



Review Article

Discretion Without Dominion: The Constitutional Limits of Prosecutorial Power in Uganda

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Abstract: Uganda's Constitution gives the Director of Public Prosecutions a deliberately wide decisional field, but article 120 does not convert independence from direction into immunity from law, reasons or review (Constitution of the Republic of Uganda, 1995, arts. 120(3), 120(5), 120(6); *Bakaleeke v Attorney General*, 2019). The controlling constitutional problem is therefore not whether discretion should exist, but how a power capable of determining arrest exposure, charge, trial, bargaining and discontinuance can remain individualised without becoming arbitrary (Davis, 1969, pp. 4–6; Davis, 2007, pp. 5–15; Criminal Procedure Code Act, Cap. 122). This article argues that article 120(5) supplies a legally enforceable grammar of justification: public interest, the administration of justice and prevention of abuse of process are cumulative constraints that must discipline both the substance of a prosecutorial decision and the procedure by which it is reached (Constitution of the Republic of Uganda, 1995, art. 120(5); *Rutayisire v Uganda Revenue Authority*, 2021). The Office of the Director of Public Prosecutions' 2023 Decision to Charge Guidelines improve evidential screening, public-interest analysis and written recording, yet their denial of correlative third-party rights and their treatment of review material as confidential leave the constitutional promise of accountability institutionally incomplete (Office of the Director of Public Prosecutions, 2023, paras. 1.1.6–1.2.1, 2.1.6, 2.3.1, 2.9.1–2.11.7). Ugandan judicial review doctrine recognises legality in principle but often demands proof of improper purpose or irrationality from persons denied the decisional record, producing an accountability paradox in which the claimant must prove what the institution alone can disclose (*Bakaleeke v Attorney General*, 2019; *SP Begira Avito v Attorney General*, 2026; cf. *Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41). Official performance data deepen rather than resolve that paradox: very high prosecution volumes coexist with major staffing vacancies, incomplete geographic coverage and indicators that measure throughput but not decisional consistency, equality, reason quality or correction on review (Office of the Director of Public Prosecutions, 2024, pp. 10, 14–15; Office of the Director of Public Prosecutions, 2025, pp. 42, 48, 54; Office of the Auditor General, 2025, pp. 25–26). Drawing on Ugandan doctrine, comparative common-law safeguards and Laurène Soubise's account of how managerial systems can both constrain and deform judgment, the article rejects the false choice between unchecked autonomy and judicial substitution (Soubise, 2015, pp. 138–149, 160–163, 269–273; *R (Corner House Research) v Director of the Serious Fraud Office*, 2008, para. 30). It proposes structured discretion: published binding criteria, intelligible contemporaneous reasons, auditable equality data, independent internal reconsideration, proportionate disclosure of the decision record, strengthened remedies and resources directed to decisional quality rather than conviction or output alone (Miller & Wright, 2008, pp. 128–135; Bibas, 2009, pp. 960–970; United Nations, 1990, paras. 12–14, 17–18).

Keywords: *prosecutorial discretion; Director of Public Prosecutions; judicial review; reasons; equality; private prosecution.*

1. Introduction

The familiar claim that prosecutors possess 'wide discretion' identifies the scale of choice but says nothing about the legal quality of its exercise, and in Uganda that verbal shortcut has too often allowed institutional independence, evidential judgment and remedial immunity to collapse into one another (Constitution of the Republic of Uganda, 1995, art. 120; Nsereko, 2005,

pp. 126–129). Article 120 separates the Director of Public Prosecutions ('DPP') from political instruction because a prosecutor beholden to a minister cannot apply criminal law impartially, but the same article commands regard to public interest, the administration of justice and prevention of abuse because an insulated prosecutor can also exercise public power unlawfully (Constitution of

the Republic of Uganda, 1995, arts. 120(5)–(6); International Association of Prosecutors, 1999, paras. 2.1, 4.1–4.3). Independence and accountability are consequently not opposing constitutional values: independence identifies who may not dictate the result, whereas accountability requires the authorised decision-maker to demonstrate that the result was reached on lawful grounds (*Krieger v Law Society of Alberta*, 2002, paras. 30–32; Venice Commission, 2011, paras. 14–16, 42–45).

That distinction matters because a charging decision is never merely preliminary administration: it mobilises coercive process, changes bargaining power, exposes the accused to expense, stigma and possible pre-trial detention, and places victims and witnesses inside a state-controlled adjudicative trajectory (Constitution of the Republic of Uganda, 1995, arts. 23, 28; *Kuria v Attorney General*, 2002, pp. 79–80; *R v Babos*, 2014, paras. 30–35). A refusal or discontinuance can be equally constitutive because it may extinguish a victim's realistic path to adjudication, neutralise a private prosecution, or distribute impunity selectively even though no judicial finding on the merits follows (Constitution of the Republic of Uganda, 1995, arts. 21, 50, 120(3)(c)–(d); Magistrates Courts Act, Cap. 19, ss. 42–43; Mujuzi, 2017, pp. 590–594). The constitutional injury is thus not confined to demonstrable bad faith; it also arises when relevant factors are ignored, unlike cases are treated inconsistently, reasons are unrecoverable, or scarcity silently substitutes for the criteria that article 120(5) makes legally relevant (*Rutayisire v Uganda Revenue Authority*, 2021; Davis, 1969, pp. 55–60; Miller & Wright, 2008, pp. 129–136).

Uganda's 2023 Decision to Charge Guidelines make the present inquiry materially different from earlier accounts that treated the absence of national charging criteria as the principal defect (Office of the Director of Public Prosecutions, 2023, foreword, paras. 1.1.1–1.2.1). The sharper question is whether internal articulation has become constitutional accountability, and the answer advanced here is that it has not because a rule known inside the institution, but ordinarily unavailable as an enforceable standard or decisional record to the person affected, controls conduct without adequately controlling power (Office of the Director of Public Prosecutions, 2023, paras. 1.1.6–1.1.7, 2.1.6, 2.9.1–2.10.2; Bibas, 2009, pp. 978–989). This is not an argument for courts to retry the evidential merits of every charge, since converting review into a pre-trial trial would fragment criminal proceedings and compromise the DPP's constitutionally assigned judgment (*Bakaleeke v Attorney General*, 2019; *SP Begira Avito v Attorney General*, 2026; *Sharma v Brown-Antoine*, 2006, para. 14). It is an argument for review architecture capable of distinguishing an honest, rational prosecutorial evaluation from a bare invocation of discretion, while preserving a deliberately narrow remedial margin for specialist judgment (*R (Corner House Research) v Director of the Serious Fraud Office*, 2008, paras. 30–31; *R v Director of Public Prosecutions*,

ex parte Kebilene, 2000, p. 371; *Diamond Hasham Lalji v Attorney General*, 2018, paras. 42–46).

The analysis proceeds from constitutional text to decisional practice rather than compiling a catalogue of prosecutorial powers: section 2 states the method and evaluative standard; sections 3 to 7 test charging, discontinuance, disclosure and review against that standard; section 8 confronts the institutional data; and sections 9 and 10 derive a reform design whose safeguards reinforce rather than cancel one another (Constitution of the Republic of Uganda, 1995, arts. 20(1), 21, 28, 42, 50, 120, 126(2)(e); United Nations, 1990, paras. 12–14). The connecting claim is that discretion becomes constitutionally legitimate only when the legal reason for a decision can travel through the system: from investigator to prosecutor, from first decision to review, from institution to affected person, and, where challenged, from record to court (Soubise, 2015, pp. 145–149, 269–273; Miller & Wright, 2008, pp. 132–140).

2. Method and Evaluative Framework

This article uses doctrinal, comparative and data-informed analysis rather than presenting unreported interviews as empirical proof, because assertions about prosecutorial behaviour cannot responsibly bear analytical weight without a disclosed sample, instrument, coding method and ethical basis (Hutchinson & Duncan, 2012, pp. 101–110; Webley, 2010, pp. 926–930). Primary materials comprise the Constitution, criminal procedure legislation, the 2023 Guidelines, Ugandan judgments and official performance and audit reports, while comparative decisions and standards are used functionally to expose design choices rather than to presume that institutional solutions can be transplanted intact (Constitution of the Republic of Uganda, 1995, art. 120; Office of the Director of Public Prosecutions, 2023; Örüçü, 2002, pp. 205–208). The official figures are treated as indicators with defined limitations, not as self-proving measures of justice, because counts of files perused, cases prosecuted or convictions obtained cannot reveal whether similarly situated persons were treated alike or whether adverse decisions were adequately reasoned (Office of the Director of Public Prosecutions, 2025, pp. 42, 48, 54; Miller & Wright, 2008, pp. 127–135).

The evaluative framework has six linked requirements: lawful authority, evidential sufficiency, public-interest proportionality, equality and impartiality, intelligible reasons, and accessible correction (Constitution of the Republic of Uganda, 1995, arts. 21, 28, 42, 50, 120(5); African Commission on Human and Peoples' Rights, 2003, principle F). Authority asks whether the DPP or a valid delegate acted within the constitutional power; sufficiency asks whether admissible and reliable evidence creates the prescribed realistic prospect; proportionality asks whether prosecution advances rather than degrades the administration of justice; equality tests whether irrelevant status or selective severity infected

the choice; reasons externalise the path between material and conclusion; and correction supplies a forum able to respond when one of those conditions fails (Office of the Director of Public Prosecutions, 2023, paras. 2.1.2–2.3.23; Council of Europe, 2000, paras. 24–36). No single safeguard is sufficient: published criteria without reasons cannot show application, reasons without a record may rationalise retrospectively, review without disclosure makes proof inaccessible, data without disaggregation conceal unequal patterns, and resources without qualitative audit can accelerate defective decisions (Soubise, 2015, pp. 138–149, 160–163, 269–273; Bibas, 2009, pp. 978–1016). This linked framework supplies the bridge to article 120, whose three express considerations should be interpreted not as decorative aspirations but as the constitutional criteria around which the entire decisional chain must be organised (Constitution of the Republic of Uganda, 1995, art. 120(5); *Rutayisire v Uganda Revenue Authority*, 2021).

3. Article 120

3.1 Independence is Insulation, Not Immunity

Article 120(6) provides that, in exercising the listed functions, the DPP is not subject to the direction or control of any person or authority, but the phrase ‘in exercising’ presupposes a lawful exercise of the office rather than placing every act labelled prosecutorial beyond constitutional supervision (Constitution of the Republic of Uganda, 1995, arts. 120(3), 120(6); *Bakalee v Attorney General*, 2019). To read non-direction as non-review would contradict article 2’s supremacy, article 20’s obligation on every organ to respect rights, article 42’s guarantee of just and fair administrative treatment and article 50’s remedial command (Constitution of the Republic of Uganda, 1995, arts. 2, 20(1), 42, 50). It would also mistake the institutional target of independence: article 120(6) restrains command over the prosecutor’s conclusion, whereas judicial review examines whether the authorised conclusion remained within legal boundaries (*Krieger v Law Society of Alberta*, 2002, paras. 30–32; *R (Corner House Research) v Director of the Serious Fraud Office*, 2008, paras. 30–31).

The point is especially important where the police initiate a file, because formal separation from investigators does not guarantee intellectual independence if the prosecutor merely validates the investigative narrative, treats exculpatory material as defence work, or measures quality by the number of sanctioned files (Soubise, 2015, pp. 179–181, 199; Fisher, 1988, pp. 207–215). Article 120(3)(a), which empowers the DPP to direct police investigation, should therefore be understood as a responsibility to cure evidential imbalance and legality defects before charge, not merely as authority to demand more inculpatory material (Constitution of the Republic of Uganda, 1995, art. 120(3)(a); United Nations, 1990, paras. 12–14; Office of the Director of Public Prosecutions, 2023, paras. 2.2.1–2.3.9). The prosecutor’s distinct

constitutional value lies in testing the state’s own hypothesis, so institutional independence is betrayed, rather than vindicated, when it protects dependence on an untested police file (*Boucher v The Queen*, 1955, pp. 23–24; Soubise, 2015, pp. 179–181, 199).

3.2 Article 120(5) Creates Cumulative Duties of Justification

The instruction to have regard to public interest, the administration of justice and prevention of abuse of legal process is framed cumulatively, which means that evidentially possible prosecution is not necessarily constitutionally permissible and politically popular prosecution is not necessarily in the public interest (Constitution of the Republic of Uganda, 1995, art. 120(5); Office of the Director of Public Prosecutions, 2023, paras. 2.3.1–2.3.23). ‘Public interest’ cannot mean executive preference or majoritarian appetite because article 21 forbids discriminatory state action and article 28 protects an accused precisely when punitive public sentiment is strongest (Constitution of the Republic of Uganda, 1995, arts. 21, 28; *Wayte v United States*, 1985, p. 608). ‘Administration of justice’ reaches beyond prospects of conviction to disclosure, proportional charging, witness treatment, reasonable expedition and fidelity to the court’s truth-seeking process (Constitution of the Republic of Uganda, 1995, arts. 28, 126(2)(b); *Soon Yeon Kong Kim v Attorney General*, 2008; United Nations, 1990, paras. 12–14). ‘Prevention of abuse’ operates prospectively, requiring the prosecutor not only to discontinue a plainly abusive case but to avoid creating the abuse through overcharging, strategic delay, suppression of material or takeover followed by unexplained termination (Constitution of the Republic of Uganda, 1995, art. 120(5); *R v Horseferry Road Magistrates’ Court, ex parte Bennett*, 1994, pp. 61–64; Office of the Director of Public Prosecutions, 2023, paras. 3.1.1–3.1.5).

Because ‘have regard’ is a decisional duty, compliance cannot be established by reciting the three nouns after a conclusion has been reached; the record must reveal the material considered, the conflicting interests weighed and the rational connection to the outcome (*Rutayisire v Uganda Revenue Authority*, 2021; *Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41). This does not demand a judicial judgment for every file, but it does require reasons proportionate to consequence: a routine charge may need a concise recorded application of the evidential and public-interest tests, whereas reversal of an earlier decision, discontinuance of a serious public case or intervention in a private prosecution requires a fuller account (International Association of Prosecutors, 1999, paras. 4.2–4.3; Crown Prosecution Service, 2018, paras. 2.10, 4.1–4.14, 7.1–7.5). Reasons are therefore constitutive, not cosmetic, because they discipline the first-instance prosecutor, preserve institutional memory, enable consistent supervision, tell the affected person why coercive power moved, and give a reviewing court

something other than assertion to evaluate (Miller & Wright, 2008, pp. 130–140; Mashaw, 1985, pp. 175–181).

3.3 Rights Complete, Rather Than Displace, Article 120

The DPP's functions must be read with the Constitution's rights provisions because article 20 binds every state organ and article 44(c) protects the fair-hearing guarantee from derogation (Constitution of the Republic of Uganda, 1995, arts. 20(1), 28, 44(c)). Article 21 is engaged not only by an express discriminatory policy but also by unexplained inconsistency in charging, diversion, plea position or discontinuance where protected or status-related characteristics plausibly correlate with different treatment (Constitution of the Republic of Uganda, 1995, art. 21; Davis, 2007, pp. 77–96; cf. *United States v Armstrong*, 1996, pp. 463–471). The exceptionally demanding discovery rule in *Armstrong* illustrates the danger of requiring defendants to produce comparator evidence held by the prosecutor before permitting access to that evidence, a circularity Uganda should not constitutionalise under the label of independence (*United States v Armstrong*, 1996, pp. 463–471; Davis, 1998, pp. 35–45). Article 42 adds procedural content because a charge, refusal, takeover or discontinuance is an exercise of public authority with immediate legal effects, even if the ultimate criminal merits remain for the trial court (Constitution of the Republic of Uganda, 1995, art. 42; *Bakalee v Attorney General*, 2019; *Rutayisire v Uganda Revenue Authority*, 2021).

The rights overlay does not constitutionalise every disagreement about weight of evidence, but it does make legality, impartiality, relevant consideration and basic procedural fairness preconditions to deference (*SP Begira Avito v Attorney General*, 2026; *Diamond Hasham Lalji v Attorney General*, 2018, paras. 42–46). Deference is earned by a demonstrably lawful process; opacity cannot itself become the reason for assuming regularity, because that would allow the absence of an evidential record to enlarge the constitutional power (*Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41; *Zuma v Democratic Alliance*, 2018, paras. 12–17, 82–89). With that constitutional architecture in place, the analysis can turn from the abstract breadth of discretion to the point at which its costs first become concrete: the decision to charge (Constitution of the Republic of Uganda, 1995, arts. 23, 28, 120(3)(b)).

4. Charging After the 2023 Guidelines

4.1 The Evidential Test is an Advance, But Its Application is the Constitutional Event

The 2023 Guidelines require both an evidential test and a public-interest test, define the evidential threshold as a realistic prospect of conviction, instruct prosecutors to consider admissibility, reliability and credibility, and require written reasons recorded in the Prosecution Case

Management Information System ('PROCAMIS') (Office of the Director of Public Prosecutions, 2023, paras. 2.1.6, 2.2.1–2.3.23). Those requirements reject two recurrent pathologies: equating police suspicion with prosecutorial proof and treating prosecution as automatic whenever an offence can be drafted from the allegation (Office of the Director of Public Prosecutions, 2023, paras. 2.1.2–2.3.9; *Boucher v The Queen*, 1955, pp. 23–24). They also correctly state that a prosecutor's task is not to obtain convictions at all costs, an ethical premise that gives operational meaning to article 120(5)'s concern with justice rather than institutional win rates (Office of the Director of Public Prosecutions, 2023, para. 2.1.5; United Nations, 1990, paras. 12–14).

Yet a published threshold does not determine its own application, because reasonable prosecutors may characterise credibility, admissibility, evidential gaps and public-interest factors differently, especially under time pressure and dependence on a police-generated file (Bibas, 2010, pp. 371–378; Soubise, 2015, pp. 145–149, 179–181; Evidence Act, Cap. 8). The decisive accountability question is therefore whether the institution can show, across comparable files, what material was evaluated, which deficiencies were returned for investigation, why a realistic prospect was or was not found, and how later information changed that conclusion (Miller & Wright, 2008, pp. 128–140; Office of the Director of Public Prosecutions, 2023, paras. 2.6.1–2.7.3). Without that decisional trace, 'realistic prospect of conviction' risks becoming a performative label attached to sanction rather than a falsifiable conclusion reached from evidence (Davis, 1969, pp. 97–100; Soubise, 2015, pp. 160–163).

The Guidelines partly recognise this risk by requiring review within fourteen days when the threshold test is used and by insisting on continuing review as evidence changes (Office of the Director of Public Prosecutions, 2023, paras. 2.4.1–2.7.3). However, a time-limited exception can become the normal route in an under-resourced system unless the institution publishes how often the threshold test is used, whether fourteen-day reviews occur, how many charges are modified or withdrawn, and what happens when the police fail to complete directed inquiries (Office of the Director of Public Prosecutions, 2023, paras. 2.4.1–2.7.3; Office of the Director of Public Prosecutions, 2024, pp. 10, 14–15). The constitutional danger is temporal: a provisional evidential judgment can impose non-provisional liberty and reputational costs, while administrative delay transfers the price of incomplete investigation from the state to the accused (Constitution of the Republic of Uganda, 1995, arts. 23, 28(3); *Kuria v Attorney General*, 2002, pp. 79–80). Accordingly, threshold charging should be exceptional, reasons should identify the missing evidence and its expected significance, liberty consequences should be expressly assessed, and expiry without completed review should trigger supervisor-controlled withdrawal rather than inert continuation (Office of the Director of Public Prosecutions, 2023,

paras. 2.4.1–2.7.3; African Commission on Human and Peoples’ Rights, 2003, principles M(1)(e), N(5)).

4.2 Public Interest Must Constrain, Not Duplicate, Evidential Judgment

The Guidelines list seriousness, culpability, harm, age, vulnerability, community impact, proportionality and alternatives among the public-interest considerations, but a list becomes meaningful only when it changes outcomes that evidential sufficiency alone would permit (Office of the Director of Public Prosecutions, 2023, paras. 2.3.10–2.3.23, 5.1–5.5). If almost every evidentially sufficient file is certified as being in the public interest, the second limb is not a test but a ritual, and Soubise’s finding that standard forms often reduce public interest to a conclusory box warns precisely against that administrative degeneration (Soubise, 2015, pp. 160–163; Crown Prosecution Service, 2018, paras. 4.9–4.14). The public-interest analysis should expose countervailing factors and explain their weight, particularly where the alleged harm is slight, the suspect is a child or otherwise vulnerable, civil or regulatory responses are available, delay is attributable to the state, or prosecution would burden the victim without a commensurate justice gain (Office of the Director of Public Prosecutions, 2023, paras. 2.3.10–2.3.23, 5.1–5.5; Children Act, Cap. 62, ss. 89–95). That explanation is also the best defence against selective leniency, because mercy exercised invisibly may be humane in one file but structurally unequal across a population (Davis, 2007, pp. 77–96; Miller & Wright, 2008, pp. 153–157).

The Guidelines’ instruction against overcharging and using excessive counts to induce a plea is particularly important because charge selection constructs the bargaining range before a court tests any evidence (Office of the Director of Public Prosecutions, 2023, paras. 3.1.1–3.1.5; Lippke, 2011, pp. 41–48). Plea bargaining can conserve resources and secure proportionate resolution, but its legitimacy depends on a credible entitlement to trial, disclosure sufficient for informed choice and a charge that reflects the provable conduct rather than a threat discounted in exchange for waiver (Judicature (Plea Bargain) Rules, SI 43 of 2016, rr. 4–8; Penal Code Act, Cap. 128; *R v Nixon*, 2011, paras. 31–47). Managerial pressure reverses that logic when the anticipated plea begins to justify a charge whose evidential or public-interest basis would not withstand trial, turning efficiency from a consequence of sound judgment into a substitute for it (Soubise, 2015, pp. 222–223, 267–268; Bibas, 2009, pp. 992–1005). Internal audit should therefore sample the relationship among initial charge, final plea, proved facts and sentence, not to punish legitimate revision but to identify offices, offences or prosecutors for whom systematic charge inflation creates apparent productivity (Soubise, 2015, pp. 145–149, 269–273; Miller & Wright, 2008, pp. 138–145).

4.3 The Guidelines’ Soft-Law Deficit

The Guidelines say both that prosecutors have a duty to comply, backed by internal discipline, and that the instrument creates no rights or obligations enforceable by third parties, including accused persons (Office of the Director of Public Prosecutions, 2023, paras. 1.1.6–1.2.1). That asymmetry gives the institution the benefit of regularisation while withholding the corresponding claim to regular treatment, even though article 42 protects the person affected by administrative action rather than the bureaucracy that classifies its own rules (Constitution of the Republic of Uganda, 1995, art. 42; *Bakalee v Attorney General*, 2019). A court need not treat every departure as automatically fatal, but a material unexplained departure from published criteria should be evidence of illegality, irrationality or procedural unfairness and should place an evidential burden on the DPP to justify the exception (*R (Lumba) v Secretary of State for the Home Department*, 2011, paras. 26, 35–36; *Rutayisire v Uganda Revenue Authority*, 2021). Otherwise, publication risks functioning as legitimacy signalling: the public is told how decisions ought to be made but cannot ordinarily test whether its own decision was made that way (Bibas, 2009, pp. 978–989; Danner, 2003, pp. 536–545).

The confidentiality provisions intensify the problem by treating review material as privileged and generally answering a person who questions a charging decision with the Guidelines rather than file-specific reasons (Office of the Director of Public Prosecutions, 2023, paras. 2.9.1–2.10.2). Legitimate secrecy may protect witnesses, active investigative methods, legal advice and third-party privacy, but a class claim over the whole decisional record is broader than those interests and frustrates both article 42 fairness and article 50 enforcement (Constitution of the Republic of Uganda, 1995, arts. 42, 50; *Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41). The proportionate solution is a severable reasons regime: provide the gist of the evidence and application of the two-stage test, redact genuinely protected details, and permit a court to inspect contested material where disclosure itself could cause harm (*Soon Yeon Kong Kim v Attorney General*, 2008; *R v Chief Constable of West Midlands Police, ex parte Wiley*, 1995, pp. 306–309). This calibrated approach preserves necessary confidentiality without allowing confidentiality to prove lawfulness by preventing the contrary from being shown (*Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41; African Commission on Human and Peoples’ Rights, 2003, principle F(3)).

Charging illustrates that internal rules are necessary but insufficient; the inadequacy becomes more visible when the DPP displaces another prosecutor or ends proceedings, because the exercise then closes rather than opens the path to adjudication (Constitution of the Republic of Uganda, 1995, art. 120(3)(c)–(d); Magistrates Courts Act, Cap. 19, ss. 42–43).

5. Takeover, Discontinuance and Private Prosecution

Article 120(3)(c) authorises the DPP to take over criminal proceedings instituted by another person or authority, while article 120(3)(d) authorises withdrawal before judgment and article 120(4) requires the court's consent where the proceedings were privately instituted (Constitution of the Republic of Uganda, 1995, art. 120(3)(c)–(d), (4)). Read together, those provisions preserve central prosecutorial coordination while preventing takeover from becoming a device by which a constitutional condition on discontinuance is evaded (Constitution of the Republic of Uganda, 1995, art. 120(3)(c)–(d), (4); Mujuzi, 2017, pp. 590–600). The Magistrates Courts Act must therefore be applied conformably with the Constitution, and any statutory wording capable of permitting discontinuance without the constitutionally required consent must yield under article 2 (Constitution of the Republic of Uganda, 1995, arts. 2, 120(4); Magistrates Courts Act, Cap. 19, s. 43).

In *Uganda v Inspector General of Police, General Kale Kayihura and others*, the High Court held that the DPP could take over a private prosecution without a formal application or the private prosecutor's consent (*Uganda v Inspector General of Police, General Kale Kayihura*, 2016). The result is defensible to the extent that article 120(3)(c) contains no consent condition for takeover, but its breadth becomes constitutionally dangerous if takeover immediately permits an opaque termination, since the private prosecutor's article 120(4) protection would then survive in text and disappear in operation (Constitution of the Republic of Uganda, 1995, art. 120(3)(c)–(d), (4); Mujuzi, 2017, pp. 595–603). Court consent should consequently be substantive rather than ceremonial: the DPP should file reasons addressing evidential sufficiency, public interest, the administration of justice and possible abuse; the private prosecutor should be heard; and the court should refuse consent where the reasons are legally irrelevant, unsupported or conceal an improper purpose (Constitution of the Republic of Uganda, 1995, arts. 42, 50, 120(4)–(5); African Commission on Human and Peoples' Rights, 2003, principle F(2)(h)). Such scrutiny does not transfer charging policy to the judiciary because the court reviews the legal adequacy of the justification for extinguishing proceedings, not whether it would itself prosecute (*R (Corner House Research) v Director of the Serious Fraud Office*, 2008, paras. 30–31; *Diamond Hasham Lalji v Attorney General*, 2018, paras. 42–46).

The 2022 discontinuance of the long-running prosecution of Hassan Basajjabalaba and Muzamiru Basajjabalaba illustrates the institutional cost of unexplained temporal reversal without proving that the underlying decision was corrupt or unlawful (Trial on Indictments Act, Cap. 25, s. 134; *Daily Monitor*, 2022; Judiciary of Uganda, 2018). After years of constitutional litigation over whether the trial could proceed, a nolle prosequi was entered and the accused were discharged, while subsequent public explanations referred to

incomplete investigations and the possibility of reinstatement rather than placing a contemporaneous, reviewable account before the public (*The Independent*, 2022; *Hassan Basajjabalaba v Attorney General*, 2021). The episode matters analytically because a discharge without final adjudication can be legally valid yet institutionally corrosive when the criteria for reversal, responsibility for investigative delay and timetable for reconsideration remain opaque (Constitution of the Republic of Uganda, 1995, art. 120(5); Soubise, 2015, pp. 145–149, 269–273). Opacity forces public debate into an unproductive binary of presumed corruption or presumed regularity, whereas contemporaneous reasons could permit evaluation without prejudging the accused or disclosing protected evidence (Danner, 2003, pp. 536–545; Miller & Wright, 2008, pp. 132–140).

Discontinuance is also where segmentation can dissolve responsibility: one prosecutor sanctions, another reviews, a third conducts preliminary proceedings, and a supervisor later terminates, allowing each decision to appear reasonable within a narrow file moment while nobody owns the case's full trajectory (Soubise, 2015, pp. 145–149, 269–273). Continuity cannot always be achieved in a national service, but serious or public-interest cases should have a designated case owner responsible for the decision history, and any reversal should identify the earlier conclusion, new material, changed legal assessment and authorising level (Soubise, 2015, pp. 269–273; International Association of Prosecutors, 1999, paras. 4.2–4.3). This record protects accused persons from zombie prosecutions, victims from unexplained closure and prosecutors from unfounded allegation, thereby showing why reason-giving is an institutional safeguard rather than a concession to any one constituency (Constitution of the Republic of Uganda, 1995, arts. 28, 42, 120(5); Council of Europe, 2000, paras. 33–36).

The same logic leads to disclosure, because a prosecutor cannot credibly claim to serve the administration of justice while keeping the accused unable to know and answer the case that discretion has placed before a court (Constitution of the Republic of Uganda, 1995, arts. 28, 120(5); *Soon Yeon Kong Kim v Attorney General*, 2008).

6. Disclosure and Trial Conduct

In *Soon Yeon Kong Kim v Attorney General*, the Constitutional Court treated pre-trial disclosure of witness statements and exhibits as prima facie required by the fair-hearing guarantee, while permitting justified limits for matters such as witness protection, informants, state secrets or a genuinely simple case (*Soon Yeon Kong Kim v Attorney General*, 2008). The decision's deeper contribution is allocative: the prosecution must identify and substantiate the need for restriction, and the court, not the prosecutor acting conclusively in its own cause, determines whether the limit is justified (*Soon Yeon Kong Kim v Attorney General*, 2008; Constitution of the Republic of Uganda, 1995, arts. 28, 44(c)). That structure should inform all claims of prosecutorial

confidentiality because it separates the existence of a legitimate protected interest from the much broader proposition that the DPP alone may define its scope (*Soon Yeon Kong Kim v Attorney General*, 2008; *R v Chief Constable of West Midlands Police, ex parte Wiley*, 1995, pp. 306–309).

Disclosure is not an adversarial favour but a reliability mechanism: exculpatory material tests the investigative theory, enables meaningful instructions and may demonstrate that continuation no longer satisfies the evidential or public-interest test (*Dallison v Caffery*, 1965, p. 369; *Boucher v The Queen*, 1955, pp. 23–24; Office of the Director of Public Prosecutions, 2023, paras. 2.6.1–2.7.3). A prosecutor who waits for the defence to discover an inconsistency treats continuing review as a one-way search for confirmation, contrary to both the Guidelines and the constitutional role of a minister of justice (Office of the Director of Public Prosecutions, 2023, paras. 2.1.4–2.1.6, 2.6.1–2.7.3; United Nations, 1990, paras. 12–14). Conversely, automatic disclosure without risk assessment may expose witnesses or compromise live investigations, so the lawful response is judicially supervised redaction, delayed disclosure or protective conditions rather than categorical secrecy (*Soon Yeon Kong Kim v Attorney General*, 2008; African Commission on Human and Peoples’ Rights, 2003, principles F(3), N(6)(g)).

Trial discretion also includes witness selection, concessions, amendment of charges, plea position and decisions whether to appeal, each of which can either correct or compound the first charging judgment (Trial on Indictments Act, Cap. 25; Magistrates Courts Act, Cap. 19; Judicature (Plea Bargain) Rules, SI 43 of 2016). The ethical standard remains constant across those stages: the prosecutor may advocate firmly, but may not treat procedural advantage as a public interest independent of accurate and fair adjudication (*Boucher v The Queen*, 1955, pp. 23–24; International Association of Prosecutors, 1999, paras. 1, 3–4). Continuous review should therefore generate recorded decision points after material disclosure, failed witness attendance, adverse admissibility rulings and plea proposals, rather than surviving as an abstract duty that leaves no trace (Office of the Director of Public Prosecutions, 2023, paras. 2.6.1–2.7.3; Soubise, 2015, pp. 145–149).

Once the decisional record is recognised as a constitutional asset at charge, discontinuance and trial, the central remedial question is no longer whether prosecutorial decisions are reviewable, but whether Uganda’s review doctrine can operate without access to that asset (*Bakaleeke v Attorney General*, 2019; *Rutayisire v Uganda Revenue Authority*, 2021; *SP Begira Avito v Attorney General*, 2026).

7. Judicial Review and Remedies

7.1 The Ugandan Cases Reveal a Record-Access Paradox

In *Bakaleeke v Attorney General*, the High Court accepted that the DPP exercises administrative or quasi-judicial public power that must be fair, honest and constitutionally confined, yet declined relief because the applicant had not established illegality, irrationality or procedural impropriety and because evidential sufficiency ordinarily belonged to the criminal trial (*Bakaleeke v Attorney General*, 2019). The distinction between review and merits is indispensable, but its practical operation is incomplete when the person charged must prove a defective purpose or decisional path without reasons, internal review material or the evidential assessment that generated the charge (*Bakaleeke v Attorney General*, 2019; Office of the Director of Public Prosecutions, 2023, paras. 2.9.1–2.10.2). If absence of that material is treated as a claimant’s failure of proof rather than a reason for targeted disclosure, reviewability exists formally while the institution controls the factual precondition for its use (*Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41; cf. *United States v Armstrong*, 1996, pp. 463–471).

Rutayisire v Uganda Revenue Authority demonstrates the opposite possibility, since the High Court quashed criminal process where the decision to prosecute individuals for corporate conduct lacked an investigative and rational foundation linking them to the alleged offence (*Rutayisire v Uganda Revenue Authority*, 2021). Its significance is not that a civil court may decide guilt, but that a charge can be unlawful before trial where the file discloses no rational bridge between the legal elements, the investigated facts and the persons selected for prosecution (*Rutayisire v Uganda Revenue Authority*, 2021; Constitution of the Republic of Uganda, 1995, arts. 28, 42, 120(5)). The case gives article 120(5) real work to do, because waiting for acquittal would treat a baseless trial as its own remedy even though exposure to the process is part of the constitutional harm (*Kuria v Attorney General*, 2002, pp. 79–80; *R v Babos*, 2014, paras. 30–35).

In *Wanyoto v Sgt Ouma*, the Court of Appeal identified malicious criminal process arising from a failed land transaction brokered by the investigating officer, yet the procedural treatment of the DPP and Attorney General exposed how remedial formalism can obstruct responsibility across the investigative-prosecutorial boundary (*Wanyoto v Sgt Ouma*, 2022; Constitution of the Republic of Uganda, 1995, art. 250(2); Human Rights (Enforcement) Act, Cap. 12). The state should not be able to answer a rights claim by fragmenting one coercive sequence into a police investigation for which the prosecutor disclaims ownership and a prosecution for which the claimant has sued the wrong juridical entity (*Wanyoto v Sgt Ouma*, 2022; Constitution of the Republic of Uganda, 1995, arts. 20(2), 50, 250(2)). Where a prosecutor adopts an investigator’s file, responsibility should turn on the prosecutor’s own assessment and continuation of the case, while the Attorney General’s representative-liability role should

simplify rather than defeat the remedy (Constitution of the Republic of Uganda, 1995, arts. 50, 120, 250(2); *Henry v British Columbia (Attorney General)*, 2015, paras. 73–85).

The High Court's 2026 decision in *SP Begira Avito v Attorney General* again confirmed that DPP decisions are amenable to review but emphasised that review is not a merits appeal, that a parallel civil dispute does not bar prosecution and that the applicant bears the burden of proving illegality, irrationality, procedural impropriety, bad faith or improper purpose (*SP Begira Avito v Attorney General*, 2026). That restraint prevents judicial pre-emption of an ordinary criminal defence, yet, unless coupled with disclosure of the decision record, it entrenches the same asymmetry seen in *Bakaleeke*: the more opaque the official process, the harder it is to prove that the process was unlawful (*SP Begira Avito v Attorney General*, 2026; *Bakaleeke v Attorney General*, 2019; *Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41). Ugandan doctrine should therefore adopt a staged approach under which the claimant first identifies a credible legality concern, after which the DPP must produce the relevant record subject to redaction, privilege itemisation and, where necessary, confidential judicial inspection (Judicature (Judicial Review) Rules, SI 11 of 2009; *Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41).

7.2 Deference Should Track Reasons, Not Institutional Status

Comparative courts properly describe review of prosecution decisions as exceptional because evidential assessments are polycentric, criminal courts can often remedy trial unfairness and premature collateral litigation can cause delay (*R v Director of Public Prosecutions, ex parte Kebilene*, 2000, p. 371; *Sharma v Brown-Antoine*, 2006, para. 14; *R (Corner House Research) v Director of the Serious Fraud Office*, 2008, para. 30). Exceptionality, however, describes the threshold for intervention rather than an evidential exemption, and a prosecutor seeking forensic deference should show that the decision was contemporaneously reasoned, factually grounded and reached through the published process (*R (Corner House Research) v Director of the Serious Fraud Office*, 2008, paras. 30–31; *R v Nixon*, 2011, paras. 52–64). Where that showing is made, courts should not substitute their preferred charge or public-interest balance; where it is not, remittal for lawful reconsideration ordinarily respects both article 120 independence and article 42 accountability (Constitution of the Republic of Uganda, 1995, arts. 42, 120(6); *Diamond Hasham Lalji v Attorney General*, 2018, paras. 42–46).

The available remedial vocabulary should correspond to the defect: certiorari for an unlawful charge or takeover, prohibition against continuation where process itself is abusive, mandamus to perform a legally required reconsideration, declaration to clarify the standard, and

compensation under article 50 where a rights violation causes proved injury (Constitution of the Republic of Uganda, 1995, art. 50; Human Rights (Enforcement) Act, Cap. 12; Judicature (Judicial Review) Rules, SI 11 of 2009; *Rutayisire v Uganda Revenue Authority*, 2021). Damages should remain exceptional for good-faith professional judgment so that fear of personal liability does not produce defensive prosecution, but deliberate suppression, knowing evidential absence or improper purpose cannot be shielded merely because the wrong was committed through a core prosecutorial function (*Henry v British Columbia (Attorney General)*, 2015, paras. 73–85; *R v Babos*, 2014, paras. 31–35). The remedy must also be timely, because a declaration after years of trial, detention or reputational harm may vindicate doctrine while leaving the practical exercise of discretion untouched (Constitution of the Republic of Uganda, 1995, arts. 23(6), 28(1), 126(2)(b); *Githunguri v Republic*, 1986, pp. 18–20).

Doctrinal refinement alone cannot solve the problem, however, because even a perfectly stated legal test will fail if prosecutors lack time, geographic reach, investigative support and information systems capable of preserving the reasons that review requires (Office of the Director of Public Prosecutions, 2024, pp. 10, 14–15; Soubise, 2015, pp. 222–223).

8. Capacity, Workload and Measurement

Official staffing tables for FY 2024/25 list 818 approved positions across twelve prosecutorial cadres but only 325 filled, approximately 39.7 per cent, including no filled State Attorney positions against 179 approved (Office of the Director of Public Prosecutions, 2024, pp. 14–15). The same statement reports no ODPP presence in 41 districts and more than 101 courts, alongside transport and PROCAMIS constraints and the perceived need for an enabling law and additional witness-protection, proceeds-of-crime and mutual-legal-assistance legislation (Office of the Director of Public Prosecutions, 2024, p. 10). Those figures do not prove that any identified prosecution was unlawful, but they rebut an analysis that treats poor decisions solely as individual ethical failure, since severe vacancy and geographic gaps predict rushed perusal, dependence on police framing, discontinuity of case ownership and uneven access to prosecutorial services (Howell, 2014, pp. 290–303; Soubise, 2015, pp. 145–149).

The FY 2024/25 fourth-quarter report records 266,936 cases prosecuted against an annual plan of 150,000, 116,196 case files perused against 120,000, 71,456 files sanctioned against 80,000 and 4,015 cases committed to the High Court (Office of the Director of Public Prosecutions, 2025, p. 54). It also reports 394,873 witnesses prepared against a target of 750,000, seventy-two plea-bargaining camps and six of eight planned supervisory visits, while reporting high percentages for complaints handling and staff-conduct processes (Office of the Director of Public Prosecutions, 2025, pp. 42, 54). These numbers show intense activity but cannot

establish constitutional quality because the report does not publicly disaggregate threshold charges, declinations, reversals, reasons, comparator outcomes, time to review, disclosure failures or judicial findings of prosecutorial unlawfulness (Office of the Director of Public Prosecutions, 2025, pp. 42, 48, 54; Miller & Wright, 2008, pp. 128–140).

The throughput surplus is analytically ambiguous: it may show extraordinary responsiveness, a change in counting, demand far above forecast or pressure to move cases faster than the evidential and public-interest tests permit (Office of the Director of Public Prosecutions, 2025, p. 54; Soubise, 2015, pp. 160–163). Treating raw case volume as success can encourage sanction where further investigation or diversion is warranted, while treating acquittal or discontinuance as automatic failure can discourage the correction that continuing review requires (Soubise, 2015, pp. 145–149, 160–163; Bibas, 2009, pp. 992–1005). The proper management objective is decisional integrity: whether the prosecutor applied the right test on sufficient material, documented uncertainty, corrected the decision when facts changed and treated comparable files consistently (International Association of Prosecutors, 1999, paras. 1–4; Office of the Director of Public Prosecutions, 2023, paras. 2.1.2–2.7.3).

The Auditor General's FY 2024/25 sector report reinforces the measurement problem by recording substantial shortfalls in selected planned results and an inability, on the reports supplied, to determine the number of ongoing or unconcluded cases (Office of the Auditor General, 2025, pp. 25–26). It noted, among other indicators, that only 442 of 2,000 planned cases in one category were concluded, 647 of 1,500 planned matters were prosecuted and 5,723 of 10,000 planned gender-related files were sanctioned (Office of the Auditor General, 2025, pp. 25–26). The critical point is not to compare unlike indicators as if they form one conviction rate, but to recognise that incomplete case-state data prevents Parliament, management and the public from distinguishing lawful attrition, delay, investigative failure and decisional error (Office of the Auditor General, 2025, pp. 25–26; Soubise, 2015, pp. 145–149, 269–273).

Resource scarcity therefore has a double constitutional character: it can explain constraints on individual prosecutors, but it cannot excuse systemic design that predictably distributes delay, thin reasons or access gaps onto accused persons and victims (Constitution of the Republic of Uganda, 1995, arts. 20(2), 21, 28, 120(5); Howell, 2014, pp. 290–303). Parliament and the executive must resource the constitutional function, while the DPP must deploy available resources transparently according to risk, complexity, vulnerability and regional need rather than allowing historically better-served offices to reproduce their advantage (Constitution of the Republic of Uganda, 1995, arts. 21, 120, 155–156; United Nations, 1990, paras. 6–7). Investment in PROCAMIS should prioritise a structured

reasons field, decision-version history, review deadlines and equality-compatible analytics, because digitising only throughput would make opacity faster rather than make discretion accountable (Office of the Director of Public Prosecutions, 2024, p. 10; Miller & Wright, 2008, pp. 132–140).

Uganda need not invent every safeguard, but comparative experience is useful only if it is translated through article 120's institutional settlement and the capacity constraints just identified (Örücü, 2002, pp. 205–208; Constitution of the Republic of Uganda, 1995, art. 120).

9. Comparative Lessons

England and Wales demonstrate the value of a public, legally anchored two-stage test, continuous review and a Victims' Right to Review scheme in which an eligible no-charge or termination decision can be reconsidered by a prosecutor not responsible for the original decision (Prosecution of Offences Act 1985, s. 10; Crown Prosecution Service, 2018, paras. 3.1–4.14; Crown Prosecution Service, 2021, paras. 4–11). The useful lesson is functional rather than hierarchical: independent reconsideration and reasons can improve accuracy without giving a complainant a right to demand prosecution or a minister power to direct the DPP (*R (Gujra) v Crown Prosecution Service*, 2012, paras. 29–33; Crown Prosecution Service, 2021, paras. 7–11). Uganda's Guidelines already allow review of a no-charge decision and contemplate written reasons, but the process should be converted from supervisor-controlled discretion into a published entitlement with time limits, conflict safeguards and review by a prosecutor institutionally removed from the first decision (Office of the Director of Public Prosecutions, 2023, paras. 2.9.1–2.11.7; Constitution of the Republic of Uganda, 1995, art. 120(7)).

South African authority supplies a second lesson by requiring production of the record relevant to a challenged discontinuance and by demonstrating that even decisions at the core of prosecution can be invalid when the reasons and material fail rationality review (*Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41; *Zuma v Democratic Alliance*, 2018, paras. 82–89). That model avoids merits substitution because record production does not answer the case; it makes the legally assigned decision answerable to evidence (*Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41). South Africa also shows that decisional independence depends on institutional tenure and appointment conditions, so Uganda's accountability design should strengthen security, professional appointment and budgetary capacity rather than make individual prosecutors more vulnerable to external command (*Corruption Watch NPC v President of the Republic of South Africa; Nxasana v Corruption Watch NPC*, 2018, paras. 19–31, 66–78; Constitution of the Republic of Uganda, 1995, arts. 120, 155–156).

Kenyan cases demonstrate both the necessity and the danger of judicial intervention: *Githunguri* protected a person from a revival of prosecution that offended fairness, while *Diamond Hasham Lalji* insisted that review target legality, rationality and abuse rather than invite the court to weigh evidence as the trial tribunal (*Githunguri v Republic*, 1986, pp. 18–20; *Diamond Hasham Lalji v Attorney General*, 2018, paras. 42–46). The resulting principle fits article 120: courts should intervene where the process lacks lawful foundation, contradicts a legitimate prior position without adequate explanation, or is used for an alien purpose, but should not choose among reasonably available charges on a properly assembled record (Constitution of the Republic of Uganda, 1995, arts. 42, 50, 120; *Kuria v Attorney General*, 2002, pp. 79–80).

Soubise's comparison of France and England and Wales supplies a caution against treating any one model as complete, since central rules and managerial targets can reduce inconsistency yet segment ownership, encourage weak-case momentum and turn reason forms into formulae, while local flexibility can preserve holistic judgment but obscure responsibility (Soubise, 2015, pp. 138–149, 160–163, 269–273). Uganda should therefore combine national minimum criteria with contextual discretion, continuous case ownership and audits designed to learn from changed decisions rather than punish every discontinuance as attrition (Soubise, 2015, pp. 269–273; Office of the Director of Public Prosecutions, 2023, paras. 2.6.1–2.7.3). The comparative synthesis supports neither unchecked autonomy nor dense command-and-control, but a structured-discretion model in which the prosecutor retains the final professional judgment while law, record, review and data make the judgment explainable (Bibas, 2010, pp. 371–378; Bibas, 2009, pp. 978–1016).

10. A Reform Architecture for Structured Discretion

10.1 Give Article 120 an Enabling Framework Without Opening a Channel of Political Direction

Parliament should enact an ODPP administration and accountability statute that preserves article 120(6), defines delegation and recusal, gives the core charging code formal status, protects tenure and professional appointment, regulates decisional records, establishes review rights and specifies reporting duties (Constitution of the Republic of Uganda, 1995, arts. 79, 120; Office of the Director of Public Prosecutions, 2024, p. 10; Venice Commission, 2011, paras. 42–45). The statute should forbid directions in individual cases, require publication of any lawful general prosecution policy and make undisclosed political communication about a live case a recordable and reviewable event (Constitution of the Republic of Uganda, 1995, art. 120(6); Council of Europe, 2000, paras. 11–16). Legislation is warranted not because the Constitution left the DPP powerless, but because the constitutional principles need durable procedures that neither internal management nor a future office-holder can silently withdraw (Constitution of the

Republic of Uganda, 1995, arts. 79, 120; Danner, 2003, pp. 536–545).

10.2 Convert Reasons from Internal Notation into Proportionate Public Accountability

Every charge, no-charge decision, takeover, material charge reduction, discontinuance and reversal should carry contemporaneous reasons stating the evidential conclusion, principal public-interest factors, material counter-considerations and authorising prosecutor (Office of the Director of Public Prosecutions, 2023, paras. 2.1.6, 2.3.1–2.3.23, 2.11.6–2.11.7; International Association of Prosecutors, 1999, paras. 4.2–4.3). The affected person should receive a concise intelligible version, with lawful redactions explained by category, while a complete version remains available for internal review, audit and, if litigation arises, controlled judicial inspection (*Soon Yeon Kong Kim v Attorney General*, 2008; *Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41). For serious public cases, private prosecutions and reversals of a previously communicated position, the reasons duty should be enhanced because consequence, reliance and risk of improper intervention are correspondingly greater (*Githunguri v Republic*, 1986, pp. 18–20; Constitution of the Republic of Uganda, 1995, art. 120(4)–(5)).

10.3 Create Independent Internal Reconsideration with External Procedural Guarantees

A victim or complainant should be entitled to request review of a final no-charge, withdrawal or discontinuance decision within a published period, and an accused should be entitled to request review where identified new material or a specified departure from the charging code plausibly undermines continuation (Crown Prosecution Service, 2021, paras. 4–11; Office of the Director of Public Prosecutions, 2023, paras. 2.9.1–2.11.7). Review should be conducted by a prosecutor outside the original line of decision, resolved within a presumptive thirty days, give reasons and identify any further investigation required, while making clear that neither side obtains a veto over the public prosecution (Crown Prosecution Service, 2021, paras. 7–11; Constitution of the Republic of Uganda, 1995, art. 120(6)–(7)). Repeated or systemic error should be referred to a small statutory prosecutorial inspectorate empowered to audit process and recommend correction but not to direct the outcome of a named live case (Bibas, 2009, pp. 1005–1016; Soubise, 2015, pp. 269–273).

10.4 Align Judicial Review with Controlled Access to the Record

The Judicial Review Rules or enabling statute should codify a staged record procedure: a claimant must plead a specific, credible ground; the DPP must lodge the relevant decision record; protected passages may be redacted with an itemised explanation; and the court may inspect disputed material privately (Judicature (Judicial Review) Rules, SI 11 of 2009; *Democratic Alliance v Acting National Director of Public Prosecutions*, 2012,

paras. 37–41). The court should ask whether lawful authority existed, the published test was applied, relevant considerations were confronted, irrelevant or discriminatory considerations were excluded, reasons rationally connected evidence to result and any departure was justified (Constitution of the Republic of Uganda, 1995, arts. 21, 42, 50, 120(5); *Rutayisire v Uganda Revenue Authority*, 2021; *SP Begira Avito v Attorney General*, 2026). The presumptive remedy for a curable defect should be prompt reconsideration by a different prosecutor, while prohibition, certiorari or compensation remains available for bad faith, abusive continuation, incurable evidential absence or completed rights injury (Constitution of the Republic of Uganda, 1995, art. 50; *Kuria v Attorney General*, 2002, pp. 79–80; *Henry v British Columbia (Attorney General)*, 2015, paras. 73–85).

10.5 Measure Equality and Decisional Quality, Not Merely Activity

The ODPP should publish annual, anonymised data by offence, region, decision type and legally permissible demographic categories on files received, returned for investigation, sanctioned, declined, diverted, reviewed, reversed, discontinued and concluded (Constitution of the Republic of Uganda, 1995, arts. 21, 38; Miller & Wright, 2008, pp. 132–140). It should also report median decision time, threshold-test usage and expiry, reasons compliance, disclosure failures, judicial review outcomes, private-prosecution takeovers and court-consent outcomes, because those measures test the constitutional path rather than count only its outputs (Office of the Director of Public Prosecutions, 2023, paras. 2.4.1–2.11.7; Office of the Auditor General, 2025, pp. 25–26). An equality audit should investigate statistically material disparities while preserving the distinction between correlation and proof, and should combine quantitative patterns with sampled file review before attributing cause (Davis, 2007, pp. 77–96; Miller & Wright, 2008, pp. 153–157). Audit incentives must reward candour and lawful correction, since a system that penalises withdrawals or acquittals without examining their causes will teach prosecutors to preserve weak cases and conceal learning (Soubise, 2015, pp. 145–149, 269–273).

10.6 Resource the Safeguard Chain

Filling prosecutorial vacancies, extending regional presence, funding secure digital case management and adopting effective witness-protection arrangements are not peripheral administrative requests; they are material conditions for equal, timely and evidence-led discretion (Office of the Director of Public Prosecutions, 2024, pp. 10, 14–15; United Nations, 1990, paras. 6–7). Training should use anonymised reversals, disclosure failures and difficult public-interest balances, with interdisciplinary input on forensic reliability, vulnerability, trauma and implicit bias, rather than treating ethics as an abstract recitation of impartiality (International Association of Prosecutors, 1999, paras. 1–4; Davis, 2007, pp. 182–

190). Case allocation should preserve ownership for serious matters while using documented handover protocols where transfer is unavoidable, thereby preventing segmentation from erasing responsibility (Soubise, 2015, pp. 145–149, 269–273).

These six reforms operate as a web: legal criteria guide the first decision; reasons preserve its logic; reconsideration tests it; record access makes judicial review real; data expose patterns; and resources allow each safeguard to function (Bibas, 2009, pp. 978–1016; Soubise, 2015, pp. 269–273). Removing any strand recreates the original defect, since rules without capacity become paper promises, capacity without data magnifies hidden variance, and review without reasons remains formally available but practically starved (Davis, 1969, pp. 55–60; Miller & Wright, 2008, pp. 128–140).

11. Conclusion

Uganda's constitutional settlement does not suffer from too much prosecutorial independence; it suffers from an incomplete account of what makes independent power legally trustworthy (Constitution of the Republic of Uganda, 1995, art. 120; Venice Commission, 2011, paras. 14–16, 42–45). Article 120(6) removes external direction, while article 120(5), read with equality, fair-hearing, administrative-justice and remedial rights, requires the DPP to exercise judgment through evidence, relevant purposes, impartiality and prevention of abuse (Constitution of the Republic of Uganda, 1995, arts. 20(1), 21, 28, 42, 50, 120(5)–(6)). The 2023 Guidelines are consequently a constitutional beginning rather than an accountability endpoint: they articulate sound internal tests, but their soft-law disclaimer, asymmetric reasons and broad confidentiality leave affected persons unable to verify consistent application (Office of the Director of Public Prosecutions, 2023, paras. 1.1.6–1.2.1, 2.1.6, 2.9.1–2.11.7).

The Ugandan cases already contain the elements of a coherent doctrine: *Bakaleeke* and *Begira Avito* preserve the boundary between review and merits; *Rutayisire* shows that an irrational charge may be stopped before trial; *Wanyoto* exposes shared state responsibility for malicious process; and *Soon Yeon Kong Kim* demonstrates how confidentiality can be reconciled with rights through a justified, court-supervised limitation (*Bakaleeke v Attorney General*, 2019; *SP Begira Avito v Attorney General*, 2026; *Rutayisire v Uganda Revenue Authority*, 2021; *Wanyoto v Sgt Ouma*, 2022; *Soon Yeon Kong Kim v Attorney General*, 2008). Their unresolved weakness is procedural: a claimant cannot reliably invoke those principles when the decisive record is exclusively held by the institution whose legality is challenged (*Democratic Alliance v Acting National Director of Public Prosecutions*, 2012, paras. 37–41; Judicature (Judicial Review) Rules, SI 11 of 2009).

Official data make reform urgent but also discipline its form, because a service operating with substantial cadre vacancies, geographic gaps and extraordinary case

volumes cannot be improved by adding undifferentiated approvals or rewarding output alone (Office of the Director of Public Prosecutions, 2024, pp. 10, 14–15; Office of the Director of Public Prosecutions, 2025, pp. 42, 48, 54). The answer is structured discretion: sufficiently bounded to be lawful, sufficiently recorded to be reviewable, sufficiently flexible to remain individualised and sufficiently resourced to be real (Davis, 1969, pp. 4–6, 55–60; Bibas, 2010, pp. 371–378). On that model, reasons do not weaken independence, disclosure does not decide the merits, data do not replace judgment and judicial review does not prosecute the case; each makes the constitutionally designated prosecutor answerable for exercising, rather than merely possessing, public power (Constitution of the Republic of Uganda, 1995, arts. 42, 50, 120; *R (Corner House Research) v Director of the Serious Fraud Office*, 2008, paras. 30–31). The constitutional ambition should therefore be stated without equivocation: prosecutorial discretion is legitimate only as reasoned judgment under law, never as dominion over whether law will speak (Constitution of the Republic of Uganda, 1995, arts. 2, 20(1), 120(5)–(6); United Nations, 1990, paras. 12–14).

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