

Traditional Justice and Reconciliation in the Aftermath of the Massacre in Pajong Village, Northern Uganda

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I. INTRODUCTION

No individual member of a given community lives as though detached from the history of that particular community to which he or she belongs.¹ This sense of belonging to a past is not only treasured by members of a given community, as it fully explains their origin — both mythical and historical — but it also shapes their primary conviction of good or evil, what they hold onto as “values,” as well what constitutes as justification for their acts.² What

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1. MAURICE HALBWACHS, *THE COLLECTIVE MEMORY* 23 (1980).
2. See David Crabtree, *The Importance of History*, available at <http://msc.gutenberg.edu/2001/02/the-importance-of-history> (last accessed Jan. 9, 2015).

is even more specific is the fact that the people's past becomes the most referential element to reckon with in the aftermath of a violent conflict.³

This Article acknowledges that the need for peaceful co-existence and harmonious living in the aftermath of violent conflict cannot be overemphasized. This Article was based on an ethnological fieldwork carried out in a small human society, Pajong-A village. The village was carved out as a result of the decentralization policy, which was formally enshrined in the 1995 Uganda Constitution.⁴ It is located in Pajong Parish, Mucwini sub-county, Kitgum District in the north of Uganda.⁵ In today's Pajong-A village, a fragile small society, which was the epicenter of the horrendous Mucwini massacre in 2002,⁶ the question of how best to deal with the bitter legacy of violence is of paramount importance to the survival of such post-war human society. Although the war in northern Uganda, together with all direct violent confrontations, has no doubt ceased, peace is still utterly disturbed by the continuing voices echoing calls for "justice" for the past evil deeds.⁷ The questions that have remained unanswered are: (1) should priority be given to dealing with the instigators of past atrocities in a punitive manner, thereby combating the culture of impunity that has come to characterize many internal conflicts?; and (2) or is it more important to start by focusing on restorative measures designed to ensure that reconciliation and peaceful co-existence, and with them the prospects for a society's longer-term recovery, are bolstered?

There is no doubt that the often conflicting understandings of justice held by different post-conflict communities (both victim and offender communities) threaten to disturb any peaceful settlement in the aftermath of a violent conflict. The case of post-war Pajong-A village, marred by deep-seated clan antagonisms, reminds us that the basis for durable peace lies not merely in reconstructing a legitimate and inclusive national-level government, but rather, in reconciling conflicting justice expectations from

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3. David Bloomfield, *The Context of Reconciliation*, in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK 40 (David Bloomfield, et al., eds. 2003).
 4. UGANDA CONST. art. II, § 3. Article II, Section 3 provides that "[t]he State shall be guided by the principle of decentralisation and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs." UGANDA CONST. art II, § 3.
 5. Human Rights Focus, Land Conflict Mapping Tool, *available at* <http://www.lcmt.org/uganda/kitgum/mucwini/pajong/pajonga> (last accessed Jan. 9, 2015).
 6. Gulu District NGO Forum, Massacre in Mucwini (Field Notes for The Justice and Reconciliation Project) 2, *available at* http://migs.concordia.ca/documents/MassacreinMucwini_Final.pdf (last accessed Jan. 9, 2015).
 7. *See Life on the Edge: The Dilemma of the White Ant* (BBC television broadcast Sep. 8, 2008).

different communities (clans, lineages, and families) as well as engaging in judicial and socio-economic reconstructions at the local tier of society, like a Ugandan village.⁸ Such reconciliation may never come into existence unless the differing concerns of justice following mass atrocities are genuinely negotiated and then considered accordingly.

The second half of the year 2006, which followed the signing of the “Agreement on Comprehensive Solutions” under Agenda Item 1 of the Juba Peace Process,⁹ ushered in a relatively tranquil northern Uganda, with the civilian population — former internally displaced persons (IDPs) — having resettled in their respective home areas.¹⁰ This, however, has not been the case for all formerly displaced families of Pajong-A village, who have been taking shelter in the vicinity of the headquarters of Mucwini sub-county.¹¹ More conspicuously, some family lineages from the Pubec clan are still being held in the then established IDP camps neighboring the sub-county headquarters as a consequence of non-acceptance for resettlement by members belonging to the Pajong clan.¹²

Living within such distinct communities, these clan members separately possess their own beliefs, codes, and myths; their own trajectories and stories told and retold over time (community narratives); their own obligations and taken-for-granted worlds; their own flavors and tastes; and in brief, their own understandings of home and destiny.¹³ In this respect, individual members from a common group will categorize ways of understanding, moral judgments, boundaries of what is permissible and prohibited, basic frames of meanings, fears and desires, and pleasure and suffering, thus creating a strong sense by which their community is framed.¹⁴

As communal individuals, members from a given community of belonging, framed by the thread of community narratives, always search for bits of characterization in terms of some “us” as against some “other.”¹⁵ This development of *othering* further bestows a socially acceptable reason for

8. See Advisory Consortium on Conflict Sensitivity, *Northern Uganda Conflict Analysis* 52 (Sep. 2013).

9. Rosemary Nagy, *Centralizing legal pluralism? Traditional justice in transitional contexts*, in *TRANSITIONAL JUSTICE AND PEACEBUILDING ON THE GROUND: VICTIMS AND EX-COMBATANTS* 90 (Chanrda Lekha Sriram, et al., eds. 2013).

10. Gulu District NGO Forum, *supra* note 6, at 4.

11. *Id.* at 17.

12. *Id.*

13. ADAM SELIGMAN, *MODEST CLAIMS: DIALOGUES AND ESSAYS ON TOLERANCE AND TRADITION* (2004).

14. *Id.*

15. *Id.* See generally EDWARD SAID, *ORIENTALISM* (2003).

compensation or restitution to members of the in-group (considered as victims) on the one hand, and a call for retribution or punishment to members of the out-group (considered as offenders), on the other hand, in the aftermath of violent conflict.¹⁶

II. FRAMING TRADITIONAL JUSTICE AND RECONCILIATION

A recent move from a retributive type of justice to restorative justice and reconciliation has seriously sparked off an on-going debate in most post-conflict societies, such as post-war northern Uganda.¹⁷ In this highly controversial debate about transitional justice, political leaders, members of civil society organizations, and academics (at both local and international levels) are divided on numerous points.¹⁸ By and large, the most divisive question is how to balance the demands of justice against the many political, economic, social, and cultural contingencies.¹⁹

According to Lucien Huyse, “[t]hose who emphasize the beneficial effects of prosecution bring forward two sets of arguments.”²⁰ The first argument is victim-oriented; it is argued that “a post-conflict society has a moral obligation to prosecute and punish the perpetrators[,] because retribution is exactly what most victims want.”²¹ Prosecution in this argument

serves to heal their wounds and restore their self-confidence due to the fact that it publicly acknowledges who was right and who was wrong and, consequently, clears the victims of any labels of ‘criminal’ that were placed on them by the authorities of the past or, indeed, by the very wrongdoers (rebel groups) or the new elites.²²

In addition, “[t]he second set of arguments has to do with establishing and upholding peace and stability.”²³ It is thus argued that “prosecutions will avoid unbridled private revenge. Otherwise, victims may be tempted to take

16. See Andrew Ashworth, *Punishment and Compensation: Victims, Offenders and the State*, 6 OXFORD J. LEGAL STUD. 86, 87-89 (1986).

17. Lucien Huyse, *Introduction: tradition-based approaches in peacemaking, transitional justice and reconciliation policies*, in TRADITIONAL JUSTICE AND RECONCILIATION AFTER VIOLENT CONFLICT: LEARNING FROM AFRICAN EXPERIENCES 3 (Lucien Huyse & Marl Salter eds., 2008).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* See Leslie Vinjamuri & Jack Snyder, *Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice*, 7 ANN. REV. POL. SCI. 345 (2014).

22. See Huyse, *supra* note 17.

23. *Id.* at 3-4.

justice into their own hands.”²⁴ Therefore, the survival of a newly established order in the aftermath of violent conflict, it is argued, “depends on swift and firm judicial action against those who are responsible for the gravest violations of human rights.”²⁵

Advocates of restorative justice question whether outright punishment is the appropriate response in any and every context.²⁶ The end of a civil war or of a period of violent repression creates an intricate agenda including

rebuilding the political machinery and the civil service, guaranteeing a minimum of physical security, disarming rebel movements and re-organizing the army and police, rebuilding the socio-economic infrastructure, stabilizing the economy, establishing a non-partisan judiciary, healing the victims, repairing the damage inflicted on them, and guaranteeing a reliable security force for civilian protection among other items.²⁷

It is argued that dealing with the perpetrators, possibly by means of criminal prosecution, is only one of many challenges.²⁸ More often than not, it will be impossible to tackle all tasks simultaneously.²⁹ Choices, therefore, have to be made; it is said that the place of justice in general, and of prosecution, in particular, on the post-conflict agenda, depends on the particular conjunction of political, cultural, and historical forces.³⁰ Other problems and needs may be more important and/or more urgent than seeking justice through trials.³¹ Furthermore, proponents of this argument believe that prosecutions are ambivalent in certain transitional contexts; they can have highly destabilizing effects on a peaceful settlement.³²

The sense of justice as punishment, on one hand, is not only treasured by members of a victim-community as it promises future assurance in the post-conflict context, but it is also what shapes their primary conviction of

24. *Id.*

25. *Id.*

26. *Id.* See generally James Ojera Latigo, *Northern Uganda: tradition-based practices in the Acholi region*, in *TRADITIONAL JUSTICE AND RECONCILIATION AFTER VIOLENT CONFLICT: LEARNING FROM AFRICAN EXPERIENCES* 85-122 (Lucien Huyse & Marl Salter eds., 2008). See also Aneta Wierzynska, *Consolidating Democracy through Transitional Justice: Rwanda's Gacaca Courts*, 79 *N.Y.U. L. REV.* 1934, 1959 (2004).

27. Huyse, *supra* note 17, at 4.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

what is and ought to be done.³³ So a victim-community, a community of belonging *par excellence*, grants or refuses to grant moral credit to both in- and out-group members, is in no way universal, but restricted (just as a family is bounded) by the thread of love and trust.³⁴ In the aftermath of massive human rights abuses, victims have well-established rights to see the perpetrators punished, to know the truth, and to receive reparations.³⁵ It is argued that a history of massive unaddressed abuses is more likely to be socially divisive, to generate mistrust between groups and the institutions of the state, as well as to hamper or slow down the achievement of security and development goals.³⁶ As has been noted in most post-conflict societies where massive human rights violations have taken place, the claims of justice (retribution) refuse to go away. Hence, in trying to ensure criminal accountability for past evil deeds, retributive justice claims to establish the rule of law, and so guarantee secure communities in the aftermath of conflict.³⁷

On the other hand, unlike retributive justice, the sense of justice as restoration is more welcomed by the offender-community. This understanding of justice seeks to engage the post-conflict society in a dialogue that includes elements of truth telling, apology, and forgiveness, which ultimately leads to reconciliation.³⁸ The underlying drive for restorative justice is geared towards an evolving understanding that any dealings with the past should focus on impacting the future of the post-conflict society constructively.³⁹ The goals of restorative justice, thus, include addressing the root causes of the conflict, involving all stakeholders (both victims and offenders) in the restoration process, emphasizing the importance of truth telling, apologizing and seeking forgiveness, and preventing future conflicts through precautionary measures instituted to rebuild the affected communities.⁴⁰

33. Okello Sunday Angoma, *From Politics of War to Politics of Peace - Northern Uganda: Whose War, Whose Peace & Whose Justice* (An Unpublished Paper Presented at Wilfrid Laurier University) 15, available at <http://acuns.org/wp-content/uploads/2012/06/FromPoliticsofWartoPoliticsofPeaceAngoma.pdf> (last accessed Jan 9, 2015). See also Ashworth, *supra* note 16, at 93.

34. SELIGMAN, *supra* note 13.

35. Vinjamuri & Snyder, *supra* note 21.

36. International Center for Transitional Justice, *What is Transitional Justice*, available at <http://www.ictj.org/about/transitional-justice> (last accessed Jan 9, 2015).

37. See Angoma, *supra* note 33.

38. Huyse, *supra* note 17, at 11.

39. Wierzynska, *supra* note 26, at 1946.

40. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 12-15 (2002).

The antagonist community narratives being recounted by the differing clans (the Pubec and the Pajong), who are now considered as parties to the conflict, could make it possible for recurrence of social violence.⁴¹ These invigorated post-war stories of victimhood and denunciation, narrated by the conflicting groups, continue to contribute toward reducing the social capital, of which trust matters most, and if not well checked, the situation may degenerate into yet another deadly conflict.⁴² Despite the conspicuous observation that most parts of this region can rightly be considered as post-conflict in context, and hence calling for reconstruction and rehabilitation, considerations for post-conflict conflict prevention still ought to be exploited holistically, especially in the case of post-war Pajong-A which could possibly be one of the most (if not simply the most) precarious villages in today's northern Uganda.⁴³ Moreover, chances for the resumption of an even more violent conflict are more likely, unless issues pertaining to post-war peace (harmonious co-living) and justice (socially acceptable reparation for wrongdoing) are directly addressed.⁴⁴

The post-war situation in Acholiland presents a vivid case contrasting criminal liability to community reconciliation through restorative justice. Although the situation in today's northern Uganda could be discussed in a context of post-war reconstruction, locating justice in the post-war public discourse remains a huge challenge. Simply put, if any peace agreement failed to address the issue of criminal accountability for the Lord's Resistance Army (LRA) leaders and their accomplices or instigators (offender-community), the agreement would be rejected by the international community and doubtlessly by the victim-community itself. Similarly, if the LRA leaders together with their accomplices were not somehow shielded from prosecution by the international community (the International Criminal Court (ICC) for this matter) and by the respective community of victims — an argument vehemently presented by most local opinion leaders and civil society organizations — disarming and fully integrating this community of offenders would still be unlikely, and equally most unlikely would be the prospect of building sustainable peace in such post-war context.

There is no doubt that the notion of justice per se has different meanings to different communities of belonging, especially with reference to victim-

41. See David Bloomfield, *Reconciliation: an Introduction*, in RECONCILIATION AFTER VIOLENT CONFLICT: A HANDBOOK (David Bloomfield, et al., eds., 2003).

42. *Id.*

43. Nikolaos Tzifakis, Post-Conflict Economic Reconstruction, *available at* <http://pesd.princeton.edu/?q=node/260> (last accessed Jan. 9, 2015).

44. MICHAEL J. BOYLE, VIOLENCE AFTER WAR: EXPLAINING INSTABILITY IN POST-CONFLICT STATES 45-96 (2014).

offender communities. Yet, what is required for peace and criminal accountability is a much deeper understanding of justice. What is even more challenging is to agree on the implementation of a working definition of justice in the aftermath of a violent conflict.⁴⁵ The conflict between the community of victims and that of offenders is significantly a conflict concerning meanings of justice.⁴⁶ For a victim–community emerging from a bloody civil war, concerns about how best to deal with the bitter legacies of the past almost always point to some sort of retributive or punitive justice — giving the offenders “what they deserve[.]”⁴⁷ The offender–community, on the extreme end, remains disturbed by the general pursuit of justice in the post-conflict scenario due to the fact that retribution is inclined to their disfavor. More often than not, the search for “justice” in the aftermath of a violent conflict ends up frustrating the search for stability and “peace[.]” which is much wanting in the very aftermath of violent conflict.

Considering past bitter memories and subsequent post-war narratives of criminal liability within the broader peace discourse in the context of post-war northern Uganda, this Article attempts to grapple with the many obstacles to building a sustainably peaceful village of Pajong-A in the aftermath of a violent conflict, in this case, a massacre. Can justice, as perceived by those who were victimized, be complementary to and compatible with the pursuit of peace as conceived by those who effectively victimized them? Will the pursuit of justice as reparation always eclipse the search for peace as harmonious co-living in the aftermath of a violent conflict? Can sustainable peace be attained in a post-war context without deliberate consideration of various demands of justice? Should community reconciliation in the aftermath of a violent conflict take precedence over socially acceptable compensation for past wrongdoing? These are questions which have significantly shaped the reflections in this Article.

III. INTERROGATING THE *MATO OPUT* TRADITIONAL JUSTICE SYSTEM

Most, if not all, African societies have had alternative methods of reintegrating the wrongdoers into society and letting them assume their societal roles as it might have been prior to the conflict (whether violent or not).⁴⁸ The *Gacaca* courts in Rwanda,⁴⁹ the *Magamba* spirits in central

45. See Angoma, *supra* note 33, at 12–13.

46. See DOUGLAS E. NOLL, *ELUSIVE PEACE: HOW MODERN DIPLOMATIC STRATEGIES COULD BETTER RESOLVE WORLD CONFLICTS* 44(2011).

47. Mabel Sheila Turyagenda, *Justice in the Eyes of the Beholders: Restorative and Retributive Justice in Northern Uganda* (A Paper Submitted in Partial Fulfilment of the Requirements for a Master’s Degree in Human Rights Practice) 19, available at <http://cardata.gmu.edu/docs/SudanTaskGroup/InnsbruckHaddijahNabbalePaperRevised-1.pdf> (last accessed Jan. 9, 2015).

48. Huysse, *supra* note 17, at 10.

Mozambique,⁵⁰ the *Mato Oput* rituals among the Acholi in northern Uganda,⁵¹ the *Ngele Gbaa* rite among the Kpaa Mende in Sierra Leone,⁵² and the *Bashingantahe* institution in Burundi⁵³ are among traditional reconciliation mechanisms, which have been advocated, and to some degree, embraced by affected communities in the aftermath of a violent conflict.⁵⁴ Given the intricacies that have almost always characterized civil wars in most African societies, these types of transitional justice mechanisms have thus emerged as ways-out to best serve the interests of a post-conflict scenario.

The *Mato Oput* ritual — the communal drinking of a concoction of a bitter local brew by former antagonists — provides a ritualized form of reconciliation.⁵⁵ This traditional justice ritual reflects a cultural understanding of justice that sees social pardon as better addressing the requirement of reconciliation than punishment meted out within legal structures.⁵⁶ In a way to ritualize remorse caused by the past evil deeds, *Mato Oput*, as a ritual, becomes a way of accepting former offenders back into the community once they have acknowledged and accepted responsibility for what they have done.⁵⁷

Cultural anthropologists remain divided about its significance.⁵⁸ In many of his arguments about contemporary application of transitional justice, Tim

49. *Id.* at 12.

50. Victor Igreja & Beatrice Dias-Lambranca, *Restorative justice and the role of magamba spirits in post-civil war Gorongosa, central Mozambique*, in TRADITIONAL JUSTICE AND RECONCILIATION AFTER VIOLENT CONFLICT: LEARNING FROM AFRICAN EXPERIENCES 68-70 (Lucien Huyse & Marl Salter eds., 2008).

51. Latigo, *supra* note 26, at 103.

52. Joe A.D. Alie, *Reconciliation and traditional justice: tradition-based practices of the Kpaa Mende in Sierra Leone*, in TRADITIONAL JUSTICE AND RECONCILIATION AFTER VIOLENT CONFLICT: LEARNING FROM AFRICAN EXPERIENCES 136-38 (Lucien Huyse & Marl Salter eds., 2008).

53. Assumpta Naniwe-Kaburahe, *The institution of bashingantahe in Burundi*, in TRADITIONAL JUSTICE AND RECONCILIATION AFTER VIOLENT CONFLICT: LEARNING FROM AFRICAN EXPERIENCES 154 (Lucien Huyse & Marl Salter eds., 2008).

54. See generally LUCIEN HUYSE & MARK SALTER, TRADITIONAL JUSTICE AND RECONCILIATION AFTER VIOLENT CONFLICT (2008).

55. Latigo, *supra* note 26, at 105.

56. See generally Jessica Gavron, *Amnesties in the light of developments in the international law and the establishment of the International Criminal Court*, 51 INT'L & COMP. L.Q. 91, 93 (2002).

57. Latigo, *supra* note 26, at 105.

58. Michael Bartlet, *Forgiveness, Reconciliation and Judicial Process in Northern Uganda: The Lord's Resistance Army and the International Criminal Court*, 2 AFR. PEACE & CONFLICT J. 42, 49 (2009).

Allen, for instance, emphasized the limitations of *Mato Oput* and other traditional justice mechanisms, outlining the dangers of exceptionalism in presenting the Acholi as “other” and outside the Ugandan cultural mainstream.⁵⁹ He suggests that an obsession of so many concerned about suffering in northern Uganda with “traditional justice” inadvertently reinforces a tendency to demonize the people of the region.⁶⁰

Traditional and religious leaders in northern Uganda, on the one hand, have emphatically argued for the many benefits of the Acholi traditional justice mechanisms as the best alternative means of criminal accountability for the past evil deeds by offenders.⁶¹ Retired Anglican Bishop of Kitgum and then vice president of the Acholi Religious Leaders Peace Initiative (ARLPI), Right Reverend (Rt. Rev.) Macleod Baker Ochola II once reported, “*Mato [O]put* is one of the best justice systems in the world because it forgives, [] restores broken [relationships,] and creates the process of healing in the hearts of those who have been wounded by violence and death.”⁶² In connection to the practice of Acholi traditional justice mechanisms vis-à-vis conventional international criminal justice, Rwot David Onen Acana II, the current Paramount Chief of Acholiland, is reported as having said that the ICC needed to learn about “forgiveness and reconciliation” from the people in Acholiland, and that the “eye for an eye” form of justice that the ICC was attempting was not suited for Acholiland, “where it is widely perceived here that this is primitive.”⁶³

On the other hand, while the subject of traditional justice has been in the limelight recently, most of the research conducted has not been sufficiently differentiated to provide adequate guidance and inform the aforementioned policy shifts.⁶⁴ Lyandro Komakech further noted that discrepancies in the importance attached to traditional justice and in the degree of individual familiarity with such practices may be linked to the nature and level of exposure to violence and to the duration of conflict in the respective areas, or it may indicate differences in the relative prevalence of traditional justice in the respective districts of northern Uganda.⁶⁵

59. *Id.* at 50.

60. TIM ALLEN, TRIAL JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE LORD’S RESISTANCE ARMY 167 (2006).

61. Bartlet, *supra* note 58, at 51.

62. *Id.*

63. *Id.* at 52.

64. Lyandro Komakech, *Exploring the place of traditional justice in post-conflict Uganda*, in INDIGENOUS VOICES IN THE SUSTAINABILITY DISCOURSE: SPIRITUALITY AND THE STRUGGLE FOR A BETTER QUALITY OF LIFE 281 (Frans Wijssen & Sylvia Marcos eds., 2010).

65. *Id.*

Furthermore, the two-decade war in the northern region of Uganda has eroded the hitherto solid and rich Acholi social fabric, which was the foundation upon which these traditional norms, belief systems, and practices were meaningfully and effectively regulated.⁶⁶ Some rituals, it is argued, might not have been performed for a long time in a particular area because wartime insecurity and the resultant extreme poverty made it impossible to put together all the necessary components.⁶⁷

While many of the questions concern the prevalence of traditional justice practices in resolving everyday crimes and disputes, the underlying issue remains whether these same principles of traditional justice mechanisms can be extrapolated to form the backbone of a national reconciliation process aimed at addressing the legacy of violence left by Uganda's many conflicts.⁶⁸ Some traditional practices may be viable and desirable in a local setting, but may not be easily incorporated into a national system.⁶⁹ Worryingly, even if the Acholi traditional justice mechanisms are incorporated into the national legal system, they might currently be less relevant to some people to whom these mechanisms are expected to be applicable⁷⁰ — young people who have been born and who have grown up during wartime, with restricted opportunity to experience or participate in such restorative practices.⁷¹

Notwithstanding the statistical dimension according to which the majority of victims of the two-decade long turmoil in northern Ugandan region are young people, and that today, some Acholi Christians tend to reject traditional practices outright as being pagan or satanic,⁷² the *Mato Oput* tradition as well as other Acholi rituals for restorative justice remain culture-specific and not flexible.⁷³ Though the benefits of such transitional justice system need not be overlooked in the aftermath of a violent conflict, the fact that a perpetrator of mass atrocities may not necessarily belong to the culture in reference makes the applicability of today's Acholi traditional justice mechanisms even more problematic in such specific cases.⁷⁴

IV. THE PAJONG MASSACRE

66. Latigo, *supra* note 26, at 105.

67. *Id.*

68. See Komakech, *supra* note 64.

69. Latigo, *supra* note 26, at 114.

70. *Id.* at 109.

71. *Id.*

72. *Id.*

73. *Id.* at 113.

74. *Id.*

In the early hours of 24 July 2002, it was reported that the LRA attacked the villages of Mucwini sub-county and killed 56 civilians (men, women, and children) in one night.⁷⁵ To date, 12 years after the massacre, many survivors still perceive this dreadful event as a deliberate and ruthless retaliation by the LRA rebels, which came as a result of deep-seated betrayal by a local dweller in Pajong (belonging to the Pubec clan).⁷⁶ This local dweller was accused of escaping from the LRA abduction with a gun and misrepresenting the family of another Pajong dweller (belonging to the Pajong clan) in a statement recorded by the LRA at the time of his abduction.⁷⁷

The retired Anglican Bishop of Kitgum, Rt. Rev. Ochola II, who happened to be the chairperson of the Mediation Team (a joint stakeholders' intervention to mediate between the people of Pajong and Pubec clans in Mucwini), reported —

What happened before the massacre had taken place is something to reckon with. The people of [Pajong] and [Pubec] clans lived together harmoniously for ages, earning their living through communal farming in the *aker* equitably divided into cleared farming fields, known as *kitaara*, per households. It was only when the people of [Pubec] clan — spearheaded by Otim Katende with the support of the then LC III of Mucwini, Onek Atube (a member of the [Pubec] clan) — claimed singular ownership of parts of the communal *aker* in the year 1992[, characterizes] that the deep-seated land dispute became manifest, leading the antagonism that still characteri[z]e the relationships of the two clans to date. The abduction of Otim Katende by the LRA in 2002, the misrepresentation of the family of Okello Manweri, who was a respected Pajong clan elder, and the subsequent massacre itself fuelled and escalated this long-standing antagonism.⁷⁸

In the aftermath of the massacre in Mucwini and the generally turbulent times caused by the LRA-led insurgency in the north of the country, Pajong returnees, who were previously mixed up in IDP camps at the peak of armed conflict from 2002–2005, have persistently denied some IDPs from the Pubec clan the right to resettle in their perceived homeland in Pajong-A village.⁷⁹ Precisely, members from the Pamong lineage who are directly linked biologically to Otim Katende — the instigator of the LRA-led

75. Gulu District NGO Forum, *supra* note 6, at 2.

76. *Id.*

77. *Id.*

78. Interview with Rt. Rev. Macleord Ochola II, Acholi Religious Leaders Peace Initiative, in Kitgum Town (Sep. 28, 2014).

79. Gulu District NGO Forum, *supra* note 6, at 17. See also Cissy Makumbi, Mucwini Massacre; 300 Families Stuck in Camps over Massacre, available at <http://acholitimes.com/index.php/perspectives/8-acholi-news/1181-mucwini-massacre-300-families-stuck-in-camps-over-massacre> (last accessed Jan. 9, 2015).

devastating massacre — are still not accepted to either dwell or till the land in Pajong-A village, where they previously co-lived with their counterparts (Pajong clan members) for ages.⁸⁰

Surviving victims of the Pajong clan, precisely those related to the family of the late Okello Manweri, a respected prominent Pajong clan elder, continue to consider the occurrence of the massacre as a purposely orchestrated venture by Pubec clan members to finalize the long-standing land dispute by exterminating Pajong members.⁸¹ This, they affirmed, was evidenced by the LRA-targeted killing of Okello Manweri, his wife Acen Duculina Okello, and their first-born son Toowili Okello, together with 53 other people gathered along the rebels' way to Okello's home, majority of whom — 21 individuals — are reported to have been Pajong clan members.⁸² In its detailed report on the Pajong-Pubec conflict in November 2008, Justice and Reconciliation Project (JRP) alluded to the fact that, in the aftermath of the massacre, victims from Pajong still accuse Otim Katende, who escaped from LRA abduction with the rebels' gun, of purposely orchestrating the massacre to resolve the long-standing dispute over farm land in Pajong.⁸³

After 12 years from the dreadful LRA attack in Mucwini, different communities of clans continue to wear various fabric of victimhood. The latter is manifested in the attitudes each group portrays vis-à-vis the other. On the one hand, Pajong clan members almost always tend to emphasize the victimization they incurred in the course of the massacre and so justify the cold-blooded relationship with their Pubec counterparts.⁸⁴ Pubec-Pamong people, on the other hand, underscore the sheer marginalization they have been undergoing for now over a decade now.⁸⁵ Clan elders of Pamong strongly argue that their people have not only become destitute following the displacement from their homeland to the so-called protected camps, but they have also been denied any chance to get out of the mud of destitution and despair, given the fact that until now they are prohibited from farming in the communal *aker* in Pajong.⁸⁶

In a highly interactive focus group discussion with nine Pajong male youths directly linked to the family of Okello Manweri, one stated that

80. See Gulu District NGO Forum, *supra* note 6, at 13.

81. Gulu District NGO Forum, *supra* note 6, at 2.

82. *Id.* at 9.

83. *Id.* at 2 & 16.

84. See, e.g., Gulu District NGO Forum, *supra* note 6, at 6-11.

85. *Id.* at 17.

86. See Gulu District NGO Forum, *supra* note 6, at 16.

[t]hese people of [Pubec-Pamong] are indeed stubborn. Our elders emphatically told us [that] they should not be allowed to come and dig in any of the fields here in Pajong anytime soon, for we[,] in Pajong[,] are still nursing our wounds of the massacre they brought to us. It is as if they always want to test our position; we still can see them come and endeavor to till the prohibited land with no prior notice whatsoever. Such are some of the attitudes which are fuelling the on-going conflict up to date.⁸⁷

Drawing from yet another occurrence, almost over a decade since the massacre took place, one respected Pubec-Pamong elder, aged 72, described what recently happened to him in the following terms —

One gentleman from the [Pajong] clan has just passed on having succumbed to a chronic disease. The ceremony for his funeral was [organized] and conducted at his home in Pajong-B. I had to make sure that I [attended] the funeral given the fact that he was a friend[,] but even most importantly a person who married from the family of my wife. Surprisingly, upon my arrival [at] the funeral at his home, I was ridiculously told to vacate the place, for this was considered a [Pajong] affair! I just could not argue with anyone there. I simply found myself chased out. This, I think, shows ... the extent of harshness we are faced with.⁸⁸

Some Pajong clan elders, persistently at the helm of decision-making processes in the village, put forth the defense for their non-acceptance of Pubec-Pamong members (to settle back and co-live with Pajong members) by reiterating the following —

It is well known to any [Acholi] person that there always is responsibility for wrongdoing in our human society. According to our [Acholi] tradition, this responsibility is[,] to a certain extent[,] collective. The massacre, although perpetrated by the LRA rebels, clearly fell within the collective responsibility of [Pubec-Pamong] people. As the latter continue to deny any sort of responsibility for this past evil, we[,] thus[,] find no reason to accommodate them back into this village. After all, it is not that easy for a community (previously [victimized]) to live again side by side with the other community of wrongdoers unless important milestones are achieved. And this is well known to the [Pubec-Pamong] people. Besides, we the elders of Pajong[,] continue to watch over[,] and so discourage any eventuality of violence in our village. Chances of violence are higher if [Pubec-Pamong] people simply come back and live with us without sorting out critical issues.⁸⁹

That some members of the Pubec clan, particularly those of Pubec-Pamong are still living in former IDP camp premises 12 years after the massacre, is ample evidence of demands for justice after violent conflict in

87. Interview with Pajong male youths in Pajong-A village (Sep. 11, 2014).

88. Interview with Pubec-Pamong elder in Owinyi village (Sep. 6, 2014).

89. Interview with Pajong clan elders in Pajong-A village (Sep. 7, 2014).

post-massacre Pajong.⁹⁰ Justice per se seems to mean different things to different people in today's Mucwini, and consequently, clashes on what justice after violence ought to mean seem to invigorate tension in such a post-massacre context. In line with this, there are arguments between or among parties to conflict or those emerging from violent conflict are over different conceptions of justice, not merely the balance between justice and expediency, or even between justice and forgiveness.⁹¹ By and large, members from the Pajong clan, on the one hand, do consider their Pubec counterparts as wrongdoers who have had sheer moral deficit that led to the evil, hence, bearing the duty of reparation for the past collectively experienced evil.⁹² Pubec-Pajong members, on the other hand, consider their Pajong counterparts as much crueler following the dreadful massacre, and consequently, the former portray the latter as victimizers deprived of any good in them.⁹³

There seems to be a tendency by most external interveners in the Pajong-Pubec conflict, including non-state actors, as well as government players (both local and central), to believe that since both Pubec and Pajong clan members are Acholi people to begin with; there is no doubt that they do have a shared understanding of justice after violent conflict, given their shared culture and tradition.⁹⁴ Greatly ignored is the fact that following the dreadful massacre, the different communities of clans in today's Mucwini have been framed in different categories (victim-offender communities) basing on what happened (remote past), what has just taken place or takes place (recent past/present), and as well as what is planned to take place (future). Accordingly, on a much deeper level, the understanding of justice (what it ought to mean) for one given community in post-massacre Mucwini tends to differ and even clash with that of another community of belonging in the same context, regardless of the shared belongingness to the Acholi culture and tradition.⁹⁵

Not only is justice itself a complex and contested concept, but in many transitional societies (those emerging from a violent past), Jeremy Webber argues that there are at least two substantially different forms of justice at issue and, indeed, often, a third.⁹⁶ Webber terms the first two forms as "retrospective" (backward-looking) and "prospective" (forward-looking)

90. See Makumbi, *supra* note 79.

91. Jeremy Webber, *Forms of Transitional Justice*, in NOMOS LI: TRANSITIONAL JUSTICE 99 (Jon Elster, et. al., eds. 2012).

92. See Gulu District NGO Forum, *supra* note 6, at 13.

93. *Id.* at 17.

94. See Latigo, *supra* note 26, at 113.

95. See Turyagenda, *supra* note 47, at 44-45.

96. Webber, *supra* note 91, at 99.

justice and the third, “adjustment of contending legal and political orders.”⁹⁷ Undoubtedly, most debates within the transitional justice literature concern the tension among these forms of justice. The notion of justice per se has a lot of different meanings: retributive, restorative, distributive, or social justice as different interpretations of the notion of justice.⁹⁸ From the viewpoint of mediation after a violent conflict, there seems to exist an inherent tension between criminal accountability and peace-making, and it is so argued that peace mediators “must have a firm grasp of the many meanings of justice.”⁹⁹

In a thoughtful focus group discussion with seven women of Pubec-Pamong, whose families have been refused the right to settle back in Pajong-A (considered to be their homeland for the past four generations) following the end of the LRA insurgency, one woman, 50 years old, said —

We have been made to silence all our claims, following the LRA attack. Is it really fair [for our generations to deserve] doom? What kind of justice[,] if we have lost any[,] say after the massacre? The very fact that this conflict has got to be mediated by third-party [intervenors] confirms that the understanding of justice held by Pajong people has been different from ours. We believe in justice in accordance with a third-party’s stand, including cultural and religious leaders, government[,] and NGOs. The massacre cannot in any way be taken to be a Pajong affair given that some of our members too were mercilessly killed.¹⁰⁰

In today’s Mucwini, clans remain divided over what justice means and ought to mean following the devastating massacre, which amply affected many communities of belonging in Mucwini and beyond. In the very first fact-finding report by the Justice and Reconciliation Project published in November 2008, it was reported that among the 56 people who were killed in that fateful night on 24 July 2002, some were abducted on the rebels’ way from Namokora (the bordering sub-county west of Mucwini) and one of those killed was a Sudanese citizen.¹⁰¹ In Mucwini itself, the damage of the massacre (death and loss of property) extended to other many communities including the Pajong, Pubec, Yepa, Bura, Akara, Pachua, and Okol.¹⁰² While the people of Pajong still emphasize their primary victimhood (considering themselves as targeted and direct victims of the massacre as well as having the most killed), the people of Pubec, together with other communities of belonging (more distinguishingly the people of Bura),

97. *Id.*

98. See NOLL, *supra* note 46.

99. *Id.* at 206.

100. Interview with Pubec-Pamong woman in Owinyi village (Sep. 12, 2014).

101. See Gulu District NGO Forum, *supra* note 6, at 13.

102. *Id.* at 4.

persistently insist that what took place in Mucwini in 2002 should never be considered a Pajong clan affair in terms of victimhood.¹⁰³

At the core of these viewpoints, much of the squabble between criminal liability (retributive) and negotiated peace (reconciliatory) settlement is actually an argument about whose understanding of justice should be applied in order to settle down the conflict in today's Mucwini. Additionally, there seems to be existing alliances among the different communities in terms of both sympathy and defense. On the one hand, key decision-makers of Pajong clan, in consonance with their allies from Akara clan, untiringly echo the call for reparation or compensation in a bid to restore the broken relationships. Today's leaders of the people of Pubec-Pamong, who are at one with their allies from the Bura clan, underscore that the call for compensation in the context of post-massacre Pajong falls outside the realm of possibility for two reasons: (1) the realization of compensation by the Pubec-Pamong is entirely impossible given the fact that the massacre consisted of a merciless killing by LRA rebels; and (2) due to the vulnerability of the people of Pubec-Pamong, who were and still are equally victimized by the massacre.

Nonetheless, sheer disagreements tend to interrupt the methodology of forgiveness and reconciliation following violent conflict. In today's post-massacre Mucwini, some stress that reconciliation and peace (*ku*) after violence will come as a result of reparation for wrongdoing (*culo kwor*), while others still underline that the emphasis on *culo kwor* is actually what puts *ku* outside the realm of possibility.¹⁰⁴ In the same spirit, given that individuals strongly argue over the meaning and implications of justice, one of the great challenges facing any community is how to persuade people that they should acquiesce to the decisions made by a community's institutions even when they espouse a differing conception of right — as invariably occurs, to some extent, in all communities.¹⁰⁵

In a focus group discussion with some four clan elders of Pajong, on the one hand, one elder, aged 73, said —

The responsibility for the dreadful massacre which took place here in Pajong rests on the shoulders of [Pubec-Pamong] people for peace to be restored; the letter written by the LRA and later found at the scene of the massacre says it all. This responsibility entails compensation for the dead as per the [Ker Kwaro Acholi] arrangements. This is what our tradition dictates.¹⁰⁶

103. See Latigo, *supra* note 26, at 114.

104. See Gulu District NGO Forum, *supra* note 6, at 15 & 18.

105. Webber, *supra* note 91, at 101.

106. Interview with Pajong elder, 73, in Pajong-C (Sep. 13, 2014).

At the other extreme, while discussing with the leaders of Pubec-Pamong people, most of whom still live in previous IDP camps around the sub-county headquarters, one Pamong elder, aged 72, stated —

The dreadful massacre was but perpetrated by the LRA rebels in their fight with the national government, which utterly failed to protect us [] civilian populations. The rebels' tactics of warfare consisted of abducting innocent civilians who then were forced to serve the rebels' purpose. If anything, it is therefore up to the government to compensate the unfortunate losses (human lives and properties) for which we [Pubec-Pamong] should all be beneficiaries. This is the type of justice we look forward to.¹⁰⁷

It, therefore, appears that negotiating a nuanced understanding of justice in the aftermath of massacre is of paramount importance for peace to be imagined and prevail in today's Mucwini. What justice means vis-à-vis what it ought to mean remains one of the greatest contestations among different communities of belonging (clans) in post-massacre Mucwini. Furthermore, prescriptions about the understanding of and demands for justice as per the established Acholi tradition seem not to accommodate fully the intricacies of this massacre — its circumstances, actors, and scale.¹⁰⁸ More specific, the institution of Ker Kwaro Acholi, which constitutes the supreme cultural decision-making body in Acholiland, appears to be under-equipped in terms of nitty-gritty tools for a long-term settlement of tension between Pajong and Pubec-Pamong clans.¹⁰⁹

Perhaps, one exceptional trait of this massacre compared to other similar dreadful events that took place in the very Acholiland, namely Barlonyo, Atiak, and Namokora at around the same period, is the subsequent polarization of different understandings about what sort of justice is to be pursued in the much needed search for peaceful co-existence among post-massacre communities of clans in Pajong.¹¹⁰ For some, it is urged that fear to accept responsibility is what undermines the attainment of justice and peace in such post-massacre context.¹¹¹ Others still argue that the understanding of what is just and what is wrong is not, and never shall it be the sole prerogative of a few individuals over the rest. The bottom line of all claims is that the remaining argument tends to suggest that although truth and justice may never vary, people do approach them in various (and often conflicting) ways.

107. Interview with Pamong elder, 72, in Obiya village (Sep. 13, 2014).

108. See Turyagenda, *supra* note 47, at 44-45.

109. HUMAN RIGHTS FOCUS, FOSTERING THE TRANSITION IN ACHOLILAND: FROM WAR TO PEACE, FROM CAMPS TO HOME 49 (2007).

110. See Gulu District NGO Forum, *supra* note 6, at 13.

111. *Id.* at 15.

There exists complexity in achieving a balance of sorts between these twin objectives of justice after a violent conflict; in numerous occasions, in the pursuit of justice after past violations, embrace and justice have apparently assumed mutually exclusive proportions.¹¹² On the one hand, proponents of the more aggressive perspective (aggressive truth-seeking and retribution) have been inclined to define reconciliation as, above all, a victim-oriented enterprise (exclusion), which presupposes that the instigators of injustice first be forced to own up to their offenses, and be proven themselves worthy of the trust and respect of full citizenship.¹¹³

On the other hand, another opposing group of activists has tended to emphasize the inclusionary side of reconciliation (embrace), which presupposes a largely offender-based activity that is meant to bring outsiders back into the public fold, and to restore harmonious relations among all of society's diverse parts. In this regard, truth and justice are considered as, at best, secondary pursuits along the path to unity and peace. Again, as seen in the case of post-massacre conflict between Pajong and Pubec clans, the tension seems to be powered by the potentially destabilizing consequences of pursuing both victim-centered and offender-based strategies simultaneously.

It is reported that in the aftermath of the massacre, given the tense atmosphere that prevailed in Mucwini, the Office of the then Resident District Commissioner (RDC), in the very first instance, took up the matter, and so endeavored to reconcile the two antagonist clans (Pubec and Pajong) through some cultural reconciliatory practice of animal slaughter.¹¹⁴ This RDC's intervention, however, did not yield any successful result, for it was never wholly embraced by the grassroots who perceived it to be a mere government hand-out.¹¹⁵ In the second place, the contested Acholi Paramount Chief, Rwot David Onen Acana II to whom the matter had been referred to by the Rwot of Chua, gathered together Pubec and Pajong clan members in a mediated dialogue, and implored the prevalence of forgiveness and reconciliation for harmonious co-living in post-massacre Mucwini.¹¹⁶ This, too, did not yield any satisfactory results.¹¹⁷ In the very end, in mid-2008, the then Kitgum District Chairperson (LC V Chairperson), Ogwok Komakech contacted retired Anglican Bishop M.B.

112. James A. McAdams, *The Double Demands of Reconciliation: The Case of Unified Germany*, in *THE POLITICS OF PAST EVIL: RELIGION, RECONCILIATION, AND THE DILEMMAS OF TRANSITIONAL JUSTICE* 128 (Philpott Daniel ed., 2006).

113. *Id.*

114. See Gulu District NGO Forum, *supra* note 6, at 14.

115. *Id.*

116. *Id.*

117. *Id.*

Ochola II, and requested him to initiate a mediation process between the two conflicting clans which too was not of complete success.¹¹⁸

V. MOVING BEYOND THE *MATO OPUT* TRADITIONAL JUSTICE SYSTEM

Following the massacre in 2002, many attempts have been undertaken by different intervenors, including cultural and religious institutions, NGOs, as well as the state, i.e., the local government of Kitgum District, in a bid to restore harmony and peaceful co-living in the disturbed human settlements in Mucwini.¹¹⁹ Of special mention are arguments for traditional justice mechanisms to ensure reconciliation among conflicting post-massacre communities in today's Mucwini. By and large, civil societies as well as NGOs have played a crucial role in advocating and assisting in the design of these mechanisms at the time of transition. *Mato Oput* tradition, from the Acholi ethos (*Mato*, which culturally signify "to drink" and *Oput*, a uniquely bitter root of tree grown in the wilderness of Acholiland),¹²⁰ is heralded by the Acholi people as the venerated reconciliatory practice, which has the ability to midwife peace after deadly conflict.¹²¹

Based on the existing literature and on-going debate about transitional justice in practice, it can be agreed that the scope and boundaries of transitional justice remain igneous. Subsequently, the measures and mechanisms advanced within the framework of transitional justice cannot, and should not indeed, be prescriptive, for these ought to be context-dependent. In the aftermath of the Juba peace talks, which led to the signing of an agreement on reconciliation and accountability in June 2007, it was noted that the application of Acholi reconciliatory rites, including, among others, *Mato Oput*, were appropriate mechanisms to address the issues of accountability and reconciliation.¹²²

However, it is important to note that such performance of *Mato Oput* as a cultural transitional justice mechanism among the Acholi people is decided upon by a much smaller group of individuals, who are considered custodians of the tradition.¹²³ Specifically, James Ojera Latigo refers to "the traditional masters of ceremony, conciliators[,] and elders from both clans" as attendants of the *Mato Oput* ritual performance.¹²⁴ Furthermore, from a deeper interrogation about the performance of the *Mato Oput* tradition, the latter

118. *Id.*

119. Latigo, *supra* note 26, at 97-98.

120. IAN LEGGET, UGANDA 33 (2001).

121. *Id.*

122. Huyse, *supra* note 17, at 103.

123. Latigo, *supra* note 26, at 102.

124. *Id.*

seems to be uncalled for in the case of this massacre — a dreadful event carried out by LRA rebels regardless of the circumstances under and parameters within which it was perpetrated. Culturally, the performance of the *Mato Oput* reconciliatory rite is warranted by direct killing, whether deliberate or accidental, of person(s) from clan A killed by person(s) from clan B.¹²⁵

Reparations, as such, have a strong dimension of prospective justice about them, in that they often respond to the past precisely in order to place the descendants of the original victims in a better position today.¹²⁶ Payment (compensation) may be necessary as an earnest effort in order to emphasize the seriousness of an apology, so as to overcome the impression that words are cheap.¹²⁷ Nevertheless, the stance of other respondents, 50 and above, mostly clan elders in Mucwini, vis-à-vis the performance of *Mato Oput* in the aftermath of the massacre, suggested a clear-cut rationale for the inapplicability of the *Mato Oput* tradition in this context. The Rwot of Chua, who doubles as the Chairman of the County Ker Kwaro, stated the following —

In the case of the Mucwini [m]assacre[,] where the killing was done by a third party (the LRA rebels)[,] it is culturally impossible to conduct the reconciliatory performance of *Mato Oput*. Traditionally, *Mato Oput* can only take place where a person (a) from clan (A) went on to kill a person (b) from clan (B) with direct means; such a killing warrants the performance of *Mato Oput* by which may reconcile and restore the previously broken relation caused by evil (killing). In my opinion, the three things expected to be done in a way to reconcile Pajong and Pubec clan members consist of the following: *culo kwot*, which in this case ought to be a third party (the Uganda government with or without support from other NGOs), followed by *ngonyo laa*, a cleansing ceremony before Otim Katende could come back to his homeland, and finally[,] *ribe ki kelo ber bedo*[,] which implies the sharing of food and drink after a detailed dialogue for reconciliation and peace.¹²⁸

Before scholars and practitioners can delve into an assessment of strengths as well as weaknesses of many a restorative type of justice, it is imperative to understand that the performance of such restorative kind of justice, such as *Mato Oput*, remains context-dependent. Hence, what may have happened in the course of violence (the times of abuse) has much influence on what ought to be done in the aftermath of violence (transition); *Mato Oput*, in this regard, therefore, should be called for on a case-by-case basis. In an interview with one of the most influential civil society activists in

125. *Id.*

126. RUTI TEITEL, TRANSITIONAL JUSTICE 119 (2000).

127. Webber, *supra* note 91, at 105.

128. Interview with the Rwot of Chua in Kabete village (Sep. 23, 2014).

the case of this massacre, aged 41, who happened to be a native of Mucwini, and who was deeply concerned with the resolution of the Pajong-Pubec tension following the 2002 massacre, the following was his standpoint —

I am still of the view that many peace scholars as well as practitioners who have taken interest in the war which devastated northern Uganda have so far terribly failed to grasp the ingredients of the [Acholi] culture. Agonizingly, they always tend to push for things they have little or no knowledge about. For instance, one often hears these researchers and peace activists, most of whom outsiders as well as unfamiliar with [Acholi] tradition, lobbying for *Mato Oput* to be performed in order for peace to be restored in the context of post-war northern Uganda. To remain true to [Acholi] tradition, the issue between [Pajong] and [Pubec] does not warrant *Mato Oput*[,] but it rather requires a mediated settlement of conflict. *Mato Oput* is therefore out of context[, the] reason being that the alleged perpetrator did not commit the act in person as required by the traditional justice system.¹²⁹

Accordingly, that there are many people involved in the on-going conflict who remain confused about the type of transitional justice mechanism to be pursued in the aftermath of this massacre does not preclude the fact that the custodians of the tradition (clan leaders and community elders) are clear about what ought to be pursued following the devastated evil of such scale.¹³⁰ These cultural wardens still know what course of action should be undertaken in a bid to restore peaceful co-existence in Pajong-A village, Mucwini and the entirety of northern Uganda by extension. Whereas a peaceful resolution of disputes in today's Pajong could be performed by clan elders and community elders given their privileged place in such post-massacre context,¹³¹ the hardest challenge tends to revolve around the pedagogy of dealing with *nipoo pi jami ma otime*, that is “to remember what took place” (memory — both individual and collective). The bottom-line preoccupation in endeavoring to redeem the previously broken tissues of society suggests anxieties for memories of past evils. What remains a less conspicuous but more pernicious manifestation in a post-war situation is that parties previously involved in war watch over one another, in even the most private settings, with extreme sensitivity to the possibility of betrayal;¹³² the fragile tissue of social life wears precariously thin.¹³³

By and large, peace-building is a contextualized venture, and so are transitional justice mechanisms. It, therefore, seems that each post-war

129. Interview with Mucwini-native activist in Kampala City (Sep. 6, 2014).

130. Latigo, *supra* note 26, at 102–103.

131. *Id.*

132. MARK OSEIL, MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW 37 (1999).

133. *Id.*

context dictates both the content and the shape of the type of transitional justice mechanisms to be applied therein.¹³⁴ Assessing the contribution of the Acholi traditional justice mechanism of *Mato Oput* reveals the pertinent need for contextualization of such justice mechanisms in societies emerging from violent conflicts (transitional societies).¹³⁵ While the debate about what type of justice ought to be pursued in the aftermath of mass violence can be carried alongside the influence of culture and tradition, contentions might still arise regarding how to go about that specific type of justice, which is much-admired in such post-war scenario.

In Pajong, the on-going tension between the much wider community of perceived victims (the Pajong), and the much smaller community of perceived offenders (the Pubec-Pamong) seems to be fuelled by the sheer lack of an agreed prioritization regarding the content (and not the form) of the pursued transitional justice.¹³⁶ Beneath this lack of agreement of the constituents for any such local judicial mechanisms are the economic dimensions (of which land still remains the most commanding impetus) in the status of emerging communities — Pajong and Pubec clans as well as their respective alliances — in the post-war context.¹³⁷ These economic dimensions also include the expected compensation package (especially material) from the government in its bid to secure harmonious co-existence between Pajong and Pubec-Pamong members in the aftermath of the massacre.¹³⁸ It seems that conflicting communities, more especially emerging from violent abuses, tend to reaffirm their categorical attributes (identity, communal narratives, and collective memory) in an even more pronounced way. The Pajong-Pubec case of post-massacre tension testifies to this manifestation and so does it urgently call for Jurgen Habermas' dialogical framework within which an inherently inter-subjective communicative rationality could be entertained for sustainable peaceful co-living.¹³⁹ The dialogical framework ensures free and transparent communication by which a shared and inter-subjective consensus could be reached.¹⁴⁰ Such inherently inter-subjective communicative rationality is characterized by the following two premises: (1) the principal possibility of unhindered and equal participation of all social actors in the discourse; and (2) the evolvment of undistorted communication which implies the right to question the

134. See Latigo, *supra* note 26, at 17.

135. *Id.*

136. See Gulu District NGO Forum, *supra* note 6, at 15.

137. *Id.* at 16.

138. *Id.* at 15.

139. See generally JURGEN HABERMAS, *THE INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY* 57–58 (1996).

140. *Id.*

underlying validity claims of all utterances put forward by any member participating in the discourse.¹⁴¹

Ultimately, in the event of a transitional society (emerging a from past violent conflict) like post-massacre Pajong-A village, such framework becomes the cornerstone for post-conflict conflict prevention;¹⁴² in fact, they envisage a viable scenario in which durable peace could be attained. Or, for so long as these communities of belonging (Pajong and Pubec clans) continue to claim monopoly of victimhood through dangerous narratives of self-righteousness and bitter memories of past sufferings, peace (at whatever cost) in post-massacre Pajong-A village will still remain disturbed and elusive in the long run.

141. *Id.*