



DPP

**PROSECUTION PERFORMANCE
STANDARDS AND GUIDELINES
2014**

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INTRODUCTION

The Mandate of the Director of Public Prosecutions is derived from Article 120 of the Constitution of the Republic Uganda. The DPP is expected under the same article to exercise his/ her powers with regard to public interest, the interest of the administration of justice and the need to prevent abuse of legal process.

As expected, the constitution does not spell out the finer details of what is entailed in the prosecution function. In the past, DPP lawyers have been guided largely by departmental good practices and tradition in carrying out their prosecutorial functions and related business. It has been a big challenge to disseminate and enforce these departmental good practices and traditions as they have not been reduced into one formal document. It is because of this realization that management found it necessary to prescribe and document performance standards to guide prosecutors and allied staff members on how best to handle and conduct prosecutions and related business. These performance standards and guidelines are put in place to ensure that prosecutors efficiently carry out their work of prosecuting criminal cases while upholding the constitution and at the same time ensuring that the rule of law prevails. The standards guide the prosecutors in managing the prosecution process.

Every case is unique and must be considered on its own merits. For this reason there is no simple formula which can be applied to give a simple answer to the question the prosecutor has to face. But there are general principles which should underlie the approach to prosecution, even though the individual facts of each case will require the prosecutor to use judgment and discretion in their application.

The aim of these guidelines for prosecutors is to set out in general terms principles which should guide the initiation and conduct of prosecutions in the Directorate. They are not intended to override any more specific directions which may exist in relation to any particular matter or case. They are intended to give general guidance to prosecutors on the factors to be taken into account at different stages of a prosecution, so that a fair, reasoned and consistent policy underlies the prosecution process.

The guidelines do not purport to deal with all the questions which can arise in the prosecution process nor with every aspect of the role of the prosecutor in their determination. The guidelines are intended as a working document which will require, in the light of circumstances, to be adjusted or elaborated. Accordingly, they will be kept under review and from time to time. The guidelines are intended to operate from the date of their approval by Top management.

For avoidance of doubt, these guidelines do not stand alone. They will have to be read and implemented together with two other important documents. These are:

- GUIDELINES FOR INVESTIGATIONS AND PROSECUTIONS, 2011.
- PROSECUTION MANUAL ON ILLICIT TRADE.

Where there is any conflict between these three documents, these guidelines will prevail.

These standards and guidelines include:

1 PART ONE

1.1 PROPER RECORD KEEPING

- i. All prosecutors should have registers for incoming and outgoing files and should make entries therein promptly on receipt and dispatch of files. These registers to be known as “individual action officer registers” are a must have for all DPP Prosecutors.
- ii. In case of Resident State Attorney Stations, all files should be registered under PROCAM and allocated on the same day.
- iii. Files for perusal and those under trial should be filed in the pink PROCAM covers; miscellaneous applications should be in the yellow PROCAM covers; appeals should be filed in green PROCAM covers while blue file covers are for criminal revisions.
- iv. New files from police should be received using a received stamp which should be stamped on the forwarding minute or letter. The PROCAM stamp should be affixed on the charge sheet, first information and front page covers of the police file.
- v. The file should be registered in the master PROCAM register and the PROCAM system at the station.
- vi. Files originating from other stations should be re-registered in the new station using PROCAM reference of the station of origin.
- vii. The file should be registered in the internal movement register and should be signed for by the action officer.

- viii. The file should be taken to the allocating officer or RSA for allocation.
- xv. At the Directorate headquarters, all incoming files should be received in the registry and taken to the allocating officer within 2 clear working days from the date of receipt.
- xvi. Court documents such as hearing notices, court proceedings, memorandum of appeal and other court papers served upon the Director of Public Prosecutions through the registry should be delivered to the officers concerned on the day of receipt or as soon thereafter as is practicable.
- xiii. Correspondences should as much as possible be handled on the day of receipt and the registry staff should ensure such correspondence is brought to the attention of the concerned officers.
- xiii. The allocating officer should allocate files to the action officers within three days from the date of receipt for general or minor cases and three days for complex cases. This gives the allocating officer the opportunity to screen the files and to decide on which officer will be best placed to handle the case file.
- xix. The action officer should be mindful of the status of the case files allocated to them and for those case files already registered in court they should be handled within ten days while for those not yet in court within thirty days.

- ix. At this stage, the PROCAM system should be updated to reflect the action officer and position of the file.
- x. In all cases where suspects are in police cells, files should as much as possible be handled the same day.
- xi. Files for perusal should as much as possible be handled and returned to police the same day. There shall be timely, effective and fair charging or closure of decisions in accordance with the law and in any case to ensure that no person is held in a police cell for more than 48 hours.
- xii. Time taken to peruse a file and return it to the registry should not exceed one month.
- xiii. Allocating officers are particularly advised to ensure that part heard cases are given priority by action officers perusing such cases.
- xiv. Time taken between dispatches from registry to different destinations should as much as possible not exceed 48 hours.

1.2 LEGAL OPINION

At the time of perusal of the police files, investigators will be guided with diligence on the line of inquiries to carry out to improve the evidence.

The legal opinions should be guided by among other factors.

- The facts of the case.
- The law applicable.
- Identification of the charge.
- The ingredients of the offence.

- An impartial and objective assessment of all relevant factors in the case.
 - Prudent and rational recommendation based on the preceding factors.
- xx. For avoidance of doubt, the decision to prosecute or not will be strictly guided by the following considerations:-
- The sufficiency of evidence,
 - Whether the intended prosecution is in public interest,
 - There is no abuse of the due process.

1.3 CHOICE OF CHARGE

In many cases, the evidence will disclose a number of possible offences. Care should be taken to ensure that the charge adequately and appropriately reflects the seriousness of the criminal conduct for which there is evidence and will provide the court with an appropriate basis for sentence. In the ordinary course the charge or charges laid will be the most serious disclosed by the evidence.

The prosecutor must not “over charge”. Charges more serious than are justified by the evidence should not be preferred with the intention of encouraging the accused to plead guilty to a lesser charge. The prosecutor should prefer only charges which are justified by the facts as then known. In particular the question of whether in a homicide case the appropriate charge is one of the murder or manslaughter has to be given the most careful consideration.

1.4 AMENDMENT OF CHARGES IN CAPITAL CASES

- i. An opinion giving reasons why a capital offence should be reduced to a lesser offence should be written and sent to the DPP together with the police file.
- ii. This practice may not apply where the matter is under hearing in the high court where oral applications may be made with leave of court.
- iii. If the DPP agrees with the opinion then a withdrawal of the charge will be signed and issued.
- iv. A withdrawal should then be tendered in court and the capital offence should immediately thereafter be substituted with a lesser offence.
- v. All files requiring amendment of the charge sheet shall be remitted back to police with a draft amended charge sheet indicating the charge to guide the Police.
- vi. As a way of controlling backlog and registration of undeserving cases, all police files should as much as possible be sanctioned by a DPP action officer before registration in court.
- vii. In the case of capital offences, the action officer should monitor and ensure that all investigations are completed within a period of three months and ensure that that the accused persons are committed before they qualify for statutory bail.
- viii. In case of non-capital cases the investigations should be completed within one month.

1.5 GUIDELINES ON PREPARATION OF COMMITTAL PAPERS

- Committal papers include the summary of case and the indictment.
- The summary of the case shall contain all relevant facts of the case.
- The facts shall be laid down in the logical order of occurrence.
- The summary of the case should state the exhibits to be relied upon by the prosecution and indicate that they will be tendered in court.
- The summary of the case and indictment should be signed and dated by the action officer on behalf of the DPP. For avoidance of doubt, a state prosecutor shall not sign on committal papers.
- The summary of the case should end with the words “the DPP contends that the accused has no valid defence and should be convicted as charged”
- The indictment should be framed in strict accordance with the enabling law found in part three of the Trial on Indictment Act. (Sections 22 – 27) which is standard form relating to framing of charges. In particular it should contain statement of offence, particulars of the offence and should be signed by a state attorney on behalf of the DPP.

2 PART TWO

2.1 COURT CASES AND HEARINGS

- i. In the case of RSA stations, all case files should be received and registered in PROCAM on the day of receipt or as soon thereafter as is practicable.
- ii. The RSA should promptly allocate case files for prosecution and update the allocation in the data base.
- iii. Where allocation of cases is done automatically on the basis of courts where prosecutors are assigned work, the RSA should keep track of such cases and ensure that the final results of such cases are captured in the appropriate PROCAM register.
- iv. Prosecutors should appraise the evidence and exhibits on record immediately and thereafter consider fixing the cases for hearing. For avoidance of doubt, prosecutors should ensure that before a case is fixed for hearing, the relevant exhibits should have been secured by the police.
- v. For cases in the magistrate's courts, fixing of hearing dates should as much as possible be within one month after plea and two months for complex cases e.g. fraud cases. Nothing should stop a prosecutor from fixing a minor case for hearing on the date of plea taking or a complex case in a short time where possible.
- vi. In cases where the accused persons are on remand, prosecutors should ensure that action is taken by

way of fixing hearing dates before the statutory mandatory remand periods.

- vii. Prosecutors shall ensure that complainants and other stakeholders are utilized to ensure attendance of witnesses and that, witness summons indicate the court room as well as the time of hearing.
- viii. Prosecutors shall carefully select witnesses, line them up for presentation before court, interview them and prepare them prior to presenting them for court.
- ix. A prosecutor should lead, as part of the prosecution case, all credible, relevant and admissible evidence unless:
 - a. The defence consents to the evidence not being adduced;
 - b. A particular matter has been established by the calling of other evidence and there is no prejudice to the accused in not calling a particular witness;
 - c. A witness is not available and dispensing with his or her evidence will not adversely affect the case for the prosecution.
- x. Prosecutors will assess the peculiar needs of victims and witnesses and inform court in advance, keep them informed about the progress of their case and seek appropriate support to help them to give their best evidence.
- xi. Prosecutors will ensure that witnesses summoned are presented, heard in court whenever and wherever practicable to minimize frequency of adjournments.

- xii. After adjournments, prosecutors should minute police files with clear guidance on the next date of hearing and the number and names of witnesses to be summoned.
- xiii. Prosecutors should fairly and firmly prosecute cases with a goal of attaining a 70% conviction rate of the completed cases.
- xiv. Prosecutors shall without fail attend the District Coordination Committee (DCC) meetings and during the meetings present or air out any matter affecting the successful prosecution of cases so that solutions to effective handling of cases are found.
- xv. Prosecutors shall advise DPP on non meritorious committed cases or cases which for various practical reasons e.g. death of a complainant may not proceed with a view of having them withdrawn from court.
- xvi. Prosecutors have a duty to explain the decision to discontinue proceedings and where charges are substantially altered to give an explanation to the respective stakeholders.
- xvii. The prosecutors shall after conviction summarize to court the aggravating and mitigating factors to assist court pass the most appropriate sentence.
- xviii. During the allocutus, prosecutors shall strike a fair balance between the interests of the victim and public interest. For avoidance of doubt the prosecutor shall be guided by the following guidelines:-
 - a) To ensure that court has before it all available evidence relevant to sentencing, whether or

- not that evidence is favorable to an accused person.
- b) In particular, to ensure that the court has before it all available evidence and appropriate submissions concerning the impact of the offence on its victim and community.
 - c) In cases where the accused person in a defilement or rape case is HIV+ to ensure that the sero status of the victim is established and information is passed on to court.
 - d) In addition, to ensure that the court has before it all relevant evidence available to the prosecution concerning the accused's circumstances, background, history and previous convictions, if any, as well as any available relevant to the circumstances in which the offence was committed which is likely to assist the court in determining the appropriate sentence.
 - e) To ensure the court is aware of the range of sentencing options available to it.
 - f) To refer the court to any relevant authority or legislation that may assist in determining the appropriate sentence.
 - g) To assist the court to avoid making any appealable error, and to draw the court's attention to any error of fact or law which the court may make when passing sentence.
- xix. Prosecutors should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. Where need be, the court

should be invited to hear evidence to determine the facts and relevance of that assertion before court passes a sentence.

2.2. JUVENILE JUSTICE

- i) A prosecutor should always ascertain the age of child victims to determine the appropriate charge.
- ii) During the perusal and trial stage, prosecutors should always give priority to cases involving juveniles.
- iii) Prosecutors should ensure Juvenile offenders are always accompanied to court by probation officers or their parents.
- iv) Prosecutors should ensure that cases involving juvenile offenders in magistrate courts are prosecuted within a period of 3 months.
- v) Prosecutors should develop child friendly skills while handling child witnesses.
- vi) A prosecutor should as much as possible ensure that there is no intimidation of whatever form on child witnesses by the accused.
- vii) A prosecutor should always request the presiding judicial officer for the trial involving a juvenile to be heard in chambers.

3 PART THREE

3.1 MISCELLANEOUS APPLICATIONS

Miscellaneous applications are applications which fall in the categories of bail, Criminal revisions and constitutional references.

3.1.1 Bail

- a) Prosecutors should record full particulars of sureties on the police file. Such particulars include residential, work place, phone contact and particulars of L.C.1 chairpersons.
- b) Prosecutor will oppose bail for accused persons where appropriate, taking particular account of the risk posed to the victim and the public as well as the need to preserve and or recover evidence. However, bail applications in all capital offences will be opposed as a matter of course.
- c) In deserving cases, prosecutors should file evidence to oppose bail application.

3.1.2 Criminal Revisions

Criminal Revisions should be handled in strict accordance with the provisions of the Criminal Procedure Code Act Cap116 (sections 48 to 54)

Prosecutors should ensure that in all criminal revisions before the high court, the DPP is heard or gives his opinion and where the DPP opposes the revisions, the prosecutor should always not only give reasons but indicate to the court that he requires to be heard in court if the court is contemplating revising the decision of the lower court.

4 PART FOUR

4.1 APPEALS

- i. In cases where an accused is acquitted the best practice is to file an automatic notice of appeal in the High Court or Court of Appeal as the case may be. This is optional to appeals before magistrate courts.
- ii. Prosecutors shall file a memorandum of appeal when they are of the view that court has made the wrong legal decision on the facts or on the law after carefully perusing the record.
- iii. Notices of appeal shall be filed within the statutory period of 14 days, and the request for the record of proceedings to be made and followed up.
- iv. As soon as he or she is served with the record, the action officer is expected to thoroughly peruse the said record to identify areas for appeal if any. If such grounds are identified or determined, the action officer is required to prepare and file the memorandum of appeal. This should be undertaken within two weeks of being served with the record.
- v. Prosecutors should endeavor to fix the appeals for hearing as well as do thorough research for the prosecution of the appeals. This practice will mutatis mutandis apply to appeals in all appellate courts.
- vi. In all appeals where the DPP is the Respondent, action officers or officers in charge of records shall promptly attend to the papers and ensure that all necessary steps are undertaken to effectively handle

the appeals as and when they are served on the DPP's office. In a nutshell, DPP action officers are mandated to ensure that all legal and administrative matters connected with appeals – including receiving, perusing, filing legal responses, research, conduct of court prosecutions and attending court to receive court rulings or judgments are attended to expeditiously.

5 PART FIVE

5.1 COMPLAINTS

- i. “Complaints” are written representations made to the office of the DPP regarding criminal matters.
- ii. All complaints should be formally received by a registry official appending the Directorate stamp immediately upon receipt.
- iii. The complaints so received will be studied and critically assessed by DPP action officers. Action if required will be taken by the action officer on the complaint as soon as is practicable, in any case not later than one week.
- iv. Complainants will be given a feedback and advised on the directorate complaints appellate structures. Feedback may be verbal or in writing depending on the nature of the complaint.
- v. Action taken on the complaint should be formally communicated to the complainant.
- vi. Public written complaints lodged with the Directorate should be handled within one week from the date of receipt.
- vii. Prosecutors should immediately start on the process of handling the complaint as soon as it is received.
- viii. Written complaints and the responses thereto should be properly filed for ease of reference.

- ix. Complaints should be responded to promptly, handled objectively, fairly and confidentially.
- x. Where complaints relate to cases under hearing, a report of the status of the case to the author of the complaint is sufficient unless there are compelling reasons requiring the recalling of the file before its due date in court.
- xi. Persons who lodge complaints with DPP offices should be treated with courtesy and respect.
- xii. Complaints to the DPP head office shall be lodged with the complaints desk.

COMMENCEMENT

These performance standards shall take effect from 4th day of July 2014



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