

Accountable Independence and the Discipline of Prosecutorial Power in Uganda: A critical analysis after *Ongoriya Moses and Another v Uganda*

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ARTICLE INFORMATION

Submitted: August 22, 2026
Accepted: September 25, 2026
Published: October 02, 2026
Volume: 2
Issue: 1

KEYWORDS

Prosecutorial accountability;
 prosecutorial independence;
 judicial review; victim participation;
 plea bargaining.

ABSTRACT

Article 120(5)(6) of Uganda's Constitution does not pit prosecutorial independence and accountability against each other; it makes each a condition of the other. This article advances the concept of accountable independence, arguing that clause (6) protects who decides by insulating the Director of Public Prosecutions from external direction or control, while clause (5) disciplines how that power is exercised through public interest, the administration of justice and prevention of abuse of legal process. Through *Ongoriya Moses and Another v Uganda*, the article demonstrates that neither constitutional command permits power beyond law. The prosecutor irregularly altered a murder indictment, retained contradictory particulars, failed to record coherent reasons and excluded mandatory victim consultation. Those failures demanded accountability, but could not create judicial jurisdiction. Having found the High Court review incompetent, the Court of Appeal nevertheless invoked section 11 of the Judicature Act to nullify the conviction and order retrial. The central constitutional danger which *Ongoriya* reveals is that judicial overreach cannot cure prosecutorial unaccountability.

1. Prosecutorial power and the burden of justification

A criminal case does not begin neutrally and acquire coercive force only when a judge speaks. The prosecutor's charge has already named the alleged wrong, selected the legal character of the conduct, exposed the accused to arrest, remand and public stigma, and fixed the terrain on which any bargain is negotiated. A refusal to charge can be just as final for a victim because it may close the only public route to adjudication. Prosecutorial discretion is therefore not a marginal allowance for difficult files; it is the gate through which the criminal law decides which people and injuries it will see.¹

The thesis is not that discretion is constitutionally suspect. Judgment is unavoidable because evidence is incomplete, witnesses differ in reliability, public resources are finite and a mechanically chargeable case may still be oppressive. The sharper point is that judgment becomes legitimate only when the authorised decision-maker can identify the law, evidence and public interest that moved the choice. Calling a choice discretionary does not complete that explanation. It begins the demand for one.²

Article 120 states the settlement in two adjacent clauses which must be allowed to speak to each other. Clause (6) protects the identity of the constitutional decision-maker by forbidding direction or control from another person or authority. Clause (5)

¹ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.1-2.1.6, 2.2-2.3; Angela J Davis, *Arbitrary Justice: The Power of the American Prosecutor* (Oxford University Press 2007) 3-18, 123-43; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 *Washington and Lee Law Review* 1587, 1587-1620.

² Constitution of the Republic of Uganda 1995, arts 20(2), 21(1), 42, 120(5)-(6); African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 'Guidelines on the Role of Prosecutors' (Havana, 27 August-7 September 1990) paras 11-14, 21-22.

disciplines the quality of that decision through public interest, the administration of justice and prevention of abuse of legal process; independence without that discipline is not the constitutional office Uganda created.³

This research study calls the resulting arrangement accountable independence. The expression matters because each word restrains the other. Accountability cannot mean that a minister, parliamentary committee, victim or judge chooses the charge on a preferred view of the file. Independence cannot mean that the prosecutor leaves no reasoned record, withholds it from every competent reviewer and treats error as an internal embarrassment rather than an exercise of public power. The proper system asks who decided, under which authority, for which reasons, through which lawful procedure, and with what remedy if the answer fails. Those questions preserve decisional responsibility instead of dispersing it.⁴

Ongoriya Moses and Another v Uganda is a hard test of that distinction because the underlying bargain is deeply unsettling. A prosecutor changed murder to manslaughter by handwriting, left particulars alleging malice aforethought, relied on an unchanged summary and recorded that the deceased's family had not been consulted because the plea-bargaining programme sought prison decongestion. The file did not disclose the disciplined judgment that article 120 required. But the courts then committed their own constitutional error: they allowed the felt need to correct the bargain to outrun jurisdiction, proof and the domestic law of personal liability. A prosecutor who cannot explain why the charge changed has not exercised accountable discretion; a court that cannot identify its jurisdiction has not supplied the cure.⁵

The thesis applies the same discipline to prosecutor and court. It first locates answerability inside article 120, then examines the premise, method, constitutional consequence and practical effect of each *Ongoriya* judgment. Only after that doctrinal account does the research study turn to institutions, data and reform, because no credible model can ignore the conditions under which prosecutors actually work.

2. Accountable independence under article 120

The constitutional starting point is public trust, not prosecutorial ownership of the file. Article 120 concentrates the power to direct investigation, institute proceedings, take them over and discontinue them before judgment so that prosecution remains a coherent public function. That concentration does not reduce the need for controls. It makes a reasoned and auditable decisional process indispensable because one institutional gatekeeper can otherwise determine whose liberty and whose injury enter the courts without a reliable account.⁶

Clause (5) is sometimes treated as an ethical preface to the real power in clause (6). That reading is textually and constitutionally untenable. Public interest may favour prosecution, yet the administration of justice may forbid a weak or oppressive case; prevention of abuse may require intervention against a protected suspect, yet it may also require restraint where the State uses criminal process to punish an opponent. The three considerations compel a prosecutor to confront tension, not recite a slogan. Seriousness alone cannot repair deficient proof, and efficiency alone cannot justify a charge which the law does not recognise.⁷

Clause (6) answers a different question: whose judgment must resolve that tension. It bars outside command but does not place the DPP beyond the Constitution, statute or judicial review. The Privy Council made that distinction explicit in *Mohit*, which concerned materially similar constitutional language protecting the Mauritian DPP from direction or control. The Board rejected the claim that independence carried immunity from review, while preserving the prosecutor's authority over the merits. Its

³ Constitution of the Republic of Uganda 1995, art 120(3)-(6); *Uganda v Kwoyelo* (Constitutional Appeal No 1 of 2012) [2015] UGSC 5 (8 April 2015); Jamil D Mujuzi, 'The Director of Public Prosecution's Power to Delegate Prosecutorial Functions in Uganda: Understanding Article 120(4)(a) of the Constitution of Uganda (1995)' (2026) 7(1) *Al-Amir* 20, 24-34.

⁴ Constitution of the Republic of Uganda 1995, arts 42, 50, 120(4)-(6), 128(1); Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 *University of Pennsylvania Law Review* 959, 959-1016; Christopher Corns, 'Prosecution Accountability and Judicial Review' (2022) 53(1) *Victoria University of Wellington Law Review* 1, 1-28; Rachel E Barkow, 'Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law' (2009) 61 *Stanford Law Review* 869, 869-921.

⁵ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [76-135]; Trial on Indictments Act (Cap 25), ss 51-52, 65, 131; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; Judicature Act (Cap 16), ss 10-11.

⁶ Constitution of the Republic of Uganda 1995, art 120(3)-(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.1.5-1.2.1, 2.1.1-2.3.17; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 *Washington and Lee Law Review* 1587, 1587-1620.

⁷ Constitution of the Republic of Uganda 1995, art 120(5); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.2-2.3; *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60, [2009] 1 AC 756, [30]-[41].

method is persuasive for Uganda because it protects the office by policing its legal boundary, not by relocating the charging decision to the court.⁸

The same distinction separates institutional independence from the operational position of an individual prosecutor. Article 120(4) permits authorised officers to exercise delegated functions under general or specific instructions. A State Attorney is entitled to resist political pressure, private threats and interference from persons outside the constitutional chain. That officer is not a separate DPP entitled to disregard lawful supervision, escalation or peer review inside the office. Transparent hierarchy can strengthen independence because it replaces informal influence with identified authority and recorded responsibility.⁹

Reasons are the hinge on which this design turns. A reason does not invite the victim or judge to take over the file; it reveals whether the prosecutor addressed offence elements, adverse material, evidential weakness, public interest and any conflict. Without that account, two like cases may be treated differently and each result defended by the same word, discretion. With it, a reviewer can remain restrained because the task is to test the decision actually made, not reconstruct a hypothetical prosecution from accusation and hindsight.¹⁰

Purdy deserves more careful use than the familiar proposition that prosecutors should give reasons. The House of Lords did not require the Director to promise immunity or publish the protected detail of every file; it required accessible criteria because a broad criminal prohibition, uneven enforcement and an affected right left people unable to order their conduct with reasonable clarity. Its premise was legality, its method was policy-specific, and its practical consequence was information rather than transfer of the charging choice. For Uganda, the authority supports published criteria and a targeted explanation where article 120 materially affects rights, not an indiscriminate demand for the prosecution file. That is the form of transparency this thesis defends: enough information to test lawful judgment, never enough outside command to replace it.¹¹

Reason-giving does not require indiscriminate publication of the file. Witness safety, privilege, ongoing investigation and the accused's fair-trial rights justify careful limits. They justify calibrated disclosure, not institutional silence: a complete internal minute, a concise outcome statement for the person directly affected, and production of the record under protective terms when a competent court examines legality. Confidentiality protects information for a lawful purpose; it cannot erase the fact that the Constitution has been exercised.¹²

The rights provisions prevent article 120 from becoming a self-contained code. Articles 20, 21, 28, 42 and 50 bind prosecution to equality, fair process, just administrative treatment and effective redress. *Kwoyelo* is important on this point, but it should not be read as a general warrant for deference simply because grave crimes are alleged. Its real constitutional force lies in the proposition that prosecutorial choice remains answerable to the legal scheme and equality, even where courts properly avoid directing a particular charge. The same caution applies to *Kiranda*: a duty to respond to selective official inaction should mean impartial, timely and reasoned consideration, not a judicial guarantee that a prosecution must be filed.¹³

Accountable independence therefore sets a double limit. The prosecutor must submit the exercise of power to reasons, authorised review and lawful consequence. The reviewing institution must stay within its own jurisdiction and remedy. *Ongoriya* becomes analytically valuable only when both limits are enforced with equal seriousness.

⁸ *Mohit v Director of Public Prosecutions of Mauritius* [2006] UKPC 20, [2006] 1 WLR 3343, [17]-[21]; Constitution of the Republic of Uganda 1995, arts 42, 120(6); Christopher Corns, 'Prosecution Accountability and Judicial Review' (2022) 53(1) *Victoria University of Wellington Law Review* 1, 1-28.

⁹ Constitution of the Republic of Uganda 1995, art 120(4)-(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.2.1, 1.3.2, 1.4.4; Jamil D Mujuzi, 'The Director of Public Prosecution's Power to Delegate Prosecutorial Functions in Uganda: Understanding Article 120(4)(a) of the Constitution of Uganda (1995)' (2026) 7(1) *Al-Amir* 20, 24-34; Rachel E Barkow, 'Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law' (2009) 61 *Stanford Law Review* 869, 869-921.

¹⁰ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.7-2.10; *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56]; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; Ronald F Wright, 'Prosecutor Institutions and Incentives' (2017) 18(3) *Criminology, Criminal Justice, Law & Society* 85, 85-100.

¹¹ *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56]; Constitution of the Republic of Uganda 1995, arts 20(2), 28(1), 42, 50, 120(5)-(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.6, 2.10.1.

¹² Constitution of the Republic of Uganda 1995, arts 28(1), 42, 50; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) para 2.10.1; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56].

¹³ Constitution of the Republic of Uganda 1995, arts 20(2), 21, 28, 42, 50, 120(5)-(6); *Uganda v Kwoyelo* (Constitutional Appeal No 1 of 2012) [2015] UGSC 5 (8 April 2015); *Kiranda Timothy and Another v Hajjat Fatuma Nabitaka Ndisaba and Others* (Miscellaneous Cause No 61 of 2025) [2026] UGHC 627 (8 June 2026).

3. What Ongoriya got right and where it failed

The litigation began with an unlawful prosecutorial method and ended with an unstable appellate one. Between those points, four questions were allowed to collapse into a single accusation of illegality: whether manslaughter could be justified on the evidence, whether counsel could alter a filed indictment, whether the family had to be consulted, and whether dishonesty explained the irregular record. Each question carried its own legal test. Each also pointed to a different decision-maker and remedy. Once the courts treated them as one moral wrong, administrative disorder became fraud, an incoherent plea became proof of murder, and concern for victims became authority to reopen a conviction. The judgment must be disaggregated before it can be fairly assessed.¹⁴

3.1 The High Court's remedial instinct outran its authority

The Principal Judge began from a premise with considerable moral force: the recorded murder narrative sat uneasily beside a manslaughter plea and a short custodial sentence. The description of a 'handshake sentence' captured the institutional unease. It did not answer whether judicial review lay against a completed judgment of a coordinate High Court. The judgment treated the apparent gravity of the wrong as evidence of the court's remedial competence, when jurisdiction had to precede any view of the merits.¹⁵

That reversal of order was the High Court's controlling error. A gap in the State's right of appeal may be troubling, particularly where the trial record suggests that a plea should never have been approved. But the gap cannot turn one High Court judge into an appellate tribunal over another. Article 126(2)(e) requires substantive justice subject to law; it is not a free-standing source of jurisdiction. Once justice is used to displace the legal allocation of power, the remedial court becomes answerable only to the strength of its own conviction.¹⁶

The evidential method repeated the same mistake in another register. The prosecution summary was an account tendered to support a plea, not testimony tested by cross-examination and not a judicial finding after trial. It could reveal that the proposed offence, particulars and facts did not cohere. It could not establish every element of murder, negate a defence, resolve admissibility or prove that the prosecutor knew the lesser charge was false. The lawful conclusion was that the trial judge lacked a sufficient basis to accept the plea; the High Court's conclusion that the record proved a concealed murder case went further than the process permitted.¹⁷

The insistence that only new evidence could justify the lesser charge was also doctrinally thin. A second prosecutor may lawfully reach a different view of the same file because the first analysis misstated an element, overlooked inadmissibility, undervalued a defence or ignored a credible weakness. Continual review exists precisely because prosecutorial judgment can change without the facts changing. Absence of new evidence therefore made an explanation more necessary, not manslaughter legally impossible. By treating silence as proof that no lawful reason existed, the Court converted a serious failure of record-keeping into a conclusive finding on the merits.¹⁸

Fraud was the point at which inference hardened into condemnation. The stale minute, unexplained custody of the police file, unchanged summary and absent victim record plainly justified investigation. They did not, without more, prove a knowingly false representation intended to induce the court. The Court of Appeal was right to hold that administrative laxity remained a plausible explanation, however unattractive that explanation was. A constitutional court does not become less exacting because

¹⁴ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 15-18; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [76-135]; Trial on Indictments Act (Cap 25), ss 51-52, 65, 131; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

¹⁵ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 15-18; Judicature Act (Cap 16), ss 14, 36; Judicature (Judicial Review) Rules 2009, SI 11 of 2009, as amended by Judicature (Judicial Review) (Amendment) Rules 2019, SI 32 of 2019, rr 3, 7A; *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd* [1989] KLR 1, 14.

¹⁶ Constitution of the Republic of Uganda 1995, arts 126(1)-(2), 128(1); Judicature Act (Cap 16), ss 10-14; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [84-99]; *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd* [1989] KLR 1, 14.

¹⁷ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 10-18; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113-123]; Constitution of the Republic of Uganda 1995, arts 28(1), 28(3)(a); *Director of Public Prosecutions v Durham* [2024] UKPC 21, [39]-[60], [63]-[89].

¹⁸ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.7-2.8; *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 12-18; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [114-119].

the officer's conduct deserves scrutiny; the graver the allegation, the greater the need to distinguish proved dishonesty from negligent administration.¹⁹

Contract doctrine added vocabulary but no jurisdiction. Promise, reliance and voluntariness can illuminate bargaining before judicial approval. They do not identify who may alter an indictment, who represents the public interest, or which court may set aside a conviction after judgment. The family was not a contracting principal whose missing consent voided the plea; its legal claim arose from mandatory consultation and the court's duty to prevent a miscarriage of justice. The High Court's premise should therefore have been public delegation, not private bargain.²⁰

The judgment's practical contribution is nevertheless important. It exposed what happens when a grave charge reduction leaves no intelligible trail, the victim process is treated as dispensable and file control is too weak to reconstruct responsibility. Those facts demanded institutional correction. They did not authorise judicial review of a coordinate court's final judgment. The Court of Appeal saw that distinction clearly, then failed to live by it.²¹

3.2 The Court of Appeal repeated the error in another form

The appellate judgment is strongest where it refuses to let administrative rank become judicial hierarchy. The Principal Judge remained a High Court judge deciding a matter already concluded by another High Court judge. The Court of Appeal correctly held that appellate jurisdiction is statutory and that article 126(2)(e) does not authorise a court to disregard the law which assigns jurisdiction. On that reasoning, the judicial-review decree had to be set aside.²²

Paragraph 112 then unsettled the judgment's own foundation. Having held that the High Court lacked jurisdiction, the Court invoked section 11 of the Judicature Act, re-evaluated the plea, nullified the conviction and sentence, ordered a retrial and returned the appellants to custody. The appeal which proved the first court had no power became the vehicle through which the second court exercised the criminal power that the State had not lawfully invoked. This research study rejects that method as jurisdictionally indefensible, not because the result was severe, but because the Court converted a remedial provision into the source of the appellate power it lacked.²³

Section 11 could not carry that result. It equips the Court of Appeal with the powers of a court of original jurisdiction when exercising an appeal already within its competence. It does not create a new appeal, enlarge standing, or convert a civil appeal from judicial review into a prosecution appeal from conviction. Section 131 of the Trial on Indictments Act defined the State's criminal appellate route, and the Court itself had accepted that the provision did not furnish the desired challenge. Remedial amplitude cannot cure jurisdictional absence.²⁴

Rule 2(2) of the Court of Appeal Rules supplies the best argument for reopening, which makes the Court's silence about it significant. The rule preserves an inherent power to set aside a judgment proved null and void. A genuine jurisdictional nullity can therefore justify exceptional intervention even when an ordinary merits appeal is unavailable. But the rule states a condition, not a judicial licence. The alleged nullity must be identified, pleaded and proved in a process that gives the convicted person a fair opportunity to answer it. *Ongoriya* did none of that: it grouped defective particulars, an inadequate factual basis and absent

¹⁹ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 15-18; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [118-119, 129-131]; Constitution of the Republic of Uganda 1995, arts 28(1), 28(3)(a).

²⁰ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3, 11-15; Robert E Scott and William J Stuntz, 'Plea Bargaining as Contract' (1992) 101 *Yale Law Journal* 1909, 1912-35, 1950-68; Nakibuule Gladys Kisekka, 'Plea Bargaining as a Human Rights Question' (2020) 6(1) *Cogent Social Sciences* 1818935, 2-5, 12-16; Robert Doya Nanima, 'The Need for a Review of Plea Bargaining in Uganda: A Reflection on the Experiences under Common Law and in South Africa' (2017) 4(1) *Journal of Comparative Law in Africa* 24, 24-44.

²¹ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 15-18; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [84-112].

²² *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [82-99]; Constitution of the Republic of Uganda 1995, arts 126(2)(e), 128(1); Judicature Act (Cap 16), ss 10-14; *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd* [1989] KLR 1, 14.

²³ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [99, 112-128 and orders 1, 3, 6-8]; Judicature Act (Cap 16), s 11; Trial on Indictments Act (Cap 25), s 131.

²⁴ Judicature Act (Cap 16), ss 10-11; Trial on Indictments Act (Cap 25), s 131; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [84-91, 95, 112]; *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd* [1989] KLR 1, 14.

victim consultation under the word nullity without explaining why those matters made the trial court's judgment void rather than appealably wrong.²⁵

Makula International does not remove the difficulty. Its enduring proposition is that consent and acquiescence cannot validate an illegal act. It does not say that every court which encounters illegality may supply itself with whatever jurisdiction is needed to reverse a final judgment. Used without attention to forum, pleading and proof, *Makula* ceases to discipline power and begins to enlarge it. Legality cannot mean that judicial illegality is permissible when directed against prosecutorial illegality.²⁶

Article 28(9) is no answer after the event. The provision permits retrial following a superior court's decision in an appeal or review related to the conviction. It presupposes a lawfully constituted appeal or review; it does not authorise one. If any proceeding before a superior court can qualify merely because the court ultimately chooses to revisit the conviction, the constitutional protection against repeated prosecution loses its limiting work.²⁷

The practical effect makes the doctrinal failure impossible to dismiss. The appellants succeeded in proving that the proceeding directed at their conviction was incompetent, yet that success exposed them to renewed custody and trial. The decision offers future courts no stable map from defect to remedy and future prosecutors no clear account of when finality can be displaced. A judgment intended to vindicate accountability instead made remedial power depend on judicial urgency. The narrower prosecutorial wrong supplies a firmer basis for reform.²⁸

3.3 The prosecutor's unlawful method and the limits of merits review

Criticism of the appellate remedy does not rehabilitate the plea. It identifies the prosecutorial wrong with greater precision. Manslaughter was not inherently unavailable merely because the police summary alleged facts capable of supporting murder. The prosecutor's failure lay in the authority used, the instrument produced and the absence of a reasoned record capable of reconciling the lesser offence with the file.²⁹

Once the indictment had been filed, section 51 of the Trial on Indictments Act vested the power to order its alteration in the High Court. The prosecutor could apply for amendment, invite a lawful plea to an alternative offence under section 65, or reconsider the office's position through the proper process. Counsel could not turn murder into manslaughter with a pen and then ask the court to treat the alteration as self-executing. That procedural excess is complete without proving corruption, fraud or the substantive correctness of murder.³⁰

The unchanged particulars made the instrument internally incoherent. An indictment which names manslaughter but alleges malice aforethought does not tell the accused, the court or the public which offence is before the court. The contradiction did not prove murder. It prevented an unequivocal plea to a legally coherent charge. The trial judge's duty was immediate and modest: refuse approval until offence, particulars and factual basis were aligned.³¹

Victim consultation failed just as plainly, but its legal significance must be kept exact. Rules 3, 11 and 13 make victim participation part of the plea process and require the court to withhold approval where the omission risks a miscarriage of

²⁵ Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, rr 2(1)-(2), 28, 66-67, 74; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [84-125]; Constitution of the Republic of Uganda 1995, arts 28(1), 44(c).

²⁶ *Makula International Ltd v His Eminence Cardinal Nsubuga and Another* (Civil Appeal No 4 of 1981) [1982] HCB 11 (Court of Appeal of Uganda); *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [100-112]; Constitution of the Republic of Uganda 1995, arts 126(1), 128(1).

²⁷ Constitution of the Republic of Uganda 1995, arts 28(9), 44(c); Trial on Indictments Act (Cap 25), s 131; Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [112-125].

²⁸ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [112-135 and orders 6-8]; Constitution of the Republic of Uganda 1995, arts 28(1), 28(9), 128(1).

²⁹ Trial on Indictments Act (Cap 25), ss 51-52, 65; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.7-2.8; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113-123].

³⁰ Trial on Indictments Act (Cap 25), ss 23, 26, 51-52, 64-65; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113, 120-123].

³¹ Trial on Indictments Act (Cap 25), ss 23, 26, 51-52, 65; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 7, 12-13; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [120-125]; *Adan v Republic* [1973] EA 445, 446-47.

justice. The notation that the family was not consulted because the programme served decongestion disclosed a deliberate substitution of an administrative aim for a legal duty. The family was entitled to timely information, an opportunity to supply relevant material and a reasoned account of how its views were treated. It was not entitled to control the charge or demand a murder conviction independent of the evidential test.³²

R v Nixon exposes why the resort to contract in *Ongoriya* was not merely foreign but analytically misplaced. The Supreme Court of Canada treated a plea agreement as an exercise of public prosecutorial power, refused to enforce it as an ordinary lawyers' undertaking, and still recognised that repudiation can demand a prosecutorial explanation. Once the accused established a proper evidential foundation, the evidential burden shifted to the Crown because the reasons lay uniquely within the prosecution, although the ultimate burden of proving abuse remained with the accused.³³ The handwritten alteration, unchanged particulars and express failure to consult in *Ongoriya* readily justified a demand for the ODPP's actual reasons. They did not permit a court to fill the silence with murder, fraud or a jurisdiction it did not possess; the constitutional gain lies in compelling an answer while leaving proof and remedy within their lawful forums.³⁴

The missing decision record remains the most serious institutional defect. A conscientious prosecutor might have concluded that admissibility, proof of malice, a defence, witness reliability or delay made manslaughter the proper charge. Nothing in the record showed that analysis. That absence denied a supervisor the means to correct error, the victim the means to understand the outcome, and the court the means to test whether the bargain rested on law rather than convenience. It justified rejection of the bargain and investigation of the process; it did not authorise a court to invent the missing reasons and then reject them.³⁵

This is where accountability and evidential restraint meet. A reviewing court may ask whether the prosecutor applied the correct test, considered relevant matters, acted for a proper purpose and followed the procedure assigned by law. It may not decide witness credibility, prove malice aforethought or pronounce the accused guilty of the charge the prosecutor declined. Otherwise, the review designed to constrain coercive power becomes a civil trial conducted without the safeguards of the criminal one.³⁶

The legal response should therefore have been staged. Before approval, the trial court should have rejected the altered indictment and required consultation and coherent reasons. After discovery of the defect, the ODPP could investigate the officer, repair its records and pursue any authorised appellate route. After final judgment, only a statute or rule meeting the exact reopening threshold could displace the conviction. That sequence condemns the prosecutor's conduct without permitting the condemnation to become a source of jurisdiction.³⁷

3.4 Personal liability must begin with Ugandan law

The Court of Appeal was right to reject the broad claim that prosecutorial office confers personal immunity for everything done in its name. Article 120 protects decisional independence; it does not license falsification, corruption, discrimination or deliberate violation of rights. That premise, however, did not permit the Court to announce personal exposure without identifying a Ugandan cause of action, its elements, the proper parties and the process by which liability could be tried.³⁸

The reliance on *Wearry v Foster* obscured more than it clarified. *Wearry* addressed the boundary of federal prosecutorial immunity in a United States civil-rights action and distinguished advocative functions from investigative conduct. It did not create a cause of action in Uganda, determine the reach of the Government Proceedings Act, or prove that the State Attorney in

³² Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3(b), 3(f), 11-13; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [117, 124-128]; Constitution of the Republic of Uganda 1995, art 120(3)-(6).

³³ *R v Nixon* 2011 SCC 34, [2011] 2 SCR 566, [44]-[46], [52]-[60], [63]-[65].

³⁴ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113-131]; Constitution of the Republic of Uganda 1995, arts 28(1), 42, 120(5)-(6).

³⁵ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.3.1-2.3.17, 2.7-2.8; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [114-131]; Ronald F Wright, 'Prosecutor Institutions and Incentives' (2017) 18(3) *Criminology, Criminal Justice, Law & Society* 85, 85-100.

³⁶ *Director of Public Prosecutions v Durham* [2024] UKPC 21, [39]-[60], [63]-[89]; *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780, [14]; *Mohit v Director of Public Prosecutions of Mauritius* [2006] UKPC 20, [2006] 1 WLR 3343, [17]-[21]; Constitution of the Republic of Uganda 1995, arts 28(1), 28(3)(a), 42.

³⁷ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-15; Trial on Indictments Act (Cap 25), ss 51-52, 65, 131; Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [112-135].

³⁸ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [132-135 and orders 4-5]; Constitution of the Republic of Uganda 1995, arts 20(2), 28(1), 120(6).

Ongoriya had violated a particular right. A comparative immunity decision can illuminate function; it cannot substitute for domestic liability law.³⁹

The Human Rights (Enforcement) Act 2019 supplied the domestic starting point which the judgment passed over. It permits proceedings for human-rights violations, addresses personal participation and contribution, provides defences and enables the court to apportion responsibility between public officer and State. Its structure requires a claimant to identify the right, the officer's conduct, causation and the remedy sought. Those requirements are not technical obstacles to accountability. They are what prevent an appellate criticism of a file from becoming an untried declaration of personal civil liability.⁴⁰

Krieger provides a more useful comparative distinction. The Supreme Court of Canada protected core prosecutorial discretion from professional second-guessing while allowing regulation of ethical conduct and litigation practice outside that core. Its premise is not immunity but institutional competence. A disciplinary body may examine dishonesty, disclosure failure, conflict or abuse without deciding that murder rather than manslaughter should have been charged. That separation gives Uganda a principled way to investigate the officer without transferring article 120 merits to a professional regulator.⁴¹

Henry is equally instructive on constitutional damages. The Canadian court recognised that serious prosecutorial misconduct can justify a personal remedy, but insisted upon a demanding test directed to intentional conduct, rights harm and causation. The case resists both blanket immunity and liability by judicial impression. Read alongside the 2019 Act, it supports a pleaded, evidence-based proceeding in which the officer can answer the allegation and the court can match remedy to proved harm.⁴²

Miazga v Kvello Estate supplies the distinction which the appellate treatment of personal exposure lacked. The Supreme Court of Canada refused to infer malice merely from an absence of reasonable grounds and kept incompetence, inexperience, poor judgment, negligence and even gross negligence outside malicious prosecution unless an improper purpose was proved. The authority is persuasive for its method, not as a borrowed Ugandan cause of action: personal consequence must follow the elements of the domestic claim rather than the intensity of appellate disapproval.⁴³ On the Ongoriya record, administrative neglect and an incoherent plea justified investigation and could support discipline if the governing duty was proved. They could not establish malice or personal human-rights liability without a pleaded right, attributable conduct, causation, any statutory defence and a hearing at which the officer could answer the allegation.⁴⁴

The Court's order for investigation was therefore more defensible than its reasoning on liability. Investigation preserves the distinction among irregularity, negligence, professional misconduct, corruption and rights violation. Each has a different threshold and consequence. A legal system committed to accountability should not collapse them merely to express disapproval. The needed architecture begins with internal reasons, but it cannot end inside the ODPP.⁴⁵

4. Accountability without transfer of charging power

No single institution can answer every prosecutorial failure without becoming dangerous in its own way. Internal review has speed and access to the file but risks self-protection; courts possess independence but may trespass into criminal merits; victims bring indispensable knowledge but cannot own the public charge; disciplinary and rights bodies can impose consequences but only after their distinct elements are proved. Accountability therefore has to be distributed by function. The design question is not how to maximise outside control, but how to ensure that every serious defect reaches a competent reviewer and every

³⁹ *Weary v Foster* 33 F 4th 260, 266-75 (5th Cir 2022); *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [132-135]; Government Proceedings Act (Cap 77), ss 10-11.

⁴⁰ Human Rights (Enforcement) Act 2019, ss 3-10, 14; Constitution of the Republic of Uganda 1995, art 50.

⁴¹ *Krieger v Law Society of Alberta* 2002 SCC 65, [2002] 3 SCR 372, [31]-[51]; Constitution of the Republic of Uganda 1995, art 120(4)-(6); Advocates Act (Cap 267).

⁴² *Henry v British Columbia (Attorney General)* 2015 SCC 24, [2015] 2 SCR 214, [31]-[44], [81]-[92]; Human Rights (Enforcement) Act 2019, ss 3-10; Constitution of the Republic of Uganda 1995, arts 28(1), 50.

⁴³ *Miazga v Kvello Estate* 2009 SCC 51, [2009] 3 SCR 339, [46]-[56], [78]-[81].

⁴⁴ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [129-135]; Human Rights (Enforcement) Act 2019, ss 3-10, 14; Constitution of the Republic of Uganda 1995, arts 28(1), 50.

⁴⁵ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [129-135 and orders 4-5]; Human Rights (Enforcement) Act 2019, ss 3-10, 14; Laurene Soubise and Alice Woolley, 'Prosecutors and Justice: Insights from Comparative Analysis' (2018) 42 Fordham International Law Journal 587, 587-626.

reviewer stops at the edge of its lawful task. Institutional design, not denunciation, determines whether independence remains responsible.⁴⁶

4.1 Internal reasons, supervision and correction

The ODPP's 2023 Decision to Charge Guidelines contain most of the necessary internal principles. They require objective judgment, written reasons for prosecution and non-prosecution, current case records, supervisor review, a two-stage evidential and public-interest test, continued reassessment and escalation of threshold charges. They also reject politics and discrimination, require the prosecutor to consider material which points away from guilt, and make non-compliance a possible disciplinary matter.⁴⁷

The value of this internal layer is structural, not cosmetic. Barkow's administrative-law account is persuasive insofar as it separates decision, supervision and review within an institution instead of trusting individual virtue to carry all three. Uganda cannot import the surrounding American architecture wholesale, but the institutional lesson travels: a prosecutor working alone with incomplete information is more vulnerable to error and influence than one required to expose a grave decision to an authorised second mind. The second mind must test the reasons, not supply them after controversy begins.⁴⁸

The internal norm is therefore more exacting than the sparse public account of many charging decisions suggests. The weakness lies in enforceability and visibility. Paragraph 1.1.7 denies that the Guidelines create third-party rights or obligations, while paragraph 2.10.1 places full written reviews behind strict confidentiality and tells persons who question a charge to consult the Guidelines.⁴⁹ That combination produces accountability inside the file but can leave the accused, victim and public unable to know whether the file contains what the policy demands. A standard which only the institution can invoke is a management tool, not yet a complete constitutional safeguard.⁵⁰

The solution is not publication of every witness statement or confidential opinion. The ODPP should preserve a full internal decision record and give a concise statement which identifies the offence considered, the applicable evidential threshold, the public-interest conclusion, victim consultation and the review route. Sensitive facts can be omitted or summarised, but the legal basis and decisive considerations cannot disappear merely because the underlying file is protected.⁵¹ A court can then test legality without demanding routine public exposure of investigative material. Serious reversals require stronger internal process than ordinary case management.⁵²

A decision to reduce a homicide charge, discontinue a prosecution against a public officer, contradict an earlier sanction decision or depart from a published policy should carry written approval from a senior prosecutor who did not make the original decision. The second reviewer should test elements, evidence, defences, public interest, victim information, conflicts and the legality of the proposed procedure, not merely endorse the outcome. Had that process operated in *Ongoriya*, the mismatch between offence, particulars and summary should have stopped the bargain before judicial approval.⁵³

⁴⁶ Rachel E Barkow, 'Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law' (2009) 61 Stanford Law Review 869, 869-921; Laurène Soubise and Alice Woolley, 'Prosecutors and Justice: Insights from Comparative Analysis' (2018) 42 Fordham International Law Journal 587, 587-626; Bruce A Green and Ellen Yaroshefsky, 'Prosecutorial Accountability 2.0' (2016) 92 Notre Dame Law Review 51, 51-115; Christopher Corns, 'Prosecution Accountability and Judicial Review' (2022) 53(1) Victoria University of Wellington Law Review 1, 1-28.

⁴⁷ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.2.1, 1.4.4, 1.5.1-1.5.6, 2.1.5, 2.3.2-2.3.10.

⁴⁸ Rachel E Barkow, 'Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law' (2009) 61 Stanford Law Review 869, 895-903.

⁴⁹ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.1.5-1.2.1, 2.1.6; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 Washington and Lee Law Review 1587, 1587-1620; Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 University of Pennsylvania Law Review 959, 959-1016.

⁵⁰ Constitution of the Republic of Uganda 1995, arts 20(2), 42, 50; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.10.1; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 University of Pennsylvania Law Review 959, 959-1016.

⁵¹ Constitution of the Republic of Uganda 1995, arts 28(1), 41, 43; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.3.1-2.3.24, 2.10.1; *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56]; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37].

⁵² *Director of Public Prosecutions v Durham* [2024] UKPC 21, [39]-[60], [63]-[89]; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000) paras 11, 14, 20, 24, 27, 31, 33-36; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.4.4, 2.7-2.9, 3.1.

⁵³ Constitution of the Republic of Uganda 1995, art 120(4)-(5); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.5, 2.2-2.3, 3.1; Trial on Indictments Act (Cap 25), ss 51-52, 65; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

Internal review must also protect a prosecutor who refuses improper influence. The Guidelines require immediate reports of attempted influence, attempted perversion of justice and conflicts, but a report to the ordinary supervisor is inadequate where that supervisor may be implicated. A protected channel to the DPP, an integrity unit or an independent inspector should record the approach, preserve evidence and shield the reporting officer from reprisal.⁵⁴

Institutional independence becomes concrete only when an individual prosecutor can resist pressure without sacrificing career, safety or file control. The central objection to internal accountability is institutional self-protection. Supervisors can normalise office culture, and a confidential file can record a reason which is legally polished but factually untested.⁵⁵ That objection defeats exclusivity, not internal review itself, because no external body can examine every charge with comparable speed or context. Internal reasons must therefore serve as the first layer and as the record upon which independent review can act when a defined trigger arises.⁵⁶

4.2 Judicial review without a shadow prosecution

Judicial review is indispensable because the DPP cannot be the final judge of the constitutional limits on the office. It is also capable of becoming a second prosecution conducted on affidavits. The dividing question is not whether the reviewing judge considers the charge wise, lenient or severe. It is whether the authorised prosecutor acted within law, for a proper purpose, upon required considerations and through a fair process.⁵⁷

Mohit supplies the constitutional premise. Language insulating a DPP from direction or control protects independent judgment but does not create an enclave beyond judicial supervision. The Board's method is careful: review remains available because prosecutorial power is legal power, while the court respects the office by addressing legality rather than making the charging choice itself. Ugandan article 120(6) should receive the same disciplined reading.⁵⁸

Sharma and *Matalulu* supply the threshold, but their language of exceptional intervention needs precision. A high evidential threshold protects the office from tactical litigation and judicial disagreement disguised as irrationality. It cannot become a presumption that an unlawful prosecution is harmless until acquittal. Arrest, remand, cost, publicity and coercive bargaining may complete the constitutional injury before a trial can correct it. Credible proof of bad faith, improper purpose, discrimination, political pressure, abuse or a decision outside any rational application of the published test is therefore reviewable, even though ordinary disputes about proof belong at trial.⁵⁹

The Canadian decisions in *Nixon* and *Anderson* supply a workable evidential method for that threshold. A bare allegation does not open the prosecutor's decision to a roving inquiry, but a claimant who establishes a proper evidential foundation can require reasons because the prosecution ordinarily controls the information which explains its choice. The evidential burden then moves to the prosecutor to explain; the ultimate burden of proving abuse remains with the claimant.⁶⁰ This thesis adopts that sequence because it refuses both presumptions which distorted *Ongoriya*: silence is neither conclusive proof of fraud nor an institutional

⁵⁴ Constitution of the Republic of Uganda 1995, art 120(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.4.4, 1.5.5; International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999) standards 1, 3-6; Martin Schönteich, *Strengthening Prosecutorial Accountability in South Africa* (ISS Paper 255, Institute for Security Studies 2014) 1-12.

⁵⁵ African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999) standards 1, 3-6; *Corruption Watch NPC v President of the Republic of South Africa* [2018] ZACC 23, 2018 (10) BCLR 1179 (CC), [19]-[33]; Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 *University of Pennsylvania Law Review* 959, 959-1016.

⁵⁶ Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 *University of Pennsylvania Law Review* 959, 959-1016; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 *Washington and Lee Law Review* 1587, 1587-1620; Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000) paras 11, 14, 20, 24, 27, 31, 33-36; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37].

⁵⁷ Constitution of the Republic of Uganda 1995, arts 42, 50, 120(5)-(6); *Mohit v Director of Public Prosecutions of Mauritius* [2006] UKPC 20, [2006] 1 WLR 3343, [17]-[21]; Christopher Corns, 'Prosecution Accountability and Judicial Review' (2022) 53(1) *Victoria University of Wellington Law Review* 1, 1-28.

⁵⁸ *Mohit v Director of Public Prosecutions of Mauritius* [2006] UKPC 20, [2006] 1 WLR 3343, [17]-[21]; Constitution of the Republic of Uganda 1995, arts 42, 120(6).

⁵⁹ *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780, [14]; *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 735-36; Constitution of the Republic of Uganda 1995, arts 28(1), 42, 50.

⁶⁰ *R v Nixon* 2011 SCC 34, [2011] 2 SCR 566, [44]-[46], [52]-[60], [63]-[65]; *R v Anderson* 2014 SCC 41, [2014] 2 SCR 167, [36]-[56].

privilege against explanation. Visible anomalies in a charge, an unexplained departure from policy, evidence of outside pressure or unequal treatment should trigger an answer, after which the court tests legality without deciding whether it prefers the abandoned charge.⁶¹

Durham marks the evidential boundary with particular clarity. The Privy Council refused to let civil proceedings determine contested witness credibility and evidence committed to the criminal process. That restraint protects the accused as much as the prosecutor. A reviewing court which declares the prosecution facts compelling may prejudice the later trial while claiming merely to review legality. Both *Ongoriya* courts crossed that line when they treated a prosecution summary as established proof of intentional murder.⁶²

South African authority shows why access to the decisional record is not merits substitution. *Democratic Alliance* rejected an attempt to frustrate review of a discontinuance by withholding the record which disclosed how the decision was made. *Freedom Under Law* likewise placed prosecution decisions within legality review, yet warned that separation of powers permits intrusion into prosecutorial terrain only on rare occasions and for compelling reasons. The combined lesson is demanding but coherent: the prosecutor must produce the material needed to test legality, and the court must resist using that material to make the decision afresh.⁶³

The cases also clarify remedy. When a decision is unlawful or irrational, the ordinary judicial response is to quash and remit it to an untainted, competent prosecutor, not to select the charge. Remittal preserves responsibility for evidence and public interest within the constitutional office while requiring that office to decide again under law. Substitution should remain exceptional because the court which commands prosecution does not bear the continuing duties of disclosure, witness assessment and withdrawal when proof changes.⁶⁴

Ugandan authority should be read through that division of labour. *Sundus Exchange* is strongest where it insists that charging power has a legal and evidential foundation, but it should not invite civil adjudication of the criminal case. *Kwoyelo* confirms that prosecutorial choice operates within constitutional standards, although deference must not leave an equality complaint unanswered. *Kiranda* is a necessary response to selective inaction only if its positive-duty language requires a lawful and reasoned decision rather than a court-selected prosecution. These cases do not form rival camps of intervention and immunity; read carefully, they identify different legal defects and remedies.⁶⁵

The remedial order completes the constitutional analysis. Absent reasons may justify production of reasons or reconsideration; improper influence may justify quashing, preservation of the record and remittal; proved rights harm may justify relief under article 50 and the 2019 Act. A completed conviction stands on different ground and can be displaced only through an appeal, review or reopening jurisdiction which the law actually confers. That final restraint is not sympathy for an unlawful bargain. It is the rule of law applied to the institution enforcing it.⁶⁶

⁶¹ Constitution of the Republic of Uganda 1995, arts 21, 28(1), 42, 120(5)-(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.7-2.10; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113-131].

⁶² *Director of Public Prosecutions v Durham* [2024] UKPC 21, [39]-[60], [63]-[89]; *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 10-18; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113-123]; Constitution of the Republic of Uganda 1995, arts 28(1), 28(3)(a).

⁶³ *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; *National Director of Public Prosecutions v Freedom Under Law* [2014] ZASCA 58, 2014 (4) SA 298 (SCA), [27], [44]-[51]; *Zuma v Democratic Alliance* [2017] ZASCA 146, 2018 (1) SA 200 (SCA), [76]-[93].

⁶⁴ *National Director of Public Prosecutions v Freedom Under Law* [2014] ZASCA 58, 2014 (4) SA 298 (SCA), [27], [44]-[51]; *Diamond Hasham Lalji v Attorney General* [2018] KECA 856 (KLR), [35]-[46]; *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780, [14]; Constitution of the Republic of Uganda 1995, art 120(3)-(6).

⁶⁵ *Sundus Exchange and Money Transfer Ltd and Seven Others v Attorney General* (Miscellaneous Cause No 161 of 2019) (High Court, Civil Division, 20 August 2019); *Uganda v Kwoyelo* (Constitutional Appeal No 1 of 2012) [2015] UGSC 5 (8 April 2015); *Kiranda Timothy and Another v Hajjat Fatuma Nabitaka Ndisaba and Others* (Miscellaneous Cause No 61 of 2025) [2026] UGHC 627 (8 June 2026); Constitution of the Republic of Uganda 1995, arts 21, 42, 50, 120(5)-(6).

⁶⁶ Constitution of the Republic of Uganda 1995, arts 42, 50, 128(1); Human Rights (Enforcement) Act 2019, ss 3-10; Trial on Indictments Act (Cap 25), s 131; Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [99, 112].

4.3 Victim participation, equality and non-prosecution

The victim's place in prosecution must be neither ornamental nor sovereign. Consultation without reasons permits the office to hear and ignore, while a veto permits private injury to displace public evidence, proportionality and the accused's rights. The defensible position gives the victim timely information, an opportunity to supply relevant material, a concise explanation of outcome and a structured request for internal review.⁶⁷

It leaves the final charge with the prosecutor and the legality of that choice with a competent court. *Ongoriya* was correct to describe rule 11 consultation as mandatory and the trial court's role as supervisory. It went too far when its contract discussion suggested that the prosecution stands in the position of a party who can consent on behalf of the family.⁶⁸ The family's absence made the process unlawful because a rule was breached, not because the family owned the prosecution or could supply the missing consent. This distinction protects victims from exclusion and accused persons from prosecution by grief.⁶⁹

Non-prosecution poses the harder equality problem because there may be no criminal court before which the failure becomes visible. A dormant sanctioned file, an unexplained reversal or a pattern which protects officials can deny equal concern even though no person possesses a right to conviction. Equality review should therefore compare reasons, timing and application of the office's own criteria rather than assume that different outcomes alone prove discrimination.⁷⁰ The claimant must identify a credible comparator, prohibited or arbitrary ground, unexplained departure or pattern; the ODPP must then produce the lawful account held in its record. The language of a positive duty to prosecute requires special caution.⁷¹

Serious rights violations may impose a duty upon the State to conduct an effective investigation and provide a practical route to accountability, particularly where public officers are implicated. That duty is breached by indifference, obstruction or an irrational refusal, but it does not guarantee that admissible evidence will support a prosecution in every case. A court which orders a charge despite failed evidence protects the appearance of action at the price of the presumption of innocence and the prosecutor's duty not to pursue an unfounded case.⁷²

A victim-review scheme can hold these principles together. It should permit a victim to request review of non-charge, discontinuance or a materially lesser charge by a senior prosecutor who was not responsible for the decision. The review should consider factual error, overlooked material, misapplication of the evidential or public-interest test, failure to consult, conflict and improper influence.⁷³ Its written result should explain enough to permit acceptance or a legality challenge, while protecting witnesses and active investigative steps. The scheme should expressly deny a victim veto, because participation earns reasoned consideration rather than control of the public charge.⁷⁴

⁶⁷ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 3, 11-13; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.10.1, 2.11.6; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Constitution of the Republic of Uganda 1995, arts 28(3)(a), 120(5)-(6).

⁶⁸ Constitution of the Republic of Uganda 1995, arts 120(3)-(6), 126(1); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) para 2.3.17; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [104-109, 118-119]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

⁶⁹ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; Constitution of the Republic of Uganda 1995, arts 28(3)(a), 120(5); African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F.

⁷⁰ Constitution of the Republic of Uganda 1995, arts 21(1), 120(5); *Kiranda Timothy and Another v Hajjat Fatuma Nabitaka Ndisaba and Others* (Miscellaneous Cause No 61 of 2025) [2026] UGHC 627 (8 June 2026); African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.5-2.1.6, 2.2-2.3.

⁷¹ Constitution of the Republic of Uganda 1995, arts 21(1), 42; *Kiranda Timothy and Another v Hajjat Fatuma Nabitaka Ndisaba and Others* (Miscellaneous Cause No 61 of 2025) [2026] UGHC 627 (8 June 2026); *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37].

⁷² Human Rights (Enforcement) Act 2019, ss 3-10; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.2.1, 2.3.10; *Kiranda Timothy and Another v Hajjat Fatuma Nabitaka Ndisaba and Others* (Miscellaneous Cause No 61 of 2025) [2026] UGHC 627 (8 June 2026); Constitution of the Republic of Uganda 1995, arts 28(3)(a), 120(5).

⁷³ Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000) paras 11, 14, 20, 24, 27, 31, 33-36; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.5, 2.2-2.3, 2.7-2.10; Constitution of the Republic of Uganda 1995, art 120(4)-(6); Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11.

⁷⁴ Constitution of the Republic of Uganda 1995, arts 41-42; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.3.16-2.3.17; *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56]; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F.

4.4 Discipline, inspection and public oversight

Professional discipline asks a different question from judicial review. Review tests the validity of a public decision, while discipline tests whether the advocate or public officer breached a legal, ethical or employment duty. A charge may remain legally sustainable despite discourtesy or poor records, and a quashed decision does not by itself prove misconduct.⁷⁵

The threshold must turn on the officer's conduct, state of mind, pattern and duty rather than the appellate fate of the case. Uganda's existing routes are fragmented between ODPP discipline, public-service control, professional discipline and rights litigation. Fragmentation becomes impunity when a complainant cannot identify the proper forum or when each body assumes another will act.⁷⁶ A single intake point should classify a complaint as decisional error, service failure, professional misconduct, corruption or alleged rights violation and refer it to the body with lawful competence. Classification prevents the familiar error of treating every disputed charge as misconduct and every serious allegation as immune discretion.⁷⁷

An independent Prosecutorial Complaints and Inspection Assessor can fill the systemic gap without directing live cases. The office should possess secure tenure, authority to inspect closed files and systemic samples, access to protected records, and power to recommend discipline, training, policy revision or referral for investigation. It should lack authority to order a charge, discontinue a prosecution or instruct a prosecutor on the merits of a pending file.⁷⁸ Its independence protects complainants from institutional self-review, while its remedial limits protect article 120 from external command. Public reporting must concern patterns and quality rather than the political supervision of named prosecutions.⁷⁹

Parliament can examine budgets, staffing, delay, review compliance, reasons recorded, victim contacts, disclosure breaches, plea reductions, complaint outcomes and regional disparities. It cannot summon the DPP to justify why a named political ally or opponent has been charged and then demand a different result. The constitutional boundary is oversight of the system, not command of the case.⁸⁰

Publication also requires care because crude statistics can reward the wrong conduct. Conviction rate can favour weak disclosure and excessive pleas, while charge volume can punish a prosecutor who correctly rejects an unsupported file. A credible dashboard must pair outputs with legality and service indicators, including withdrawal after review, time to review remand cases, compliance with disclosure, victim notification, rejected plea bargains and substantiated complaints. The object is not to maximise punishment but to make the office's constitutional judgment visible in forms which expose error and support improvement.⁸¹

Comparative literature also cautions against reducing accountability to the punishment of a visible individual. Soubise and Woolley show why recurrent misconduct often reflects incentives, information and organisational practice as much as personal character. An assessor who can see only the officer but not workload, supervision, file access and performance pressure may

⁷⁵ *Krieger v Law Society of Alberta* 2002 SCC 65, [2002] 3 SCR 372, [31]-[51]; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Advocates Act (Cap 267), ss 16-20; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) para 1.2.1.

⁷⁶ *Krieger v Law Society of Alberta* 2002 SCC 65, [2002] 3 SCR 372, [31]-[51]; International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999) standards 1, 3-6; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) para 1.2.1; Human Rights (Enforcement) Act 2019, ss 3-10, 14.

⁷⁷ Martin Schönteich, *Strengthening Prosecutorial Accountability in South Africa* (ISS Paper 255, Institute for Security Studies 2014) 1-12; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Human Rights (Enforcement) Act 2019, ss 3-10; *Krieger v Law Society of Alberta* 2002 SCC 65, [2002] 3 SCR 372, [31]-[51].

⁷⁸ Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000) paras 11, 14, 20, 24, 27, 31, 33-36; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Constitution of the Republic of Uganda 1995, art 120(6); *Corruption Watch NPC v President of the Republic of South Africa* [2018] ZACC 23, 2018 (10) BCLR 1179 (CC), [19]-[33].

⁷⁹ Constitution of the Republic of Uganda 1995, arts 79, 120(6); Martin Schönteich, *Strengthening Prosecutorial Accountability in South Africa* (ISS Paper 255, Institute for Security Studies 2014) 1-12; Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000) paras 11, 14, 20, 24, 27, 31, 33-36; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 Washington and Lee Law Review 1587, 1587-1620.

⁸⁰ Constitution of the Republic of Uganda 1995, arts 79, 120(6); Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 15-25; Judiciary (Courts of Judicature), *Vote Budget Framework Paper FY 2025/26* (Vote 101, 2025) 3, 15-17; *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60, [2009] 1 AC 756, [30]-[41].

⁸¹ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.3-2.1.6, 2.3.10; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 21-25; Constitution of the Republic of Uganda 1995, art 120(5).

produce blame without prevention. Personal consequence remains necessary where its elements are proved, but a serious accountability system must also repair the conditions which repeatedly generate the breach.⁸²

5. Accountability under institutional pressure

A doctrinal model which assumes abundant prosecutors, complete files and reliable data will misdiagnose Uganda's accountability problem. Resource scarcity does not excuse unconstitutional action, but it determines whether a proposed safeguard can operate outside Kampala and beyond exceptional cases. The answer must therefore reduce unrecorded discretion without creating a paper regime so elaborate that compliance becomes fictional. Short structured records, defined escalation and auditable samples are more credible than lengthy opinions for every routine file.⁸³

5.1 Staffing and file integrity as constitutional facts

The Auditor General reported that only 600 of an approved ODPP structure of 1,704 posts were filled, with 399 prosecutors deployed across 149 field stations. Many stations had one prosecutor who appeared before three or four judicial officers and also served neighbouring districts. That burden helps explain delay and sparse reasons, but it also concentrates unchecked power in the places least able to absorb error.⁸⁴

A rural accused or victim should not receive a thinner version of article 120 because the nearest office has one exhausted officer. The same audit reported that only 23,184 of 40,501 new cases were committed to the High Court, with management attributing part of the shortfall to understaffing. A commitment shortfall is not itself proof of unlawful prosecution, but it exposes the cost of decisions which remain dormant after the State has already imposed arrest, remand and accusation.⁸⁵ The ODPP's own Guidelines recognise that poorly charged cases burden families, employment, travel and an already stressed court system. Accountability must therefore measure the interval between charge, evidential review, committal and final disposal rather than count initiation alone.⁸⁶

File integrity is not clerical detail after *Ongoriya*. The unexplained possession of the police file and failure to update a minute did not prove fraud, but they prevented the institution from reconstructing who decided what, on which material and at which time. That informational failure increased suspicion, weakened supervision and invited a court to infer motive from disorder. A reliable record protects the public from concealment and the honest prosecutor from an allegation which no audit trail can disprove.⁸⁷

5.2 PROCAMIS and the limits of digital accountability

The Prosecution Case Management Information System was launched in October 2016 to monitor and track prosecution work, yet the 2025 audit found major modules unpopulated and many equipped stations not using it. The system could not reliably exchange data with Police, the Judiciary or the National Identification and Registration Authority because of incompatible master data and synchronisation problems. Evidence, witness and case-detail fields remained blank in sampled units, which deprived supervisors of the information needed to control decisions.⁸⁸

⁸² Laurène Soubise and Alice Woolley, 'Prosecutors and Justice: Insights from Comparative Analysis' (2018) 42 Fordham International Law Journal 587, 587-626; Bruce A Green and Ellen Yaroshefsky, 'Prosecutorial Accountability 2.0' (2016) 92 Notre Dame Law Review 51, 51-115; Rachel E Barkow, 'Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law' (2009) 61 Stanford Law Review 869, 869-921.

⁸³ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4, 15-16, 21-25; Constitution of the Republic of Uganda 1995, arts 20(2), 21(1), 42; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.6-2.8; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 Washington and Lee Law Review 1587, 1587-1620.

⁸⁴ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 15-16; Constitution of the Republic of Uganda 1995, arts 21(1), 42.

⁸⁵ Constitution of the Republic of Uganda 1995, arts 21(1), 120(5); African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 15-16.

⁸⁶ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.2-2.1.4; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 21-25.

⁸⁷ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [119, 129-131]; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.11.5; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 Washington and Lee Law Review 1587, 1587-1620; Bruce A Green and Ellen Yaroshefsky, 'Prosecutorial Accountability 2.0' (2016) 92 Notre Dame Law Review 51, 51-115.

⁸⁸ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4.

Digital purchase therefore produced infrastructure without dependable institutional memory. That failure has a direct constitutional consequence. The office cannot test equal treatment, locate unexplained delay, identify serial non-compliance or conduct meaningful senior review if the underlying record is partial.⁸⁹ A dashboard built upon blank modules can create an appearance of transparency while preserving the very opacity it was purchased to cure. Technology strengthens accountability only when data fields correspond to legal duties and completion is checked against the physical file and court record.⁹⁰

The required digital record should follow the constitutional decision rather than merely the case event. It should record the decision-maker, delegation, offences considered, evidential result, public-interest factors, adverse material, victim contact, conflict declaration, supervisor approval and next review date. Mandatory fields should block a grave charge reduction from closure until a senior reviewer and victim-process entry exist, subject to an emergency override which itself demands reasons.⁹¹ The design turns *Ongoriya* from a cautionary tale into a preventable sequence of validation failures. Data protection and witness safety require role-based access, audit logs and protected fields.⁹²

They do not justify keeping the system so incomplete that no authorised reviewer can reconstruct the decision. Every view, amendment and export of a sensitive file should leave a tamper-evident log, which protects confidentiality by identifying misuse rather than by defeating access altogether. Institutional accountability is strongest when secrecy is controlled, not when information ceases to exist.⁹³

Wright's description of prosecutors who 'fly blind' and 'fly solo' identifies the deeper institutional risk. Incomplete data prevents the office from comparing like decisions, while weak consultation isolates the prosecutor from information held by victims, investigators and colleagues. PROCAMIS cannot solve either problem merely by counting events. It has to preserve the reasons and relationships which made the decision, or digitisation will reproduce opacity at greater speed.⁹⁴

5.3 When performance figures conceal constitutional failure

The Auditor General found that the ODPP achieved 68 per cent of 40 strategic indicators despite funding above the strategic estimate, while nine indicators remained unachieved. The same audit recorded a plan to conclude 2,000 cases against 442 completed and a plan to prosecute 1,500 criminal cases against 647 achieved. It could not determine how many prosecutions remained active and recommended separate measures for preparation, trial or plea negotiation, conclusion and closure.⁹⁵

That recommendation is legally important because the phrase 'cases prosecuted' conceals whether state power produced a lawful charge, repeated adjournment, a plea, withdrawal or final adjudication. The audit also identified inconsistencies between reported and verified totals, including 71,456 reported new general casework sanctions against 82,743 found in the annual record, and 116,196 reported case perusals against 130,425 assessed. The figures do not establish manipulation, but they show

⁸⁹ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4; Bruce A Green and Ellen Yaroshefsky, 'Prosecutorial Accountability 2.0' (2016) 92 *Notre Dame Law Review* 51, 51-115; Constitution of the Republic of Uganda 1995, arts 21(1), 42, 120(5); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.6-2.8.

⁹⁰ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 *Washington and Lee Law Review* 1587, 1587-1620; Bruce A Green and Ellen Yaroshefsky, 'Prosecutorial Accountability 2.0' (2016) 92 *Notre Dame Law Review* 51, 51-115; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.11.5.

⁹¹ Constitution of the Republic of Uganda 1995, art 120(4)-(5); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.4.4, 1.6.1, 2.7-2.8; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13.

⁹² *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113-131]; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4; Constitution of the Republic of Uganda 1995, arts 27, 28(1), 43; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) para 2.10.1.

⁹³ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.5-1.6, 2.10.1; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4; Constitution of the Republic of Uganda 1995, arts 41-42; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37].

⁹⁴ Ronald F Wright, 'Prosecutor Institutions and Incentives' (2017) 18(3) *Criminology, Criminal Justice, Law & Society* 85, 85-100; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 15-16, 23-25.

⁹⁵ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 14-16.

that the present validation controls cannot support confident public comparison.⁹⁶ An equality audit based on unstable denominators can falsely condemn one station or conceal another. Data quality is therefore part of fair accountability, not an administrative concern external to it.⁹⁷

Plea bargaining illustrates the danger of a one-sided metric. The Judiciary's FY 2025/26 framework planned 6,408 plea-bargained completions and 40 plea camps, figures which respond to genuine delay and remand pressure. A numerical completion target becomes constitutionally distorted if no companion measure records rejected bargains, victim consultation, defence advice, charge coherence, time on remand and reasons for offence reduction.⁹⁸ *Ongoriya* shows the practical result when decongestion ceases to be one legitimate consideration and becomes an answer to a mandatory safeguard. The proper performance question is not how many convictions a prosecutor secured.⁹⁹

It is whether the office selected charges consistently, withdrew weak cases promptly, disclosed material, respected victims and accused persons, corrected error and preserved a reviewable reason for each major choice. A withdrawal after new exculpatory material can be a success, while a conviction secured through suppressed evidence can be an institutional failure. Metrics must reward legality and correction if internal incentives are to support article 120(5) rather than compete with it.¹⁰⁰

Sklansky's account exposes the weakness in the usual promise that transparency alone will discipline prosecutors. Publication does little constitutional work if the public receives figures whose idea of success has never been defended; a high conviction rate can signal careful screening, coerced pleas, weak disclosure or some combination of all three. Uganda does not lack a normative anchor because article 120(5) already identifies public interest, the administration of justice and prevention of abuse as the standards against which institutional performance must be understood. The ODPP should therefore publish each headline total with its denominator, legal category, regional distribution and quality control, then connect the figure to sampled reasons and corrected errors. Anything less turns transparency into numerical theatre: the institution appears measurable while the choices which exercise coercive power remain hidden.¹⁰¹

6. A Ugandan model of accountable independence

Reform should begin from the constitutional allocation already in force rather than import a foreign model of elected prosecutors, ministerial instruction or routine merits review. Uganda needs a chain of reasons in the ODPP, a chain of review outside it and a remedial ladder which stops each institution at the boundary of its competence. The model proposed below responds directly to *Ongoriya*: it makes the defective plea less likely, the file anomaly visible, the victim process enforceable, the fraud allegation triable and the final judgment correctable only by lawful jurisdiction. Its ambition is institutional precision, not maximum supervision.¹⁰²

6.1 A decision record which makes judgment auditable

Every charge, non-charge, discontinuance, material charge reduction and plea concession should generate a structured decision record. The record should identify the authorised officer, the delegation relied upon, the offence elements, decisive inculpatory and exculpatory material, the evidential conclusion, the public-interest factors, victim input, conflict checks and the date for

⁹⁶ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 21-22; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.6-2.8.

⁹⁷ Constitution of the Republic of Uganda 1995, arts 21(1), 42; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 23-25; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 Washington and Lee Law Review 1587, 1587-1620.

⁹⁸ Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 8, 11-15; Nakibuule Gladys Kisekka, 'Plea Bargaining as a Human Rights Question' (2020) 6(1) Cogent Social Sciences 1818935, 2-5, 12-16; Judiciary (Courts of Judicature), *Vote Budget Framework Paper FY 2025/26* (Vote 101, 2025) 3, 15-17; Constitution of the Republic of Uganda 1995, arts 23, 28(1), 120(5).

⁹⁹ *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [117, 126-128]; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) para 2.1.5; International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999) standards 1, 3-6.

¹⁰⁰ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1-2.11; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; *Henry v British Columbia (Attorney General)* 2015 SCC 24, [2015] 2 SCR 214, [31]-[44], [81]-[92]; Constitution of the Republic of Uganda 1995, art 120(5).

¹⁰¹ David Alan Sklansky, 'The Nature and Function of Prosecutorial Power' (2016) 106 Journal of Criminal Law and Criminology 473, 474-77, 515-22; Constitution of the Republic of Uganda 1995, art 120(5).

¹⁰² Constitution of the Republic of Uganda 1995, arts 42, 50, 120(4)-(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.5-1.6, 2.6-2.10; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 11-13; Human Rights (Enforcement) Act 2019, ss 3-10.

review. It should distinguish facts accepted for the decision from allegations still contested, which prevents an untested summary from becoming a judicial finding by repetition.¹⁰³

A supervisor should certify any prescribed high-impact decision and state reasons for agreement or disagreement. The record must be proportionate to the decision. Routine matters can use a concise form with coded factors and a short narrative, while homicide, public-officer, corruption, sexual-violence and constitutional-rights cases require fuller reasons.¹⁰⁴ A form which permits boxes without a narrative will invite mechanical compliance, so every departure, adverse factor and disputed victim submission needs a short explanation in the officer's own words. The goal is to expose thought, not to reward length.¹⁰⁵

Affected persons should receive an outcome statement rather than the protected internal minute. For a victim, it should state the result, principal evidential or public-interest basis, treatment of the victim's material and review deadline. For an accused, disclosure duties and fair-trial procedure govern the evidence, but an exceptional or reversed charge should still identify the lawful authority and basis sufficient to permit challenge.¹⁰⁶ Redaction should protect a witness or investigation only to the extent necessary and should itself be recorded for later review. The strongest objection is that reasons freeze discretion and teach suspects how to evade proof.¹⁰⁷

That objection supports calibrated timing and redaction, not reasonless power, because the Guidelines already require written reasons and case records. A contemporaneous reason also protects adaptation because the prosecutor can later identify which premise changed and why reconsideration is legitimate. Silence does not preserve flexibility; it conceals whether there was judgment at all.¹⁰⁸

6.2 Review by legal trigger rather than political importance

Internal review should turn on published legal triggers rather than media attention or the status of the parties. Triggers should include a substantial charge reduction, discontinuance after committal, change to an earlier written decision, credible conflict allegation, public-officer suspect, death in custody, major delay and a victim request which identifies material error. The reviewer should be senior, independent of the first decision and institutionally responsible for a fresh application of the published criteria.¹⁰⁹

A politically prominent case should receive the same trigger-based process, because special supervision for famous persons can become discrimination in a respectable form. A victim request should not depend upon proof of irrationality before the file is accessible. It should identify the contested result and any overlooked material, factual error, conflict or policy departure, after

¹⁰³ Constitution of the Republic of Uganda 1995, art 120(3)-(5); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.3.2-2.3.10, 2.11.1-2.11.5; *Director of Public Prosecutions v Durham* [2024] UKPC 21, [39]-[60], [63]-[89]; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [113-123].

¹⁰⁴ Constitution of the Republic of Uganda 1995, art 120(4); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.4.4, 2.6-2.8; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 'Guidelines on the Role of Prosecutors' (Havana, 27 August-7 September 1990) paras 11-14, 21-22.

¹⁰⁵ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.6, 2.3.12; Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 *University of Pennsylvania Law Review* 959, 959-1016; *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56]; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37].

¹⁰⁶ Constitution of the Republic of Uganda 1995, arts 28(1), 42; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.3.16-2.3.17, 2.10.1, 2.11.6; Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, r 11; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F.

¹⁰⁷ Constitution of the Republic of Uganda 1995, arts 41(2), 43(2)(c); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) para 2.10.1; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 *University of Pennsylvania Law Review* 959, 959-1016.

¹⁰⁸ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.10.1; *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56]; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; Ronald F Wright and Marc L Miller, 'The Worldwide Accountability Deficit for Prosecutors' (2010) 67 *Washington and Lee Law Review* 1587, 1587-1620.

¹⁰⁹ Constitution of the Republic of Uganda 1995, arts 21(1), 120(5)-(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.4.4, 2.7-2.9; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 'Guidelines on the Role of Prosecutors' (Havana, 27 August-7 September 1990) paras 11-14, 21-22.

which the senior reviewer must produce a reasoned answer within a fixed period.¹¹⁰ Repeated requests based on no new matter can be rejected summarily, and disclosure can remain limited by safety, privacy and active investigation. The route provides dignified participation without turning prosecutorial judgment into private litigation at every stage.¹¹¹

An independence register should record any communication from a political office, security actor or senior official which seeks a result in a named case. The register can protect operational details while identifying the source, date, subject and response for inspection after the immediate sensitivity has passed. An approach which conveys relevant evidence is not improper merely because it comes from government, but pressure which prescribes the charge or outcome must be refused and reported.¹¹² The record permits later distinction between legitimate information and unconstitutional command instead of relying upon denial after controversy erupts. External inspection should examine samples and closed complaints, not operate as a permanent pre-clearance body.¹¹³

Pre-clearance shifts responsibility and can allow the ODPP to blame the overseer for a difficult decision. Retrospective inspection can test compliance, detect patterns and recommend systemic correction while leaving the live decision with the constitutional office. Urgent rights harm remains for courts under articles 42 and 50, which prevents retrospective oversight from becoming an excuse for present illegality.¹¹⁴

6.3 A remedial ladder matched to the defect

The remedial sequence should begin at the earliest lawful point. Before charge, a supervisor can require investigation, a clearer analysis or a fresh decision, but cannot manufacture missing evidence. After charge and before judgment, the trial court can enforce disclosure, reject an incoherent plea, refuse unlawful amendment, stay abuse and protect fair-trial rights.¹¹⁵

Judicial review should remain available for a credible constitutional or public-law wrong which the criminal court cannot adequately remedy, subject to strict control against evidential substitution. After judgment, finality must become stronger, not weaker. A complaint against prosecutorial conduct can still proceed through discipline, investigation or rights litigation, but those routes do not automatically erase the conviction.¹¹⁶ The conviction should stand or fall only under a criminal appellate or reopening power which identifies standing, grounds, time, proof and protection against repeated prosecution. That separation prevents the precise procedural conversion which occurred in *Ongoriya*.¹¹⁷

Parliament should reconcile rule 2(2) of the Court of Appeal Rules with section 131 of the Trial on Indictments Act through a narrow reopening procedure. The DPP should require leave to reopen a conviction after a guilty plea and should prove a jurisdictional nullity, fraud which materially procured judgment, or a fundamental defect which made the plea legally incapable of supporting conviction. The statute should impose prompt time limits from discovery, full disclosure, notice to the convicted person, a hearing before coercive orders, and express consideration of finality, reliance, custody already served and prosecutorial

¹¹⁰ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.5, 2.7-2.10; *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345, [34]-[56].

¹¹¹ Constitution of the Republic of Uganda 1995, arts 41(2), 43; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.3.16-2.3.17; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F.

¹¹² Constitution of the Republic of Uganda 1995, art 120(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.5.5, 2.10.1; *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60, [2009] 1 AC 756, [30]-[41]; International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999) standards 1, 3-6.

¹¹³ *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60, [2009] 1 AC 756, [30]-[41]; *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA), [23]-[37]; Constitution of the Republic of Uganda 1995, art 120(6); Martin Schönteich, *Strengthening Prosecutorial Accountability in South Africa* (ISS Paper 255, Institute for Security Studies 2014) 1-12.

¹¹⁴ Constitution of the Republic of Uganda 1995, art 120(3)-(6); Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000) paras 11, 14, 20, 24, 27, 31, 33-36; Human Rights (Enforcement) Act 2019, ss 3-10; *Diamond Hasham Lalji v Attorney General* [2018] KECA 856 (KLR), [35]-[46].

¹¹⁵ Constitution of the Republic of Uganda 1995, arts 28(1), 44(c); Judicature (Plea Bargain) Rules 2016, SI 43 of 2016, rr 12-13; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.2-2.6; Trial on Indictments Act (Cap 25), ss 51-52, 64-65.

¹¹⁶ Constitution of the Republic of Uganda 1995, arts 42, 50; *Director of Public Prosecutions v Durham* [2024] UKPC 21, [39]-[60], [63]-[89]; Trial on Indictments Act (Cap 25), s 131; Human Rights (Enforcement) Act 2019, ss 3-10, 14.

¹¹⁷ Constitution of the Republic of Uganda 1995, art 28(9); Trial on Indictments Act (Cap 25), s 131; Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); Judicature Act (Cap 16), s 11.

fault.¹¹⁸ Retrial should follow only where the defect affected the conviction, a lawful charge remains viable and renewed proceedings are not oppressive. The reopening power must not become a disguised sentence appeal for the State.¹¹⁹

A sentence viewed as lenient, a public controversy or a later judicial preference for a more serious charge should not satisfy the threshold. The applicant must identify the legal incapacity of the judgment, not merely argue that the bargain produced an unattractive result. This limit protects finality while preserving a lawful safety valve for the exceptional judgment which no competent court had power to enter.¹²⁰

Personal remedy should follow the Human Rights (Enforcement) Act rather than judicial improvisation. The claimant must establish a protected right, personal violation or participation, causation and an appropriate remedy, after which the court can apportion liability between officer and State. Professional discipline can proceed on its own legal test, while criminal investigation requires the ordinary presumption of innocence and proof. Separate routes prevent compensation, discipline and punishment from being imposed through an appeal in which the officer's personal liability was never tried.¹²¹

6.4 Quality metrics and legislative oversight without case command

The ODPP should publish an annual accountability report which joins resources, decisions, review and remedies in one verifiable account. It should disclose, by offence class and region, charge and non-charge totals, time to first and continued review, remand intervals, plea reductions, victim contacts, disclosure failures, withdrawals, complaints, discipline and reasons for material data revisions. The data should be anonymised and independently validated against PROCAMIS, physical files and court records.¹²²

Publication creates a basis for equality analysis without exposing witnesses or inviting political debate about the merits of a pending prosecution. Performance appraisal must credit lawful restraint. A prosecutor who declines a popular but unsupported charge, discloses exculpatory material, withdraws after the evidential test fails or rejects an unlawful bargain has served justice even though no conviction follows.¹²³ Targets should therefore combine timeliness and output with sampled legal quality, reasons compliance, correction, disclosure and treatment of affected persons. The change matters because an institution produces what it counts, even when its constitutional duty demands what the table omits.¹²⁴

Parliament should use that report to legislate, fund and question systemic failure. It can require an implementation plan for vacant posts, regional inequality, file integrity, PROCAMIS use and complaint delay, with measurable dates and audited results. It should not demand the evidential minute in a live named case or condition funding upon prosecution of a person.¹²⁵

¹¹⁸ Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); Trial on Indictments Act (Cap 25), ss 64-65, 131; Constitution of the Republic of Uganda 1995, arts 23, 28(1), 28(9), 44(c); *Makula International Ltd v His Eminence Cardinal Nsubuga and Another* (Civil Appeal No 4 of 1981) [1982] HCB 11 (Court of Appeal of Uganda).

¹¹⁹ Constitution of the Republic of Uganda 1995, art 28(9); *Githunguri v Republic* [1986] KEHC 44 (KLR), [1986] KLR 1; Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); Trial on Indictments Act (Cap 25), s 131.

¹²⁰ Constitution of the Republic of Uganda 1995, arts 28(9), 120(5); Trial on Indictments Act (Cap 25), s 131; Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); *Makula International Ltd v His Eminence Cardinal Nsubuga and Another* (Civil Appeal No 4 of 1981) [1982] HCB 11 (Court of Appeal of Uganda).

¹²¹ Human Rights (Enforcement) Act 2019, ss 1-3, 9-10; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [132-135]; Constitution of the Republic of Uganda 1995, arts 28(1), 50; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F.

¹²² Constitution of the Republic of Uganda 1995, arts 41, 79, 120(6); Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4, 23-25; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6, 2.6-2.11; Judiciary (Courts of Judicature), *Vote Budget Framework Paper FY 2025/26* (Vote 101, 2025) 3, 15-17.

¹²³ Constitution of the Republic of Uganda 1995, arts 21(1), 27, 41, 120(6); Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 2.1.5, 2.3.10, 2.7-2.8, 4.2-4.7; International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999) standards 1, 3-6; Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 'Guidelines on the Role of Prosecutors' (Havana, 27 August-7 September 1990) paras 11-14, 21-22.

¹²⁴ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 21-25; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.1.5-1.2.1; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F; Stephanos Bibas, 'Prosecutorial Regulation Versus Prosecutorial Accountability' (2009) 157 *University of Pennsylvania Law Review* 959, 959-1016.

¹²⁵ Constitution of the Republic of Uganda 1995, arts 79, 163, 120(6); Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4, 15-16, 23-25; *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60, [2009] 1 AC 756, [30]-[41]; *Corruption Watch NPC v President of the Republic of South Africa* [2018] ZACC 23, 2018 (10) BCLR 1179 (CC), [19]-[33].

Accountability to Parliament is constitutional only while it leaves prosecutorial judgment where article 120 placed it. The cost objection is real but incomplete.¹²⁶

Uganda cannot impose a complex review bureaucracy upon 399 field prosecutors and then treat predictable non-compliance as individual moral failure. Implementation should begin with grave offences, custodial cases, public-officer files, material charge reductions and discontinuances, supported by simple digital forms and regional review teams. Resources should follow the duty, but scarcity cannot justify the present combination of mandatory internal reasons, unreliable records and weak access to review.¹²⁷

7. Conclusion

Prosecutorial accountability begins with an unfashionable proposition: discretion is valuable because judgment is necessary, not because judgment is beyond explanation. Article 120(6) protects the prosecutor from outside command. Article 120(5), read with Chapter Four, prevents that protection from becoming silence, discrimination, abuse or rights-violating power. The constitutional office is strongest when the person who decides can show why, submit to the reviewer competent for the alleged defect and accept the remedy which the law authorises.¹²⁸

Ongoriya exposes the cost of forgetting either side of that settlement. The prosecutor's handwritten alteration, contradictory particulars, absent reasons, excluded family and defective file control showed public authority without a dependable account. The High Court responded by treating a remedial gap as jurisdiction, an untested summary as proof and disorder as fraud. The Court of Appeal corrected those errors, then reopened the conviction under section 11 through the very appeal which established the first court's want of power. Neither institution could cure the other by repeating its central vice: power untethered from the legal source which justified it.¹²⁹

The practical answer is not another body empowered to command the charge. It is a connected structure of short contemporaneous reasons, senior review for grave departures, meaningful victim review without veto, judicial control of legality, professional discipline for conduct, rights-based liability after due process, independent systemic inspection and verified quality data. Each institution receives enough authority to expose and correct the wrong assigned to it, but no more. That restraint is what keeps accountability from becoming political or judicial ownership of prosecution.¹³⁰

Parliament should add a narrow, leave-based reopening process which reconciles rule 2(2) with section 131 and confines intervention to a proved nullity, material fraud or a fundamental defect incapable of supporting conviction. The ODPP should make its existing internal standards visible through structured records and review, supported by staffing and data systems capable of proving compliance. Courts should insist on both legality and jurisdiction with the same firmness. Victims deserve information, participation and reasons; accused persons deserve correction only through a competent court. No outsider may dictate the charge, and no prosecutor may treat independence as an answer which the Constitution has already rejected.¹³¹

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

¹²⁶ Constitution of the Republic of Uganda 1995, arts 79, 120(3)-(6); Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000) paras 11, 14, 20, 24, 27, 31, 33-36; Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 15-25.

¹²⁷ Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4, 15-16; Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.6.1, 2.1.6; Constitution of the Republic of Uganda 1995, arts 20(2), 21(1), 42.

¹²⁸ Constitution of the Republic of Uganda 1995, arts 20(2), 21, 28, 42, 50, 120(5)-(6); *Mohit v Director of Public Prosecutions of Mauritius* [2006] UKPC 20, [2006] 1 WLR 3343, [17]-[21]; African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sections A(2), C and F.

¹²⁹ *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024) 10-18; *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026) [84-135]; Judicature Act (Cap 16), s 11; Trial on Indictments Act (Cap 25), ss 51-52, 65, 131.

¹³⁰ Office of the Director of Public Prosecutions, *The Decision to Charge Guidelines* (2023) paras 1.4.4, 1.6.1, 2.1.6, 2.7-2.10; Human Rights (Enforcement) Act 2019, ss 3-10, 14.

¹³¹ Judicature (Court of Appeal Rules) Directions, SI 13-10, sch, r 2(2); Trial on Indictments Act (Cap 25), s 131; Constitution of the Republic of Uganda 1995, arts 28(1), 28(9), 42, 50, 120(5)-(6); Auditor General, *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) 2-4, 15-16, 23-25.

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Artificial Intelligence (AI) Use Disclosure: The authors declare that no artificial intelligence tools were used in the preparation of this manuscript.

References

- [1] *Adan v Republic* [1973] EA 445
- [2] Advocates Act (Cap 267)
- [3] African Commission on Human and Peoples' Rights (2026), *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003) <<https://achpr.au.int/en/node/879>> accessed 5 September 2026
- [4] Auditor General (2026), *Report on the Office of the Director of Public Prosecution for the Audit Year Ended December 2025* (Office of the Auditor General 2025) <https://www.oag.go.ug/storage/reports/JLO_CG_DPT_2024_25_1775572785.pdf> accessed 5 September 2026
- [5] Barkow RE, (2009) Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law (2009) 61 *Stanford Law Review* 869
- [6] Bibas S, (2009) Prosecutorial Regulation Versus Prosecutorial Accountability (2009) 157 *University of Pennsylvania Law Review* 959
- [7] Committee of Ministers of the Council of Europe (2000), Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System (6 October 2000)
- [8] Constitution of the Republic of Uganda 1995
- [9] Corns C, (2007) Prosecution Accountability and Judicial Review (2022) 53(1) *Victoria University of Wellington Law Review* 1
- [10] *Corruption Watch NPC v President of the Republic of South Africa* [2018] ZACC 23, 2018 (10) BCLR 1179 (CC)
- [11] Davis AJ, (2007) *Arbitrary Justice: The Power of the American Prosecutor* (Oxford University Press 2007)
- [12] *Democratic Alliance v Acting National Director of Public Prosecutions* [2012] ZASCA 15, 2012 (3) SA 486 (SCA)
- [13] *Diamond Hasham Lalji v Attorney General* [2018] KECA 856 (KLR)
- [14] *Director of Public Prosecutions v Durham* [2024] UKPC 21
- [15] Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, (1990) Guidelines on the Role of Prosecutors' (Havana, 27 August-7 September 1990)
- [16] *Githunguri v Republic* [1986] KEHC 44 (KLR), [1986] KLR 1
- [17] Green BA and Yaroshefsky E, (2016) Prosecutorial Accountability 2.0 (2016) 92 *Notre Dame Law Review* 51
- [18] *Henry v British Columbia (Attorney General)* 2015 SCC 24, [2015] 2 SCR 214
- [19] Human Rights (Enforcement) Act 2019
- [20] International Association of Prosecutors (1999), *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999)
- [21] Judicature (Court of Appeal Rules) Directions, SI 13-10
- [22] Judicature (Judicial Review) Rules 2009, SI 11 of 2009, as amended by Judicature (Judicial Review) (Amendment) Rules 2019, SI 32 of 2019
- [23] Judicature (Plea Bargain) Rules 2016, SI 43 of 2016
- [24] Judicature Act (Cap 16)
- [25] Judiciary (Courts of Judicature) (2026) , *Vote Budget Framework Paper FY 2025/26* (Vote 101, 2025) <https://budget.finance.go.ug/sites/default/files/Sector%20Spending%20Agency%20Budgets%20and%20Performance/Judiciary_20.pdf> accessed 5 September 2026
- [26] *Kiranda Timothy and Another v Hajjat Fatuma Nabitaka Ndisaba and Others* (Miscellaneous Cause No 61 of 2025) [2026] UGHC 627 (8 June 2026)
- [27] Kisekka NG, (2020) Plea Bargaining as a Human Rights Question (2020) 6(1) *Cogent Social Sciences* 1818935
- [28] *Krieger v Law Society of Alberta* 2002 SCC 65, [2002] 3 SCR 372
- [29] *Makula International Ltd v His Eminence Cardinal Nsubuga and Another* (Civil Appeal No 4 of 1981) [1982] HCB 11 (Court of Appeal of Uganda)
- [30] *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712
- [31] *Miazga v Kvello Estate* 2009 SCC 51, [2009] 3 SCR 339
- [32] *Mohit v Director of Public Prosecutions of Mauritius* [2006] UKPC 20, [2006] 1 WLR 3343
- [33] Mujuzi JD, (2026) The Director of Public Prosecution's Power to Delegate Prosecutorial Functions in Uganda: Understanding Article 120(4)(a) of the Constitution of Uganda (1995) (2026) 7(1) *Al-Amir* 20
- [34] Nanima RD, (2017) The Need for a Review of Plea Bargaining in Uganda: A Reflection on the Experiences under Common Law and in South Africa (2017) 4(1) *Journal of Comparative Law in Africa* 24
- [35] *National Director of Public Prosecutions v Freedom Under Law* [2014] ZASCA 58, 2014 (4) SA 298 (SCA)
- [36] Office of the Director of Public Prosecutions (2026) , *The Decision to Charge Guidelines* (2023) <<https://dpp.go.ug/wp-content/uploads/2024/03/THE-DECISION-TO-CHARGE-GUIDELINES.pdf>> accessed 5 September 2026
- [37] *Ongoriya Moses and Another v Uganda* (Consolidated Criminal Appeal Nos 711 and 749 of 2024) [2026] UGCA 225 (31 July 2026)
- [38] *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd* [1989] KLR 1
- [39] *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60, [2009] 1 AC 756
- [40] *R (Purdy) v Director of Public Prosecutions* [2009] UKHL 45, [2010] 1 AC 345
- [41] *R v Anderson* 2014 SCC 41, [2014] 2 SCR 167
- [42] *R v Nixon* 2011 SCC 34, [2011] 2 SCR 566
- [43] Schönteich M, (2014) *Strengthening Prosecutorial Accountability in South Africa* (ISS Paper 255, Institute for Security Studies 2014)
- [44] Scott RE and Stuntz WJ, (1992) Plea Bargaining as Contract' (1992) 101 *Yale Law Journal* 1909

- [45] *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780
- [46] Sklansky DA, (2016) The Nature and Function of Prosecutorial Power (2016) 106 *Journal of Criminal Law and Criminology* 473
- [47] Soubise L and Woolley A, (2018) Prosecutors and Justice: Insights from Comparative Analysis (2018) 42 *Fordham International Law Journal* 587
- [48] *Sundus Exchange and Money Transfer Ltd and Seven Others v Attorney General* (Miscellaneous Cause No 161 of 2019) (High Court, Civil Division, 20 August 2019)
- [49] Trial on Indictments Act (Cap 25)
- [50] *Uganda (DPP) v Ongoriya Moses and Wanamama Mics Isaiah* (Criminal Review Application No 44 of 2024) [2024] UGHCCRD 68 (26 November 2024)
- [51] *Uganda v Kwoyelo* (Constitutional Appeal No 1 of 2012) [2015] UGSC 5 (8 April 2015)
- [52] *Wearry v Foster* 33 F 4th 260 (5th Cir 2022)
- [53] Wright RF and Miller ML, (2010) The Worldwide Accountability Deficit for Prosecutors (2010) 67 *Washington and Lee Law Review* 1587
- [54] Wright RF, (2017) Prosecutor Institutions and Incentives (2017) 18(3) *Criminology, Criminal Justice, Law & Society* 85
- [55] *Zuma v Democratic Alliance* [2017] ZASCA 146, 2018 (1) SA 200 (SCA)