

## **Interview: Justice in Uganda**

**Author:** [Stephen Opio](#)

Senior ICC official Phakiso Mochockoko tells IWPR about his hopes of bringing to justice those responsible for atrocities in Uganda.

OPIO: What exactly is the International Criminal Court and how did it come about?

MOCHOCKOKO: The ICC is a permanent judicial institution created by states in accordance with the Rome Statute, which was signed in the Italian capital in 1998. The whole idea of the ICC is to bring to justice those responsible for the most serious crimes of international concern.

These crimes have been clearly defined under the statute. They are the crimes of genocide, crimes against humanity and war crimes. These are serious crimes that have gone without punishment in many instances and for many years in the past. Primarily, the responsibility lies with states to prosecute these crimes, but unfortunately history has shown that states themselves have not been able to do so.

The ICC was born in the aftermath of many of these atrocities. Its purpose is really to make sure that if states themselves don't prosecute - or they are unable or unwilling to prosecute - perpetrators of these crimes, there is an international judicial mechanism to prosecute these persons in an independent and impartial manner.

OPIO: The ICC Statute came into force on July 1, 2002. How does the ICC begin to engage in investigations in different places where alleged war crimes and human rights violations are being committed, as in Uganda?

MOCHOCKOKO: Although the ICC statute was concluded in 1998, ratification was required from a minimum of 60 states before the ICC could legally begin operating. That took until 2002.

There are various ways in which proceedings can be instituted by the court, or begin to look at whether the crimes that fall under its statute have been committed.

Firstly, a state party to the statute - that is any country that has ratified the statute - can itself refer a situation to the court. And once that has been done, then the court will take a look to determine whether any crimes under the statute have been committed; who has committed those alleged crimes; and whether there is a punishment that should be given to such a person.

Secondly, the prosecutor, who is an independent official in charge of all the prosecutions, can - after a careful analysis of information received - seek the authority of one of the pre-trial chambers (that is, one of the three judges) for approval on whether or not to proceed with an investigation.

The third way by which investigations can be instigated is when the Security Council (of the United Nations), in the context of its maintenance of peace and security, refers a situation to the court. But it will be up to the prosecutor to look into this situation, to collect all the evidence, and, as a result of that evidence, determine who is alleged to be responsible for the commission of the crimes and therefore who is liable to be charged under the statute.

OPIO: So, in Uganda's case, Uganda ratified the statute and it is the one that referred the situation to the ICC?

MOCHOCKOKO: Exactly. Uganda is a state party to the ICC statute. The Ugandan government itself referred the situation to the prosecutor of the ICC and requested the ICC to look into the situation - the prolonged civil war in northern Uganda - and to determine what crimes have been committed in that war and who is responsible for them.

OPIO: There are several other key players in the situation in northern Uganda who are trying to resolve this conflict. We have got the traditional means of conflict resolution in the Acholi Community [a process called locally Mato Oput\*]. We have got the national Amnesty Act which was put into place in 2002 and we have also got local politician Betty Bigombe who is struggling to make contact with the rebels of the Lord's Resistance Army, LRA, in a bid to have the conflict resolved peacefully.

Don't you see the ICC intervention as a setback to these processes?

MOCHOCKOKO: The situation in northern Uganda was referred to the ICC prosecutor [Argentine lawyer Luis Moreno Ocampo] by the government of Uganda. And, as a result of that, the ICC is obliged to exercise its mandate in accordance with the statute.

It is true that there are other initiatives going on in Uganda, and the prosecutor in his investigations is taking them into account. He has had discussions with the various players. He has held discussions with the local people, and it is now for the prosecutor to decide, given the gravity of the alleged crimes, the interests of justice and the interests of victims, whether he still wants to proceed with prosecutions. [Since this interview was conducted, the ICC has issued arrest warrants for leaders of the LRA; no arrests have yet been made].

OPIO: In northern Uganda, there have been accusations that the ICC is mainly investigating crimes that have been committed by the LRA rebels while avoiding looking at other crimes alleged to have been committed by the government military, the Uganda People's Defence Force, UPDF.

MOCHOCKOKO: The office of the prosecutor is an independent office that investigates crimes. What has been referred to the office of the prosecutor is the situation in northern Uganda. In order for the prosecutor to lay charges against anybody, he has got to collect evidence which will show him who has committed the crimes in northern Uganda. As in any legal institution, the prosecutor will follow the evidence wherever it leads him.

OPIO: When you look at the Uganda situation, it goes way back to 1986 and perhaps further. Does the ICC consider the history of the conflict when carrying out these investigations?

MOCHOCKOKO: As part of its analysis and as part of its understanding of the situation in Uganda, of course the court and in particular the office of the prosecutor will be looking back into the history of the conflict. But the court legally cannot look at anything, in terms of crimes, that happened prior to July 2002. It can only look at alleged crimes committed after the entry into force of the Rome statute.

OPIO: We know that the LRA was at one point getting support from Sudan. What will happen if you find out

that the situation cuts across the Uganda border and gets into Sudan?

MOCHOCKOKO: It is indeed a situation which may be found to be cutting across borders, and then the prosecutor will have to follow that...and I am sure that the prosecutor will look into that and find ways and means of bringing those responsible for those atrocities to justice.

OPIO: In that case, are you saying there is no immunity?

MOCHOCKOKO: Under the statute and under international law, there is no immunity for any of these alleged crimes of genocide, crimes against humanity and war crimes. The international community is agreed that wherever these crimes were committed, by whomever they were committed, such people should be brought to justice. The philosophy is that there is no justification for these crimes, whether by a head of state, whether by a [military] commander-in-chief, or whatever. They are not absolved from justice under the statute and international law.

But to issue an arrest warrant or to instigate a prosecution, everything depends on the evidence. If the prosecutor alleges that genocide has been committed in northern Uganda, then he must prove that. He must lead evidence to show that.

OPIO: Talking of the evidence, is the public welcome to provide information that may be good for the investigation, either as witnesses or victims?

MOCHOCKOKO: That would be welcome by the court. The court has an office in Uganda and court staff are now in that office. If anybody, including victims, has got information that would be of assistance to the court they can contact the ICC office. There will also be an office in the north of Uganda.

OPIO: If LRA rebels want to contact you as victims or witnesses in this case, are they free to do so?

MOCHOCKOKO: The ICC office is open to anyone who wants to contact it.

OPIO: What is the guarantee of the safety or of the concealment of the identity of people providing information as witnesses or victims?

MOCHOCKOKO: The court is fully aware of the safety risks that are attendant upon people coming forward either as witnesses or victims. Under the office of the registrar, there is a special section called the witness and victims section. The whole purpose of this section is to make an assessment, and - where there are risks involved - to make sure that these people are properly protected. So there are various mechanisms in place that can even include relocation of people to other areas where they can be safe.

The safety of these people is a very top priority for the court, to the extent of allowing people to give information under pseudonyms.

OPIO: Does the ICC have the capacity to relocate people for their own safety?

MOCHOCKOKO: The ICC will look into ways of doing this if it is the only way in which witnesses can be protected after they have given information to the court. Again, the court has begun negotiations with various countries to see if it is possible for them to accept people for relocation. Some countries have already agreed to take people who are in danger after giving information to the court. For purposes of confidentiality I cannot disclose the names of the countries with which the court has already signed such agreements.

OPIO: If individuals from either the LRA or Uganda's armed forces are eventually tried and pronounced guilty, will they serve their sentences in this or another country?

MOCHOCKOKO: The court is currently negotiating with various countries that are parties to the statute. The court itself does not have prison facilities [although it has holding cells at its headquarters in The Hague]. There is also a possibility that convicted people could serve their prison sentences in Uganda if the Ugandan government agrees to take them.

OPIO: What is the possibility of the ICC delaying its investigations or withdrawing from the Uganda situation based on the population's call for the traditional means of reconciliation - "Mato Oput" - or the Betty Bigombe initiative or through the Amnesty Act?

MOCHOCKOKO: The prosecutor is fully aware of all these initiatives and he is taking them into consideration. He is fully aware of their importance. He would not want to delay ending the war in Uganda by a day longer than necessary.

OPIO: Is there any last clarification you want to make about the ICC and Uganda?

MOCHOCKOKO: Thank you for the opportunity. The ICC has only just begun its work. It is in the early stages of its history and operations. I would hope that the Ugandan people first try to understand what the court is, what it's doing, what it can do and what it cannot do.

Now that the court's office is functional in Uganda, I would encourage people to go to this office to seek information and clarity about its operation. I hope the court and the people of Uganda can work together to end impunity and to make sure that those responsible for the atrocities in Uganda are brought to justice in the interest of peace and reconciliation.

Phakiso Mochockoko, a lawyer from the southern African state of Lesotho, is Senior Legal Officer in the ICC Registry. Stephen Opio, a producer with independent Mega FM Radio in Gulu, Uganda, interviewed him in Johannesburg.

\* In the elaborate ceremony called "mato oput" - which in the Acholi language literally means "to drink a bitter potion made from the leaves of the oput tree" - prodigal sons and daughters can receive forgiveness and be welcomed back into their communities.

"Mato oput involves the man or woman accepting responsibility for their actions and repenting for their crimes against their brothers and sisters," said the Reverend Baker Ochola, the Anglican Bishop of the northern town of Kitgum. "They then ask for the forgiveness of their community and pay reparations - sometimes in the form of a goat or a cow - to those they have wronged. Finally, they rejoin their

community without cruelty or victimisation."

The ceremony is conducted by a council of elders. The guilty party crushes a raw egg to symbolise a new beginning and then steps over an "opobo" (bamboo stick) to represent the leap from the past to the present. At the climax of the rite, both the guilty and the wronged parties drink a brew made from the herbs of the oput tree, to show that they accept the bitterness of the past and promise never to taste such bitterness again.

**Location:** Uganda  
Sudan  
South Sudan  
Darfur

**Focus:** ICC - International Criminal Court

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