



THE REPUBLIC OF UGANDA

OFFICE OF THE DIRECTOR OF  
PUBLIC PROSECUTIONS



# THE DECISION TO CHARGE GUIDELINES

---

These guidelines were developed with the support of



## FOREWORD

Prosecution is the core function of the Office of the Director of Public Prosecutions (ODPP) as enunciated in Article 120 of the Constitution of the Republic of Uganda, 1995.

As critical players in the justice system, Prosecutors have a duty to prepare and conduct cases in accordance with all enabling legislation, policies, practice directions and guidelines issued by the DPP or the Judiciary. The exercise of Prosecutorial discretion includes, but is not limited to, deciding whether to initiate, continue or discontinue a prosecution, selection of charges and acceptance of pleas.

Whereas the mandate to withdraw charges is exercised exclusively by the Director of Public Prosecutions (DPP), all other functions of the DPP enshrined in Article 120 are exercised by the DPP or officers authorised by the DPP as provided under article 120(4) of the Constitution.

The exercise of the prosecution function, makes all Prosecutors gatekeepers to the criminal justice system. In this regard, the decision to charge (and therefore prosecute) is a serious step that affects suspects, victims, witnesses and the community at large, and so must be undertaken with the utmost care and diligence.

It is therefore the duty of a Prosecutor to ensure that the right person is prosecuted for the right offence, properly applying the law, and ensuring that relevant evidence is submitted before the court, and that disclosure obligations are complied with. It is vital that Prosecutors effectively discharge their obligation to conduct an objective and independent analysis of every single file that is presented to them for a decision to charge. Failure to do so carries high costs for society.

In order to ensure that all Prosecutors exercise their Prosecutorial decisions in a standard manner, the ODPP deemed it expedient to put in place guidelines/standards to guide Prosecutors on the standards expected of them, their duties in the administration of justice, and the factors to consider in the exercise of Prosecutorial discretion.

In appreciating that poor decision-making can have profound consequences for accused persons, victims, witnesses and the public, these Guidelines are

specially aimed at equipping Prosecutors to independently and objectively exercise their role as gatekeepers to the criminal justice system.

Therefore, these “Guidelines on the Decision to Charge 2023” give guidance to Prosecutors on the general principles to be applied when making decisions about criminal proceedings. The Guidelines are intended to cement and enhance the growth of a stronger, streamlined and professional Prosecutorial service in Uganda. They are complementary to existing prosecution guidelines and policy and additional guidelines may be developed from time to time on certain thematic areas.

The Guidelines set out the core functions and duties of a Prosecutor in relation to the decision to charge and the conduct of criminal proceedings so that Prosecutors may properly exercise their functions.

It is expected that the consistent use of the present Guidelines will ensure transparency and accountability in the exercise of Prosecutorial powers and consequently build public confidence and trust in the ODPP and the criminal justice system at large.



**Jane Frances ABODO**

**DIRECTOR OF PUBLIC PROSECUTIONS**

## ACKNOWLEDGMENTS

On behalf of the ODPP, I express my profound gratitude to the ODPP Top and Senior Management Team, for its leadership, guidance and invaluable contribution to the development of these Guidelines.

I would like to extend special thanks to the United Nations Office on Drugs and Crime and the United States Bureau of International Narcotics and Law Enforcement Affairs (INL) for partnering with the ODPP in developing these Guidelines.

I also appreciate Ms. Shamini Jayanathan, OBE, Barrister-at-Law, for her tireless legal support in guiding the entire process, that has resulted in this product.

To the task force members who were at the center of the development of these guidelines, I thank you for your tireless effort to ensure that we finally have a standard guide for Prosecutors that will govern their decision making and taking of Prosecutorial decisions across board.

These Guidelines will form the bedrock of a professional and independent prosecution service.

It is my hope that all the Prosecutors will embrace and utilize them to enhance the transparency and accountability of the exercise of Prosecutorial discretion of the institution and conduct of criminal proceedings.

## TASK FORCE MEMBERS

Elem-Ogwal Charles	D/DPP
Odumbi James Owere	D/DPP
Asiimwe John Baptist	D/DPP
Byansi George William	D/DPP
Khisa Betty	PA/DPP
Odiit Andrew	PA/DPP
Nabaasa Carolyn Hope	PA/DPP
Mulindwa Badru	PA/DPP
Oola Sam	SA/DPP
Kamuli Charles	A/DPP
Nakigudde Margaret	A/DPP
Namatovu Josephine	A/DPP
Anguzu Lino	A/DPP
Wakooli Samali	A/DPP
Ahimbisibwe Winfred	A/DPP
Kawuma Barbara	A/DPP
Bikhole Rachel	A/DPP
Nabisenke Victoria	A/DPP
Turumanya Faith	A/DPP
Jatiko Thomas	A/DPP
Namakoye Catherine	A/DPP
Agola Betty	A/DPP
Tumuheise Rose	A/DPP
Bisamunyu David	CSA
Muhumuza Edward	CSA
Masinde Barbra	CSA
Asingwire Adrine	CSA
Keko Joan	CSA
Kabajungu Ann	CSA
Nakimbugwe Irene	SSA
Okui Jacquelyn	SSA

## DEFINITIONS

For purposes of these Guidelines, the following definitions apply:

**“Accused person”** is used to describe a person who has been charged with a criminal offence.

**“Child”** means an individual who has not attained the age of eighteen.

**“Child Offender”** is a person who is of the age of 12 or under the age of 18 who is in conflict with the law.

**“Convict”** is used to describe a person who has admitted guilt as to the commission of an offence, or who has been found guilty in a court of law.

**“Diversion”** is the process of resolving criminal cases without resorting to judicial proceedings. See Chapter Six.

**“Evidential Test”** means the test used to ensure that there is sufficient evidence to provide a realistic prospect of conviction against a suspect on each charge, as elaborated in Chapter Two.

**“Investigation Officer”** means a police officer, or any other person formally mandated by statute, who is conducting a criminal investigation.

**“Investigative agency”** means the Uganda Police Force or any other agency conducting investigations.

**“Offence”** means an act, attempt or omission punishable by law, and includes a regulatory offence.

**“Plea bargain”** means the process between an accused person and the prosecution, in which the accused person agrees to plead guilty in exchange for an agreement by the Prosecutor to drop one or more charges or reduce the charge to a less serious offence, or where the accused person agrees to plead to the charge but on a different set of facts. The Prosecutor may then recommend the sentence subject to the approval of the court.

**“Prosecutor”** means the DPP, and any person exercising delegated powers of the DPP under Article 120(4)(a) of the Constitution of the Republic of Uganda, 1995.

**“Public Interest Test”** means the test applied by Prosecutors to decide whether charging a suspect is in the interest of the wider administration of justice as elaborated in Chapter Two.

**“Suspect”** is used to describe a person who is under consideration as the subject of formal criminal proceedings.

**“Threshold Test”** means the test applied by Prosecutors to charge a suspect where there is some evidence and there is a reasonable prospect of additional evidence becoming available as referred to in Chapter Two.

**“Victim”** is used to describe a person against whom an offence has been committed, or the complainant in a case being considered or prosecuted by the ODPP or by those exercising delegated powers of prosecution.

**“Vulnerable person”** means a victim or witness who, due to age, gender, disability or other special characteristics or circumstances may require the provision of support and/or protection in the context of a criminal prosecution.



## TABLE OF CONTENTS

FOREWORD .....	3
ACKNOWLEDGMENTS .....	5
DEFINITIONS .....	7
ABBREVIATIONS.....	10
Chapter One - Introduction.....	11
1.1 Objectives .....	11
1.2 Compliance and Accountability .....	12
1.3 Powers of the Director of Public Prosecutions.....	12
1.4 Guiding Principles - Conduct of the Prosecutor.....	13
1.5 Conflict of Interest.....	14
1.6 Record Keeping .....	15
Chapter Two - The Decision to Charge .....	16
2.1 The Decision to Charge .....	16
2.2 Standard Required in Making the Decision to Charge.....	17
<b>2.3 The Two-Stage Test</b> .....	17
<b>2.4 The Threshold Test</b> .....	23
2.5 Minimum requirements of a file: under the Threshold Test.....	25
2.6 Review of Decision to Charge Based on the Threshold Test .....	26
2.7 Continuing Review of the Decision to Charge .....	26
2.8 Continuous Review of Ongoing Prosecutions.....	26
2.9 Review of a Decision Not to Charge .....	27
2.10 Confidentiality of Written Reviews.....	28
2.11 Key Evidence .....	28
Chapter Three - Determining the Appropriate Charge(s).....	30
3.1 Selection of Charges.....	30
3.2 Cases Involving Multiple Offences and/or Offenders .....	30
3.3 Submission of the Charge Sheet.....	31
Chapter Four - Accepting a Guilty Plea and Plea Bargaining .....	33
Chapter Five - Alternatives to Prosecution.....	34

## ABBREVIATIONS

<b>CCTV:</b>	Closed Circuit Television
<b>CID:</b>	Criminal Investigation Directorate
<b>CPCA:</b>	Criminal Procedure Code Act
<b>DPP:</b>	Director of Public Prosecutions
<b>IO:</b>	Investigating Officer
<b>ODPP:</b>	Office of the Director of Public Prosecutions
<b>PROCAM:</b>	Prosecution Case Management
<b>PROCAMIS:</b>	Prosecution Case Management Information System
<b>PF:</b>	Police Form
<b>UPF:</b>	Uganda Police Force

## Chapter One – Introduction

### 1.1 Objectives

1.1.1 These “Guidelines on the Decision to Charge 2023” (hereinafter the “Guidelines”) gives guidance to Prosecutors on the general principles to be applied when making decisions about criminal proceedings.

1.1.2 The Guidelines intend to cement and enhance the growth of a stronger, streamlined and professional Prosecutorial service in Uganda having made substantial progress since the establishment of the Office of the Director of Public Prosecutions, (ODPP) in 1995. They are complementary to existing prosecution guidelines and policy and additional guidelines may be developed from time to time on certain thematic areas.

1.1.3 The Guidelines set out the core functions and duties of a Prosecutor in relation to the decision to charge and the conduct of criminal proceedings so that Prosecutors may properly exercise their functions.

1.1.4 They are intended to guide Prosecutors on the standards expected of them, their duties in the administration of justice, and the factors to consider in the exercise of Prosecutorial discretion.

1.1.5 It is expected that the consistent use of the present Guidelines will ensure transparency and accountability in the exercise of Prosecutorial powers and consequently, build public confidence and trust in the ODPP and the criminal justice system at large.

1.1.6 In appreciating that poor decision-making can have profound consequences for accused persons, victims, witnesses and the public, these Guidelines are specially aimed at equipping Prosecutors to independently and objectively exercise their role as gatekeepers to the criminal justice system.

1.1.7 The Guidelines do not create any rights or obligations on the part of any third party including any defence counsel.

## 1.2. Compliance and Accountability

1.2.1 All Prosecutors have a duty to comply with all the guidelines and instructions issued by the DPP in respect of prosecutions. Failure to adhere to these Guidelines may lead to internal disciplinary action.

## 1.3 Powers of the Director of Public Prosecutions

1.3.1 Article 120 (3) of the Constitution of Uganda, 1995, establishes the independent Office of the Director of Public Prosecutions and sets out the functions of that Office. These include:

(a) To **direct** the police to investigate any information of a criminal nature and to report to him or her expeditiously.

(b) To **institute** criminal proceedings against any person or authority in any court with competent jurisdiction other than a court-martial.

(c) To **take over** and continue any criminal proceedings instituted by any other person or authority.

(d) To **discontinue** at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court.

1.3.2 Functions under sub-sections a) to c) above, can be delegated by the Director of Public Prosecutions by general or specified instructions.

1.3.3 Under Article 120(5), in exercising his or her powers under this article, the Director of Public Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process. Finally, in the exercise of the functions under Article 120(3), the Director of Public Prosecutions shall not be subject to the direction or control of any person or authority.<sup>1</sup> Thus the Constitution underlines the independence of the Office of the Director of Public Prosecutions.

---

<sup>1</sup> Article 120(6) of the Constitution of Uganda, 1995.

## 1.4 Guiding Principles - Conduct of the Prosecutor

1.4.1 The independence of the Prosecutor is central to the criminal justice system of a democratic society. Prosecutors are independent from persons or agencies that are not part of the prosecution decision-making process. Prosecutors are also independent from the police and other investigators. Prosecutors must be free to carry out their professional duties without political interference and must not be affected by improper or undue pressure or influence from any source.

1.4.2 Prosecutors shall act in accordance with the Constitution, laws of Uganda and in a manner that is compatible with their functions and the rights of the accused. As critical players in the justice system, Prosecutors have a duty to prepare and conduct cases in accordance with all enabling legislation, policies, practice directions and guidelines issued by the DPP or the Judiciary.

1.4.3 The exercise of Prosecutorial discretion includes, but is not limited to, deciding whether to initiate, continue or discontinue a prosecution, selection of charges and acceptance of pleas.

1.4.4 When making such decisions, Prosecutors shall not be influenced by irrelevant considerations such as individual, sectional, or political interests, or media pressure. This means that Prosecutors shall;

- Exercise the highest standards of integrity and care.
- Consult with a supervisor before conducting a case that is beyond their experience.
- Take reasonable steps to maintain and enhance their professional knowledge and skills and keep themselves well-informed of relevant legal developments.
- Be consistent, independent, fair and impartial.
- Maintain professional confidentiality at all times, subject to the requirements of the law.
- Understand and comply with their duties of disclosure under the law and guidelines.
- Serve and protect the interests of justice without fear, favour or prejudice, taking into account all circumstances whether or not they are to the advantage or disadvantage of the accused person.

- Respect and uphold, the right of all people - Prosecutors must never act in a way that unjustifiably favours or discriminates against particular individuals or interests.

## 1.5 Conflict of Interest

1.5.1 Prosecutors shall not knowingly participate in or seek to influence the making of a decision in regard to any case where their personal or financial interests or their family, social or other relationships would reasonably appear to influence their conduct as Prosecutors.

1.5.2 Prosecutors shall not act in any case in which their action or decision is the subject of litigation (e.g., judicial review), or in which, for any other reason, they are likely to be called as a witness.

1.5.3 Prosecutors shall disclose to their supervisor any potential conflict of interest that could reasonably be perceived as affecting their independent judgment in any case. Failure to do so may lead to internal disciplinary action and in serious cases, may result in criminal prosecution.

1.5.4 Where external counsel are instructed by the ODPP to act as Prosecutors for specific cases or where they are exercising delegated powers of prosecution, they must disclose to the DPP any issue that might reasonably be perceived to be a conflict of interest and report any issues that may arise pertaining to a conflict of interest or attempt to interfere with their function.

1.5.5 Prosecutors must immediately report to their supervisors:

- any improper attempt to influence their decision-making.
- any attempt to pervert the course of justice, or
- where anything emerges that gives rise to a potential conflict of interest.

1.5.6 The supervisor will be responsible for determining the necessary action.

## 1.6 Record Keeping

1.6.1 Prosecutors have a duty to keep up-to-date records of all decisions taken and instructions issued by the court or ODPP in sufficient detail. For Prosecutors within the ODPP, they must ensure that this information is recorded in sufficient detail on PROCAM and/or PROCAMIS.

## Chapter Two – The Decision to Charge

### 2.1 The Decision to Charge

2.1.1 It is the function of the ODPP to make assessments about whether it is appropriate to present charges for the criminal court to consider. A finding of guilt can only be made by a court of law.

2.1.2 The decision to charge (and therefore prosecute) is a serious step that affects suspects, victims, witnesses and the community at large, and so must be undertaken with the utmost care.

2.1.3 The Prosecutor stands as the gatekeeper to the criminal justice system. Poorly charged cases result in accused persons being remanded in custody or subject to restrictive bail conditions on matters that have little hope of conviction. The stigma and burden of having a criminal charge against them may have consequences upon their family, their standing in a community, their prospects of employment and their ability to travel abroad. Further, such cases only serve to overload an already stressed court system. It is vital that Prosecutors effectively discharge their obligation to conduct an objective and independent analysis of every single file that is presented to them for a decision to charge. Failure to do so carries high costs for society.

2.1.4 It is therefore the duty of a Prosecutor to ensure that the right person is prosecuted for the right offence, properly applying the law, and ensuring that relevant evidence is submitted before the court, and that disclosure obligations are complied with. Decisions on prosecution must be undertaken in a manner that is objective and with integrity.

2.1.5 Prosecutors must not let personal views based on ethnic or national origin, gender, disability, age, religion or belief, or social status of a suspect, accused person, victim or any witness influence their decision and neither must they be motivated by political considerations. Prosecutors must be even-handed in their approach in every case as they have a duty to protect the rights of the suspect and the accused persons whilst ensuring the victim is properly supported throughout the whole process. Prosecutors must always act in the interest of justice and not solely for the purpose of obtaining a conviction.



2.1.6 All decisions made on whether to prosecute or not and the reasons for such decisions must be written in accordance with these Guidelines and where applicable, filed on PROCAM and/or PROCAMIS.

## 2.2 Standard Required in Making the Decision to Charge

2.2.1 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. A realistic prospect of conviction means an objective, impartial and reasonable court hearing a case, properly directed and acting in accordance with the law, is more likely than not to convict the accused. This is however a different test from the one that the criminal courts must apply. A court will convict if it is sure that the accused's guilt is proved beyond reasonable doubt.

## 2.3 The Two-Stage Test

2.3.1 The Two-Stage Test, comprising an 'Evidential Test' followed by a 'Public Interest Test' should be applied:

- when all outstanding reasonable lines of enquiry have been pursued, or
- prior to an investigation being completed, where the Prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Two-Stage Test whether in favour of or against prosecution.
- Prosecutors should only apply the Two-Stage Test when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest.
- If Prosecutors do not have sufficient information to take such a decision, the investigation should continue, and a decision should be taken later in accordance with the Two-Stage Test set out in this section.

## The Evidential Test

2.3.2 When deciding whether there is sufficient evidence to prosecute, Prosecutors should first identify all the elements for each offence. This involves a thorough understanding of relevant substantive and procedural law including legal precedents. Once the Prosecutor is clear about the ingredients of the offence, the Prosecutor should address the following factors:

### Relevance

2.3.3 Relevant evidence is evidence tending to prove or disprove a matter in issue. A Prosecutor should assess whether the evidence tends to prove or disprove an element of an offence or whether it adds any probative value to make one of the elements of the offence more likely or not. See part II of the Evidence Act and relevant authorities.

### Admissibility

2.3.4 Admissibility is the quality of evidence that makes it capable of being legally admitted, allowable or permissible in court. Admissible evidence is therefore evidence that is relevant and is of such character (e.g., *inter alia* not unfairly prejudicial, based on hearsay, or privileged) that the court should receive it.

2.3.5 A Prosecutor should assess:

- Admissibility of evidence under existing law and procedure - for example under the Evidence Act and other relevant statutes specific to the nature of the alleged offence (e.g., admissibility of intercept evidence in terrorism trials or the use of digital evidence (and copies) under the Electronic Transactions Act and Computer Misuse Act).
- The likelihood of the evidence being held as inadmissible by the court (e.g., illegally obtained evidence; confessions and hearsay).
- The importance of that evidence in relation to the evidence as a whole.

### Reliability

2.3.6 Prosecutors must determine if the evidence is capable of being regarded as trustworthy or accurate. Prosecutors should consider the consistency of the evidence and witnesses over time, e.g., are there questions on accuracy or integrity? In a case that relies wholly or substantially upon

the identification of an accused person, the circumstances in which the identification took place must adhere to certain principles. Also, where identification parades have been conducted, adherence to the law (*Sentale vs. Uganda* (1968) EA 365) on the same is key. In all cases, contradictions within the evidence must be assessed to determine if they undermine the prosecution case. The totality of the evidence should be considered.

### **Credibility**

2.3.7 Credibility is the quality that makes something (as a witness or some evidence) worthy of belief. Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence e.g., the motivation of the witness, or where a witness has previous convictions for dishonesty, any civil proceedings on-going between the parties or where evidence is perishable over time and has not been examined early enough.

### **Availability**

2.3.8 Availability is the capacity of evidence to be legally valid at the point of tendering in court. For example, where the witnesses are foreigners, the probability of ensuring their attendance or other options such as visual audio link must be assessed and the value of their evidence weighed against other evidence in the case - can the Prosecutor proceed without them?

### **Consideration of any defence raised**

2.3.9 Evidence may be offered to disprove or contradict the evidence presented by the police or investigation agency, such as alibi. In considering the sufficiency of evidence, the Prosecutor must assess the suspect's explanation or defence if raised in any account given to the police. The Prosecutor should be mindful that reasonable lines of enquiry in an investigation include those enquiries that point away from the suspect's guilt.

### **The Public Interest Test**

2.3.10 In every case where the evidential sufficiency test has been passed, the Prosecutor must go on to assess whether a prosecution is in the public interest. A case that does not pass the evidential test must not proceed, no

matter how serious or sensitive the case may be. The only exception to this rule is where the Threshold Test is applied.

2.3.11 The Public Interest Test is where a Prosecutor exercises discretion. Sir Hartley Shawcross, a former English Attorney General, explained the rationale behind the Public Interest Test in 1951:

*“It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution. Indeed, the very first regulations under which the Director of Public Prosecutions worked provided that he should intervene to prosecute, amongst other cases: wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect therefore is required in the public interest. That is still the dominant consideration. It is not always in the public interest to go through the whole process of the criminal law if, at the end of the day, perhaps because of mitigating circumstances, perhaps because of what the defendant has already suffered, only a nominal penalty is likely to be imposed. And almost every day in particular cases, and where guilt has been admitted, I decide that the interests of public justice will be sufficiently served not by prosecuting, but perhaps by causing a warning to be administered instead. Sometimes, of course, the considerations may be wider still. Prosecution may involve a question of public policy or national, or sometimes, international, concern.”*

2.3.12 When applying the Public Interest Test, the Prosecutor should consider each of the factors below. The factors are not exhaustive and not all will be relevant in every case. The weight to be attached to each of the factors will also vary according to the facts and merits of each case. It is quite possible that one public interest factor alone may outweigh a number of other factors that tend in the opposite direction. As always, written reasons for the decision must be recorded. Factors include:

2.3.13 **The seriousness of the offence.** The more serious, the more likely it is that a prosecution is required. When assessing seriousness, consider the suspect’s culpability and the harm caused by considering the factors listed below:

*a) Culpability of the suspect*

2.3.14 Culpability is the tendency towards guilt or blameworthiness. It is determined by among others, the following factors:

- The suspect's level of involvement in the commission of the offence.
- The extent to which the offence was premeditated and/or planned.
- The extent to which the suspect has benefited from the criminal conduct.
- Whether the suspect has previous criminal conduct and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order.
- Whether the offence is likely to be continued, repeated or escalated.
- The suspect's age and maturity (see section 2.3.20).
- Where the suspect is in a position of trust or authority in relation to the victim.
- The vulnerability of the victim. The greater the perceived vulnerability, the greater the culpability of the suspect.

2.3.15 Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability (not amounting to a defence or impacting his or her ability to understand proceedings), as in some circumstances this may mean that it is less likely that a prosecution is required. However, Prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

b) *Impact or harm to the victim or community*

2.3.16 The greater the harm to the victim or the community, the more likely it is that a prosecution will be required in the public interest. However, Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special procedures and the possibility of prosecution without the participation of the victim. Prosecutors should consider the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

2.3.17 However, the ODPP does not act for victims and their families in the same way that lawyers act for their clients and Prosecutors must form an overall view of the public interest.

**2.3.18 The status of the victim.** It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion, or belief, or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics. A prosecution is also more likely to be in the public interest where the victim was a person serving the public at the time of the offence or where there was a relationship of trust or authority between the suspect and the victim.

**2.3.19 The suspect's age at the time of the offence.** The criminal justice system treats children differently from adults and significant weight must be attached to the age of the suspect if a minor. The best interests and welfare of the child must be considered, including whether a prosecution is likely to have an adverse impact on their prospects that is disproportionate to the seriousness of the offence. Prosecutors must have regard to the obligations arising under the Children Act, Cap 59 as amended, and the Constitution of Uganda, 1995. Prosecutors must be familiar with existing guidelines and policy on diversion where available.

**2.3.20** As a starting point, the younger the child offender, the less likely a prosecution is required. However, there may be circumstances in which the prosecution of a child offender is in the public interest. Such circumstances include: Firstly, the offence committed is serious; secondly, the child offender's past record suggests there are no suitable alternatives to prosecution and where the child offender does not admit to committing the offence which limits the application of out-of-court disposal mechanisms.

**2.3.21 Impact on the community.** The greater the impact of the offending on the community, the more likely a prosecution is required. Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group. The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offence. Government policy regarding certain offences may be a good indicator of the need for prosecution of certain offences such as corruption cases, and environmental protection (e.g., wildlife cases in areas with unique biodiversity and for the greater good of the country).

**2.3.22 Whether prosecution is a proportionate response.** In considering whether prosecution is proportionate to the likely outcome, a Prosecutor should consider the cost to the ODPP and the wider criminal justice system. This especially applies where prosecution could be regarded as excessive when weighed against any likely penalty. The consideration of prosecution as a proportionate response should not be the sole determinant of public interest. It is essential that regard is also given to the public interest factors identified above i.e. suspect's age, impact on the community, status of victim or suspect's culpability. Cost, therefore, can be a relevant factor when making an overall assessment of public interest.

**2.3.23 Out-of-court disposals.** When considering the public interest, in any case, consideration will be given as to whether the matter can be appropriately dealt with out-of-court. Prosecutors should apply any guidelines on diversion that may be in place and ensure that any decision to divert a case is recorded with reasons. See Chapter Six for more information.

**2.3.24 Protecting information.** Certain sources of information require protection. For instance, in some cases, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, on-going investigations, international relations or national security. It is essential that such cases be kept under continuous review.

## **2.4 The Threshold Test**

**2.4.1** In rare and unique circumstances, the Prosecutor can apply the Threshold Test to charge a suspect where the seriousness or circumstances of the case justify the making of an immediate charging decision, and there are substantial grounds to object to bail. There must be *some* evidence, and there must be a reasonable prospect of additional evidence becoming available. This test can only be used during the early stages of very serious cases, such as sexual and gender-based violence, murder, election violence, anti-corruption cases and counterterrorism, and only after consultation with the immediate supervisor.

**2.4.2** When the Threshold Test is applied, the following five requirements **MUST** be met:

## **First requirement**

2.4.3 There are reasonable grounds to believe that the suspect has committed the offence. Prosecutors must be satisfied, on an objective assessment of the evidence, that there are reasonable grounds to believe that the suspect has committed the offence. The assessment must consider the impact of any defence or information that the suspect has put forward or on which they might rely.

2.4.4 In determining whether there are reasonable grounds to believe that the suspect has committed the offence, Prosecutors must consider all of the material or information available thus far. Prosecutors must be satisfied that the relevant material to be relied on at this stage is capable of being put into an admissible format for trial, reliable and credible.

## **Second requirement**

2.4.5 Prosecutors must be satisfied that there are reasonable grounds to believe that the continuing investigation will provide further evidence, within a reasonable period of time. This allows the Prosecutor to consider the totality of the evidence, including material which may point away from, as well as towards a particular suspect, and determine whether it is capable of establishing a realistic prospect of conviction in accordance with the Two Stage Test.

2.4.6 The likely further evidence must be identifiable and not merely speculative. In reaching these decisions, Prosecutors must consider:

- The nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
- The charges that the evidence will support;
- The reasons why the evidence is not already available;
- The time required to obtain the further evidence, including whether it could be obtained within a reasonable period; and
- Whether the delay in applying the Two Stage Test is reasonable in all the circumstances.

## **Third requirement**



2.4.7 The seriousness or the circumstances of the case justifies the making of an immediate charging decision.

#### **Fourth requirement**

2.4.8 There are continuing substantial grounds to object to bail and in the circumstances of the case, it is proper to do so.

#### **Fifth requirement**

2.4.9 It is in the public interest to charge the suspect, applying the public interest test as set out in the Two Stage Test above.

### 2.5 Minimum requirements of a file: under the Threshold Test

2.5.1 In order to make a decision to charge based on the Threshold Test once the above five requirements are met, the Prosecutor must be satisfied that the investigation file is sufficiently compiled to allow the making of an informed decision.

2.5.2 Where the investigation is not complete and a decision to charge is sought on the Threshold Test, the file MUST contain:

- Key evidence or information that raises reasonable grounds to believe that the suspect has committed the offence.
- A description of outstanding evidence and anticipated timelines.
- A summary of the facts of the case stating why the case is serious for the purposes of the Threshold Test – this may include issues such as risk to the suspect of being on the receiving end of mob justice.
- Where applicable, reasons why the suspect is a flight risk or poses another bail risk.

2.5.3 Where the minimum requirements are not met, the Threshold Test will not be applied, and a charge cannot be preferred. Prosecutors should advise investigators as to what further evidence or steps must be taken in order to revisit the question of charge.

2.5.4 A proposed charge alone will never justify the making of a decision on the Threshold Test. Some evidence must be provided. If the Threshold Test is not passed, the Prosecutor may guide the police on further investigation in accordance with guidelines issued by the ODPP.

## 2.6 Review of Decision to Charge Based on the Threshold Test

2.6.1 A decision to charge under the Threshold Test must be kept under regular review and the first review must take place within 14 days of making the decision. If the evidence anticipated is still not available within the 14-day period, the case should be escalated to the supervisor for direction on the next steps.

2.6.2 The Prosecutor should be proactive to secure from the police the identified outstanding evidence or other material in accordance with an agreed timeframe. The evidence must be regularly assessed to ensure that the charge is still appropriate and that, where applicable, continued objection to bail is justified. The Two-Stage Test must be applied as soon as the anticipated further evidence or material is received. If that evidence is not forthcoming, or it becomes known to the Prosecutor that the evidence does not meet the required standards, a review with a view to withdrawing the case must be conducted without delay.

## 2.7 Continuing Review of the Decision to Charge

2.7.1 A review can be conducted by any Prosecutor seized of/assigned the matter. Supervisors and the performance management team shall ensure, as a matter of practice, and for the purposes of compliance and quality control, that there are regular reviews of decisions to charge. Reviews may be made in consultation with the person who made the initial decision. Where a Prosecutor is aware of other matters related to a case under review, the process of review should include and consider all related files. All reviews must be recorded in writing.

## 2.8 Continuous Review of Ongoing Prosecutions

2.8.1 The prosecution should keep cases under constant review. Review is necessary as circumstances of the case may change. The evidential factors that supported a prosecution may no longer be available or the public interest may alter during the course of a trial as new information or facts come to light.

2.8.2 The circumstances in which a review would be required include:

- Three consecutive adjournments, by the prosecution, should trigger a review. This is to ensure Prosecutors remain vigilant over the conduct of a prosecution once it has started, to assess the reasons for those adjournments and determine whether there is any action to mitigate the risk of further adjournments;
- When further evidence is received in relation to the case, or new information has come to light e.g., where a witness is no longer willing to testify or is no longer available;
- As a trial progresses, it may be that some of the witnesses fail to attend trial or leave essential elements of the offence unresolved to the standard required at trial;
- A Prosecutor's continuing duty of disclosure may also result in the need to review the case.

## 2.9 Review of a Decision Not to Charge

2.9.1 Occasionally there are cases where the Prosecutor will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal. This will usually be triggered by further evidence or information that comes to light. These cases include:

- Cases where a further review of the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, charges should be instituted.
- Cases where charges were not filed for lack of sufficient evidence but where more significant evidence is discovered later.
- Cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought.

## 2.10 Confidentiality of Written Reviews

2.10.1 Written reviews MUST NEVER be given to unauthorised persons under any circumstances. They are also subject to legal professional privilege between the investigating agency and the ODPP only. Where Prosecutors are requested by complainants, family members of deceased persons, accused persons or their representatives to provide reasons for a decision not to prosecute, this should be communicated in a written letter and approved by a supervisor. Any queries on the decision to charge should be responded to with a reference to these Guidelines.

## 2.11 Key Evidence

2.11.1 Key evidence is evidence that establishes the ingredients of an offence. Evidence denotes the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved; and, without prejudice to the foregoing generality, includes statements by accused persons, admissions, and observation by the court in its judicial capacity.

2.11.2 The ingredients of an offence are defined by statute and in some cases, clarified by legal precedents. These ingredients must be proved in order to secure a conviction. Key evidence should be available at the point of charge. It would usually include but is not limited to:

- All witness statements gathered in the investigation of the offence relating to the elements of the offence, including evidence that points away from the guilt of the suspect.
  - Statements from Investigating Officers and arresting officers.
  - Expert evidence (e.g., forensic scientists) whose evidence establishes one or more of the elements of the offence.
  - Any statements of the accused whether exculpatory or inculpatory.
  - Any statement relating to the arrest of the accused.
  - Digital evidence (e.g., CCTV, other audio/visual multimedia and metadata).
  - Documentary evidence.
  - Exhibits.

2.11.3 In order to make a decision to charge, the investigation file must include enough of the key evidence to establish the elements of the offence in order to justify a charging decision unless the Threshold Test applies.

2.11.4 Statements may be obtained post-charge, purely for the purposes of chain of custody/continuity along with a full expert report provided the evidence revealed at the time of a decision to charge establishes the elements of the offence. In cases involving, for example, narcotics drugs or specimens of wildlife, a statement from an experienced officer as to his/her opinion on the nature of the item, should suffice for the purposes of making a decision to charge. That statement must set out his experience and basis for his/her opinion.

2.11.5 When reviewing the evidence in an investigation file, the Prosecutor must check that the investigation diary is up to date and accurate. If there is any anomaly, this should be highlighted to the Investigating Officer. The Prosecutor must indicate which evidence has been presented within the file and on which the decision to charge or not to charge has been made.

2.11.6 When a Prosecutor decides not to charge, reasons shall be given in writing and, where appropriate, the Investigating Officer and the victim shall be consulted.

2.11.7 Where there is a need for additional evidence to meet the minimum requirements, a Prosecutor shall give written advice, outlining key areas to be covered, together with any other specified information within a reasonable time (this can usually be assessed in discussion with the Investigating Officer) and the file be resubmitted for further direction.

## Chapter Three – Determining the Appropriate Charge(s)

### 3.1 Selection of Charges

3.1.1 It is the duty of the Prosecutor to determine the charges for which the accused takes a plea. The Prosecutor must prefer charges that:

- reflect the seriousness and extent of the offending.
- give the court adequate powers to sentence and impose appropriate post- conviction orders.
- allow a confiscation order to be made in appropriate cases, where a defendant has benefitted from criminal conduct; and
- enable the case to be presented in a clear and simple way.

3.1.2 In the ordinary course, the charge or charges laid will be the most serious disclosed by the evidence. However, the Prosecutors may not always choose or continue with the most serious charge where there is a choice, and the interests of justice are met by selecting the lesser charge especially where the sentencing powers are sufficient to meet the seriousness of the conduct alleged.

3.1.3 Prosecutors should never proceed with more charges (or ‘over charge’) than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never proceed with a more serious charge just to encourage a defendant to plead guilty to a less serious one.

3.1.4 Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

3.1.5 The framing of the charges and information must be consistent with the provisions of section 88 of the Magistrates Courts Act or section 25 of the Trial on Indictments Act as appropriate. Prosecutors must take account of any relevant change in circumstances as the case progresses after charge and be proactive in seeking an amendment if it is in the interests of justice to do so.

### 3.2 Cases Involving Multiple Offences and/or Offenders

3.2.1 Prosecutors must be familiar with section 86 and 87 of the Magistrate Courts Act and section 23, 24 and 25 of the Trial on Indictments Act, in relation to joinder of persons and charges. It is important that Prosecutors identify and correctly consider the number of files to be submitted to deal with the number and type of suspects and offences.

3.2.2 The most common combinations are:

- Single offender multiple linked offences.
- Single offender, multiple non-linked offences.
- Multiple-offenders, linked offences.
- Multiple offenders, non-linked offences.

3.2.3 Charges for multiple offences may be included in the same charge sheet provided those charges are: founded on the same facts or form or are part of a series of offences of a same or similar character. As a result, case files containing charges that are not linked in those two ways will need to be separated, each with a different ODPP registration number.

Similarly, where multiple offences include cases that must be tried in the High Court, and those that may be tried in subordinate courts, provided there is sufficient nexus in the facts and circumstances of the offences, Prosecutors should seek to join the offences and try them together in the High Court.

3.2.4 Similarly, cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, the prosecution might be reserved for the more culpable participants in order to avoid excessively long and complex proceedings.

### 3.3 Submission of the Charge Sheet

3.3.1 The action officer (Prosecutor) shall sanction the charges by appending his or her signature, date, and stamp on the Charge Sheet.

3.3.2 A copy shall be retained in the ODPP PROCAM file. Once the Charge Sheet is filed in court, depending on whether the accused is in the custody of investigative agencies or not, the Prosecutor will guide the investigative

agencies on when the accused person should be availed to take plea. The attendance of the accused if not in custody can be procured by way of issuance of summons. Otherwise, apprehension and arraignment as the case may be. With the Charge Sheet filed in the court registry, a court file is opened, and a case number assigned – this number must be recorded on the ODPP's copy of the Charge Sheet as well as the ODPP file. The ODPP file itself should remain with the Prosecutor and under no circumstances may a file be left unattended in the court or office.



## Chapter Four – Accepting a Guilty Plea and Plea Bargaining

4.1 Accused persons may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime.

4.2 A plea agreement may be entered into between the Prosecutor and an accused person where an accused person has been charged in court; and at any time before the court passes judgment. Prosecutors must therefore be familiar with and apply the Plea-Bargaining Rules.

4.3 Prosecutors should only accept the accused person's plea if:

- the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features.
- it enables the court to make a confiscation order in appropriate cases, where an accused has benefitted from criminal conduct, and
- it provides the court with adequate powers to impose other ancillary orders, bearing in mind that these can be made with some offences but not with others.

4.4 Particular care must be taken when considering pleas which would enable the accused person to avoid the imposition of a mandatory minimum sentence.

4.5 Prosecutors must never accept a guilty plea just because it is convenient.

4.6 In considering whether the pleas offered are acceptable, Prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the Prosecutor.

4.7. It must be made clear to the court on what basis any plea is advanced and accepted.

## Chapter Five – Alternatives to Prosecution

5.1 A Prosecutor may consider an alternative to prosecution if it is an appropriate response to the offence or the seriousness and consequences of the offending behaviour.

5.2 Prosecutors must follow any relevant guidance when asked to advise on or authorise an out-of-court disposal, including any appropriate regulatory proceedings, a punitive or civil penalty, or other disposal. They should ensure that the appropriate evidential standard for the specific out-of-court disposal is met including, where required, a clear admission of guilt, and that the public interest would be properly served by such a disposal. Such disposals may include:

5.3 Diversion which is the process of resolving criminal cases without resorting to judicial proceedings. Diversion can take the form of:

- A caution, a warning.
- An apology to the victim or reconciliation. Where parties are willing to reconcile before the suspect has been arraigned, the Prosecutor should direct the Investigating Officer to verify and record an additional statement and resubmit the file for a final decision. Where the reconciliation fails, the criminal trial of the accused shall proceed to final determination without prejudice to the right of the victim to seek appropriate relief in civil proceedings.
- The payment of compensation for damage done or losses incurred by the victim or witness (or restitution).
- The referral to a structured diversion programme, restorative justice process or similar scheme.
- It is particularly suitable for juvenile offenders but see Chapter Two for further considerations when dealing with children in conflict with the law.


5.4 Prosecutors might also consider referral of the matter for a civil remedy or even administrative action where appropriate. Administrative action can include sanctions by professional bodies such as the Police Council, Public Service Commission, the Education Service Commission, among others.

5.5 Alternatives to prosecution should be applied at the earliest opportunity. The action officer/Prosecutor shall make the initial decision and identify the alternative to be applied with reasons recorded in writing. Such decisions on out-of-court disposals may be subject to review by a supervisor.



A matter dealt with through alternatives to prosecution shall be considered concluded.



## Office of the Director of Public Prosecutions - Uganda

 Plot 1 Pilkington Road,  
Worker's House 9th ,11th and 12th Floor  
P. O. Box 1550, Kampala- Uganda.

 [admin@dpp.go.ug](mailto:admin@dpp.go.ug)  
 [www.dpp.go.ug](http://www.dpp.go.ug)

 [odppuganda](https://www.facebook.com/odppuganda)  
 [odppuganda](https://twitter.com/odppuganda)