crime and why GBV is so prevalent in certain societies. In this article, Durazo notes that CA can lead to an “existential death, risking death of parts of the self/selves that are the product of oppressive systems” which could get to the root cause of why someone committed a crime (Heiner & Tyson 1-23). Crime is a social construct, and they mean different things in different societies, but if community accountability can lead to people being honorable and responsible citizens of society who are not tied to colonialist and oppressive history, then the world would be a better place for women.

In the case of Uyinene, her offender could have healing and community circles where the offender can hear from Uyinene’s friends and family, University of Cape Town students and professors, police officers, and other supporters of Uyinene. Together they could work together to give Uyinene’s offender a sentence where each week for 18 weeks, the offender could receive cognitive behavioral treatment and address other issues such as substance abuse, poverty, anger management, and their history of violence and abuse. In Uyinene’s case, the offender will never be able to hear from Uyinene in victim-offender mediation treatment, but the community and Uyinene’s family, friends, and supporters could take the place of Uyinene. These meetings have had positive outcomes in other countries and can be used in South Africa to resolve relationships and help Uyinene’s supporters achieve a sense of healing. The method of sentencing circles, community circles, and healing circles could also be used in this case. The mandatory minimum sentences in South Africa should no longer exist, and the community and the supporters of Uyinene’s case should determine the appropriate sentence for the offender.

I also think that the correctional centre should enforce the offender to enroll in courses on women’s rights, the reasons why GBV is such a national problem in South Africa, and the importance of non-sexual violence and non-violence. Uyinene’s offender Luyanda Botha “was

sentenced to three terms of life imprisonment plus five years by the Cape Town High Court" with the possibility of parole after 25 years. He murdered Uyinene for no other reason than the fact that she resisted his sexual advances. When women say no or reject men, we are subject to violence or murder. No woman should have to live under these conditions, and men have no right to impose violence on women who reject them. Botha stated that "I admit that I acted with full appreciation of the wrongfulness of my actions... and I am liable for my actions as I had the intention to rape and kill the deceased" (Knight). How can anyone imagine a person who committed this crime to be able to get out of prison? If Botha gets out of prison at some point, the community members will probably be very upset and hostile towards him. If Botha actually learns from his mistakes while he is incarcerated and he learns about the importance of non-sexual violence and non-violence, then the community could potentially hope that the offender would never commit any GBV crime ever again. The community also may never accept Botha ever again, but restorative justice approaches could be used to deter him from committing the same crime in the future. I believe that the most effective approach would be a version of restorative justice which incorporates all of the studies I have cited previously. Since the BIP with CP study noted that there was a decrease of assault and abuse over time, then I think this is something that should be implemented in correctional centres.

Judge Salie-Hlophe who gave Botha his prison sentence stated "Uyinene's fighting spirit and her legacy will continue to give voice to other women who suffer daily as victims of gender-based violence," but can we imagine a world where GBV is not a problem and women can live peacefully? (Knight). Can we imagine a world where institutions can serve and protect women? Uyinene and other victims of GBV deserve to be alive and to live long prosperous lives without the fear of losing their lives everyday.

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