

**KEYNOTE ADDRESS OF ACTING CHIEF JUSTICE OF  
UGANDA, ELIZABETH MPAGI BAHIGEINE AT THE  
JUDICIAL COLLOQUIUM ON VICTIM AND WITNESS  
PROTECTION – BOMAH HOTEL, GULU, 1-3 AUGUST 2011**

My Lord the Principal Judge

My Lord Justice Tsekooko, Chair, Judicial Training Committee,

My Lords Judges of Judicature here present,

The Registrar and your Worships,

Members of the Judiciary,

UN representatives,

The Honourable Resident District Commissioner

Distinguished guests and participants,

Ladies and Gentlemen,

I wish to thank the organisers of this Judicial Colloquium on Victim and Witness Protection for inviting us. I say us because you had invited the Chief Justice who in turn asked me to represent him and deliver this keynote address this morning on his behalf.

I do commend the organisers for convening such an important forum aimed at sharing good practices on victim and witness protection. This will go a long way to improve judicial response in handling victims and witnesses cooperating with the justice system in the effective delivery of justice.

This colloquium, which targets judges from the International Crimes Division and the Criminal Division of the High Court of Uganda and other key stakeholders in the justice sector, provides a strategic opportunity for national justice actors to interact with and learn from key players from the international criminal courts and ad hoc tribunals who will be sharing their experiences in the context of victim and witness protection.

On this note, I wish to specially recognise our distinguished sister and Lady Justice Julia Sebutinde of the Special Court for Sierra Leone and African brother, Justice Bakone Moloto of South Africa. My special thanks go to the United Nations Office of the High Commissioner for Human Rights, the Justice Law and Order Sector, Judicial Studies Institute and the International Center for Transitional Justice for sponsoring this colloquium and their invaluable assistance to the International Crimes Division.

It is expected that this colloquium will facilitate constructive dialogue and hopefully contribute to the development of legally acceptable, culturally appropriate, gender sensitive and child-friendly protection measures and techniques, which will facilitate and enhance effective participation and cooperation of witnesses in the judicial process before, during and after the trial process.

I therefore reiterate my appreciation to the conveners of this colloquium, which I consider to be timely and will no doubt greatly complement the work of the International Crimes Division (ICD), whose vast mandate to try international crimes such as genocide, crimes against humanity, war crimes, terrorism, human trafficking and piracy among others, (in accordance with paragraph 6 of the High Court (International Crimes Division) Practice Directions 2011) inextricably depends on the ability

to secure credible and assailable testimony against the perpetrators of such heinous crimes. This mandate of necessity involves dealing with vulnerable witnesses who are in delicate situations that could bar or inhibit their full and effective participation in court proceedings. Such witnesses would be at high risk of encountering retaliation and harassment from the suspects bent on destroying or preventing their testimonies from being used against them by the courts of law. In such situations, witness protection becomes ever urgent, inevitable and indispensable for the effective prosecution of such crimes and translates into an obligation on the part of the justice actors, which they must enforce.

Of course needless to emphasize that witnesses are the lynchpin in any effective adjudication of cases and eventual delivery of justice for the victims. As players in the justice system, their protection needs should therefore be identified and prioritised by the justice actors interacting with them during judicial proceedings.

In addition to the State obligation to protect witnesses enshrined in the various international and regional treaties, justice actors must first and foremost, understand that they too have clear roles to respond to the protection needs of witnesses, as rights-holders and; evaluate the impact of their work in addressing the plight of victims who face the long-term effect of the crimes they seek to prosecute. It is my ardent hope that this colloquium will enhance and broaden knowledge on standards in this area among justice actors in Uganda on their respective duties and obligations towards witnesses, knowledge that can assist to maximise proper treatment and participation of victims and witnesses in judicial processes.

Whereas criminal justice processes are inherently focused on the accused person, witness protection will demand a robust paradigm shift

from the way things are usually done in the justice sector. Witnesses should no longer be viewed as mere objects of a trial process but as key subjects and stakeholders in the administration of justice. Facilitating their participation during judicial proceedings, safeguarding their physical, physiological and psychosocial wellbeing is therefore just as important as securing a verdict against a suspect. Witness protection is also vital in facilitating the fair trial rights and due process for suspects appearing before courts of law. A fair trial calls for a balancing of fair trial rights of the accused person and ensuring the safety of witnesses.

Appreciating the importance of witness protection in addressing impunity, and prosecution of violations especially those committed during conflicts, Uganda is now moving towards developing a legal framework in that regard. So far, inherent powers have been invoked to devise some ad hoc interventions, which are themselves not without limitations. A law or mechanism on witness protection is a requisite. It would not only enhance institutional capacity to protect witnesses but would also generally improve the justice process in the country by ensuring effective remedies to victims of crime.

Responding to the protection needs of witnesses in Uganda requires the justice sector to adopt clear strategies that will make a positive and sustainable impact on the lives of victims and witnesses. I consider this is where you have to compare avenues of sharing and promoting best practices relating to policing methods, institutional arrangements and innovative approaches to witness protection in respect to what can work best.

But, there are still a number of challenges that will require your further consideration. In particular the recognition of victim participation during court proceedings; this is alien to common law jurisdictions like Uganda although it is permitted in the Rome Statute and the ICC Act of Uganda.

The fact that victims lack legal standing in their own right before courts of law in Uganda forms a clear bar to the demand for their protection by the justice sector and a disconnect from the contemporary international criminal justice standards. The fundamental question to ask therefore is which way can this be resolved? For the time being I leave that to your expert minds.

Secondly, while witness identity needs to be concealed in certain cases, there is need to balance this with the fair trial rights of an accused person who is entitled to access the prosecution case file in good time and thus get acquainted with the prosecution witnesses. The rigorous court room procedure during witness cross examination on the other hand also necessitates the defence to identify the prosecution witnesses and challenge their demeanour. In such cases, whose interests should be accorded priority?

At a practical level, there is very limited specialised expertise within the justice sector on how to handle certain categories of vulnerable witnesses such as children, formerly abducted, sexually-assaulted victims testifying in court who face the likelihood of secondary retraumatisation; the absence of essential referral paths, the viability of protection measures in the absence of adequate funding.

It is my sincere hope that this colloquium will delve into these peculiar issues and complexities of witness protection while also stressing the underlying obligation on all justice actors to protect and respond to the needs of victims and witnesses, which also entails an obligation to be efficient and effective in their handling of cases.

I also wish to commend NGOs, CSOs and victims' groups represented here for their invaluable role in supporting victims and witnesses with the necessary psychosocial counselling and humanitarian assistance that

has enabled them cope better with their challenging situations. It is my sincere hope that through this colloquium, sustainable partnerships between the judiciary and the CSOs will be built and strengthened as we work towards improving national institutional capacity and judicial response to the needs of victims and witnesses.

Last but not least, sincerest thanks go to the UN Office of the High Commissioner for Human Rights for collaborating with us, the Judiciary, to host this event, which will be very instrumental towards improving institutional practices and performance of the justice sector as a whole.

I thank you very much for your attention and wish you lively and fruitful deliberations.

**FOR GOD AND MY COUNTRY**

**ALICE E.N. MPAGI-BAHIGEINE**  
**AG. CHIEF JUSTICE**