

Collective Memory and Intersectional Identities: Healing Unique Sexual Violence Harms Against Women of Color Past, Present and Future

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ABSTRACT

For at least the last decade, at the urging of gender scholars and advocates, reconciliation initiatives started to recognize specialized harms of sexual violence against women and began to tailor redress to address these harms. Yet, although a step in the right direction, even those forward-looking redress initiatives did not specifically and forthrightly recognize unique sexual violence harms to women of color. This Article builds on this developing intersectional race-gender redress analysis with its focus on sexual violence by illuminating an important next step: recognition, through storytelling and collective memory, of sexual violence injustices against women of color. The collective memory of injustice is an important prelude to reconciliation initiatives. In the context of sexual violence against women of color, the shaping of an individual's and group's narrative and public image of the harms are vital to moving forward, especially as related to truth commission investigations and hearings. Where women of color who suffered sexual violence (and other forms of gender-based harms) are often silenced or largely rendered invisible in the redress process, voicing both individual and collective experiences of such harms may be an important step forward in healing such unique harms.

Yet in many transitional justice initiatives, those willing to come forward are frequently narrowly cast or categorized as "victims," often in the context as witnesses in criminal prosecutions or for the purpose of determining legal eligibility for monetary reparations. However, recent studies reveal that women of color who have suffered sexual violence harms experience multiple, intersectional identities—as victims, survivors, political activists,

fighters and much more. And many of them have expressed that they wish to be remembered that way—as more than just “victims”—in reparative justice initiatives and beyond. Through a mini case study of the experiences of Toufah Jallow, the Gambian woman who is credited with inspiring the #MeToo movement in Africa, this Article begins to illuminate what more is needed for comprehensive and enduring social healing through justice for both individual women of color and the polity itself. The time is now to listen to these women of color with empathy and understanding. The time is now to strive for more genuine and comprehensive social healing through justice.

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*To all victims whose rapists are not presidents.
To all survivors who have paid for survival with silence.
May the whispers of our mothers, their mothers and
the mothers before them rise in our throats.
I hope we find safety in speaking together.
-Toufah Jallow¹*

I. INTRODUCTION

In 2019, #IAmToufah sparked transformative social change in West Africa and beyond.² For the first time, Fatou Jallow, known as Toufah, spoke out publicly in detail about her horrific rape by Yahya Jammeh, The Gambia's former president and dictator,³ which occurred just after winning a national

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¹ TOUFAH JALLOW WITH KIM PITTAWAY, TOUFAH: THE WOMAN WHO INSPIRED AN AFRICAN #METOO MOVEMENT (2021) (dedication page to memoir).

² *Id.* at 3–4, 242–43, 271.

³ For a more detailed history of The Gambia, including the twenty-year-long dictatorship under Yahya Jammeh, *see*, for example, PA NDERRY M'BAI, THE GAMBIA: THE UNTOLD DICTATOR YAHYA JAMMEH'S STORY (2012) (highlighting the human rights atrocities and disregard for the rule of law in The Gambia under Yahya Jammeh's rule); THE GAMBIA IN TRANSITION: TOWARDS A NEW CONSTITUTIONAL ORDER (Satang Nabaneh, Adem Abebe & Gaye Sowe eds., 2022) (assessing the national reconciliation efforts in The Gambia post-

talent competition and university scholarship at the age of eighteen, and after rejecting Jammeh’s marriage proposal to pursue her studies.⁴ Fearing for her life after Jammeh had drugged and violently raped her, and worried about the persecution of her family, Toufah abruptly fled The Gambia on her own and became a refugee in Canada.⁵ She lived quietly in physical exile and in silence until Jammeh fell from power in 2017.⁶ But even after she was able to return to The Gambia, she expressed feeling an “emotional exile”—“exiled to the land of statistics” with other Gambian victims of sexual assault.⁷ Then, she decided to tell her story and speak out.⁸ She “refuse[d] to be invisible” any longer.⁹ As she put it, “In the end the silence is as uncomfortable and more damaging than the consequences of speaking.”¹⁰

Against the backdrop of a patriarchal African Muslim culture marked by polygamous marriages, where there was no word for rape in her native Fula language¹¹—in her words, a “culture where you have to keep secrets” and “believe that women should be quiet”—Toufah remarkably ended her silence and told her story.¹² In 2019, she first spoke out at a global press conference in The Gambia, then submitted her experience for inclusion in a Human Rights Watch report, and later testified publicly before The Gambia’s Truth,

Yahya Jammeh’s rule in the context of constitution making). It is beyond the scope of this Article to explore the various transitional justice dimensions for present-day The Gambia.

⁴ JALLOW, *supra* note 1, at 24, 37, 43–45, 207.

⁵ Toufah detailed her experience and journey during this period in her memoir, co-written with journalist Kim Pittaway. *See generally id.*

⁶ *Id.* at 48, 57, 94–95, 179.

⁷ *Id.* at 192–93.

⁸ *Id.* at 207.

⁹ *Id.* at 211–12.

¹⁰ Dionne Searcey, *A Beauty Queen Accuses Former Gambian President of Rape: ‘I Literally Stumbled Out of There’*, N.Y. TIMES (June 25, 2019) [hereinafter Searcey, *A Beauty Queen Accuses Former Gambian President of Rape*], <https://www.nytimes.com/2019/06/25/world/africa/fatou-jallow-yahya-jammeh-gambia.html>.

¹¹ JALLOW, *supra* note 1, at 43–44 (“There is no word for rape in the Fula language. This isn’t because it doesn’t happen. It’s because we are supposed to believe it is so rare that no word is necessary for it. If it does happen, we are not supposed to speak of it.”); *see also id.* at 76 (“We were talking in my language, and I tried to find a word that would express what had happened. ‘He violated me,’ I said, though the word I used in our language was closer to ‘he troubled me.’ It was as if we were speaking in code, all these not-quite-right words offering what looked like protection but was really a cloak of shame worn by the victim rather than the rapist.”).

¹² Louise Hunt, *#IamToufah: Breaking the Silence on Sexual Assault in Gambia*, ALJAZEERA (Nov. 12, 2019), <https://www.aljazeera.com/features/2019/11/12/iamtoufah-breaking-the-silence-on-sexual-assault-in-gambia>; *see also* Searcey, *A Beauty Queen Accuses Former Gambian President of Rape*, *supra* note 10.

Reconciliation and Reparations Commission (TRRC).¹³ Since then, she has told her story to international audiences and advocated for the criminal prosecution of Jammeh, reparations, and greater financial support and social resources for sexual violence victims.¹⁴ As she was speaking out in some of these different forums, she called on women to share their stories on social media using #IAMToufah, lending her name in hopes of helping others, who perhaps could not (yet) attach their names or faces in telling their stories of sexual violence, “find a way to speak, to be visible, to claim our stories, our lives, our strength.”¹⁵ #IAMToufah later became the rallying cry and slogan for the first women’s march in The Gambia that same year.¹⁶

Toufah’s story is astounding in many respects. On the one hand, interest in and visibility to her experience and story is due in large part to the global status of her rapist, a former dictator.¹⁷ On the other hand, what is not always highlighted in media accounts is her strong desire to be recognized not just as a victim but also as a survivor, feminist, advocate, fighter, leader and human rights activist—without the stigma, marginalization, fear or shame often attached to sexual violence victims.¹⁸ As she discussed at a panel before an international audience, “[o]ur intersectionality matters.”¹⁹ She urged panel attendees and the international community to “work side by side with us [victims of sexual violence], empowering us as activists, fighters and advocates for ourselves and others.”²⁰

¹³ JALLOW, *supra* note 1, at 219–20, 252–69; *Gambia: Women Accuse Ex-President of Sexual Violence*, HUM. RTS. WATCH (June 26, 2019, 6:00 AM), <https://www.hrw.org/news/2019/06/26/gambia-women-accuse-ex-president-sexual-violence>.

¹⁴ JALLOW, *supra* note 1, at 244, 268; *see also* Carley Petesch, *Gambian Toufah Jallow Tells of Surviving Rape by Dictator*, AP NEWS (Oct. 17, 2021) [hereinafter Petesch, *Gambian Toufah Jallow Tells of Surviving Rape by Dictator*], <https://apnews.com/article/gambia-toufah-jallow-metoo-sexual-assault-survivor-aa57d8062771a103c0e7dd010baa636a>.

¹⁵ JALLOW, *supra* note 1, at 236, 239.

¹⁶ *Id.* at 242–43.

¹⁷ *See id.* at 248–50.

¹⁸ *See id.* at 277.

¹⁹ *Id.* For some sociologists, intersectionality is an analytical tool to investigate “how intersecting power relations influence social relations across diverse societies as well as individual experiences in everyday life” where social categories such as race, gender, sexuality, class and ability are viewed as interrelated and mutually shaping one another. PATRICIA HILL COLLINS & SIRMA BILGE, *INTERSECTIONALITY 2* (2d ed. 2020) [hereinafter COLLINS & BILGE, *INTERSECTIONALITY*]; *see also infra* note 33.

²⁰ JALLOW, *supra* note 1, at 277.

This call by Toufah has recently been echoed by other women of color who suffered from sexual violence atrocities and who have spoken out.²¹ Recent redress efforts reveal that women of color who have faced sexual violence injustices, when provided with the opportunity to speak and tell their stories, want to be remembered as more than just “victims.”²² For example, in Nepal, several women, who were at the center of political action, wanted recognition for their role in bringing about systemic changes as part of the Maoist movement.²³ In The Gambia, where sexual violence “was used to silence women and restrict their political participation,” several women testified “that they were physically abused for supporting the opposition and engaging in politics, which is considered an activity for men only.”²⁴ In the Central African Republic, similar to Toufah’s efforts, another woman underscored her identity as a survivor and a leader, not just as a victim: “I am not only a survivor – I am now also a leader. I want to lend a hand to those who are victims so that they become survivors. I call on all survivors to speak out.”²⁵

Despite salutary advancements in understanding and recognizing sexual violence against women of color as uniquely redress-worthy, the dominant discourse continues to narrowly cast or categorize women of color as “victims.”²⁶ Or, worse, certain societal circumstances continue to render

²¹ It is beyond the scope of this Article to explore these global examples more fully. Further in-depth research and analysis on this subject would be useful.

²² Virginie Ladisch, *Victims, Survivors, and Agents of Change: Reparations for Sexual and Gender-Based Violations*, INT’L CTR. FOR TRANSITIONAL JUST. (Aug. 1, 2022) [hereinafter Ladisch, *Victims, Survivors, and Agents of Change*], <https://www.ictj.org/latest-news/victims-survivors-and-agents-change-reparations-sexual-and-gender-based-violations>; see also Jo-Anne Wemmers, Isabelle Parent & Marika Lachance Quirion, *Restoring Victims’ Confidence: Victim-Centered Restorative Practices*, INT’L REV. VICTIMOLOGY 1, 14 (2022) (noting that “[v]ictimization is disempowering” and suggesting, through the results of their study, that “the disempowerment experienced by victims may be why RP [restorative practices], which offer agency to victims, are beneficial,” especially to advancing healing and allowing women who suffered sexual violence to find and express their voice).

²³ Ladisch, *Victims, Survivors, and Agents of Change*, *supra* note 22.

²⁴ *Id.*

²⁵ “*We Break the Silence to Help Survivors of Sexual Violence in Our Fight for Justice*”, GLOBAL SURVIVORS FUND (June 20, 2022), <https://www.globalsurvivorsfund.org/media/webbreaksilence> (quoting Miryam who now serves as the General Secretary of the Movement of Survivors in Central African Republic (MOSUCA)).

²⁶ See, e.g., Miyoko T. Pettit, *Who Is Worthy of Redress?: Recognizing Sexual Violence Injustice Against Women of Color as Uniquely Redress-Worthy—Illuminated by a Case Study on Kenya’s Mau Mau Women and Their Unique Harms*, 30 BERKELEY J. GENDER, L. & JUST. 268 (2015) [hereinafter Pettit, *Who Is Worthy of Redress?*] (employing a particularized

them and their stories entirely invisible.²⁷ A counternarrative—collective memories of sexual violence injustices by women of color—is needed.²⁸

Through a brief examination of Toufah Jallow’s experience and story—relying primarily on her recently published memoir and media accounts—this Article begins to imagine alternatives for recognition of sexual violence harms against women of color in the redress process. The examination of Toufah’s story loosely reveals an ongoing sense that women of color’s voices, and thus their stories, remain silenced, invisible or overlooked in reconciliation initiatives.²⁹ Why, despite salutary steps taken to address these unique harms, are their voices and stories still missing from redress conversations? In light of this, and amidst a palpable sense that more is needed for comprehensive and enduring social healing, what more can we do to *recognize* these unique sexual violence harms against women of color? And how might we begin to break down unproductive discursive strategies and stock stories underlying the dominant narratives to create room for women of color’s intersectional identities as part of the redress process?

This Article responds, in broad sketches, to these pressing questions. It builds upon extensive prior inquiries into women’s harms during mass

intersectional race-gender redress analysis for Kenya’s Mau Mau women and their unique sexual violence harms); Michele Park Sonen, *Healing Multidimensional Wounds of Injustice Intersectionality and the Korean “Comfort Women”*, 22 BERKELEY LA RAZA L.J. 269, 298 (2012) [hereinafter Sonen, *Healing Multidimensional Wounds of Injustice Intersectionality*] (employing an intersectional race-gender redress analysis for Korean “comfort women” and observing that the model victim narrative precluded genuine social healing); Eric K. Yamamoto & Michele Park Sonen, *Reparations Law: Redress Bias?*, in IMPLICIT RACIAL BIAS ACROSS THE LAW 245 (Justin D. Levinson & Robert J. Smith eds., 2012) [hereinafter Yamamoto & Sonen, *Reparations Law: Redress Bias?*] (calling for intersectional race-gender sensitive redress to account for implicit redress bias, noting that many redress policymakers and frontline advocates seem to treat women of color’s unique harms as less worthy of repair).

²⁷ See *infra* Section IV (discussing generally race-gender intersectional redress and a recent focus on sexual violence).

²⁸ See *infra* Sections V.D (proposing counternarratives focused on intersectional identities) and VI.C (recognizing dominant narratives and the need for counternarratives in the context of the mini case study on Toufah Jallow and The Gambia).

²⁹ There are many other examples and case studies, across continents and different racial classifications, of women of color’s voices and stories being silenced, invisible or left out entirely from redress processes and historical records. See, e.g., Katrina Anderson, *Turning Reconciliation on Its Head: Responding to Sexual Violence Under the Khmer Rouge*, 3 SEATTLE J. SOC. JUST. 785, 788 (2005) (describing the story of Tang Kim, a Khmer Rouge rape survivor, and recognizing that “silence can no longer be the appropriate response” to Cambodia’s history of sexual crimes).

atrocities and systemic violence.³⁰ It begins to modestly add to the vast literature on the collective memory of injustice “as a prelude to reparatory justice initiatives.”³¹ It questions the different multiple roles of women of color who faced sexual violence during hostilities and mass injustices and

³⁰ See, e.g., WHAT HAPPENED TO THE WOMEN? GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS (Ruth Rubio-Marín ed., 2006) [hereinafter RUBIO-MARÍN, WHAT HAPPENED TO THE WOMEN?] (collecting case studies examining how governments in new or reforming democracies could repair particular forms of gendered harms suffered by their populations during periods of political violence by integrating gender concerns into state-sponsored reparations efforts); Yamamoto & Sonen, *Reparations Law: Redress Bias?*, *supra* note 26, at 246–61 (highlighting the implicit biases against women of color in redress initiatives and examining the South African Truth and Reconciliation Commission, Tuskegee Syphilis Experiment, and Mayan women in Guatemala as case studies); Colleen Duggan, Claudia Paz y Paz Bailey & Julie Guillerot, *Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru*, 2 INT’L J. TRANSITIONAL JUST. 192, 199–213 (2008) [hereinafter Duggan, Paz y Paz Bailey & Guillerot, *Reparations for Sexual and Reproductive Violence*] (examining case studies of sexual and reproductive violence against women in Guatemala and Peru and exploring prospects for redress to victims in each country).

³¹ See, e.g., Susan K. Serrano, *Collective Memory and the Persistence of Injustice: From Hawai‘i’s Plantations to Congress—Puerto Ricans’ Claims to Membership in the Polity*, 20 S. CAL. REV. L. & SOC. JUST. 353, 359 (2011) [hereinafter Serrano, *Collective Memory and the Persistence of Injustice*] (discussing how Hawaiian sugar cane plantation owners furthered a collective memory of racialization of Puerto Ricans, erecting a threshold barrier for Puerto Rican justice advocates); Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747, 1756–77 (2000) [hereinafter Hom & Yamamoto, *Collective Memory, History, and Social Justice*] (analyzing the dynamics of collective memory in framing justice grievances and claims); Troy J. H. Andrade, *Hawai‘i ‘78: Collective Memory and the Untold Legal History of Reparative Action for Kānaka Maoli*, 24 U. PENN. J.L. & SOC. CHANGE 85, 131–45 (2021) [hereinafter Andrade, *Hawai‘i ‘78*] (examining the constant negotiation of history, mobilization and power of collective memory that lawmakers wield to advance or stall justice initiatives for Native Hawaiians); Rachel López, *The (Re)Collection of Memory After Mass Atrocity and the Dilemma for Transitional Justice*, 47 N.Y.U. J. INT’L L. & POL. 799 (2015) [hereinafter López, *The (Re)Collection of Memory*] (setting forth a taxonomy of collective memory theory, examining the tension between justice and collective memory, and considering how collective memory would further certain transitional justice goals if group memories are incorporated in judicial proceedings seeking to address mass atrocities); Jody Lyneé Madeira, *When It’s So Hard to Relate: Can Legal Systems Mitigate the Trauma of Victim-Offender Relationships?*, 46 HOUS. L. REV. 401, 418–30 (2009) [hereinafter Madeira, *When It’s So Hard to Relate*] (analyzing how understandings of dramatic, tragic deaths are formed collectively through interpersonal discussion and media coverage); MARK OSIEL, MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW 13–24 (1997) (exploring how collective memory is formed and shaped after mass atrocities, including through criminal prosecutions).

their “present-day [justice] struggles over collective memory.”³² Employing an intersectionality framework,³³ importantly, it broadly suggests that women of color who suffered from sexual violence might be remembered as victims, survivors, political activists, fighters and much more as part of present-day collective memories.³⁴ And, finally, this Article roughly outlines how women of color—especially their unique voices—should be taken into consideration at the initial design and investigative stages, as well as the implementation phases, in order to strive for more enduring and comprehensive social healing.³⁵ In doing so, it bridges the gap between theory and practice. It reinforces conceptual notions that reconciliation measures, especially *recognition* of harms, must go beyond the “common-sense” or dominant narratives³⁶ while uplifting the practical sense that they should also “serve as a catalyst for long-term transformation of gender norms and practices to advance gender equality and inclusion.”³⁷

³² See Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1771.

³³ “Intersectionality theory refers to the conceptual underpinnings whereby scholars challenge the dominant ways of thinking about discrimination. These mainly feminist scholars propose that multiple perspectives better account for the complex experiences of subordinated groups, especially women of color.” Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 276 n.36; see also *infra* Section V.D & note 192 and accompanying text; Robert S. Chang & Jerome McCristal Culp, Jr., *After Intersectionality*, 71 U. MO. KAN. CITY L. REV. 485 (2002); Mary Jo Wiggins, *Foreword: The Future of Intersectionality and Critical Race Feminism*, 11 J. CONTEMP. LEGAL ISSUES 677 (2001); Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 BERKELEY WOMEN’S L.J. 181 (1990–91).

³⁴ See Ladisch, *Victims, Survivors, and Agents of Change*, *supra* note 22 (“This begins by making space for the multiple roles women experience in periods of conflict or political violence, whether that be as victims, survivors, or fighters on behalf of a cause.”).

³⁵ See Eric K. Yamamoto, Miyoko Pettit-Toledo & Sarah Sheffield, *Bridging the Chasm: Reconciliation’s Needed Implementation Fourth Step*, 15 SEATTLE J. SOC. JUST. 109, 116–18 (2016) [hereinafter Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*] (recognizing that while a truth commission’s findings and recommendations are a key piece to the reconciliation process, many policymakers, scholars and advocates search and call for “remaking a key part of the prevailing reconciliation template,” which would entail “a new, formalized fourth step in the truth and reconciliation process”—“an Assessment, Implementation, and Oversight Task Force”).

³⁶ See KAREN ENGLE, *THE GRIP OF SEXUAL VIOLENCE IN CONFLICT: FEMINIST INTERVENTIONS IN INTERNATIONAL LAW* 7 (2020) [hereinafter ENGLE, *THE GRIP OF SEXUAL VIOLENCE*]; see also *infra* Sections V.B (outlining some of the dominant narratives focused on the “innocent victim” and the “perpetrator”) and V.C (presenting some critiques of the dominant narratives).

³⁷ See Ladisch, *Victims, Survivors, and Agents of Change*, *supra* note 22.

To begin this examination, then, a very brief historical backdrop of the growing recognition of sexual violence against women over the past few decades is helpful.

II. HISTORICAL BACKGROUND: SEXUAL VIOLENCE INJUSTICES

The 1990s marked the growing recognition of sexual violence against women during conflict as crimes against humanity and serious violations of human rights.³⁸ The International Criminal Tribunal for the Former Yugoslavia spotlighted rapes against women during the conflict that gripped the former Yugoslavia.³⁹ The International Criminal Tribunal for Rwanda then developed further understandings of rape and sexual violence as forms of genocide.⁴⁰ Since those landmark court decisions, “sexual violence in conflict,” “sexual and reproductive violence” (SRV)⁴¹ and “conflict-related

³⁸ See MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE 6–8 (2001) [hereinafter MINOW, BETWEEN VENGEANCE AND FORGIVENESS]; ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 1; Christine Gibbons, Note, *CEDAW, the Islamic State, and Conflict-Related Sexual Violence*, 51 VAND. J. TRANSNAT'L L. 1423, 1429–37 (2018) (providing a historical overview of sexual violence and international law and the emergence of women's rights as an international priority in the 1990s).

³⁹ ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 80–81; see also Kirsten Campbell, *Gender Justice Beyond the Tribunals: From Criminal Accountability to Transformative Justice*, 110 AM. J. INT'L L. UNBOUND 227, 227 (2016) (describing the legacies of gender justice at the International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda and arguing for broader “transformative” gender justice beyond international tribunals). *But see* Margaret Urban Walker, *Transformative Reparations? A Critical Look at a Current Trend in Thinking About Gender-Just Reparations*, 10 INT'L J. TRANSITIONAL JUST. 108 (2016) (offering a critique of the concept of “transformative”—as opposed to corrective or restorative—justice in the context of gender-just reparations).

⁴⁰ ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 101; see also Heidi Rombouts, *Women and Reparations in Rwanda: A Long Path to Travel*, in RUBIO-MARÍN, WHAT HAPPENED TO THE WOMEN?, *supra* note 30, at 197, 221 [hereinafter Rombouts, *Women and Reparations in Rwanda*] (noting the salutary steps from the International Criminal Tribunal for Rwanda while also recognizing the shortcomings of other courts in addressing sexual violence in Rwanda).

⁴¹ See Duggan, Paz y Paz Bailey & Guillerot, *Reparations for Sexual and Reproductive Violence*, *supra* note 30, at 194 (generally describing sexual and reproductive violence against women and noting that it is “understood to include practices such as sexual slavery, forced marriage, forced pregnancy/abortion/sterilization, rape, sexual torture/mutilation and sexual humiliation”).

sexual violence” (CRSV)⁴² emerged as catchwords drawing the attention of international institutions.⁴³

At the turn of the century, in 2000, another monumental shift occurred with the United Nations Security Council Resolution 1325 on Women, Peace and Security (“UNSCR 1325”).⁴⁴ That resolution sought to recognize the “unique impact of conflict on women and the need to increase women’s participation in conflict resolution, peacebuilding, and peacekeeping.”⁴⁵ More specifically, the resolution expressed “concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally

⁴² “CRSV is defined by the United Nations as rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.” GLOBAL SURVIVORS FUND, GLOBAL REPARATIONS STUDY EXECUTIVE SUMMARY REPORT OF PRELIMINARY FINDINGS 4 (Sept. 27, 2021) [hereinafter 2021 GLOBAL REPARATIONS STUDY SUMMARY REPORT OF PRELIMINARY FINDINGS], https://static1.squarespace.com/static/5ff7d9f4dd4cdc650b24f9a4/t/61558febcd56d515c8012904/1632997364374/2021+09+27+GSF+Report_UNGA_Preliminary_Findings.pdf; see also Shirambere Philippe Tunamsifu, *The Right to Justice: A Challenge for Survivors of Conflict-Related Sexual Violence in the Eastern Democratic Republic of the Congo*, 15 AFR. HUM. RTS. L.J. 473, 476–81 (2015) (providing an overview of CRSV globally and in the DRC). GBV or “gender-based violence” refers to “harmful acts directed at an individual based on their gender” that is “rooted in gender inequality, the abuse of power and harmful norms.” *Gender-Based Violence*, UNHCR: THE UN REFUGEE AGENCY, <https://www.unhcr.org/gender-based-violence.html> (last visited Mar. 11, 2023). GBV can include “sexual, physical, mental and economic harm inflicted in public or in private” and can take many forms, including sexual violence. *Id.* While this Article limits its focus to cisgender women, due in large part to the prevalence of sexual violence against this particular group, I acknowledge that this historical and legal depiction may too narrowly cast understandings of sexual violence during periods of conflict. For a discussion on expanded understandings of sexual violence during conflict, which may include men, transgender women, and intersex/non-binary/third-gender individuals, see, for example, David Eichert, *Expanding the Gender of Genocidal Sexual Violence: Towards the Inclusion of Men, Transgender Women, and People Outside the Binary*, 25 UCLA J. INT’L L. & FOREIGN AFF. 157 (2021); Lisa Davis, *Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTIQ Persons*, 24 WM. & MARY J. WOMEN & L. 513 (2018).

⁴³ See ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 1.

⁴⁴ See Kelli Muddell, *An Overlooked Aspect of Sexual and Gender-Based Violence*, INT’L CTR. FOR TRANSITIONAL JUST. (Oct. 30, 2018) [hereinafter Muddell, *An Overlooked Aspect of Sexual and Gender-Based Violence*], <https://www.ictj.org/news/overlooked-aspect-sexual-and-gender-based-violence>; see also S.C. Res. 1325 (Oct. 31, 2000).

⁴⁵ Muddell, *An Overlooked Aspect of Sexual and Gender-Based Violence*, *supra* note 44.

displaced persons, and increasingly are targeted by combatants and armed elements.”⁴⁶ It further called on “all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction.”⁴⁷

With the celebration of the eighteenth anniversary of the resolution in 2018, many applauded advancements in adopting national action plans for the implementation of UNSCR 1325 in over seventy-five countries.⁴⁸ However, others cautioned too much optimism in this limited progress considering the use of sexual and gender-based violence in ongoing conflicts, such as the Syrian and Rohingya crises.⁴⁹

Beyond international criminal courts⁵⁰ and UN resolutions, redress scholars and reparative justice advocates called for more comprehensive and enduring gender-sensitive redress.⁵¹ Recognizing that sexual violence against women has sometimes been narrowly focused on punitive or retributive forms of justice, human rights advocates, feminists, gender and redress scholars, victims’ groups, women’s rights groups, journalists, policymakers and government officials called for tailored redress for

⁴⁶ S.C. Res. 1325 (Oct. 31, 2000).

⁴⁷ *Id.* ¶ 8.

⁴⁸ See Muddell, *An Overlooked Aspect of Sexual and Gender-Based Violence*, *supra* note 44.

⁴⁹ *See id.*

⁵⁰ *See generally* INT’L CRIM. CT., OFF. OF THE PROSECUTOR, POLICY ON THE CRIME OF GENDER PERSECUTION (Dec. 7, 2022), <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf> (setting forth an official policy in furtherance of “accountability for, and the prevention of, gender persecution”); Anne-Marie de Brouwer, *Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families*, 20 LEIDEN J. INT’L L. 207 (2007) (examining sexual violence victims’ claims for reparations under supranational criminal law at the International Criminal Court and at the Trust Fund for Victims and their families).

⁵¹ *See* RUBIO-MARÍN, WHAT HAPPENED TO THE WOMEN?, *supra* note 30, at 22 (“The transitional justice debate has been overwhelmingly more about what to do against perpetrators than about what to do for victims, in spite of the increasing awareness of the limits of criminal justice in scenarios of massive and systematic violations of human rights.”). It is beyond the scope of this Article to more fully discuss gender-sensitive redress theory. For a brief overview of the emergence of gender-sensitive redress theory, see Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 293–300. For more recent scholarship on gender-sensitive redress from a socio-historical and socio-legal perspective, see, for example, Natalia Gerodetti, *Whose Reparation Claims Count? Gender, History and (In)Justice*, 42 AUSTL. FEMINIST L.J. 97 (2016).

gendered harms, including reparations for sexual violence.⁵² Studies of truth commissions and reparations in South Africa, Guatemala, Peru, Rwanda, Sierra Leone and Timor-Leste were some of the first examples to demonstrate the potential of gender-tailored redress.⁵³ Those studies, however, also identified shortcomings and potential solutions.⁵⁴

In 2023, sexual violence injustices are now part of the mainstream consciousness—whether in international court settings, in United Nations Security Council Resolutions, or in truth commissions and reparative justice initiatives.⁵⁵ Yet, there is a strong, palpable sense that still more is needed for enduring and comprehensive social healing of these sexual violence injustices for individuals and the polity itself.⁵⁶ Professor Eric Yamamoto’s *social healing through justice* framework provides a critical lens and analytical toolkit for shaping, assessing and retooling these on-the-ground initiatives, including those involving sexual violence against women of color.⁵⁷ The next section, from a high-level view, discusses Yamamoto’s

⁵² See, e.g., Colleen Duggan & Adila Abusharaf, *Reparations of Sexual Violence in Democratic Transitions: The Search for Gender Justice*, in THE HANDBOOK OF REPARATIONS 623, 626–28 (Pablo de Greiff ed., 2006) (noting the absence of gender-sensitive redress and finding that justice continues to fail victims of gender-based violence—once during the underlying harm and again during the aftermath of violence); RUBIO-MARÍN, WHAT HAPPENED TO THE WOMEN?, *supra* note 30, at 27 (encouraging “conceptualizing forms of redress tailored to women” and calling for gender-conscious redress); Kirsten Campbell, *Building National and Regional Accountability for Conflict Related Sexual Violence: From Prosecutions in the Former Yugoslavia to the African Court of Justice and Human and Peoples’ Rights*, 7 INT’L HUM. RTS. L. REV. 201, 217–23 (2018) (arguing for a “gender justice framework”).

⁵³ See generally RUBIO-MARÍN, WHAT HAPPENED TO THE WOMEN?, *supra* note 30.

⁵⁴ See generally *id.*

⁵⁵ See generally Fionnuala Ní Aoláin, Catherine O’Rourke & Aisling Swaine, *Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice*, 28 HARV. HUM. RTS. J. 97 (2015) (providing an overview of progressive normative advances, identifying conceptual and practical gaps in the legal and policy frameworks for reparations for CRSV and challenges in the implementation of gender-sensitive reparations, and proposing guiding principles to advance transformative justice for victims of sexually violent harms).

⁵⁶ See, e.g., Sabine Freizer, *Reparations After Conflict Related Sexual Violence: The Long Road in the Western Balkans*, 27 SEC. & HUM. RTS. 14, 16 (2016) (noting that “[i]ncreased awareness of CRSV has yet to be translated into the implementation of quick, effective, transformative, and comprehensive reparation programs for survivors” and providing an update on reparation systems in the Western Balkans, especially Bosnia-Herzegovina, Croatia and Kosovo).

⁵⁷ See ERIC K. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY 72–73 (2021) [hereinafter

social healing through justice framework. It sets the stage to assist with a more critical examination of Toufah's sexual violence injustice story as part of The Gambia's transitional justice initiatives.

III. SOCIAL HEALING THROUGH JUSTICE

The *social healing through justice* framework aims to provide those on the social justice frontlines with concrete ways to approach and heal historic injustices for individuals and larger communities.⁵⁸ Drawing upon multidisciplinary fields, such as law (including human rights emphases on prevention and reparative justice), economics, theology, social psychology, political theory and indigenous conflict resolution, *social healing through justice* seeks to bring all stakeholders, including those who perpetrated harms, those harmed, and at times bystanders, to the reconciliation table.⁵⁹ Importantly, it strives to meaningfully restructure social, economic, political and even spiritual relationships to ensure a collective sense of justice done—not through words but actions.⁶⁰ Indeed, this multidimensional framework, which is often linked to transitional justice but with a broader reach,⁶¹

YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE]. See also Eric K. Yamamoto, Miyoko Pettit & Sara Lee, *Unfinished Business: A Joint South Korea and United States Jeju 4.3 Tragedy Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*, 15 ASIAN-PAC. L. & POL'Y J. 1, 7–24 (2014) [hereinafter Yamamoto, Pettit & Lee, *Unfinished Business*]; ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 172–73 (1999) [hereinafter YAMAMOTO, *INTERRACIAL JUSTICE*]; Eric K. Yamamoto & Ashley Kaiāo Obrey, *Reframing Redress: A "Social Healing Through Justice" Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 ASIAN AM. L.J. 5, 28–42 (2009) [hereinafter Yamamoto & Obrey, *Reframing Redress*].

⁵⁸ Yamamoto & Obrey, *Reframing Redress*, *supra* note 57, at 20 (“[T]he language of redress is shifting away from reparations and towards social healing, or what is often broadly termed reconciliation.”).

⁵⁹ See YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 57, at 9, 47.

⁶⁰ See *id.* at 25–26, 47–48.

⁶¹ “Transitional justice refers to how societies respond to the legacies of massive and serious human rights violations . . . [and] asks some of the most difficult questions in law, politics, and the social sciences and grapples with innumerable dilemmas.” *What Is Transitional Justice?*, INT’L CTR. FOR TRANSITIONAL JUST., <https://www.ictj.org/what-transitional-justice/> (last visited Jan. 3, 2023); see also JAMIE ROWEN, *SEARCHING FOR TRUTH IN THE TRANSITIONAL JUSTICE MOVEMENT* 3 (2017) (arguing that transitional justice is best understood as “an idea—meaning a thought, a plan, or a suggestion—about how to redress mass, often state-sponsored, violence and ensure democratic social and political change” and noting that the “idea encompasses an identifiable vocabulary with words such as truth and reconciliation” and has “an associated set of interventions including tribunals, truth commissions, and reparations programs”).

engages “individuals, communities, justice organizations, students, lawyers, businesses, therapists, clergy, scholars, journalists, policymakers and government officials in a dynamic process of *recognition*, *responsibility*, *reconstruction*, and *reparation*.”⁶² With these 4Rs, the *social healing through justice* inquiry assists in shaping, implementing, assessing and recalibrating on-the-ground reconciliation initiatives.⁶³

Recognition asks stakeholders to “acknowledge and empathize with the anger, suffering and hopes of those harmed, focusing on ‘victims’ but also with an eye on ‘perpetrators.’”⁶⁴ As the first point of inquiry, it acknowledges the full range of harms and underlying causes.⁶⁵ It “addresses the social psychological by examining the historical, cultural and structural context of past and continuing suffering.”⁶⁶ It encompasses, in part, a “critical sociolegal inquiry” that “interrogate[s] critically” the “structural/discursive aspects” of widespread historic injustice.⁶⁷ This inquiry also involves the examination of “stock stories that groups . . . tell to explain the conflict and justify the groups’ responses,” the “agendas and reactions of those in power,” and the mechanisms that maintain power structures.⁶⁸ For Yamamoto, empathy is at the heart of *recognition* as “[m]embers of each group work to understand the woundedness of the other groups’ members” and “gain an appreciation for [their] struggles and hopes.”⁶⁹ This Article focuses on this first of the 4Rs—*recognition*—as a foundational piece to the other 4Rs.

Building upon this first inquiry, *responsibility* then requires stakeholders to assess group power dynamics in acknowledging the harms and accepting responsibility for their role in repairing inflicted harms.⁷⁰ More specifically, *responsibility* necessitates participation by those directly involved in the injustice, those benefiting from the harms, and those participating in the

⁶² See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 25–26.

⁶³ See *id.* at 46, 72 (noting that the 4Rs serve as the “shorthand for the analytical inquiries generated by a *social healing through justice* framework”).

⁶⁴ See *id.* at 74.

⁶⁵ See *id.*

⁶⁶ Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 57, at 20.

⁶⁷ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 74.

⁶⁸ *Id.*

⁶⁹ YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 57, at 176.

⁷⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 79.

polity that caused the harms—particularly those complicit in the abuse of power.⁷¹

In some situations, Yamamoto suggests, *recognition* coupled with *responsibility* may be enough for all involved to acknowledge certain types of harms.⁷² For many, however, the words underlying *recognition* and *responsibility* are not enough.⁷³ More often, with the backdrop of complex historical injustices marked by complicated economic, legal, social and political circumstances, *reconstruction* and *reparation* are key to enduring and comprehensive social healing.⁷⁴

Reconstruction goes beyond just words into the realm of reparative actions.⁷⁵ Building upon the first two inquiries, *reconstruction* includes concrete actions that “promote individual and community healing by rebuilding relationships and remaking institutions.”⁷⁶ Importantly, these concrete actions involve institutional restructuring to avoid the repetition of historical injustice.⁷⁷ Thus, apologies, educational programs, memorials, museums and other actions to remember and recognize the harm and to underscore lessons learned comprise *reconstruction*.⁷⁸

The final of the 4Rs—*reparation*—focuses on repairing the damage to material conditions of individual and communal life and on repairing the psychological damage.⁷⁹ While many often narrowly cast *reparation* as monetary payments to individuals, it more broadly encompasses concepts of economic justice for the community as a whole.⁸⁰ Significantly, *reparation* marks the transformation necessary to unite communities to allow them to move forward with their lives—“enabling those harmed to live with, but not in, history.”⁸¹

⁷¹ *Id.*

⁷² *See id.* at 74.

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ *See id.*

⁷⁶ *Id.* at 82.

⁷⁷ *Id.*

⁷⁸ *Id.* at 83–84.

⁷⁹ *Id.* at 86.

⁸⁰ *Id.* at 87; *see also* Eric K. Yamamoto & Brian Mackintosh, *Redress and the Salience of Economic Justice*, 4 F. PUB. POL’Y 1, 13 (2010) [hereinafter Yamamoto & MacKintosh, *Redress and the Salience of Economic Justice*] (recognizing that “[c]apacity-building for those most harmed through individual payments and economic restructuring and development—economic justice—may well be a key to a personal and public sense of ‘reconciliation achieved’”).

⁸¹ Yamamoto, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 86–87.

At bottom, these 4Rs engage stakeholders at the reconciliation table to lead toward genuine social healing.⁸² Employing the *social healing through justice* framework allows those on the justice frontlines to identify gaps and opportunities for more enduring and comprehensive social healing.⁸³ In this Article, employing the framework demonstrates the power of *recognition* of the unique sexual violence harms of women of color at the intersection of race and gender. And it allows us to assess the significant steps forward—and notable shortcomings—of current ongoing redress initiatives for women of color, like Toufah Jallow and The Gambia’s TRRC.⁸⁴ The next section further contextualizes the power of the *recognition* inquiry by specifically considering how a refined intersectional race-gender redress analysis is crucial as a first step in achieving comprehensive, systemic and enduring *social healing through justice*.

IV. RACE-GENDER INTERSECTIONAL REDRESS: SEXUAL VIOLENCE

Although important steps in the right direction, even forward-looking gender-sensitive redress initiatives (discussed above) failed to specifically and forthrightly recognize the unique sexual violence harms against women of color.⁸⁵ Race and gender situate women of color at the bottom of the social hierarchy, making them particularly vulnerable to sexual violence as part of mass historic injustices and later often rendering their unique injuries nearly invisible in the redress process.⁸⁶ For example, some redress initiatives—although perhaps unintentional—slighted African American enslaved women,⁸⁷ Guatemalan indigenous women,⁸⁸ Korean military sex slaves⁸⁹ and

⁸² *Id.* at 91.

⁸³ *Id.*

⁸⁴ See *infra* Section VI (presenting a mini case study on Toufah Jallow and The Gambia).

⁸⁵ See generally Yamamoto & Sonen, *Reparations Law: Redress Bias?*, *supra* note 26 (calling for intersectional race-gender sensitive redress to account for implicit redress bias); Sonen, *Healing Multidimensional Wounds of Injustice Intersectionality*, *supra* note 26 (employing an intersectional race-gender redress analysis for Korean “comfort women”). It is beyond the scope of this Article to more fully detail intersectional race-gender redress initiatives. For a short discussion of these cutting-edge approaches, see Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 300–03.

⁸⁶ Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 300–03.

⁸⁷ Yamamoto & Sonen, *Reparations Law: Redress Bias?*, *supra* note 26, at 255–59.

⁸⁸ See *id.* at 255–56; see also Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 304.

⁸⁹ See generally Sonen, *Healing Multidimensional Wounds of Injustice Intersectionality*, *supra* note 26; Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 305.

Jeju women⁹⁰ by overlooking their unique sexual violence harms.⁹¹ Scholars therefore called for a particularized intersectional race-gender redress analysis,⁹² and later specifically a focus on one understanding of gender as it intersects with race: sexual violence.⁹³ For example, I specifically employed this particularized intersectional race-gender redress framework with a focus on sexual violence to illuminate implicit redress bias in the case of Kenyan Mau Mau women.⁹⁴ And in employing a *recognition* inquiry, I explored what was missing in Mau Mau redress initiatives at the time.⁹⁵

Since calls for this particularized race-gender redress analysis in the early to mid-2010s, it has become evident that the tightening of the gender analysis has served two important functions. First, it acknowledged that sexual violence is unique “because in many ways it is both horrific at the time it occurs and in its aftermath.”⁹⁶ Second, it sought to “unveil and make explicit any implicit intersectional redress bias” to recognize sexual violence against women of color as especially unique and worthy of redress.⁹⁷ Overall, this modest refinement of the intersectional race-gender analysis—with the focus on sexual violence—has been significant to “begin changing societal notions about who is worthy of redress.”⁹⁸

Yet, despite this important progress in highlighting unique sexual violence harms to women of color through these modest theoretical expansions, many of those on the justice frontlines, especially those harmed, still feel silenced, invisible, devalued and overlooked. This leaves scholars, justice advocates, victims and other stakeholders questioning: what more can be done? This Article, in broad brush strokes, looks to collective memory as a means of

⁹⁰ See Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 305–06; *see also* Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 57, at 5.

⁹¹ *See generally* Pettit, *Who Is Worthy of Redress?*, *supra* note 26.

⁹² *See* Yamamoto & Sonen, *Reparations Law: Redress Bias?*, *supra* note 26, at 255–57; *see also supra* note 85.

⁹³ *See, e.g.,* Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 302–03.

⁹⁴ *See id.* at 308–22.

⁹⁵ *See id.* at 313–22.

⁹⁶ *Id.* at 277.

⁹⁷ *Id.*

⁹⁸ *Id.*; *see also* Lisa Davis, *Dusting Off the Law Books: Recognizing Gender Persecution in Conflicts and Atrocities*, 20 NW. J. HUM. RTS. 1, 2–27 (2021) (discussing gender persecution in the international criminal law and human rights context, and specifically focusing on discrimination at the nexus of sexual violence and gender-based violence; recognizing the work of feminists to increase awareness of sexual violence in its various forms; calling for another shift in the discourse to be more inclusive; and urging further recognition of the crime of gender persecution to “bring justice to a more inclusive group of survivors and victims who have never in history received full recognition”).

recognizing sexual violence injustice against women of color through storytelling as an important next step in ongoing redress initiatives. Accordingly, the next section generally presents the contours of the theory of collective memory as a precondition to reparative justice.

V. COLLECTIVE MEMORY: VICTIMS, SURVIVORS, POLITICAL ACTIVISTS,
FIGHTERS AND MORE

A. *Collective Memory of Injustice*

Despite salutary steps forward in gender-redress initiatives—especially at the intersection of race and gender—sexual violence is still often narrowly cast as an individual harm.⁹⁹ One that is perpetrated by an oppressor against a victim.¹⁰⁰ Yet sexual violence during conflict is often leveled on the masses.¹⁰¹ Group pain emerges through these experiences.¹⁰² But frequently the stigma and shame associated with sexual violence harms—and the shifting ideological, cultural and social circumstances—lead to silencing.¹⁰³ Forever—or at least immediately following the harms.¹⁰⁴ This, at least, is one of the current dominant narratives of sexual violence harms generally (as detailed in more depth below).¹⁰⁵

When accounts of these unique sexual violence harms and significant related historical injustice events surface, they are not always aligned with this dominant narrative.¹⁰⁶ Additionally, they are not often defined broadly as injustices.¹⁰⁷ Rather, they are frequently narrowly cast with a focus on criminal legal doctrines and definitions—with a narrow focus on deterrence and punishment.¹⁰⁸ For Yamamoto, “[t]hat framing, while legally apt, narrows public imagination and debate.”¹⁰⁹ As Professor Susan Serrano

⁹⁹ See generally Engle, *The Grip of Sexual Violence*, *supra* note 36.

¹⁰⁰ See *id.* at 10–12.

¹⁰¹ See *id.* at 1–2.

¹⁰² See generally Yamamoto, *Healing the Persisting Wounds of Historic Injustice*, *supra* note 57.

¹⁰³ See generally Engle, *The Grip of Sexual Violence*, *supra* note 36; Yamamoto & Sonen, *Reparations Law: Redress Bias?*, *supra* note 26; Pettit, *Who Is Worthy of Redress?*, *supra* note 26.

¹⁰⁴ See *infra* Section VI.

¹⁰⁵ See *infra* Sections V.B and V.C.

¹⁰⁶ See *infra* Sections V.B and V.C.

¹⁰⁷ See *infra* Sections V.B and V.C.

¹⁰⁸ See *infra* Sections V.B and V.C.

¹⁰⁹ Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1757.

underscores, “[w]ho tells the definitive history of group injustice—and how that history is framed—is vital to shaping a group’s narrative and public image.”¹¹⁰ For many women of color who have suffered sexual violence during conflict, there is a “need to create a new memory beyond the excruciating story of personal loss and suffering—a memory that include[s] a sense of social justice and . . . accountability.”¹¹¹

Framing these sexual violence injustices, then, is about “social memory.”¹¹² Memories of struggles of historical injustice—and present-day reconciliation initiatives—are inextricably linked to historical narratives.¹¹³ In addition to framing injustices through a narrow, lawyerly, criminal justice lens, Yamamoto calls on people on the justice frontlines to dig into both the documentary archives and “the archives of mind, spirit, and culture—then and now.”¹¹⁴ To Yamamoto, “[s]ocial understandings of historical injustice are largely constructed in the present. Those understandings are rooted less in backward-looking searches for ‘what happened’ than in the present-day dynamics of collective memory.”¹¹⁵

Drawing on multidisciplinary insights, Yamamoto posits that group memories are constructed within the larger context of injustice and reparation and of daily cultural practices and major events.¹¹⁶ “Collective memories can therefore differ depending on locale, group experiences, and cultural norms.”¹¹⁷ They become, then, a “struggle over supremacy of world views, of colliding ideologies.”¹¹⁸ That is, those fashioning reconciliation initiatives

¹¹⁰ Serrano, *Collective Memory and the Persistence of Injustice*, *supra* note 31, at 359 (emphasis omitted).

¹¹¹ Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1759.

¹¹² *Id.* at 1756.

¹¹³ See Andrade, *Hawai‘i ‘78*, *supra* note 31, at 89 (“History is always inseparable from the law.”).

¹¹⁴ Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1764.

¹¹⁵ *Id.* at 1757.

¹¹⁶ *Id.* at 1758, 1764 (“Collective memory not only vivifies a group’s past, it also reconstructs it and thereby situates a group in relation to others in a power hierarchy.”).

¹¹⁷ *Id.* at 1764. There is an extensive, well-developed, multidisciplinary body of research and study on collective memory. It is beyond the scope of this Article to detail the sociological, psychoanalytic and critical historical literatures on which this discussion of collective memory is based. However, for an apt summary of the origins of collective memory, see, for example, Andrade, *Hawai‘i ‘78*, *supra* note 31, at 90–96. In addition to an apt summary of the origins of collective memory, for a “taxonomy of the diverse types of collective memory,” see López, *The (Re)Collection of Memory*, *supra* note 31, at 806–12.

¹¹⁸ Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1764.

and implementing reparative measures—including those harmed, lawyers, politicians, journalists, justice workers and scholars—“possess often unacknowledged power” in helping to shape collective memories of injustice.¹¹⁹ That power lies, Yamamoto contends, in “the potential for constructing collective memories of injustice as a basis for redress” or “for shaking (or salving) the psyche of a people.”¹²⁰ The social group memory is thus “collective” because “it emerges from interactions among people, institutions, media, and other cultural forms.”¹²¹ It is “built and continually altered.”¹²² Indeed, as Yamamoto argues, “[h]ow a community frames past events and connects them to current conditions often determines the power of justice claims or of opposition to them.”¹²³

Many legal and critical race theory scholars, to date, have focused on the construction of collective memory in the context of domestic court opinions and the role of judges in that process.¹²⁴ Professor Troy Andrade extended the application of collective memory to Hawai‘i’s political history, specifically by “linking collective memory with policy-making and legislation.”¹²⁵ Likewise, Professor Rachel López extended and explored

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 1771.

¹²⁴ See, e.g., *id.* at 1766 (examining the significance of collective memory, and the “fierce battle over conflicting histories,” in the context of the United States Supreme Court case, *Rice v. Cayetano*, 528 U.S. 495 (2000), which “invalidated a limitation by which only Native Hawaiians were allowed to vote for trustees to the state’s Office of Hawaiian Affairs,” and thus had “far-reaching effects on civil rights, human rights, and native sovereignty”); Serrano, *Collective Memory and the Persistence of Injustice*, *supra* note 31, at 360 (exploring the “collective memory embedded in the legal text” of the decision, *Igartúa de la Rosa v. United States*, 417 F.3d 145 (1st Cir. 2005), holding that “Puerto Ricans have no constitutional or international law right to vote in U.S. presidential elections,” and discussing how the case uncovered “one story of racialization that helped to shape the modern-day collective memory of Puerto Ricans”).

¹²⁵ See Andrade, *Hawai‘i ‘78*, *supra* note 31, at 88 (examining “the strategic and selective reliance on collective memory in legal contexts” through a case study of the creation and story of the Office of Hawaiian Affairs). More recently, Professors Melody Kapilialoha MacKenzie and D. Kapua‘ala Sproat applied the collective memory framework to critique a historically flawed law review article by a highly renowned jurist about Native Hawaiian claims to lands. See Melody Kapilialoha MacKenzie & D. Kapua‘ala Sproat, *A Collective Memory of Injustice: Reclaiming Hawai‘i’s Crown Lands Trust in Response to Judge James S. Burns*, 39 U. HAW. L. REV. 481, 499–533 (2017).

concepts of collective memory to international court settings.¹²⁶ Other legal scholarship on collective memory emanates from this “transitional justice” context, or rather from situations where there are “legal responses to regime change or democratization in formerly unjust societies.”¹²⁷ This Article proposes a modest, and notably explicit, extension of the application and concept of collective memory to truth and reconciliation commission investigations and related hearings,¹²⁸ which have become notable sites of collective memories of injustice.¹²⁹ Sometimes later reparations lawsuits and related court opinions, or apologies by a particular government or group, further develop or alter those collective memories.¹³⁰ Indeed, “justice claims . . . begin with back-and-forth struggles over the creation of public or collective memory. Those struggles are a fight over who will tell the

¹²⁶ López, *The (Re)Collection of Memory*, *supra* note 31, at 801 (urging “a fundamental reconceptualization of the law’s preference for individual memory in the context of transitional justice” and arguing that the “inclusion of collective memory will facilitate a better understanding of the collective harms that characterize mass atrocities,” which in turn “will better serve the distinct goals of transitional justice, including reconciliation, the creation of a historical record, nation-building, and legal reform”). *See also* OSIEL, *supra* note 31, at 6 (considering the role of trials of mass atrocities in creating collective memory).

¹²⁷ *See* Andrade, *Hawai’i ‘78*, *supra* note 31, at 91 (quoting Ariela Gross, *The Constitution of History and Memory*, in *LAW AND THE HUMANITIES: AN INTRODUCTION* 431 (Austin Sarat, Matthew Anderson & Catherine O. Frank eds., 2010)); MINOW, *BETWEEN VENGEANCE AND FORGIVENESS*, *supra* note 38, at 61 (describing how truth commissions and other rituals provide the memory work that helps the healing process).

¹²⁸ Other scholars have recognized the role of truth commissions in facilitating the creation of “grand narratives” or collective memory, but this Article is the first to explicitly note truth commissions as sites of creating (or reconstructing) collective memories of mass historic injustices, and specifically in the context of sexual violence against women of color. *See, e.g.*, Nneoma V. Nwogu, *When and Why It Started: Deconstructing Victim-Centered Truth Commissions in the Context of Ethnicity-Based Conflict*, 4 *INT’L J. TRANSITIONAL JUST.* 275, 283–89 (2010) (“Furthermore, the memory-making aspect of truth commissions, if guided by the normalization of social relations by which both victims and perpetrators are seen as parties with an equal stake in the development of their society’s future, is more likely to generate a democratizing truth.”).

¹²⁹ It is beyond the scope of this Article to further explore truth commissions as sites of collective memory formation, but it is an important area for further research and analysis.

¹³⁰ *See* López, *The (Re)Collection of Memory*, *supra* note 31, at 813 (observing that, although “scholars across many disciplines that have theorized about the relationship between collective memory and justice tend to agree that legal proceedings play a role in strengthening a shared understanding of the past, which in turn facilitates reconciliation and societal healing,” “the delay of justice after mass atrocity means that collective memory forms in the absence of official legal proceedings” and that “[w]hen justice finally comes, it is often disruptive to this pre-existing collective memory”); Madeira, *When It’s So Hard to Relate*, *supra* note 31, at 425–26 (suggesting that the process of storytelling during legal proceedings facilitates a shared understanding of the past and healing of individuals and group relations).

dominant story of injustice (or absence thereof) and how that story will be shaped.”¹³¹ As Serrano importantly recognizes, “the collective memory of injustice [i]s a prelude to reparatory justice initiatives.”¹³² It is also an integral, ongoing part of the ever-shifting landscape of reconciliation initiatives.¹³³

For Yamamoto, one key part to collective memories of injustice are narrative structures.¹³⁴ This concept is especially salient in the context of transitional justice initiatives and truth commission hearings, which are often marked by unique social and cultural circumstances.¹³⁵ According to Yamamoto, influential narratives function in two key ways: (1) giving the “language, ideas and images . . . to ‘comprehend’ the past”; and (2) framing “the relationship of the past to the present” in a way that “shapes the past in light of how we see (or want to see) ourselves and others in the present.”¹³⁶ When language, ideas or concepts are lacking (or missing entirely), or excluded from conversations and societal norms of a particular culture, this makes the remembering and recounting of unique sexual violence harms

¹³¹ Eric K. Yamamoto & Catherine Corpus Betts, *Disfiguring Civil Rights to Deny Indigenous Hawaiian Self-Determination: The Story of Rice v. Cayetano*, in RACE LAW STORIES 563 (Rachel F. Moran & Devon W. Carbado eds., 2008).

¹³² Serrano, *Collective Memory and the Persistence of Injustice*, *supra* note 31, at 359; see also López, *The (Re)Collection of Memory*, *supra* note 31, at 802 (“This process of developing collective memory allows victims to heal and start to rebuild their lives.”).

¹³³ See López, *The (Re)Collection of Memory*, *supra* note 31, at 805 (noting that the “inclusion of collective memory could aid international bodies to prescribe more appropriate remedies aimed at addressing collective harm,” such as by “illuminat[ing] the need for reparations intended to redress injuries to communities or measures intended to address the root causes of systematic violence, such as legal reform and educational initiatives”).

¹³⁴ See Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1761–62. A related key part to building collective memories of sexual violence injustice is to “respond to gross historical distortions.” *Id.* at 1763. As Serrano puts it, “[m]ore than a simple backward-looking recitation of historical ‘facts,’ the framing of group memories of injustice thus involves active construction in the present.” Serrano, *Collective Memory and the Persistence of Injustice*, *supra* note 31, at 359 (citing Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1757).

¹³⁵ See generally Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 35 (describing the prevailing reconciliation template and basic structure, including truth seeking, criminal prosecution/amnesty, and reconstruction and reparation, and proposing a new fourth step for assessment, implementation and oversight to account for realpolitik influences and evolving circumstances).

¹³⁶ Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1762.

more difficult.¹³⁷ And, at the same time, it highlights the significance of narrative structures in forming collective memories.¹³⁸ Thus, developing these narrative structures is foundational to constituting collective memories.

As Serrano highlights, “Collective memories are formed and transformed through cultural media, such as news accounts, books, and government reports.”¹³⁹ Racial and sexist depictions—either through their historical and present-day forms—sometimes serve as foundations for collective memory.¹⁴⁰ For women of color, at the intersection of race and gender, such racialized, sexist depictions contribute to certain collective memories as inferior, unworthy, non-political persons at the bottom of the social and redress hierarchies.¹⁴¹ That memory, at times, has been inscribed in and reproduced through law and media to reinforce present-day biases.¹⁴²

Thus, redress for sexual violence harms against women of color—with its attendant legal claims in both the criminal and civil contexts—is really an opening to struggles over collective memory of the specific sexual violence harms suffered, the nature of the wider conflict in which these harms occurred, and the broader structural social, political and economic conditions in which the sexual violence arose.¹⁴³ And these struggles over collective memories create (or close) openings for justice claims, including calls for criminal prosecutions, apologies, education, memorials and even monetary reparations.

As described further below, this Article begins to roughly uncover one aspect of these struggles over collective memory that help to shape modern-day collective memories of women of color who suffered sexual violence harms during conflict. That is, developing a counternarrative describing the intersectional identities of women of color as victims, survivors, political

¹³⁷ See *supra* note 11 and accompanying text (discussing the lack of a word for rape in the Fula language); see also *infra* notes 304–07 and accompanying text (discussing use of the #IAmToufah hashtag).

¹³⁸ See Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1761–62.

¹³⁹ Serrano, *Collective Memory and the Persistence of Injustice*, *supra* note 31, at 365.

¹⁴⁰ It is outside the scope of this Article to expand on these examples. For a concise summary of the theory of “racial formation” to help illuminate and explain examples of historical racial depictions at the turn of the twentieth century, see *id.* at 365–70.

¹⁴¹ See generally Pettit, *Who Is Worthy of Redress?*, *supra* note 26.

¹⁴² See, e.g., *infra* Section VI.

¹⁴³ Rombouts, *Women and Reparations in Rwanda*, *supra* note 40, at 221 (“[T]here is the question of whether an individual court approach to reparation for sexual violence is likely to respond properly to the widespread and systematic character of the crimes and the large numbers of victims involved.”).

activists, fighters and much more.¹⁴⁴ That group “social memory,” in part, bears on present-day reconciliation initiatives, including certain justice claims and responses to them.¹⁴⁵ However, to better understand the importance of developing these counternarratives, a general overview of the dominant discourse of sexual violence injustices is helpful.¹⁴⁶

B. Dominant Narratives: The Innocent Victim and The Perpetrator

As discussed above, since at least the 1990s, heightened international attention turned to sexual violence during conflict.¹⁴⁷ Human rights and feminist legal and political discourses emphasized sexual violence.¹⁴⁸ As a result, certain dominant narratives emerged.¹⁴⁹ From one perspective,¹⁵⁰

¹⁴⁴ See López, *The (Re)Collection of Memory*, *supra* note 31, at 839 (“Collective memory provides us with a context through which to make sense of our own personal experiences and confers legitimacy to our individual interpretation of events.”).

¹⁴⁵ It is beyond the scope of this Article to explore how collective memory may present certain drawbacks, particularly in the context of women of color who suffered sexual violence injustices. For a brief overview of how collective memory may present certain “significant drawbacks,” see López, *The (Re)Collection of Memory*, *supra* note 31, at 845–46 (detailing the psychological phenomenon of “collaborative inhibition” and the potential for “social contagion” and calling for certain procedural protections in criminal proceedings to guard against these potential pitfalls in collective memory).

¹⁴⁶ It is beyond the scope of this Article to carefully parse out the various, nuanced dominant discourses and narratives. However, this Article attempts to broadly sketch out at least one perspective of some of the underlying “common-sense” narratives by looking to the recent scholarship of feminist and human rights scholar, Professor Karen Engle. See generally ENGLE, *THE GRIP OF SEXUAL VIOLENCE*, *supra* note 36.

¹⁴⁷ See *supra* Section II.

¹⁴⁸ See generally ENGLE, *THE GRIP OF SEXUAL VIOLENCE*, *supra* note 36; RUBIO-MARÍN, *WHAT HAPPENED TO THE WOMEN?*, *supra* note 30.

¹⁴⁹ See, e.g., ENGLE, *THE GRIP OF SEXUAL VIOLENCE*, *supra* note 36.

¹⁵⁰ Due to scope limitations, this Article focuses on only one scholar’s perspective on the dominant narratives. However, there may be other perspectives (or critiques) that would add another important dimension to this discussion and would serve as another valuable avenue for further research and scholarship. For example, Professor Doris Buss argues that the “hypervisibility” of certain sexual violence crimes, such as rape, not only makes invisible the larger context and causes of the Rwandan conflict, but that it makes invisible individual stories of rape, especially of Hutu women, that do not fit the mold. See Doris E. Buss, *Rethinking “Rape as a Weapon of War”*, 17 *FEMINIST LEGAL STUD.* 145,154–55 (2009). Notably, the scholarly perspective on the dominant narrative offered in this Article is that of a Western and Global North feminist and human rights scholar. Considerations and perspectives from the Global South or from African Muslim scholars and advocates are important, especially in the context of Toufah’s story, but those are beyond the scope of this Article but ripe for future research and scholarship.

Professor Karen Engle refers to these dominant narratives as the “common-sense narratives,” which she draws from media and “spaces concerned with international human rights, military intervention, international criminal law, and international peace and security.”¹⁵¹ In “unpacking” these narratives, she unsettles and challenges dominant human rights and feminist legal and political discourses about sexual violence during conflict.¹⁵² Some of those critiques are discussed below following the outline of the “common-sense narratives.”

In identifying the dominant narratives relating to sexual violence during conflict, Engle recognizes the problematic, yet powerful, rhetoric of rape and sexual violence as “the worst crimes” and “fate[s] worse than death.”¹⁵³ By elevating this rhetoric that rape and sexual violence “cause the ultimate harm,” Engle contends, “understandings of victims as forever condemned by those actions to shame and stigmatization” are inevitably reinforced.¹⁵⁴ The message—centered around mid-twentieth century notions of a women’s honor as a binding force in a community—is that such anger, shame and victimization “tear communities apart,”¹⁵⁵ “destroy[ing] families and communities.”¹⁵⁶ As Engle describes, “Rape presumably works as a tool of war because it can cause targeted groups to turn on their own members who are victims of sexual violence.”¹⁵⁷ For Engle, these depictions of a woman’s loss of honor, then, become apparent in modern-day media focused on the “staying power of shame and stigma” for individuals and communities as the predominant harms of rape.¹⁵⁸

Another commanding, long-standing narrative is that “perpetrators of sexual violence are monstrous men” and their “victims are innocent,” or rather not responsible for any of the harm.¹⁵⁹ According to Engle, this view relies on two assumptions about women during war: (1) they are nearly always the victims or potential victims; and (2) they are innocent insofar as they do not perpetuate sexual violence and “rarely play any political or military role in war.”¹⁶⁰ This narrative, as Engle points out, becomes problematic as it incorrectly limits the role of women, excluding them from

¹⁵¹ ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 7.

¹⁵² *See generally id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 8.

¹⁵⁶ *Id.* at 9.

¹⁵⁷ *Id.* at 8.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 10.

¹⁶⁰ *Id.*

political roles or as perpetrators of violence, especially during times of war.¹⁶¹ Moreover, it diminishes women's sexual agency by reinforcing the idea that women are the "most vulnerable and violated" victims.¹⁶²

A related influential narrative, which Engle identifies, centers around the notion that domestic or international criminal law will end sexual violence in conflict.¹⁶³ Put another way, "[c]riminal punishment will 'bring those responsible to justice.'"¹⁶⁴ But as Engle recognizes, this narrative leaves no room for the "banality of evil."¹⁶⁵ Or, as Professor Randle DeFalco illuminates, the "aesthetic bias" of the "spectacular" crimes of rape and sexual violence as mass atrocities lead to the invisibility or backgrounding of other atrocity crimes against women that are committed on "large-scale" and "seemingly ordinary, even banal, means."¹⁶⁶

According to Engle, the final powerful narrative, linked to the others, is this: "sexual violence prevents peace," or stated differently, "sexual violence makes wars 'last longer.'"¹⁶⁷ The concept, as Engle posits, "suggests that if incarceration can deter sexual violence and lock away the shame and anger, peace will ensue."¹⁶⁸ But, to Engle, this is doubly problematic insofar as criminal punishment (as a deterrence) does not necessarily end sexual violence and ending sexual violence does not necessarily lead to sustainable or lasting peace.¹⁶⁹

With some of these dominant narratives in mind, critiques emerge.¹⁷⁰ But so does this important question: in light of these narratives and related

¹⁶¹ *Id.* at 11.

¹⁶² *Id.*

¹⁶³ *Id.* at 12–13.

¹⁶⁴ *Id.* at 13.

¹⁶⁵ *Id.*

¹⁶⁶ See generally RANDLE C. DEFALCO, *INVISIBLE ATROCITIES: THE AESTHETIC BIASES OF INTERNATIONAL CRIMINAL JUSTICE* (2022) [hereinafter DEFALCO, *INVISIBLE ATROCITIES*] (exploring the implications of international criminal law's aesthetic biases that recognize the wrongfulness of visible atrocities while obscuring the severity of other forms of violence committed through unspectacular, seemingly ordinary means).

¹⁶⁷ ENGLE, *THE GRIP OF SEXUAL VIOLENCE*, *supra* note 36, at 15.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ It is beyond the scope of this Article to explore the various, nuanced critiques of all the dominant narratives. Accordingly, the Article considers only a few aspects of the critiques set forth by Professor Karen Engle based in large part on the dominant narratives that she herself identifies. Additional consideration of other views of the dominant narratives, and related critiques, would be a fruitful possibility for future research.

critiques, what are we to do about it—in concept and in practice? The next two sections attempt, in broad strokes, to address this important question.

C. Critiques of the Dominant Narratives

By heeding significant attention to sexual violence in conflict in international activism, in one of the first recent critiques of the legal and political discourse, Engle contends that other ways in which women experience gendered, structural, ethnic and class-based violence have been obscured, diminished and rendered invisible.¹⁷¹ Engle's focus on the ways in which sexual violence against women is perceived—thereby shaping “particular imaginaries” on a global scale—reveals distorted understandings of gender, sex, sexuality and race/ethnicity.¹⁷² Just as the aesthetic biases of mass atrocities, as DeFalco puts it, unveil the foregrounding of particular scenarios of (sexual) violence against women.¹⁷³ Stated another way, the “common-sense” views of sexual violence as the dominant narratives reinforce these aesthetic biases and the backgrounding or complete erasure of other types of violence against women.¹⁷⁴ Regardless of how it is stated, Engle and DeFalco (and others)¹⁷⁵ seem to agree on this central critique: these flaws and aesthetic biases undermine the legal legitimacy of international institutions themselves and the legal framework of human rights.¹⁷⁶

On one level, then, Engle's critique is not only about the atrocities of sexual violence against women during conflict; it is also about how the dominant discourse has evolved around such atrocities—in helpful and harmful ways.¹⁷⁷ For example, her careful chronicling of the “common-sense” view and disruption of it illuminates ways in which structural-bias feminism may have helped the retrenchment of certain negative images of sex and sexuality and “problematic understandings of gender,

¹⁷¹ ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 1.

¹⁷² *Id.*

¹⁷³ See generally DEFALCO, INVISIBLE ATROCITIES, *supra* note 166.

¹⁷⁴ See *id.* at 59–62, 215–27 (examining how the “atrocities” aesthetic in international criminal law obscures (and eventually erases) less visible atrocities and discussing the broader effects of aesthetic bias in transitional justice, historical memory and peacebuilding contexts).

¹⁷⁵ Other scholars may similarly take issue with the legal legitimacy of international institutions, especially international criminal courts. It is beyond the scope of this Article to delve into these other critiques, although this is a noteworthy path for further research and examination in the context of sexual violence atrocities.

¹⁷⁶ See generally ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36; DEFALCO, INVISIBLE ATROCITIES, *supra* note 166.

¹⁷⁷ See generally ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36.

[race/]ethnicity, and war and peace.”¹⁷⁸ In Engle’s view, “[a] recurring theme . . . has been that feminist successes in bringing international institutional attention to sexual violence . . . have cemented and even amplified some of the very imaginaries about rape and sexual violence that nearly all feminists originally hoped to dispel.”¹⁷⁹ Another dominant theme is that “feminists, however unwittingly, have participated in the continuation of the common-sense view that rape is a fate worse than death.”¹⁸⁰

On another level, though, Engle’s critique cuts through the discursive debates and questions the practical roles of the international criminal tribunals and other international institutions as the preferred response to sexual violence in conflict.¹⁸¹ For example, she challenges the heavy reliance on international criminal institutions—with their focus on the “incarceration of individual monsters,” deterrence and subsequent peace—to end sexual violence in conflict.¹⁸² As Engle aptly points out, these criminal punishment mechanisms transfer “energy and resources . . . away from other social, political, and economic interventions—including through the law—that might better address the structural causes of violence.”¹⁸³

In addressing the first dominant narrative identified (that rape is a “fate worse than death”), for example, Engle argues that by placing such a strong emphasis on individual and communal shame emanating from “rape culture,” it “takes for granted shame culture, especially in the predominantly Muslim and African communities.”¹⁸⁴ In response to this “common-sense” narrative, she proposes some alternative ways to think about and address shame by drawing on literary examples.¹⁸⁵ She points to one instance in which “women who have been raped during conflict see the rape or their responses to it as part of their political or military struggle, or treat it as but one facet of their wartime experiences.”¹⁸⁶ In this manner, Engle calls for a “discursive and doctrinal shift away from the assumption that sexual violence is inherently

¹⁷⁸ *Id.* at 2.

¹⁷⁹ *Id.* at 152.

¹⁸⁰ *Id.*

¹⁸¹ *See id.* at 14–15.

¹⁸² *Id.* Professor DeFalco’s framework of invisible atrocities underscores Engle’s points about the limitations and legitimacy of international criminal tribunals as the primary means of addressing sexual violence harms. *See generally* DEFALCO, INVISIBLE ATROCITIES, *supra* note 166.

¹⁸³ ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 14–15.

¹⁸⁴ *Id.* at 9.

¹⁸⁵ *Id.* at 9–10, 151–72.

¹⁸⁶ *Id.* at 10.

shameful to individuals and communities.”¹⁸⁷ Stated differently, and from Yamamoto’s perspective, she calls for a rejection of the dominant (at times harmful) narratives, including persisting stock stories, and for a reframing of collective memories.¹⁸⁸ To do so, however, requires navigating “sharply dissonant versions of history” and “colliding ideologies, or desired world views.”¹⁸⁹

At bottom, Engle’s identification of “the rise of a form of structural-bias feminism that ascribes women’s oppression to their sexual subordination” links to prior concerns about race-gender redress bias relating to the unique sexual violence harms of women of color.¹⁹⁰ Yet Engle’s critiques do not necessarily offer corresponding, practical workable strategies or solutions for shifting the discourse, healing wounds, distributing resources and reordering institutions. Nonetheless, her critiques lay an important foundation for examining practical solutions and opens a path for such an assessment using the *social healing through justice* framework.

Taking all of this into consideration, while redress biases tend to render the voices and stories of women of color who suffered sexual violence on the sidelines and in the background, the persisting questions—linked to on-the-ground justice struggles—continue to emerge: what more can be done? And what’s next? The next section briefly suggests a possible next step in a practical path forward as to how counternarratives of intersectional identities might support reframing collective memories to counter some of these biases. It then considers how this may play out in the context of Toufah’s story and The Gambia’s reconciliation initiatives.

D. Counternarratives Focused on Intersectional Identities

Recognition of women of color’s intersectionality is crucial to the construction of present-day collective memories of historic mass injustices. As one potential response to the critiques,¹⁹¹ creating an opening for counternarratives (to the current dominant narratives) focused on the intersectional identities of women of color who suffered sexual violence injustices would be an important next step forward towards more

¹⁸⁷ *Id.*

¹⁸⁸ *See id.*; Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1776–77.

¹⁸⁹ Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1776.

¹⁹⁰ *See* ENGLE, THE GRIP OF SEXUAL VIOLENCE, *supra* note 36, at 16.

¹⁹¹ This section modestly sketches out this concept. More in-depth analysis is beyond the scope of this Article but ripe for further research and analysis.

comprehensive and enduring social healing.¹⁹² Those counternarratives would emerge through storytelling—either informally or in more formal settings such as truth commission hearings.¹⁹³ And such storytelling could be done publicly or anonymously to protect the identities of certain women of color based on shifting political, legal, social and economic circumstances.¹⁹⁴ In the context of healing unique sexual violence harms against women of color, integrating the present-day voices of these women of color to tell their stories of the injustices suffered—both at the individual level but also at the communal level—might help to further heal physical, emotional, spiritual and communal wounds.¹⁹⁵ As the International Center for Transitional Justice (ICTJ) recently acknowledged, by “making space for

¹⁹² Professor Kimberlé Crenshaw is often credited with coining the term “intersectionality” and introducing intersectionality theory to the mainstream as a challenge to the “uncritical and disturbing acceptance of dominant ways of thinking about discrimination.” See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139, 150 (1989); see also Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242–45 (1991) (exploring the race and gender dimensions of violence against women of color as frequently the product of “intersecting patterns of racism and sexism” and how these intersectional experiences tend to lack representation in either feminist or antiracist discourse, and emphasizing that the focus on intersections of race and gender underscore “the need to account for multiple grounds of identity when considering how the social world is constructed”); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (arguing that white feminist scholars sometimes adopt gender essentialist views that ignore the unique experiences of women of color); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN’S RTS. L. REP. 7, 8 (1989) (urging advocates to embrace “consciousness of the experience of life under patriarchy and racial hierarchy”).

¹⁹³ See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 198–203.

¹⁹⁴ “[U]nderstanding the political and cultural dynamics and strategic import of collective memory for justice claims . . . is an integral part, though only one part” of comprehensive and enduring social healing through justice. Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31, at 1777. “Victims must weigh the risk of coming forward to access reparations with the possible backlash they could face if their community discovers why they are receiving reparations. As a result, many victims—which include women and girls, but also men and boys—stay silent.” Ladisch, *Victims, Survivors, and Agents of Change*, *supra* note 22.

¹⁹⁵ See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 64–66 (2021) (noting that one of the principles underlying the *social healing through justice* framework is healing the individual and collective simultaneously on both levels).

the multiple roles women experience in periods of conflict or political violence, whether that be as victims, survivors, or fighters on behalf of a cause,” we can begin changing traditional notions about gender and race and help “assert women’s roles as political actors and active members of society.”¹⁹⁶

Intersectionality, then, serves as an analytical tool of critical inquiry and praxis to better grapple with current dominant understandings narrowly casting women of color as “victims”¹⁹⁷ or attaching notions of fear, stigma and shame to them.¹⁹⁸ It also presents ways to foster “more expansive understandings of collective identities and political action” as well as more “complex understandings of individual identities.”¹⁹⁹ Importantly, intersectionality assists in “reconceptualizing individual identity and subjectivity.”²⁰⁰

Central to the focus on the intersectional identities of women of color is not only their individual identities based on their gender or race/ethnicity but also how they express their political identities as victims, survivors, advocates, fighters, political activists and much more. That is, their individual identities are “intersecting and performative,” shifting the “meaning of identity from something one *has* to something one *does*” all

¹⁹⁶ Ladisch, *Victims, Survivors, and Agents of Change*, *supra* note 22.

¹⁹⁷ See generally Huma Saeed, *Victims and Victimhood: Individuals of Inaction or Active Agents of Change? Reflections on Fieldwork in Afghanistan*, 10 INT’L J. TRANSITIONAL JUST. 168 (2016) (exploring how “victims” and “victimhood” are complex, subjective, political, multi-layered terms “whose meaning seems to lie in the eye of the beholder”); Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, 2 J. HUM. RTS. PRAC. 208 (2010) [hereinafter Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*] (observing “how, and what kind of, victims are ‘produced’ by the transitional justice industry” and urging a “shift from dependency to agency, that is, victims having greater control over their encounters with expert-others and not allowing themselves and/or their stories to be used as fodder to sustain the industry and its entrepreneurs”).

¹⁹⁸ COLLINS & BILGE, INTERSECTIONALITY, *supra* note 19, at 3, 37–39. It is beyond the scope of this Article to analyze and discuss the concept and theory of intersectionality in depth, for which there is extensive literature and scholarship. This section broadly presents certain concepts of intersectionality, from a socio-legal perspective, for purposes of this Article. Other legal scholars have also urged for the adoption of an intersectional approach to transitional justice. See, e.g., Ronli Sifris & Maria Tanyag, *Intersectionality, Transitional Justice, and the Case of Internally Displaced Moro Women in the Philippines*, 41 HUM. RTS. Q. 399, 412–419 (2019) (generally discussing the value of adopting an intersectional lens when considering sexual and gender-based violence during armed conflicts, particularly in the context of Moro women in the Philippines).

¹⁹⁹ COLLINS & BILGE, INTERSECTIONALITY, *supra* note 19, at 166–67.

²⁰⁰ *Id.* at 167.

within different power structures and social constructs.²⁰¹ Stuart Hall sums up this tension and sense of shifting intersectional individual identities as follows:

Identity is not a set of fixed attributes, the unchanging essence of the inner self, but a constantly shifting process of *positioning*. We tend to think of identity as taking us back to our roots, the part of us which remains essentially the same across time. In fact, identity is always a never-completed *process* of becoming – a process of shifting *identifications*, rather than a singular, complete, finished state of being.²⁰²

For sociology professors, Patricia Hill Collins and Sirma Bilge, how individuals express their multiple individual identities may vary across different situations as “[s]ocial context matters in how people use identity to create space for personal freedom.”²⁰³ As they recognize, “For many individuals, this focus on the social construction of intersecting identities that can be differentially performed from one setting to the next has been a space of individual empowerment.”²⁰⁴ This holds true for women of color who suffered from sexual violence injustices across different forums such as when they may identify as “victims” during criminal prosecutions and to qualify for reparations, as “survivors” in media accounts, as “fighters” and “political activists” when framing their experiences before truth and reconciliation commissions, or as “advocates” when engaging in movements for broader social change on local, national and international stages. That is, intersectionality provides one possible alternative for expressing sexual violence survivors’ complex identities and providing an opening to tell their stories as a means of empowerment. It also presents an opportunity for a restructuring of social and redress hierarchies—by importantly negating the sense that “being a ‘raped woman’ becomes one’s ‘sole identity.’”²⁰⁵

²⁰¹ *Id.*

²⁰² *Id.* (quoting STUART HALL, *FAMILIAR STRANGER: A LIFE BETWEEN TWO ISLANDS* 16 (2017)).

²⁰³ *Id.* at 179.

²⁰⁴ *Id.* at 167.

²⁰⁵ “As Nusreta Sivic, a former Bosnian judge who was detained and raped in the Omarska camp, puts it in the epigraph above, being a ‘raped woman’ becomes one’s ‘sole identity.’” ENGLE, *THE GRIP OF SEXUAL VIOLENCE*, *supra* note 36, at 152 (citing *CALLING THE GHOSTS: A STORY ABOUT RAPE, WAR, AND WOMEN* (Women Make Movies, 1996)).

More broadly, these intersectional individual identities provide space for the formation of collective identities—or counternarratives of collective memory based on sexual violence injustices against women of color. Through the construction of these collective memories, stories of sexual violence injustice are better contextualized in the broader historic injustice.²⁰⁶ And through stories elevating intersectional identities of women of color,²⁰⁷ it ensures “that we define complex experiences as closely to their full complexity as possible and that we do not ignore voices at the margin,” as Professor Trina Grillo urges.²⁰⁸

Toufah Jallow’s experience illuminates how storytelling and the construction of collective memories through counternarratives provide a key justice opening for more enduring social healing. The next section broadly examines her story as a mini case study and reveals the potential power of *recognition* of sexual violence injustice against women of color through the construction of individual and collective memory of Gambian women’s intersectional identities, particularly as political actors and active members of society. A brief background of The Gambia’s TRRC sets the stage for this examination.

VI. TOUFAH JALLOW AND THE GAMBIA: A MINI CASE STUDY

A. *Brief Background of The Gambia’s TRRC*

In 2017, The Gambia’s former President Yahya Jammeh and his dictatorship’s culture of fear and misinformation came to an end when he fled abroad after losing the presidential election to current President Adama Barrow.²⁰⁹ For over two decades, Gambian citizens faced atrocities and human rights violations perpetrated under Jammeh’s reign, including, among

²⁰⁶ For example, as part of the Guatemala conflict, “[t]here were also ‘selective rapes’ of women accused of being guerrillas, social leaders, union leaders, or family members of disappeared victims.” Claudia Paz y Paz Bailey, *Guatemala: Gender and Reparations for Human Rights Violations*, in RUBIO-MARÍN, *WHAT HAPPENED TO THE WOMEN?*, *supra* note 30, at 98.

²⁰⁷ See Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, *supra* note 197, at 226 (urging that “responsibility to the story” of victims should be, perhaps principally, about “redistribution of resources and power,” and in order to do that, “we need to dismantle the trusteeship and reproduction of colonial relations”).

²⁰⁸ Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 *BERKELEY WOMEN’S L.J.* 16, 22 (1995).

²⁰⁹ For additional context of this authoritarian regime and next steps to ensure the protection of democratic ideals and constitutional order, see generally *THE GAMBIA IN TRANSITION: TOWARDS A NEW CONSTITUTIONAL ORDER* (Satang Nabaneh, Adem Abebe & Gaye Sowe eds., 2022).

other things, the unjustified detention and imprisonment of dissidents,²¹⁰ extrajudicial murders, beatings, and torture, literal witch hunts of women,²¹¹ threats to behead homosexuals,²¹² the forced experimentation of Jammeh's experimental herbal "miracle cure" for AIDS patients²¹³ and sexual violence and coercion of women as his "protocol girls," or "women assembled by his associates to serve him sexually."²¹⁴ During this tumultuous period, many Gambians fled the country, often seeking work in Europe, but Jammeh's "death squad," a paramilitary force known as the "Junglers," tortured and executed at least fifty-four migrants in 2005.²¹⁵

²¹⁰ Jammeh was known to jail dissidents and to call journalists the "illegitimate sons of Africa." Julie Turkewitz, *Now Streaming on YouTube: Confessions from a Presidential Hit Squad in Gambia*, N.Y. TIMES (Aug. 31, 2019) [hereinafter Turkewitz, *Confessions from a Presidential Hit Squad in Gambia*], <https://www.nytimes.com/2019/08/31/world/africa/gambia-truth-commission-yahya-jammeh.html>.

²¹¹ See Julie Turkewitz, *Women in Gambia Describe Torture After Ex-President Called Them Witches*, N.Y. TIMES (Nov. 13, 2019) [hereinafter Turkewitz, *Women in Gambia Describe Torture*], <https://www.nytimes.com/2019/11/12/world/africa/gambia-witch-hunt-testimony.html>.

²¹² Dionne Searcey & Jaime Yaya Barry, *Gambian Minister Calls on All Women with Accusations Against Ex-President to Come Forward*, N.Y. TIMES (June 26, 2019) [hereinafter Searcey & Barry, *Gambian Minister Calls on All Women with Accusations Against Ex-President to Come Forward*], <https://www.nytimes.com/2019/06/26/world/africa/gambia-president-rape-accusation.html>.

²¹³ Dionne Searcey & Jaime Yaya Barry, 'Gambia Is Back Again,' but Its New Leader Is Still in Senegal, N.Y. TIMES (Jan. 22, 2017) [hereinafter Searcey & Barry, 'Gambia Is Back Again'], <https://www.nytimes.com/2017/01/22/world/africa/gambia-president-adama-barrow-yahya-jammeh.html>.

²¹⁴ Emma Teitel, *I Am Toufah: The Toronto Woman Who Stood Up to a Dictator and Launched a West African MeToo Movement*, TORONTO STAR (Jan. 30, 2022) [hereinafter Teitel, *I Am Toufah*], <https://www.thestar.com/news/canada/2022/01/30/i-am-toufah-the-toronto-woman-who-stood-up-to-a-dictator-and-launched-a-west-african-metoo-movement.html>; see also Turkewitz, *Women in Gambia Describe Torture*, *supra* note 211; *More Revelations About President Jammeh's Sex Exploits of Young Gambian Girl*, FATU NETWORK (Oct. 19, 2015), <https://www.fatunetwork.net/more-revelations-about-president-jammehs-sex-exploits-of-young-gambian-girl/> (describing Fatu Radio's documentation of the experiences of girls (mainly teenagers) who were employed as "Protocol Officers attached to the Office of the President who openly accused the President of sexually exploiting them" and describing the "in-depth investigative report which documented how virgin girls [we]re lured into sexual relationship with the President where they [we]re dis-virgined and their blood used for rituals").

²¹⁵ Saikou Jammeh & Ruth Maclean, *Mass Grave of Alleged Victims of Former President Jammeh Found in The Gambia*, GUARDIAN (May 16, 2018, 2:00 AM),

The Gambia, a West African nation with a population of about two and a half million and a weak economy often plaguing its people, faced a reckoning of this horrific regime and resolved to never let this happen again.²¹⁶ Under the current President Adama Barrow, a Truth, Reconciliation and Reparations Commission (TRRC) was established in 2017 to “nurture national reconciliation and healing” and to create a historical record of the atrocities under Jammeh’s regime.²¹⁷ The official objectives of the TRRC included creating an “impartial historical record of violations and abuses of human rights from July 1994 to January 2017” in order to “promote healing and reconciliation,” “respond to the needs of the victims,” “address impunity” and “prevent a repeat of the violations and abuses suffered by making recommendations for the establishment of appropriate preventative mechanisms including institutional and legal reforms.”²¹⁸ Other objectives included establishing and revealing what happened to “disappeared victims,” providing victims with “an opportunity to relate their own accounts of the violations and abuses suffered,” and granting reparations to victims in certain cases.²¹⁹

Significantly and laudably, the TRRC Act of 2017 specifically mandated “a child and gender sensitive approach in conducting its investigations in cases of children and women.”²²⁰ Indeed, there was a special committee on “Child Protection and Sexual and Gender Based Violence,” which could invite specialists or experts to meetings and was required to make recommendations to the TRRC for approval.²²¹ For sexual violence cases, the TRRC also had the discretion to allow victims to testify privately *in camera* or publicly.²²²

<https://www.theguardian.com/global-development/2018/may/16/mass-grave-victims-alleged-massacre-gambia>.

²¹⁶ Abdul-Jalilu Ateku, *How The Gambia Is Going About Its Search for Truth and Reconciliation*, CONVERSATION (Mar. 27, 2019, 9:30 AM), <https://theconversation.com/how-the-gambia-is-going-about-its-search-for-truth-and-reconciliation-114203>.

²¹⁷ Searcey, *A Beauty Queen Accuses Former Gambian President of Rape*, *supra* note 10; *see* Searcey & Barry, ‘*Gambia Is Back Again*’, *supra* note 213.

²¹⁸ Truth, Reconciliation and Reparations Commission Act, 2017, § 13 (Gam.).

²¹⁹ *Id.* §§ 13, 20.

²²⁰ *Id.* § 14(2).

²²¹ *Id.* § 18.

²²² *Id.* § 16(4)(b). For example, Justice Rapid Response, a civic society organization, deployed experts, including a sexual and gender-based violence expert. *The Gambia: Truth and Reconciliation Report Paves the Way for Prosecutions*, JUST. RAPID RESPONSE (Mar. 14, 2022) [hereinafter JUST. RAPID RESPONSE, *TRRC Paves the Way for Prosecutions*], <https://www.justicerapidresponse.org/the-gambia-truth-and-reconciliation-report-paves-the-way-for-prosecutions/>.

TRRC hearings began in January 2019 and concluded in May 2021, which featured more than 400 witnesses, including over 51 women.²²³ Witnesses included both those accused of human rights violations as well as victims of abuse.²²⁴ These public TRRC hearings were streamed live by widespread television and radio stations and Facebook—all accessible to young and old alike on their cell phones—such that *The New York Times* described the TRRC as “the most accessible truth commission in history.”²²⁵

Although not part of the TRRC public hearings, and instead as part of the truth commission’s outreach efforts, “a series of women-only listening circles brought victims together to share privately their traumatic experiences and encourage them to speak out.”²²⁶ According to *The New York Times*, “Gambia’s reconciliation process ha[d] put a special focus on women who endured beatings or sexual violence by Mr. Jammeh’s security officers, or who were impoverished after their husbands were locked up.”²²⁷ Significantly, as part of the TRRC public hearings and the official record, Toufah Jallow became the first woman to speak out publicly and on the record about her rape by the former dictator.²²⁸

Yet despite these commendable efforts to tailor redress based on gender, many Gambian women, justice advocates and scholars are still calling for

²²³ 1 TRUTH, RECONCILIATION & REPARATIONS COMM’N, FINAL REPORT: COMPENDIUM ON FINDINGS AND RECOMMENDATIONS xv (2018–2021), <https://www.justiceinfo.net/wp-content/uploads/Volume-1-Compendium-Part-A.pdf>; TRUTH, RECONCILIATION & REPARATIONS COMM’N, INTERIM REPORT 13 (2018–2019) [hereinafter TRRC, INTERIM REPORT], <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5eab360f11f74c62aa3b849f/1588278803832/TRRC-INTERIM-REPORT-Logo-Final.pdf>; JUST. RAPID RESPONSE, *TRRC Paves the Way for Prosecutions*, *supra* note 222.

²²⁴ See Searcey, *A Beauty Queen Accuses Former Gambian President of Rape*, *supra* note 10.

²²⁵ TRRC, INTERIM REPORT, *supra* note 223, at 13; Turkewitz, *Confessions from a Presidential Hit Squad in Gambia*, *supra* note 210.

²²⁶ Searcey, *A Beauty Queen Accuses Former Gambian President of Rape*, *supra* note 10; see *infra* notes 328–31 and accompanying text (describing in more detail these women-only listening circles).

²²⁷ Searcey, *A Beauty Queen Accuses Former Gambian President of Rape*, *supra* note 10.

²²⁸ See Searcey & Barry, *Gambian Minister Calls on All Women with Accusations Against Ex-President to Come Forward*, *supra* note 212; Searcey, *A Beauty Queen Accuses Former Gambian President of Rape*, *supra* note 10.

more.²²⁹ The next few sections identify what is missing from the TRRC²³⁰ and Gambian transitional justice initiatives then and now, and how counternarratives through storytelling focused on women's intersectional identities may help to break down unproductive stereotypes and discursive strategies intended to maintain certain power and social structures.

B. Recognition of Sexual Violence Injustices: What's Missing from the TRRC and The Gambia's Reconciliation Initiatives

Recognition “acknowledges that people suffer simultaneously as individuals and as a part of communities, often because of their identity as a member of a targeted or disfavored social group.”²³¹ It also encompasses recognizing at least two kinds of wounds: “[o]ne kind of wound is the immediate harm – the anger, hurt and material loss resulting from disabling group constraints” and “[a] second, more pervasive kind of wound is the pain buried in collective memories of group exclusion or subjugation.”²³² Accordingly, “groups must first empathize, not sympathize; listen, not analyze; acknowledge, not blame.”²³³

1. Recognition of Past Sexual Violence Harms

Mutual engagement in *recognition* is therefore an important starting point.²³⁴ For Toufah Jallow and other Gambian women who suffered sexual violence abuses, recognition includes all participants first acknowledging that rape was a common experience under Jammeh's authoritarian regime but is largely minimized or treated differently in truth commission proceedings than other types of harms, such as extrajudicial killings and torture.²³⁵

Both Toufah and human rights lawyer Marion Volkmann expressed concern about the TRRC's approach to sexual and gender-based violence, despite its seemingly well-intentioned framing of gender-redress

²²⁹ See Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 35, at 140–41, 160–78 (discussing how structuring the truth-seeking and recognition aspects of truth and reconciliation commissions and redress initiatives are crucial, as well as how a TRC's findings are handled and recommendations are implemented).

²³⁰ See *id.* at 134–41 (noting how there are often gaps in the redress process toward genuine social healing and how often more needs to be done to uplift the process).

²³¹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 73.

²³² *Id.* at 74.

²³³ *Id.* at 75.

²³⁴ *Id.* at 73.

²³⁵ See *id.* at 74 (“[R]ecognition asks participants in the social healing process to acknowledge and empathize with the anger, suffering and hopes of those harmed, focusing on ‘victims’ but also with an eye on ‘perpetrators.’”).

sensitivities.²³⁶ For example, they recognized that “[w]hen [the TRRC] published a list of ‘themes’ or crimes they would be addressing, they used the word ‘alleged’ only in connection to sexual assault, never for the killings, torture and illegal detentions, or even the literal witch hunt against sorcerers Jammeh ordered in retribution for the death of his aunt.”²³⁷ They also noted that, in non-sexual violence investigations, witnesses were encouraged to name the abusers whereas, with the exception of sexual assault crimes by Jammeh, witnesses were told that they could only refer to the perpetrators by number, not by name.²³⁸ By apparently designing the hearings process relating to sexual violence injustices in this way, the TRRC seemingly sought to protect the perpetrators’ identities from the public, which in many ways seemed unjust and reflected certain redress biases.²³⁹

This approach, in part, left many with the sense that “sexual violence remained a kind of side note, an after-thought, to the investigation into Jammeh and his regime.”²⁴⁰ Re-inflicting the still open wounds, in January 2020, an expert witness at the TRRC testified about the overall impact of Jammeh’s regime on The Gambia.²⁴¹ To Toufah, this testimony reflected, in many ways, the shortcomings of the TRRC with respect to the recognition of sexual violence harms.

While he briefly mentioned that Jammeh had raped many women, he went on to say that “Jammeh should be credited for having promoted many women to important positions of power.” . . . It was as if he believed Jammeh’s rapes were erased by promoting a handful of women within his government. And the larger issue, of how Jammeh’s behaviour created a climate that permitted other men to rape and discouraged their victims from reporting, was almost completely ignored. Rapes by soldiers were glossed over, rapes of women prisoners at the notorious Mile Two Central Prison were unacknowledged, gang rapes by men in uniform were hinted at with no follow-up questions asked.²⁴²

²³⁶ JALLOW, *supra* note 1, at 252.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *See id.*

²⁴⁰ *Id.* at 281.

²⁴¹ *Id.*

²⁴² *Id.*

Recognition encompasses realizing that Gambian women endured these forms of rape as well as other horrific forms of sexual violence, including sexual slavery, which often left deep lasting wounds.²⁴³ Notably, these shocking forms of sexual violence were apparently aimed specifically at certain groups of women in The Gambia, but not other white or African women. They were also apparently aimed at marginalized populations or those opposed to Jammeh's ruling party.²⁴⁴ According to a recent Global Reparations Study (in collaboration with the International Center for Transitional Justice), "[w]omen were particularly susceptible to forms of sexual and gender-based violence in association with other crimes, and were targeted for breaching gender norms by stepping into traditionally masculine roles, including activism and politics."²⁴⁵ This occurred, in large part, due to "[a] culture of oppression, silence, and deeply entrenched patriarchy."²⁴⁶

Toufah Jallow was the first to speak out and insert her story into the conversation and foster social group memory.²⁴⁷ Under oath, before the TRRC, she "g[a]ve rape a face in The Gambia" as a visible survivor, sending the message that if other women had also been raped that looked like her, they could also survive it too.²⁴⁸ Although suffering from the sexual violence abuses herself, Toufah empathized with other sexual violence survivors and uncovered for some "the pain buried in collective memories of group exclusion and subjugation."²⁴⁹ By attaching her name to her story, rather than remaining anonymous, she allowed herself, along with many others, the opportunity for storytelling.²⁵⁰ She also created an opening for some women to realize that they were survivors of sexual violence because, as she notes, many were not even aware of the abuses given that violence against women

²⁴³ See generally REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE, COUNTRY BRIEFING: THE GAMBIA (June 2022) [hereinafter REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE: THE GAMBIA], https://static1.squarespace.com/static/5ff7d9f4dd4cdc650b24f9a4/t/63577a5d3017d770b8a4f3c8/1666677344018/GSF_Country_Sheet_The_Gambia_EN_June2022_WEB.pdf (recognizing the harm caused to survivors, families and communities as a result of conflict-related sexual violence under President Yahya Jammeh's dictatorship).

²⁴⁴ *Id.* at 2.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ JALLOW, *supra* note 1, at 212.

²⁴⁸ *Id.*

²⁴⁹ See *id.* at 211, 241–44; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 74.

²⁵⁰ See JALLOW, *supra* note 1, at 212–13; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 75–78.

had been somewhat normalized historically in The Gambia.²⁵¹ While an important step in *recognition*, her efforts are limited by the lack of participation from *all* participants, especially Jammeh and government officials who facilitated the sexual violence abuses, such as his cousin Jimbee, those who continue to support Jammeh in his exile and others who benefitted under Jammeh's regime.²⁵² They are also undermined by the above-referenced aspects of the TRRC's approach to sexual violence abuses during the hearings.

Recognizing and preserving the voices of Gambian sexual violence survivors, like Toufah's, is essential to promoting more complex understandings of the breadth and depth of their historic sexual violence harms under Jammeh's rule. After Toufah publicly testified before the TRRC, Abubacarr M. Tambadou, The Gambia's attorney general and minister of justice, called on other women who were sexually abused to come forward: "It is only through speaking up and exposing such despicable acts, especially by those in positions of power, can we effectively combat the scourge and menace of sexual violence against women and girls in our society."²⁵³ Beyond government calls to support survivors to speak out, the Gambian government might also endeavor to document their personalized stories of loss and later rejuvenation through widely publicized collective records. They might also devote resources for public education and curriculum development. Further, the Gambian government might also support additional popular and scholarly research, publications and presentations (art, documentaries, conferences) about Gambian women's sexual violence harms and current healing efforts.²⁵⁴ Specifically, for example, they might support Toufah's film documentary efforts to memorialize and record the voices and stories of other Gambian women survivors,²⁵⁵ as well as her dream to convene a conference featuring linguists

²⁵¹ See REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE: THE GAMBIA, *supra* note 243, at 2; JALLOW, *supra* note 1, at 268, 295–99.

²⁵² See JALLOW, *supra* note 1, at 252; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 74.

²⁵³ Searcey & Barry, *Gambian Minister Calls on All Women with Accusations Against Ex-President to Come Forward*, *supra* note 212.

²⁵⁴ See Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 316.

²⁵⁵ Toufah, recognizing society's tendency to identify and narrowly define survivors of sexual violence as "victims of rape," has embarked on filming a documentary called *Justifying Survival*, which interviews survivors who tell their stories on camera "not just about what happened to them, but who they are, what they like, what their jobs are." Teitel, *I Am Toufah*, *supra* note 214. In this way, these women of color are empowered to tell their own stories

and scholars to establish a new vocabulary in the various common languages to come up with words like “rape” to further narratives of sexual violence injustice in The Gambia.²⁵⁶ Due to the potentially limited resources of the Gambian government, and against the backdrop of the country’s weak economy, international human rights supporters, researchers, institutions and scholars might contribute to the realization of these government-led efforts.²⁵⁷ In these ways, the Gambian government and its populace might begin to acknowledge that those previously in power apparently targeted certain women because of their perceived racial and gender inferiority—and because of their roles as political actors and activists resisting the primarily African Muslim patriarchal culture.

Recognition of the broadscale sexual violence injustices is still largely absent, despite the TRRC’s notable steps to include gender-sensitive approaches in the truth commission process.²⁵⁸ While some Gambian women testified before the TRRC and many participated in the women’s circles, the commonly cited number of sexual violence survivors is identified as twenty-five (25) survivors, whereas a recent study suggested that the estimated real number is closer to seventy-seven (77) with numbers likely to be significantly higher.²⁵⁹ Accordingly, there is a sense that, even

and define their own intersectional identities in ways that are fair “to them and their children.”
Id.

²⁵⁶ Toufah expressed what she believed would be laudable next steps to address healing sexual violence wounds:

Public education to introduce language about rape and rape culture and the idea that women had a right to say no, as well as showing how women’s lives are affected by casually sexist attitudes and actions. Programs for young women to help them develop their voices and dreams. Opportunities for survivors to speak about their experiences. Proposals for changes to legislation. A shelter for women and their children to escape and heal from trauma and violence. All were essential. I knew from my own experience that simply focusing on one aspect—telling young women they can be what they want to be, say no if they want to say no—was actually dangerous if those shiny ideals weren’t backed up with practical supports, effective laws and societal structures to hold abusers accountable.

JALLOW, *supra* note 1, at 280.

²⁵⁷ See Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 316.

²⁵⁸ See Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 35, at 176 (observing that “evolving social norms also shape implementation” and that “[i]ncreasing attention to gender, sexual orientation, race, and indigeneity encourages marginalized groups to advocate for heightened recognition and tailored remedies”).

²⁵⁹ REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE: THE GAMBIA, *supra* note 243, at 1.

after extensive TRRC hearings and proceedings, sexual violence under Jammeh's regime has been, and continues to be, severely underreported.²⁶⁰ Mutual storytelling and listening, then, remain critical to moving forward.

But in addition to these steps as part of the *recognition* inquiry, full disclosure of the extent of the sexual violence harms, including those extending into the present day, is crucial.²⁶¹ A close look at the unique persisting sexual violence harms follows.

2. Recognition of Persisting Harms

Recognition of lingering, present-day harms requires an understanding that historic sexual violence harms have severe and lasting consequences.²⁶² In certain cultural and social circumstances, past sexual violence harms hold significant present-day importance on what women of color can (or cannot) do with respect to marital relations, employment and other aspects of their lives within their community's social hierarchy.²⁶³ Many aspects of these continuing harms, however, remain unacknowledged in current redress efforts.

A recent study revealed that victims report "long-lasting psychological, social, physical, and economic consequences," including stigma that has forced them to self-isolate in their communities.²⁶⁴ Many expressed facing "ridicule, exclusion, and a loss of respect and dignity" and reported having suicidal thoughts due to their persisting trauma.²⁶⁵ Still others spoke of damaged familial relations due in part to shame and stigma.²⁶⁶ As one survivor stated, "The most embarrassing thing is the stigma and discrimination I face in the society, which is an unbearable pain honestly.

²⁶⁰ *Id.* at 2.

²⁶¹ See Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 35, at 177 (acknowledging that realpolitik shifts and evolving conditions may require refashioning truth commission processes and recommendations "all toward the goal of recalibrating and reinvigorating the original reconciliation commitment").

²⁶² See Pettit, *Who Is Worthy of Redress?*, *supra* note 26, at 317–19.

²⁶³ *See id.*

²⁶⁴ REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE: THE GAMBIA, *supra* note 243, at 3.

²⁶⁵ *Id.*

²⁶⁶ *See id.*

There are certain pains that an individual might go through that make you prefer to die than bear the shame.”²⁶⁷

For Toufah, after her TRRC testimony, she realized firsthand through calls to her mother and family that many from the “older generation that never spoke openly about sexual violence . . . viewed it as shameful for the victim to acknowledge.”²⁶⁸ Indeed, according to Toufah, their calls emphasized her “victimization more than [her] survival” as they often gave her mother “the kind of condolences expressed after a death.”²⁶⁹ To Toufah, this demonstrated the limitations for women of color who suffered sexual violence harms to speak openly about their experiences.²⁷⁰

Some of these emotional, psychological and physical harms have resulted in economic injustice.²⁷¹ As many survivors were left with “overlapping and persistent physical injuries and complications,”²⁷² they often lost their jobs, which led to living in poverty unable to care for their families.²⁷³ As a result, many cannot afford basic needs, such as housing, food, education or even medical care, which further strains individuals, families and the larger community.²⁷⁴ This has impacted the next generation, who often leave their educational studies to work in order to generate income to support their families.²⁷⁵ The Covid-19 pandemic further exacerbated these precarious socioeconomic conditions.²⁷⁶ Moreover, as the study recognized, “[h]arms caused to survivors are compounded by a lack of rehabilitation program[s] or spaces to share their feelings or demands.”²⁷⁷

Complete recognition of this collective trauma and persisting long-term damage to individual women, their communities and their descendants is still

²⁶⁷ *Id.* This quotation echoes the “common-sense” discourse and dominant narratives relating to rape and sexual violence during conflict, as articulated by Professor Karen Engle. *See supra* Section V.B.

²⁶⁸ JALLOW, *supra* note 1, at 230.

²⁶⁹ *Id.*

²⁷⁰ *Id.* Toufah’s experience is reminiscent of the dominant, “common-sense” discourse discussed above in Section V.B.

²⁷¹ *See generally* Yamamoto & Mackintosh, *Redress and the Salience of Economic Injustice*, *supra* note 80.

²⁷² REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE: THE GAMBIA, *supra* note 243, at 3 (“Survivors report high blood pressure, overall pain throughout their bodies, including abdominal pains, urinary difficulties, and for some, disrupted HIV treatment.”).

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

needed. A handful of notable civil society organizations, such as the Victims Center, the Women Association for Victims Empowerment, and Women in Liberation and Leadership, have contributed to documenting these individual and collective experiences, among other salutary initiatives.²⁷⁸ However, without key support from the Gambian government, along with international human rights supporters, researchers and scholars, the scope and pervasiveness of Gambian women's continuing sexual violence harms remain underreported and efforts to redress these harms remain severely limited. By involving all participants involved in the initial injustice and in continuing injustices, the Gambian government, populace and larger diaspora, as well as the international community, might explicitly acknowledge the unique ways that Gambian women continue to suffer on multiple, complex levels.

C. Recognition of Dominant Narratives and Need for Counternarratives

Although *recognition*, through empathy, listening and acknowledgment of past and persisting harms, is a necessary next step in the redress process, perhaps more significant, and related to this aspect of *recognition*, is "identifying the justice grievance," or rather "the larger framing and the details of the historical injustice as well as the present-day claims for rectification."²⁷⁹ As Yamamoto observes, "[t]hese sometimes directly, sometimes covertly communicated grievances are rooted not only in suffering around a singular event but also in collective perceptions of how one's own group has been historically wronged by another group with great power."²⁸⁰ An assessment of the justice grievance encompasses "an examination of multiple accounts of events, consequences and social and political forces at play" as well as an inquiry "into the agendas and motivations of those making the claims of injustice and of those apparently inflicting the harms."²⁸¹

Importantly, identifying the justice grievance in this way means "critically unraveling 'stock stories' about events and group cultural attributes that ostensibly legitimated past abuses and that heighten current tensions."²⁸² "Stock stories are narratives shaped and told by groups (especially

²⁷⁸ *Id.* at 4.

²⁷⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 57, at 75.

²⁸⁰ *Id.*

²⁸¹ *Id.* at 76.

²⁸² *Id.*

governments) to justify abuse of others . . . or, alternatively, to portray victim status and enhance the validity of redress claims.”²⁸³ According to Yamamoto, these stock stories or dominant narratives “are often a conglomeration of selective historical recollections, partial information about events and socioeconomic conditions—infused with speculation and falsehoods and grounded in self-interest.”²⁸⁴

Addressing and unraveling these stock stories are particularly important in the context of sexual violence against women of color—especially in the case of The Gambia’s largely African Muslim patriarchal culture. Often the dominant narratives are “social constructions – cultural depictions, communicated through media, schools, families, churches, artists, businesses, judges, lawyers, government officials and more.”²⁸⁵ Such cultural depictions tend to “generate social identities and attribute cultural characteristics to group membership.”²⁸⁶ Those attributed cultural characteristics then “influence the dynamics of group interactions by providing the lens through which others initially see and then evaluate all group members.”²⁸⁷ The “interrogation of stock stories” or dominant cultural narratives thus importantly “aims to reveal what was then, and is now, really going on.”²⁸⁸ By doing so, we may “remake stock stories into narratives that more accurately reflect actual events and the perspectives of those harmed.”²⁸⁹ That is, this part of the *recognition* inquiry “aims for a newly framed collective memory of the injustice as a foundation for collaborative efforts to repair the damage.”²⁹⁰

1. Construction of Collective Memories of Sexual Violence Injustices

The Gambia, marked primarily by African Muslim patriarchal culture, reflects retrenched cultural norms that “often state that men are aggressive, controlling and dominant, while women are docile, subservient, and rely on men for provision.”²⁹¹ The Gambia’s social norms and history of conflict

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 77.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 78.

²⁸⁹ *Id.*

²⁹⁰ *Id.* See generally López, *The (Re)collection of Memory*, *supra* note 31; Hom & Yamamoto, *Collective Memory, History, and Social Justice*, *supra* note 31.

²⁹¹ INST. FOR HUM. RTS. & DEV. IN AFRICA (IHRDA) & THE GAMBIA CTR. FOR VICTIMS OF HUM. RTS. VIOLATIONS, SEXUAL AND GENDER-BASED VIOLENCE IN THE GAMBIA: A HANDBOOK (INCLUDING STORIES OF SURVIVORS) 14 (2020), <https://victimscentergm.org/wp-content/uploads/2020/07/Handbook-on-SGBV-in-The-Gambia-FINAL.pdf>.

and political unrest further serve as a backdrop for sexual violence harms against Gambian women.²⁹² From the perspective of on-the-ground human rights organizations and victims' support groups, these norms "can foster a culture of outright abuse, such as rape," among other forms of violence against women.²⁹³ Thus, in many ways, the dominant narratives in The Gambia "portray women as victims and men as perpetrators."²⁹⁴ What is clear, then, is that deploying these cultural, racial and gender stereotypes to justify rape and sexual violence against Gambian women under Jammeh's regime allowed both those at the top, including the former dictator, and those under his regime to perpetrate widespread sexual violence against Gambian women.

In the case of Toufah, based on these retrenched gender, racial and cultural stereotypes often portrayed and reinforced in the media, many Gambian citizens and those in the diaspora initially portrayed her as a "whore" and said Jammeh "would never be tempted by someone like [her]."²⁹⁵ According to Toufah, many in The Gambia and its diaspora "believed the worst" about her after she rejected Jammeh's marriage proposal and fled to Canada.²⁹⁶ In her own words, these widespread norms contributed to her silence and made it difficult to initially speak out,

My culture—like so many patriarchal cultures around the world—left no space to imagine I might have other reasons to flee. And I had no way to safely speak out to counter the image of me that bloomed in the soil of misogyny, fertilized with rumour. It didn't escape my notice that these were judgments made about me even though I hadn't publicly accused him of rape. I couldn't imagine what backlash I'd face if I told the truth.²⁹⁷

But in her estimation, "in silencing women to preserve our own comfort, to protect our families from shame is a misguided effort to protect our family dignity, we are condemning our sisters, our mothers, our cousins to being forever broken, forever hidden, forever traumatized."²⁹⁸

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.* at 15.

²⁹⁵ JALLOW, *supra* note 1, at 86.

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 86–87.

²⁹⁸ *Id.* at 234.

Only after she testified for five hours before the TRRC and after she unearthed the truth of what had happened did counternarratives emerge of her unjustified, unspeakable rape and of widespread sexual violence.²⁹⁹ As Toufah wrote in her memoir, “The other women’s stories bore similarities to mine.”³⁰⁰ Media reports and the Human Rights Watch report, as well as limited efforts by the TRRC, helped to reframe the seemingly legitimate abuse and violence as severe human rights violations.³⁰¹ The organization of the women’s march and use of the hashtag #IAMToufah further helped to reframe the discussion and contribute to the construction of altered collective memories.³⁰² These were significant advancements, yet, as reflected in the discussion above, much more is still needed at this level.

Despite these significant steps forward, without either a formal apology or acknowledgment of the need for further justice through reparation or criminal prosecutions of perpetrators, recognition is incomplete.³⁰³ Moreover, despite these admirable steps forward, little to no attention was given to the formation of collective memories around these women’s intersectional identities.

2. *Development of Collective Memories Focused on Intersectional Identities*

Toufah’s truth told under oath before the TRRC, to the media and to international audiences is stunning. In these settings—but notably not in a courtroom—she was able to use her own voice to share her story. By doing so, she started to construct a counternarrative about who she was and how the sexual violence harms were perpetrated against her in Gambian society. And in many ways, she provided a means to help the broader community of Gambian women to construct collective memories of their own individual and group sexual and gender-based violence experiences.

For example, #IAMToufah illustrates on-the-ground efforts to construct collective memories of women of color who had suffered from sexual violence under a repressive government regime in The Gambia.³⁰⁴ With no

²⁹⁹ *Id.* at 271.

³⁰⁰ *Id.* at 209.

³⁰¹ *See, e.g., id.* at 219–22, 254–69 (detailing efforts by these organizations, from Toufah’s perspective, to reframe the conversation to be rooted in human rights violations).

³⁰² *See id.* at 271 (describing the women’s march and use of the hashtag).

³⁰³ *See* Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 35, at 128–38 (providing examples of reconciliation initiatives stalled and criticized and illustrations of “unfinished business” in truth and reconciliation commission initiatives).

³⁰⁴ *See* JALLOW, *supra* note 1, at 242–44 (describing the widespread use of the hashtag #IAMToufah among Gambian women survivors of sexual violence).

linguistic structure to describe rape or sexual violence,³⁰⁵ #IAmToufah provided a narrative structure to comprehend sexual violence harms to women of color while also framing those past harms to the present through storytelling and the representation of strength, voice and visibility in Toufah, the twenty-three-year-old rape victim, survivor and activist.³⁰⁶ As one media news outlet described, “if [Yahya Jammeh] never comes to justice [due to questions of political will], there is some justice in this: a woman whose name evokes his brutality is seeing to it that other women’s names and stories remain their own.”³⁰⁷

Indeed, through broader media reports, presentations to international audiences, her TRRC testimony and her more recent memoir, Toufah has been leading the way in reframing and altering collective memories—not only about her detailed rape but also about the reactions to her storytelling that reflect deeply ingrained cultural, racial and gender stereotypes. For example, immediately after testifying to the TRRC, an Imam³⁰⁸ approached her to commend her on her bravery and suggested that she was worthy of being his son’s wife as a means of celebrating her.³⁰⁹ To Toufah, however, this underscored “how far we had to go in order for my worth, for any woman’s worth, to be seen as residing in her *self*, not in her role as a wife or prospective wife, or as a mother, a daughter or daughter-in-law.”³¹⁰ Put another way, in Toufah’s words, “[i]f a woman’s value, a woman’s autonomy, her right to be free from assault, is dependent on her relationships as a mother, wife, sister or daughter to the men in her life, it means she is only as human as the strength of her relationships to the men around her—that women are only conditionally human.”³¹¹ These views may be considered somewhat radical to those in The Gambia, but they exposed the underlying discursive strategies and stock stories that contributed to the underlying injustice and reflected what is still needed to recognize the value

³⁰⁵ Petesch, *Gambian Toufah Jallow Tells Story of Surviving Rape by Dictator*, *supra* note 14 (Toufah explaining that speaking about sex and sexuality is “just not done” and that people use phrases like “somebody fell on me” to describe rape in her native Fula language); *see also supra* notes 11 & 256 and accompanying text.

³⁰⁶ *See* JALLOW, *supra* note 1, at 271 (exploring the impact of the #IAmToufah movement in The Gambia).

³⁰⁷ Teitel, *I Am Toufah*, *supra* note 214.

³⁰⁸ An *Imam* is the prayer leader of a mosque. *Imam*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/imam> (last updated Mar. 8, 2023).

³⁰⁹ JALLOW, *supra* note 1, at 269.

³¹⁰ *Id.*

³¹¹ *Id.*

of women of color in society: listening to them, working with them and empowering them through their intersectional identities.

Notably, for survivors interviewed as part of the Global Reparations Study, there was an emphasis on the fact that survivors are not a “homogenous group” as “each of them has a distinct set of needs based on intersecting factors and vulnerabilities.”³¹² Rooted in African matriarchal histories, including strong examples of leadership and strength against colonial forces and against a strong Muslim African patriarchy,³¹³ Gambian women, in particular, reflect complex identities as “activists, fighters and advocates” for themselves and others.³¹⁴ As Toufah herself has recognized, there is a far-reaching matriarchal history of African women to “draw on for examples of female leadership and strength.”³¹⁵ As one example, she describes women traders known as Signarés who used family networks in The Gambia and Senegal to facilitate the transfer and sale of products at home and abroad.³¹⁶ As another example, she refers to Phillis Wheatley, who was born in The Gambia before being enslaved and making her way to become one of the most celebrated poets in eighteenth-century North America.³¹⁷

Apart from these specific individual examples, more broadly as a collective group, Gambian women have a long history of organizing themselves (and others) to advance their unique economic, social and political interests.³¹⁸ These particularized interests often emphasize health

³¹² 2021 GLOBAL REPARATIONS STUDY SUMMARY REPORT OF PRELIMINARY FINDINGS, *supra* note 42, at 7.

³¹³ See JALLOW, *supra* note 1, at 281, 295, 297.

³¹⁴ See *id.* at 277. Although The Gambia is a small West African country with a population of approximately 2.64 million, this Article focuses on the rich history and context of Gambian women to illustrate and uplift just one example of the many complex intersectional identities among women of color as “activists, fighters and advocates.” See *id.* Additional examples or illustrations are beyond the scope of this Article but ripe for further inquiry.

³¹⁵ See JALLOW, *supra* note 1, at 295 (citing to examples of her mother and grandmothers, pop culture examples like Nakia from the movie *Black Panther*, based in part on the Agoji, the all-women army in the African Kingdom of Dahomey and others).

³¹⁶ *Id.* at 296; see Cymone Fourshey, *Women in The Gambia*, OXFORD RSCH. ENCYC. AFR. HIST., Mar. 9, 2019, at 7–8 [hereinafter Fourshey, *Women in The Gambia*] (explaining the crucial role Senegambian Signarés played in Portuguese and later French, Dutch and British trade with West Africa from the sixteenth through nineteenth centuries).

³¹⁷ JALLOW, *supra* note 1, at 296; see generally VINCENT CARRETTA, PHILLIS WHEATLEY: BIOGRAPHY OF A GENIUS IN BONDAGE (2011) (recognizing Phillis Wheatley “as a heroic figure in an age of heroes” in the first full-length biography of her).

³¹⁸ See generally Fatou Janneh, *Women's Struggles Through Collective Action in The Gambia, 1950s to 1970*, 21 AFR. STUD. Q. 1 (Aug. 2022) [hereinafter Janneh, *Women's Struggle Through Collective Action in The Gambia*] (discussing the history of collective

care, social welfare and education and reflect their “struggle to gain ‘voice.’”³¹⁹ At the margins of society, particularly under British colonial rule, and faced historically with a weak economy, poor infrastructure and massive illiteracy, among other things, many Gambian women often resorted to using collective action through women’s grassroots organizations—particularly *kafoolu* in rural and peri-urban areas³²⁰ and *kompins* in urban settings.³²¹ Through these groups, Gambian women sought to overcome barriers and to promote their key economic, social and political interests.³²²

organizing among women during British colonial rule and leading up to The Gambia’s independence in the 1960s); Fatou Janneh, *Kafoolu and Kompins: Women’s Grassroots Movements in Post-Colonial Gambia* (Dec. 2021) (Master of Arts Thesis, College of Arts and Sciences of Ohio University) (on file with the OhioLINK Electronic Theses & Dissertation Center) (examining Gambian women’s collective organizing after independence through oral interviews, archival documents, newspapers and government publications).

³¹⁹ See ‘*Gambian Women Deserve More Leadership Roles in Politics*’ – Gender Activist, PANAPRESS NEWS AGENCY (Nov. 22, 2020, 7:14 PM), https://www.panapress.com/%EF%BF%BDGambian-Women-deserve-more-lead-a_630669267-lang2-free_news.html [hereinafter PANAPRESS NEWS AGENCY, ‘*Gambian Women Deserve More Leadership Roles in Politics*’] (quoting the Secretary General of the Community for Democracies, Thomas E. Garrett, who argued that “women leaders prioritized policies that emphasized health care, social welfare and education” and, noting that “women participants [in politics] would help transform The Gambia into a full-fledged democracy,” who also said that “[s]tates where women hold more political power are less likely to go to war and less likely to commit human rights abuses”). A detailed, careful history of collective organizing among Gambian women is beyond the scope of this Article. These examples are for illustrative purposes only. For more in-depth accounts, see Janneh, *Women’s Struggles Through Collective Action in The Gambia*, *supra* note 318 (collecting sources of scholarship on prominent Gambian women of Bathurst and women farmers’ socio-economic contributions in agriculture) and the sources in Fourshey, *Women in The Gambia*, *supra* note 316, at 7–8 (providing a brief sampling of African women who shaped The Gambia River territories over the last six centuries).

³²⁰ *Kafoo* (plural *kafoolu*) means “traditional associations” in the Gambian language, Mandinka. Janneh, *Women’s Struggles Through Collective Action in The Gambia*, *supra* note 318, at 14 n.3. According to scholar Fatou Janneh, although there is a “long-standing history of women’s network in rural Gambia,” there is little evidence as to exactly when *kafoolu* were created. *Id.* at 5.

³²¹ *Kompins* refer to “associations/organizations” in the Gambian language, Wolof. Janneh, *Women’s Struggles through Collective Action in The Gambia*, *supra* note 318, at 14 n.3. “Both *kafoolu* and *kompins* constitute different ethnolinguistic references of The Gambia.” *Id.* Scholar Fatou Janneh distinguishes *kompins* from *kafoolu* based on their origins and pre- or post-colonial roots, but importantly, she notes that they have “bec[o]me intertwined with the purpose of enhancing women’s economic and social freedom.” *Id.* at 5.

³²² See *id.*

As Gambian scholar Fatou Janneh put it, “Despite the hostility of the colonial environment, women contested and negotiated with the system that gagged them.”³²³ Beginning with the passage of universal adult suffrage in the mid-twentieth century, and on the path to independence and decolonization, key women journalists and political leaders led the way forward for Gambian society, in conjunction with women’s grassroots organizations and others.³²⁴ Many educated or elite women gathered through *kompins* to engage in education, health, entertainment and humanitarian activities.³²⁵ Still other women *kafoolu* members largely became breadwinners as farmers and food producers, whose collective action bolstered socio-economic opportunities and contributed to the Gambian economy.³²⁶ Yet, despite these collective efforts to shape Gambian society and politics, and despite significant efforts to advance women’s rights and goals for the benefit of all, Gambian women today still often find themselves at the margins of relevant positions in government, business and decision-making.³²⁷

In recent years, though, a group of women who cannot bear children or whose children died at an early age—known as *kaneleng*—have carried on the rich legacy of women’s collective action in The Gambia. They seek to advance storytelling and empowerment of women victims to make “transitional justice processes more accessible and inclusive.”³²⁸ Due to the high value placed on fertility and childbearing in Gambian culture, *kaneleng* often suffer social exclusion yet are free to engage in “taboo” matters, such as discussing sexual and gender-based violence, that are otherwise left out of

³²³ *Id.*

³²⁴ *Id.* at 8–9 (describing the resistance of women journalists, Marion Foon, Cecilia Moore and Harriet Camara against colonial anti-press laws, and their promotion of women’s issues, along with the key roles of Hannah Forster, a wealth entrepreneur and one of the country’s first women political activists, and of Rachel Palmer, the only woman to attend the London Constitutional Conference of 1961).

³²⁵ *Id.* at 3–4. For example, the Women’s Contemporary Society and Gambia Women’s Federation encouraged parents to enroll their daughters in school and organized a “baby award” annually and offered incentives to mothers of the healthiest babies to promote proper sanitation and hygiene. *Id.* at 4 (“By advocating for mass education for girls, [*kompins*] were the vanguard of a struggle for social change and the dismantling of gender barriers.”).

³²⁶ *Id.* at 6. Organizations such as the Ndemban Garden Association and The Gambia Women Farmers’ Association were involved in food production, engaging in horticultural ventures and breeding livestock for provincial markets. *Id.*

³²⁷ See PANAPRESS NEWS AGENCY, ‘Gambian Women Deserve More Leadership Roles in Politics’ – Gender Activist, *supra* note 319.

³²⁸ *Traditional Communicators, Women Lead the Way for Justice in The Gambia*, INT’L CTR. FOR TRANSITIONAL JUST. (Jan. 31, 2019), <https://www.ictj.org/news/traditional-communicators-women-lead-way-justice-gambia>.

public discourse.³²⁹ Following the fall of the Jammeh dictatorship, *kaneleng* women led support groups using traditional song, story and rituals to educate their communities and to promote social healing.³³⁰ Known as traditional communicators who have a broad reach, particularly to rural communities, *kaneleng* women, by sharing their own experiences, created a safe space for others to share their stories. In doing so, they laid a “powerful foundation for deeper work with the women victims across the country.”³³¹ And they themselves have demonstrated the power of their own intersectional identities as Gambian women.

There are many other specific examples of contemporary strong African Black women in The Gambia. For example, Toufah cites to “female school principals, doctors, lawyers, activists, businesswomen and artists such as educators Dr. Isatou Touray and Harriet Margaret Ndow; Jaha Dukureh, a Nobel Peace Prize nominee for her work to combat female genital mutilation; and environmentalist Isatou Ceesay.”³³² Toufah’s name is now added to that growing list of women who have made their mark in Gambian history. In many ways, Toufah herself “performed” her intersectional identity as a Black Gambian woman resisting traditional Muslim African patriarchal norms—which otherwise likely would have relegated her to the confines of the home and the duties of child-rearing—by first rejecting Jammeh’s marriage proposal in pursuit of higher education abroad, and by later combatting attempts to silence her by speaking out and telling her story. And, today, she continues to demonstrate the complex, multidimensional aspects of her identity—as an activist, survivor, social worker, teacher, advocate, leader and much more. All while furthering many of the social, economic and political interests of Gambian women dating back at least a century. She continues to tell her full story—carrying on the long legacy of Gambian Black women struggling to gain and express their voices. Through “performing” and “demonstrating” her intersectional identities, she has influenced, and continues to shape, Gambian women’s desired society and communities, individually on her own and more broadly through collective action with other Gambian women, including younger generations of Gambian teenagers. Although she, too, was a victim of Jammeh and his oppressive regime, she shall forever be remembered as much more than that. And she

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² JALLOW, *supra* note 1, at 295.

is leading the way and creating a justice opening for many Gambian women, collectively, to be remembered more than that too.

By focusing on these intersectional identities through storytelling, Gambian women—through the truth-seeking and recognition process in redress initiatives—have embarked on a groundbreaking path of challenging the dominant, “common-sense” narratives, focusing on the full humanity of their conditions, and changing cultural and social norms about their place and roles in society. By overcoming these barriers and breaking their silence in telling their stories, they are challenging power and structural constraints that previously relegated them to the bottom of the social and redress hierarchies. Although much more is still needed to ensure full recognition of their complex sexual violence harms, then and now, storytelling through their complex, multi-layered identities directly responds to stigmatization and social exclusion. Importantly, storytelling has a “cathartic [healing] impact of being able to come together with other survivors to share experiences and rebuild together.”³³³

Recognition, then, may be more fully achieved by listening to these women of color’s voices, in their own words and languages, and allowing them to fully express all facets of their intersectional identities. All participants in the redress process—and those beyond it in the international community—should strive to support this by finding safe spaces and openings for this mutual engagement and sharing of stories.

VII. CONCLUSION: LOOKING AHEAD TO INCLUDE MORE WOMEN OF COLOR’S VOICES

The Global Reparations Study, through its innovative, path-breaking on-the-ground study, has found that “it is possible for survivors to make their voices heard” and “doing so is not only paramount in providing appropriate recommendations for the design and implementation of meaningful survivor-centric reparations, but also has a reparative value in itself.”³³⁴ As the International Center for Transitional Justice (ICTJ) Program Officer for Uganda recognized, “Victims know what they need in order for their lives to be transformed, therefore they have to be full and equal participants in any of these processes.”³³⁵ That is, simply including their voices during truth commission investigations, hearings and proceedings is not enough. Their

³³³ 2021 GLOBAL REPARATIONS STUDY SUMMARY REPORT OF PRELIMINARY FINDINGS, *supra* note 42, at 7.

³³⁴ *Id.* at 5.

³³⁵ *New Study Calls for Reparations for Victims of Conflict-Related Sexual Violence in Uganda*, INT’L CTR. FOR TRANSITIONAL JUST. (Oct. 17, 2022), <https://www.ictj.org/latest-news/new-study-calls-reparations-victims-conflict-related-sexual-violence-uganda>.

voices, influence and value should be taken into account at the earliest opportunity, particularly in the design and shaping of redress initiatives, first for truth commission-related matters, and later in the implementation and assessment of recommendations and reparations.³³⁶ Meaningful participation by women, beyond just a “seat at the table,” is paramount.³³⁷ This is significant not only in endeavoring to achieve genuine social healing but also to ensure that women of color come forward to tell their stories. As the ICTJ has recognized, “[e]fforts to increase the participation of women in post-conflict measures have taught us that if the most marginalized are not taken into consideration in design and implementation, they will not feel safe enough to come forward.”³³⁸ Moreover, case studies from Colombia, Guatemala, Sri Lanka, The Gambia and Tunisia strongly suggest that “more inclusion of women leads eventually to more inclusion for everyone.”³³⁹

This Article broadly sketched out possible avenues to address the past and persisting sexual violence wounds of women of color. Such possible

³³⁶ See Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 35, at 165, 177 (proposing a new fourth step for assessment, implementation and oversight in reconciliation initiatives, which may include retooling the prevailing theoretical reconciliation framework to “better account for practical on-the-ground realities”); Lisa Davis, *Third Party at the Table: Afro-Colombian Women’s Struggle for Peace and Inclusion*, 4 COLUM. HUM. RTS. L. REV. ONLINE 363 (2020) (underscoring the historic achievements of the 2016 Peace Accord between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) for its recognition of women, LGBTIQ persons, Afro-Colombians and Indigenous Peoples as victims, emphasis on gender justice and women’s participation and acknowledgment of discriminatory violence at the intersection of race, ethnicity and gender, but discussing the real consequences of the lack of full, genuine and comprehensive implementation of the Peace Accord).

³³⁷ UN WOMEN & UNDP, WOMEN’S MEANINGFUL PARTICIPATION IN TRANSITIONAL JUSTICE: ADVANCING GENDER EQUALITY AND BUILDING SUSTAINABLE PEACE 4–5 (Mar. 2022) [hereinafter UN WOMEN & UNDP, WOMEN’S MEANINGFUL PARTICIPATION IN TRANSITIONAL JUSTICE], <https://www.unwomen.org/sites/default/files/2022-03/Research-paper-Womens-meaningful-participation-in-transitional-justice-en.pdf>; see Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, *supra* note 197, at 226 (“Indeed, the victim *can* speak and do much more.”).

³³⁸ Kelli Muddell, *An Overlooked Aspect of Sexual and Gender-Based Violence*, *supra* note 44.

³³⁹ UN WOMEN & UNDP, WOMEN’S MEANINGFUL PARTICIPATION IN TRANSITIONAL JUSTICE, *supra* note 337, at 4; see also Melanne Verveer, *Foreword* to ROSLYN WARREN ET AL., GEORGETOWN INST. WOMEN, PEACE & SEC., INCLUSIVE JUSTICE: HOW WOMEN SHAPE TRANSITIONAL JUSTICE IN TUNISIA AND COLOMBIA (2017), <https://giwps.georgetown.edu/resource/inclusive-justice/> (“In order to create solutions that benefit the whole of society, women’s voices must be heard.”).

pathways forward include, importantly, recognizing these women’s unique sexual violence harms during the redress process through the construction of collective memories by way of storytelling. By creating justice openings for these women to use their voices and tell their stories—including from the vantage point of their various intersectional identities—more comprehensive and enduring social healing may follow. This Article suggests that by recognizing and creating safe spaces for these women of color to develop their individual and collective memories of the harms perpetrated, particularly through truth and reconciliation commission investigations and hearings, we may begin to counter the dominant, traditional narratives of sexual violence atrocities against women during conflict. In doing so, this Article underscores the need for more complex, nuanced, multi-layered counternarratives reflecting that women of color are not only “victims,” but also survivors, fighters, advocates, political activists and much more. Through a mini case study of Toufah Jallow’s experience and The Gambia’s TRRC, it is evident that more is needed for comprehensive and enduring social healing through justice. Foundational to that genuine social healing is women of color’s voices and their involvement at all stages. As one survivor of sexual violence put it, “We who are affected must be involved in all decisions and we must also speak out together. Our slogan is ‘Nothing without us’, nothing without the victims, you cannot speak for us anymore.”³⁴⁰ Now is the time to listen to them with empathy and understanding. Now is the time to strive for more genuine *social healing through justice*.

³⁴⁰ 2021 GLOBAL REPARATIONS STUDY SUMMARY REPORT OF PRELIMINARY FINDINGS, *supra* note 42, at 2.