Stout in Law and Societal Studies (SLSS)

DOI: https://doi.org/10.61424/kt3fq797
Journal Homepage: https://stoutjournals.org/index.php/SLSS

The Power of the DPP to Direct the Police to Investigate

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ARTICLE INFORMATION

Submitted: August 12, 2026
Accepted: September 23, 2026
Published: October 02, 2026
Volume: 2
Issue: 1

KEYWORDS

Director of Public Prosecutions; police investigation; prosecution-guided investigation; prosecutorial independence; pre-file direction; Uganda Police Force; criminal process.

ABSTRACT

Article 120(3)(a) of the Constitution of the Republic of Uganda authorises the Director of Public Prosecutions to direct the police to investigate any information of a criminal nature and to report expeditiously. The provision is often treated in practice as a power that becomes useful only after a police file has reached a prosecutor. That understanding reverses the constitutional sequence. The power is addressed to information, not to a completed file; its commanded activity is investigation; and the file or report is the product expected to return to the DPP. The power may therefore be exercised before police registration and may require an investigation to be opened. That conclusion does not turn the DPP into the operational commander of the police. The Constitution preserves police responsibility for investigative methods and command, while legislation reserves particular coercive measures to police officers or judicial officers. The proper account is consequently neither prosecutorial passivity nor prosecutorial takeover. It is a bounded power to determine whether criminal information will be investigated, to frame the lawful and evidential questions that require inquiry, to insist upon reasonable inculpatory and exculpatory lines, and to demand an expeditious, reasoned report. This article develops that account through the breadth, length, width, height, depth, vertical axis, horizontal axis and circular diameter of Article 120(3)(a). It subjects the leading Ugandan and Kenyan authorities to close analysis, and tests Uganda's settlement against South Africa, England and Wales, Scotland, Canada and European human-rights doctrine. The comparison shows that early prosecutorial engagement can protect the quality and independence of charging decisions, but can also produce joint tunnel vision, political manipulation and blurred responsibility unless direction is written, reviewable and separated from coercive tactics. The available ODPP data reveal considerable prosecution-guided activity, but do not show when directions begin, whether police comply, whether exculpatory lines are pursued, or whether intervention improves the quality of justice. The institutional failure is therefore best understood as under-assertion combined with under-institutionalisation. The article proposes a focused enabling statute, a joint DPP–IGP protocol, a pre-file intake mechanism, fresh-eyes charge review, rights-sensitive templates, staged escalation and outcome-based public reporting. It also identifies practices that must be abandoned, especially the file-receipt culture, informal unrecorded instructions, numerical performance measures detached from justice, and directions that presuppose guilt

1. The constitutional question arises before the case file

The controversy can be stated without ceremony. Must the Director of Public Prosecutions wait until the police have investigated an allegation, assembled a file and delivered it for sanction before Article 120(3)(a) can be used? The answer is no. A completed file is not the trigger named by the Constitution. The trigger is 'any information of a criminal nature'. The act authorised is a direction 'to investigate'. The report is what the police must make 'expeditiously' after the direction has set the constitutional process in motion. A contrary reading requires the report to exist before the power to require it can arise. It is textually strained and institutionally self-defeating.[1]

The order of Article 120(3) confirms the point. Paragraph (a) deals with investigation; paragraph (b) with the institution of criminal proceedings; paragraph (c) with taking over proceedings; and paragraph (d) with discontinuance. That sequence does not make every investigation a chronological procession controlled by the DPP. It does show, however, that the Constitution deliberately gave the DPP a function on the investigative side of the charge decision. If paragraph (a) began only after police

[1] Constitution of the Republic of Uganda 1995, arts 2(1), 120(3)(a) and 259.

work was complete, it would add little to the power to decide whether proceedings should be instituted. Constitutional language should not be reduced to a ceremonial repetition of a power already conferred elsewhere.[2]

This is not an abstract drafting objection. A rule that makes a police file a condition precedent gives the police an unreviewable gatekeeping power over the DPP's constitutional field. A refusal to register a complaint, a decision to classify it as civil, an unexplained delay, or a premature closure would determine whether the DPP could ever act. The institution whose omission requires correction would thereby acquire the legal capacity to disable the correcting power. Nothing in Articles 120, 212 or 213 supports that inversion.

The file remains important, but for a different reason. It records allegations, statements, exhibits, decisions and investigative acts. It allows a prosecutor to assess admissibility, sufficiency and public interest. It may reveal why a direction is required. Yet it is an administrative and evidential vehicle, not the source of constitutional jurisdiction. The distinction matters because institutions often convert an efficient working convention into an imagined legal limit. Receipt of a file is a convenient point of ordinary prosecutorial engagement. It cannot be allowed to become the boundary of an extraordinary power designed for cases in which ordinary police initiation has failed or requires legal focus.[3]

The pre-file answer must nevertheless be stated with care. Article 120(3)(a) allows the DPP to require an investigation; it does not allow the DPP to manufacture a prosecution. A direction can identify a possible offence, ask that a complaint be registered, require preservation of vulnerable evidence, specify legal ingredients that need factual inquiry, demand attention to a plausible defence, and set a reporting period. It cannot truthfully declare contested facts proved before they have been investigated. The constitutional power begins early precisely because the truth is not yet known.

This distinction supplies the article's central thesis. Article 120(3)(a) is broad as to the information and criminal subject matter it can reach, long as to the period during which it may operate, and high as a command grounded in the Constitution. It is deliberately shallower in operational depth. The DPP directs the lawful object, evidential completeness and reporting of the inquiry. Police retain professional responsibility for ordinary tactics and statutory coercive powers. Courts retain control where legislation makes judicial authorisation necessary. The power is real because the police cannot ignore it; bounded because the DPP cannot silently absorb the offices of investigator, police commander and judicial officer.[4]

That account also exposes why the question is larger than institutional territory. A prosecutor cannot make an independent decision on charge if the police alone decide which allegations enter the system, which witnesses are heard, which records are preserved and which exculpatory possibilities never reach the file. Independence at the end of a process is fragile where another institution controls the information on which independence must act. Direction is therefore one of the Constitution's means of securing independence over the factual basis of prosecution, not merely independence over the formal signature on a charge sheet.[5]

The legal difficulty is to preserve that epistemic independence without creating a prosecutorial police force by interpretation. The analysis that follows approaches the problem through constitutional principle rather than institutional preference. It reads Article 120 with the police provisions, the rights chapter and the governing procedural statutes; tests the principal cases for their premise, method, constitutional consequence and practical effect; and uses comparison only where the foreign arrangement clarifies a choice Uganda's own law must make. The objective is not to enlarge the DPP's office. It is to give the words already in the Constitution their full, disciplined effect.

2. Direction is a condition of independent judgment, not a claim to police command

2.1 Independence begins with access to a legally adequate account of the facts

Prosecutorial independence is often described as freedom from instruction when deciding whether and how to prosecute. That description is correct but incomplete. A charging authority can be free from political orders and still be informationally captive. If the file omits the witness who contradicts the complaint, the transaction that explains the payment, the digital record that fixes

[2] Constitution of the Republic of Uganda 1995, art 120(3)(a)–(d).

[3] Constitution of the Republic of Uganda 1995, arts 120(3)(a), 120(5), 120(6) and 212(c); Police Act, Cap 324, ss 4(1)(e), 27 and 28.

[4] Constitution of the Republic of Uganda 1995, arts 23, 27, 120(3)(a), 212, 213 and 221; Police Act, Cap 324, ss 4, 5 and 23–28; Magistrates Courts Act, Cap 19, ss 69–74.

[5] Máximo Langer and David Alan Sklansky (eds), *Prosecutors and Democracy: A Cross-National Study* (CUP 2017) 3–32; Erik Luna and Marianne Wade (eds), *The Prosecutor in Transnational Perspective* (OUP 2012) 1–14.

the time, or the suspect whose role is inconvenient to the prevailing theory, the prosecutor's formal freedom operates inside a factual frame selected elsewhere. Article 120(3)(a) responds to that quieter form of dependence.[6]

The constitutional value of the direction power lies in its ability to disturb an incomplete account before incompleteness hardens into institutional truth. The DPP can ask whether all elements of the suspected offence have been investigated, whether an apparent defence is capable of objective verification, whether evidence was lawfully obtained, whether similarly placed actors were treated alike, and whether an alternative offence or non-criminal explanation better fits the facts. This is not an invitation to search indefinitely for evidence sufficient to rescue a weak allegation. It is authority to insist that the State's eventual decision rests on a fair account rather than a prosecutorially convenient one.[7]

This research study describes that function as epistemic independence. The expression is useful because it directs attention to the quality and provenance of the knowledge on which public power is exercised. It also reveals a limit. The DPP does not become independent by replacing police tunnel vision with prosecutorial tunnel vision. Early participation can make a prosecutor intellectually invested in an initial theory and reluctant to recognise that the theory has failed. The institutional answer is not to retreat to late file receipt. It is to require directions that expressly accommodate reasonable exculpatory lines and to subject the final charge decision, in serious or contested cases, to fresh-eyes review by a prosecutor who did not design the investigation.[8]

The DPP's own decision-to-charge framework already provides the beginnings of this discipline. It treats the prosecutor's task as an assessment of admissible evidence, realistic prospects and public interest, and requires continuing review rather than allegiance to an early decision. Article 120(3)(a) should carry the same ethic backwards into investigation. The prosecutor's constitutional interest is not that an allegation be proved. It is that the allegation be properly tested.[9]

2.2 A constitutional direction binds, but only within the DPP's constitutional field

The verb 'direct' cannot honestly be reduced to 'request'. The framers could have authorised the DPP to advise, consult or recommend. They chose an imperative term and placed it in the supreme law. A lawful direction is therefore binding even though Uganda's text, unlike Kenya's, does not append the words 'shall comply'. Constitutional supremacy performs that work. Police silence, indefinite inaction or an unexplained substitution of the police view for the DPP's direction would deny the provision legal effect.[10]

Binding force does not mean blind obedience. A direction may be impossible, internally contradictory, addressed to the wrong institution, premised on a material error, or incompatible with a statute or a protected right. Police professionalism requires such a defect to be identified, not concealed. The proper response is prompt written engagement: perform the lawful part, explain the legal or operational obstacle, propose an alternative where possible, and escalate the disagreement through designated senior officers. Secret non-compliance protects neither police independence nor prosecutorial independence. It merely removes the disagreement from law.

The boundary appears in the relationship between Articles 120, 212 and 213. Article 212 assigns the Police Force responsibility for protecting life and property, preserving law and order, preventing and detecting crime and co-operating with civilian authority. Article 213 vests command in the Inspector-General of Police. Article 120(3)(a) is not an implied amendment of those provisions. It creates a specific constitutional incursion into the investigative field: the DPP may require that qualifying criminal information be investigated and reported. The incursion is substantial, but it is not total.[11]

The DPP may determine the legal questions that require investigation and the evidential gaps that prevent a responsible charge decision. The police ordinarily determine how officers will be deployed, how an interview will be sequenced, what safe operational method will be used, and whether statutory grounds exist for a police power. The line will not always be neat. A

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[6] Office of the Director of Public Prosecutions Uganda, *Guidelines on the Decision to Charge 2023* (2023) paras 1.3.1–1.4.4 and 2.3.1–2.3.7; Langer and Sklansky (n 5) 3–32.

[7] Office of the Director of Public Prosecutions Uganda, *Guidelines on the Decision to Charge 2023* (2023) paras 1.4.1–1.4.4 and 2.3.1–2.9.1; United Nations, *Guidelines on the Role of Prosecutors* (1990) paras 12–16.

[8] Keith A Findley and Michael S Scott, 'The Multiple Dimensions of Tunnel Vision in Criminal Cases' (2006) *Wisconsin Law Review* 291, 307–23; Public Prosecution Service of Canada, *PPSC Deskbook*, guideline 2.7, 'Relationship between Crown Counsel and Investigative Agencies' (1 March 2014) paras 3.1 and 3.4; *R v Regan* 2002 SCC 12, [2002] 1 SCR 297 [65], [155]–[156].

[9] Office of the Director of Public Prosecutions Uganda, *Guidelines on the Decision to Charge 2023* (2023) paras 2.3.1–2.9.1.

[10] Constitution of the Republic of Uganda 1995, arts 2(1), 120(3)(a) and 120(6); compare Constitution of Kenya 2010, arts 157(4) and 245(4).

[11] Constitution of the Republic of Uganda 1995, arts 212 and 213; Police Act, Cap 324, ss 4–7 and 21.

direction to obtain a particular category of record may influence method; an operational choice may frustrate the evidential object. The constitutional answer is reasoned co-ordination under distinct legal responsibilities, not an assertion that one institution owns the whole investigation.

Article 120(6) deepens the point. The DPP is not subject to the direction or control of any person or authority in exercising the prescribed functions. That protection would be hollow if police omission could determine what reaches the DPP. It would also be abused if the DPP invoked independence to escape Article 120(5), the Bill of Rights or judicial review. Independence protects judgment from improper command. It does not convert judgment into unreasoned power.[12]

2.3 Impartial inquiry is the measure of lawful direction

An investigation is not constitutionally adequate merely because it produces evidence capable of supporting a charge. It must remain open to material that weakens or defeats the allegation. Reasonable exculpatory lines are therefore part of the direction power itself. An objectively testable alibi, a lawful source of funds, an inconsistent account, an alternative actor, an apparent consent issue, a digital location record or a transaction document cannot be dismissed as 'a defence for trial' where timely inquiry could establish whether it is true. Deferring such matters until trial burdens liberty and fair process with a failure that belongs to investigation.[13]

The word 'reasonable' does necessary work. It prevents a suspect from converting every speculative assertion into a demand for unlimited public investigation. A line is reasonable where it bears materially upon an element, defence, identity, reliability or lawful explanation and can be pursued proportionately. The DPP should be able to say why a requested inquiry is connected to the legal decision that must eventually be made. The police should be able to say why a proposed line is impossible, exhausted or disproportionate. Reasons, rather than institutional rank, should carry the disagreement.

This impartiality requirement also disciplines the form of a direction. 'Establish whether X caused the death and examine the identified alternative causes' is an investigative instruction. 'Prove that X murdered Y' is an instruction to confirm a conclusion. The second formulation is constitutionally defective even if every technique later used is lawful. It corrupts the object of investigation at inception, encourages selective collection and compromises the appearance and reality of the DPP's later charge decision.[14]

Fresh-eyes review is the necessary companion to early engagement. In a minor or straightforward matter, ordinary supervisory review may be sufficient. In a case involving death, grave corruption, public officials, police suspects, politically exposed persons, novel surveillance, or a seriously contested factual theory, the prosecutor who framed the central direction should not have the sole final word on charge. A separate reviewer should see the direction, the police response, uncompleted lines and reasons for departure. That modest separation preserves the gain of legal guidance without allowing authorship of an investigative theory to become ownership of its outcome.[15]

3. The constitutional geometry of Article 120(3)(a)

Geometric language is useful only if it disciplines rather than decorates the analysis. Breadth identifies the information capable of activating the power. Length identifies its temporal beginning and end. Width concerns the persons, offences, places and evidential lines it may reach. Height concerns constitutional rank and the legal ceiling imposed by rights and statute. Depth asks how far the DPP may penetrate operational choices. The vertical axis describes lawful delegation and command within each institution; the horizontal axis describes co-ordination between distinct constitutional actors. Circular diameter describes the full legitimate circuit from information to direction, investigation, report, review and closure.

3.1 Breadth: 'any information of a criminal nature' is wide, but not standardless

'Any information' is source-neutral. It may come from a victim, whistle-blower, audit, regulator, court record, commission of inquiry, parliamentary proceeding, financial-intelligence report, media investigation, foreign authority, civil litigation or another prosecution. A police file is one possible source. It is not the constitutionally preferred source. That choice of language is

[12] Constitution of the Republic of Uganda 1995, arts 20–28, 44, 120(5), 120(6) and 221.

[13] *Isaac Tumunu Njunge v Director of Public Prosecutions and 2 Others* [2016] KEHC 2673 (KLR) [24]–[26], [36]–[45]; *Margaret Muthoni Mutai v Inspector-General of the National Police Service and Others* [2017] KEHC 8786 (KLR) [27]–[38]; Office of the Director of Public Prosecutions Uganda, *Guidelines on the Decision to Charge 2023* (2023) paras 1.4.1–1.4.4.

[14] Constitution of the Republic of Uganda 1995, arts 28(3)(a), 120(5) and 120(6); Findley and Scott (n 8) 307–23.

[15] Public Prosecution Service of Canada (n 8) paras 3.1 and 3.4; *Regan* (n 8) [65], [155]–[156].

deliberate in effect, whether or not the framers foresaw every modern source. It prevents the DPP's jurisdiction from being dependent upon police authorship.[16]

The constitutional threshold is information 'of a criminal nature', not proof of a completed offence. Information meets that description when, if materially accurate, it could disclose an offence or participation in one and presents at least one rationally verifiable line. The actor, exact charge and every ingredient need not already be known. Investigation exists because relevant facts remain uncertain. Requiring charge-ready evidence before direction would collapse the first threshold into the third.

Yet 'any' is not synonymous with 'every'. A vague grievance, political accusation or unsupported rumour may be recorded, clarified or subjected to limited verification without justifying a full criminal investigation. Article 120(5) requires attention to public interest, the administration of justice and prevention of abuse. Those obligations support graduated responses: immediate preservation where evidence is at risk; limited checks where credibility is uncertain; a full investigation where allegations are concrete; and reasoned closure where the matter is manifestly non-criminal or incapable of proportionate verification.[17]

Breadth therefore describes jurisdiction, not intensity. The DPP may receive information from anywhere, but must give the police a legally intelligible reason to use public investigative power. This is the first protection against politicised direction. The second is consistency: comparable information should be triaged by comparable criteria. Selective enthusiasm is not cured merely because the chosen allegation is capable of investigation.

3.2 Length: the power begins before registration and ends only after lawful closure

On the forward temporal axis, Article 120(3)(a) begins when qualifying information reaches the DPP and enough is known to justify a proportionate investigative response. It can therefore precede a police reference number, station diary entry or assembled case file. The first direction may be no more than an instruction to register, preserve a record, contact a vulnerable complainant or report whether another competent body is already acting. The importance of early power lies precisely in its ability to prevent administrative non-recognition from becoming factual extinction.

The power continues after a file is first submitted. A prosecutor may identify a missing element, unreliable identification, unexplained inconsistency, unlawful collection method, undisclosed digital source, or reasonable defence requiring inquiry. The file may return to the police with directions and come back again. *Uwera Nsenga* must therefore be read carefully when it says the police role generally ends on submission. Submission ends the authority of a police recommendation to control the charge decision. It does not extinguish the constitutional possibility of supplementary investigation or the police responsibility to carry it out.[18]

The power can also operate after proceedings have begun, but its intensity changes. New evidence may require further inquiry; a witness may recant; disclosure may expose a gap; a court may permit an amended charge. The DPP's ongoing duty to review a prosecution would be artificial if Article 120(3)(a) vanished upon arraignment. At the same time, directions after charge must respect judicial control of proceedings, disclosure duties, trial fairness and the prohibition against using investigation to repair a case through oppressive delay.[19]

On the reverse temporal axis, old conduct is not excluded merely by age. The DPP may direct inquiry into historical offences where limitation rules, evidential integrity and fairness permit. Age affects practicality and public interest; it is not a textual bar. Conversely, the direction power is not perpetual. It ends in relation to a particular line when it has been completed, lawfully abandoned as futile or disproportionate, superseded by a reasoned decision, or finally foreclosed by law. Closure must be visible. An 'ongoing investigation' that has no activity, timetable or review point is not length. It is administrative suspension without responsibility.

[16] Constitution of the Republic of Uganda 1995, art 120(3)(a); Evidence Act, Cap 8, ss 123–124.

[17] Constitution of the Republic of Uganda 1995, arts 120(3)(a) and 120(5); *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others; In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* [2000] ZACC 12, 2001 (1) SA 545 (CC) [23]–[26], [44]–[56].

[18] *Uganda v Uwera Nsenga* (Criminal Session Case No 0312 of 2013) [2014] UGHCCRD 43 [49]; Constitution of the Republic of Uganda 1995, arts 120(3)(a)–(b) and 212(c).

[19] Constitution of the Republic of Uganda 1995, arts 28, 120(3)(a), 120(3)(d) and 120(5); Office of the Director of Public Prosecutions Uganda, *Guidelines on the Decision to Charge 2023* (2023) paras 2.7.1–2.9.1.

3.3 Width, height and depth: extensive reach under a rights-based ceiling

The width of the power follows the criminal information rather than the status of the person concerned. It may reach public officials, private actors, corporations, police officers, complainants, associates and persons not named in the original account where a rational evidential connection emerges. It may cross districts and require co-ordination among specialised police units. It may require inquiry into a connected predicate offence, proceeds, attempt, conspiracy or concealment. It may not be widened merely to place pressure on a person, to search for an offence without a rational basis, or to settle a civil contest through the stigma of criminal process.[20]

Height has two aspects. Article 120(3)(a) is constitutionally superior to an inconsistent administrative practice. A police standing order, informal custom or file-routing convention cannot reduce it. The same constitutional height subjects the power to the rest of the Constitution. Articles 20 to 28, 44 and 221 are not external inconveniences. They are part of the legal form of every direction. The DPP cannot use a high constitutional source to authorise torture, arbitrary detention, unlawful search, discriminatory selection or denial of a fair hearing.[21]

Depth is where overstatement most often occurs. The DPP may require that a witness be traced or a class of records lawfully sought; may identify why an interview is necessary; and may demand an account of steps taken. Ordinarily the DPP should not choose the arresting team, dictate the physical method of a search, order detention without statutory grounds, determine police bond, or command a particular surveillance technique. Those matters engage police command, statutory thresholds and sometimes judicial authorisation. Article 120(3)(a) supplies purpose and legal focus. It does not supply every coercive power required to pursue that purpose.

The distinction is not weakened because prosecutors sometimes attend searches, advise during interviews or work in joint teams. Co-operation may be prudent and sometimes indispensable. Legal responsibility should still be attributed to the officer or institution exercising the relevant power. Blurred practice cannot be allowed to blur review. When liberty or privacy is infringed, a court should be able to identify who decided, under which law, on what information and subject to which safeguard.

3.4 The vertical and horizontal axes must meet without collapsing

The vertical axis first concerns the DPP's own office. Article 120(4) permits specified functions to be exercised by authorised officers. Delegation makes national operation possible, but it must preserve accountability. A direction should identify the officer's authority, the responsible police recipient, the reporting line and the point at which a matter must be escalated. Junior correspondence should not acquire constitutional force merely because it is copied to a senior office; nor should an over-centralised system require the DPP personally to sign routine lawful directions.[22]

On the police side, Article 213 means that formal directions should ordinarily enter through a structure capable of allocating officers and ensuring compliance. That does not require every direction to travel personally through the IGP. It requires an agreed channel that respects command and prevents a prosecutor from informally selecting and privately directing individual officers outside their chain of responsibility. A joint protocol can identify urgent exceptions while preserving prompt notification and record.

The horizontal axis joins institutions without fusing them. The DPP, police and courts each contribute something the others cannot lawfully supply. The DPP brings legal characterisation, evidential assessment, public-interest judgment and independence from police charging preferences. Police bring investigative skill, lawful operational capacity and command responsibility. Courts authorise or review coercion where legislation so provides and protect the integrity of proceedings. The constitutional design works when these functions meet at defined points, not when one office claims institutional purity through isolation.

The circular diameter measures the maximum legitimate journey of a direction: information is assessed; a written direction frames a lawful inquiry; police plan and execute lawful steps; an expeditious report records inculpatory and exculpatory results; the DPP reviews the response; proportionate supplementary directions issue if necessary; and a reasoned decision closes, defers

[20] Constitution of the Republic of Uganda 1995, arts 21, 120(5) and 120(6); *Kanaba Estates and Agencies Ltd v Dr Sam Mayanja and Another* (Miscellaneous Cause No 0001 of 2025) [2025] UGHC 282; *Kawalya Hassan v Director of Public Prosecutions and Others* (Miscellaneous Application No 0268 of 2026) [2026] UGHC 868 [42].

[21] Constitution of the Republic of Uganda 1995, arts 20–28, 44 and 221; Human Rights (Enforcement) Act, Cap 12, ss 3–15; Prevention and Prohibition of Torture Act 2012, Cap 130, ss 10–21.

[22] Constitution of the Republic of Uganda 1995, art 120(4)(a)–(b).

or advances the matter. The circuit may repeat, but it cannot spin indefinitely. Each return must be justified by a material unresolved question. Otherwise 'further investigation' becomes a means of avoiding the responsibility to decide.

This circular account answers both extremes. The police cannot say that submission has ended their role when a lawful gap remains. The DPP cannot return a file repeatedly in the hope that an evidential deficiency will somehow disappear. Direction is not a ritual by which responsibility travels in circles. It is a disciplined means of bringing an investigation to an honest decision.

4. Statutory legality fixes the operational boundary

Article 120(3)(a) does not float above criminal procedure. The Constitution supplies authority to direct; legislation supplies much of the machinery through which an investigation is actually conducted. The distinction is decisive. A constitutional direction can require a lawful result, but cannot dispense with the statutory conditions attached to the means of obtaining it. The DPP's purpose does not become a substitute for reasonable suspicion, a warrant, rank, written grounds, humane execution or judicial control.

4.1 Coercive investigation remains an exercise of statutory police power

The Police Act locates prevention and detection of crime within the functions of the Force, places the Force under the IGP's command and gives police officers defined powers of arrest, detention, search, seizure and witness attendance. Those provisions do more than allocate administrative tasks. They identify who must personally form the beliefs and record the grounds that make coercion lawful. Section 23, for example, speaks to the reasonable cause of the arresting police officer. Section 27 requires a qualifying officer to record grounds for a search and builds in safeguards concerning written authority, attendance and humane execution. Section 28 regulates written attendance requirements during an investigation.[23]

The DPP can supply legal analysis relevant to those judgments. A prosecutor may point out that identified facts appear capable of amounting to an arrestable offence, that a record is likely to be material, or that delay may endanger evidence. The prosecutor cannot simply lend constitutional status to a missing statutory belief. If an officer arrests solely because 'the DPP directed it', without independently satisfying the governing legal threshold, both institutions have misunderstood their roles. The police have abandoned a duty the statute places upon them; the DPP has attempted to exercise a power the statute does not confer.

This separation also protects the DPP. If a direction states the investigative question and police independently choose a lawful technique, responsibility for the operational choice remains where law placed it. If prosecutors informally select targets, dictate arrests or use police bond as leverage, accountability becomes confused and prosecutorial independence is exposed to the consequences of acts outside its proper field. Institutional power is strengthened, not weakened, by refusing authority that belongs elsewhere.

The Criminal Procedure Code Act reinforces the point by prescribing arrest and search powers and the treatment of persons and property through legal thresholds that do not disappear because a constitutional officer wants speed. 'Expeditiously' qualifies the report; it does not authorise shortcuts around legality. A fast unlawful investigation is not constitutional compliance.[24]

4.2 Judicial control is a constitutional partner, not an obstacle to direction

The Magistrates Courts Act makes judicial authorisation central to specified searches, warrants and process. Sections 69 to 74 regulate searches and seized property. Article 120(3)(a) cannot be read as a freestanding prosecutorial warrant. The DPP may direct police to consider seeking a warrant and may help identify materiality. The application must still satisfy the magistrate on the statutory basis. A refusal by a judicial officer cannot be overridden by repeating the same demand as a prosecutorial direction.[25]

More revealing is section 42(7). A magistrate receiving a charge or complaint may postpone summons or warrant, direct investigation or further investigation by police, and require a report to the court. Uganda's law therefore rejects the proposition that every case-specific direction to investigate is the DPP's exclusive preserve. The DPP's authority is constitutional and broad. The magistrate's authority is statutory, attached to a complaint or charge before the court and conditioned by recorded reasons. Each is lawful within its own field.[26]

[23] Police Act, Cap 324, ss 4–7, 21 and 23–30.

[24] Criminal Procedure Code Act, Cap 122, ss 7–18 and 24–27; Constitution of the Republic of Uganda 1995, arts 23 and 120(3)(a).

[25] Magistrates Courts Act, Cap 19, ss 69–74; Constitution of the Republic of Uganda 1995, art 27.

[26] Magistrates Courts Act, Cap 19, s 42(7).

This matters when Kenyan decisions speak in exclusive terms about the DPP as the officer entitled to direct the police. Kenya's constitutional text and institutional setting may support that conclusion there. Uganda's section 42(7) forecloses its transplantation as a general rule. The durable principle is not exclusivity. It is legal provenance. Every direction must identify the source from which it derives, the purpose for which that source permits it, the recipient legally obliged to act, and the institution to which the resulting report is owed.

The judicial direction power also provides a useful contrast in form. Section 42(7) requires reasons in writing. Article 120(3)(a) is silent on form, but the same values apply with greater force to an independent constitutional officer whose direction may initiate a serious investigation. Writing identifies the allegation, protects against later reconstruction, allows police to understand the task, and permits a court to review legality. Urgency may justify an oral direction. It should be confirmed promptly in writing, with the time and substance of the oral instruction recorded.

4.3 Express evidence-gathering powers mark the limit of implied authority

Sections 224 of the Magistrates Courts Act and 137 of the Trial on Indictments Act allow bank documents to be supplied on a written request by the DPP, or by a police officer of the required rank authorised in writing by the DPP. The provisions are unusually direct. They permit the DPP to obtain copies and, where necessary, originals for inspection or testing; prescribe receipts and certified replacements; and make the authorised police officer answerable to the DPP for acts under the section.[27]

These provisions do not merely illustrate Article 120(3)(a). They expose its boundary. Parliament knew how to confer a direct prosecutorial evidence-gathering power, specify its object, prescribe form, identify an authorised police intermediary and protect the custodian. It would be odd to treat the general word 'direct' as already containing unlimited powers to compel every category of evidence. The stronger inference is that Article 120 authorises direction of police investigation, while direct compulsion or acquisition by the DPP requires an additional legal source.

The inference is not absolute. Specific legislation may clarify an existing constitutional function and cannot reduce the Constitution. But it is powerful where the claimed implied authority intrudes upon property, privacy, professional obligation or third-party custody. Constitutional purpose cannot do all the work that safeguards, procedures and remedies are designed to do. If Uganda wants the DPP to obtain telecommunications, beneficial-ownership, financial or platform data directly, Parliament should say so and attach conditions appropriate to each category. Expansion by careful legislation is more legitimate than expansion by institutional habit.

The same reasoning explains why South Africa's separate Investigating Directorates cannot be treated as proof that every DPP possesses inherent investigative machinery. They are creatures of detailed legislation. Uganda may decide that specialised prosecutorial investigation is desirable for defined offences. Such a choice would require powers, limits, oversight, staffing and remedies. Article 120(3)(a), standing alone, should not be made to carry that institutional design.

4.4 Evidence law and human rights determine what a useful investigation can become

The Evidence Act should influence direction at the beginning, not merely admissibility at trial. Sections 23 to 29 regulate confessions and information leading to discovery; sections 122 to 128 deal with official information, source protection and professional communications. A prosecutor who directs inquiry without considering these rules may produce a large file that cannot support a lawful prosecution. Investigative relevance and trial usability are not identical, but it is wasteful and unjust to pursue evidence by a route known to destroy its legal value.[28]

Section 124 presents a narrower institutional difficulty. Its source-protection language expressly refers to a magistrate, police officer and revenue officer. It does not name the DPP. Article 120(3)(a) permits the DPP to receive information from a source, but it does not automatically answer whether a later legal demand can compel disclosure of that source. The omission should not be concealed by broad constitutional rhetoric. A modern enabling law should protect confidential prosecutorial sources subject to carefully defined judicial exceptions, security arrangements and disclosure obligations necessary for a fair trial.

Privilege supplies another limit. A direction cannot convert protected advocate-client communication into ordinary investigative material, nor can it pressure counsel to become a witness against a client outside the recognised exceptions. Equally, an assertion of privilege should not be accepted as a blanket description of every document located in a lawyer's office or copied to

[27] Magistrates Courts Act, Cap 19, s 224; Trial on Indictments Act, Cap 25, s 137.

[28] Evidence Act, Cap 8, ss 23–29 and 122–128.

an advocate. The correct approach is independent identification, sealing where necessary and judicial resolution. The DPP's interest is lawful admissible evidence, not institutional victory over a claim of confidentiality.[29]

The Human Rights (Enforcement) Act gives practical consequences to constitutional breach and reaches public officers whose acts or omissions violate protected rights. The Prevention and Prohibition of Torture Act rejects any evidential or institutional justification for torture and attaches responsibility beyond the immediate physical actor. Read with Articles 23, 24, 27, 28, 44 and 221, these statutes mean that the content of a direction, the foreseeable manner of its execution and the response to reported abuse all matter. A prosecutor cannot remain deliberately indifferent to torture or unlawful detention carried out to fulfil a direction and then treat the resulting file as a neutral product.[30]

This is where the reporting duty becomes a rights safeguard. A proper report should disclose coercive steps taken, judicial authorisations obtained, complaints of ill-treatment, evidence excluded or challenged, and significant departures from the investigative plan. The DPP should not ask only, 'What evidence was found?' The equally constitutional questions are, 'How was it obtained, what points away from guilt, and what happened to the persons against whom State power was used?'

4.5 Direction, coercion and charge require separate thresholds

Much doctrinal confusion disappears once three thresholds are kept apart. The direction threshold asks whether information of a criminal nature presents a rational, proportionate line for police investigation. The coercion threshold asks whether a particular statute permits arrest, search, detention, compelled attendance, interception or another intrusive measure on the facts known at that time. The charge threshold asks whether admissible evidence and public interest justify instituting or continuing proceedings under the applicable prosecutorial test.[31]

The thresholds are related but not interchangeable. Information can justify investigation while falling far short of arrest. Reasonable suspicion may justify a particular police step while evidence remains insufficient for charge. Evidence may establish a realistic prospect of conviction while public interest points away from prosecution. Each stage requires its own reasons. A direction to investigate should not be cited as evidence that arrest was lawful; an arrest should not be treated as proof that charge is justified; and a charge should never be defended merely because considerable resources have already been spent.

The three-threshold model also supplies a principled answer to delay. Where only the first threshold is met, the direction should identify limited inquiries capable of resolving uncertainty. Where coercive action is contemplated, urgency and rights should be assessed separately. Where the charge threshold is not met after reasonable investigation, the file must be closed or marked for genuinely defined further work. Repetition cannot lower the threshold.

5. Ugandan doctrine must distinguish authority from evidential justification

Ugandan case law has recognised important pieces of Article 120's design but has not yet assembled them into a complete doctrine of pre-file direction. The cases defend the DPP's control of charge, acknowledge the utility of investigative guidance, resist political intrusion and preserve judicial review for abuse. Their weakness lies less in their results than in the tendency to move quickly from institutional competence to institutional conclusion. The difficult question is not simply who has the last word. It is what reasons, evidence and constitutional consequences make that word lawful.

5.1 Final authority over charge does not end the investigative relationship

Uganda v Uwera Nsenga arose from a sharp disagreement about legal characterisation. Police investigated a death and favoured manslaughter or causing death by a rash and negligent act. The DPP required a murder charge. Gaswaga J held that the police recommendation did not bind the DPP and described the police and DPP as independent organs with distinct functions. On the decisive point, the judgment is sound. Article 120(3)(b) places the institution of criminal proceedings with the DPP; Article 120(6) prevents a police opinion from controlling that function.[32]

The court approached the dispute through constitutional allocation: investigation produces material and a recommendation; prosecution independently decides what charge, if any, that material can support. Its reasoning was functional rather than

[29] Evidence Act, Cap 8, ss 125–128.

[30] Human Rights (Enforcement) Act, Cap 12, ss 3–15; Prevention and Prohibition of Torture Act 2012, Cap 130, ss 10–21; Constitution of the Republic of Uganda 1995, arts 23, 24, 27, 28, 44 and 221.

[31] Constitution of the Republic of Uganda 1995, arts 23, 27, 120(3)(a) and 120(5); Police Act, Cap 324, ss 23–28; Magistrates Courts Act, Cap 19, ss 69–74; Office of the Director of Public Prosecutions Uganda, *Guidelines on the Decision to Charge 2023* (2023) paras 2.3.1–2.6.2.

[32] *Uwera Nsenga* (n 18) [34]–[37], [49]; Constitution of the Republic of Uganda 1995, arts 120(3)(b) and 120(6).

evidential. Identifying the competent institution was enough to resolve the attack on the indictment, but it should not be made to prove more than it did. Competence to select murder does not itself establish malice aforethought, cure an evidential gap or answer a reasoned police objection.

The judgment's statement that the police role 'generally ends' when the file reaches the DPP is therefore capable of two readings. The narrow reading is correct: submission ends any claim that the police recommendation controls charge. The broad reading is not. Police remain necessary for supplementary statements, exhibits, forensic continuity, witness protection, warrants, disclosure inquiries and new evidence. Article 120(3)(a) would be strangely amputated if it could not operate once a file had crossed the prosecutor's desk.[33]

Read constitutionally, *Uwera Nsenga* establishes an independent charge gate joined to a continuing investigative capacity. Where a DPP's preferred charge rests on an evidential question that can be resolved, the principled response is a focused supplementary direction. Where the gap cannot be cured, independence requires a lesser charge or no charge. Rank is not evidence. Treating DPP authority as self-justifying would reward the higher institutional view even where the police assessment is factually better grounded.

The case also warns against confusing compliance with correctness. Police were obliged to respect the lawful charging decision, but the DPP remained answerable under Article 120(5) for the decision's evidential and public-interest basis. The stronger Article 120(3)(a) becomes, the more important that distinction is. Early influence over the investigation followed by final control of charge concentrates substantial power. It must be matched by recorded reasons and review, not by an assumption that constitutional competence validates its own exercise.

5.2 Equality requires comparable investigation, not automatic equality of charge

In *Naphatal Were and Another v Attorney General*, the petitioners alleged selective investigation and prosecution in a complex corporate transaction. They contended that they had been targeted while members of MTN's executive management, said to be implicated, were excluded. The Constitutional Court recognised the breadth of the DPP's powers and treated prosecutorial guidance as a legitimate means of enabling investigators to obtain evidence relevant to whether reasonable grounds for prosecution existed. The Court also resisted the proposition that every person named in a factual narrative must be charged alike.[34]

The decision is defensible to this point. Equality before the law does not require an indiscriminate charge sheet. Persons located within the same transaction may have different knowledge, acts, duties, intent and admissible evidence against them. The reasoning is less satisfying when it turns to how those differences arose. By emphasising the width of prosecutorial discretion and the evidential distinctions asserted by the State, the Court gave limited attention to the process by which the distinctions were investigated. It risked allowing the result of a selective inquiry to become the justification for selectivity.

The sharper constitutional question is whether materially comparable actors and explanations were subjected to a comparably serious inquiry. If one employee's documents, communications and authority are examined while a senior decision-maker's role is accepted on assertion, the later statement that evidence differs may merely describe what the investigation chose to collect. Article 21 does not compel identical outcomes. Joined with Article 120(5), it requires an even-handed route to rationally different outcomes.

This is where Article 120(3)(a) has its greatest equality value. A direction can require investigators to map the decision chain, test authorisation and benefit, examine those who appear to occupy comparable roles, and record why particular lines were not pursued. The purpose is not to enlarge the accused population. It may show why a person should not be investigated or charged. Equality is served by principled selection, not by numerical symmetry.

Naphatal Were should thus stand for something narrower than immunity for selective charging and stronger than a command to charge all. The DPP has room to differentiate, but the distinction must be traceable to a lawful, sufficiently comprehensive investigation and a reasoned application of the charge standard. Decisions not to investigate or charge can be as constitutionally significant as decisions to proceed. An audit trail protects both.

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[33] *Uwera Nsenga* (n 18) [49]; Constitution of the Republic of Uganda 1995, arts 120(3)(a)–(b) and 212(c); Police Act, Cap 324, ss 4 and 23–30.

[34] *Naphatal Were and Another v Attorney General* (Consolidated Constitutional Applications Nos 42 and 52 of 2012) [2021] UGCC 9, 16–23; Constitution of the Republic of Uganda 1995, arts 21, 120(3)(a), 120(5) and 120(6).

5.3 Independence excludes political command and remains subject to legality

Kanaba Estates and Agencies Ltd v Dr Sam Mayanja illuminates the external boundary. The dispute concerned ministerial interventions touching land title, arrest, charge and police bond. The High Court treated the conduct as an unlawful intrusion into powers assigned to other institutions. The significance of the decision is not confined to an overreaching minister. It demonstrates that criminal information may be supplied by political office, but the legal response cannot be politically owned.[35]

The strength of the Court's reasoning lies in attribution. It asked who purported to decide matters entrusted to police, prosecutors or courts. That inquiry should become routine in Article 120 practice. Where instructions travel orally through meetings, telephone calls or informal task forces, a later file may conceal the author of the crucial decision. Written directions do not merely discipline the DPP. They prevent outsiders from laundering political preferences through prosecutorial or police action.

The result is two-sided. Article 120(6) protects the DPP from ministerial control, while Article 120(3)(a) gives the DPP a lawful route to respond to credible information regardless of the source's status. The office should neither obey a minister nor ignore an allegation simply because a minister raised it. It must translate information into the same recorded criteria applied to any other source. That is how independence becomes impartiality rather than institutional defensiveness.

Kawalya Hassan v Director of Public Prosecutions addresses the inward boundary. In staying proceedings alleged to have become entangled with a civil land dispute, the High Court stressed that prosecutorial independence does not place the DPP above the law. That starting point is unanswerable: Article 120(6) cannot be read apart from Article 120(5), constitutional rights and the court's duty to prevent abuse. The danger lies in allowing the existence of parallel civil litigation to do too much work. Civil and criminal liability can arise from the same conduct; one does not automatically cancel the other.[36]

The correct method asks whether the criminal process is directed to a genuine public offence on an adequate factual basis, or is being used as leverage to obtain possession, payment, contractual advantage or a favourable civil settlement. Relevant indicators include selective urgency, threats tied to private demands, repeated arrests without investigative progress, disregard of obvious documentary issues, and a complainant's control over police or prosecutorial choices. No single indicator is conclusive. Together they may reveal that the ostensible investigation has acquired an alien purpose.

These cases complete the principle begun in *Uwera Nsenga* and *Naphatal Were*. The DPP must be independent of police charging preferences, private influence and political command, yet remains legally answerable for the fairness, purpose and rationality of the process. Judicial review should not substitute a court's preferred charge assessment. It should insist that the constitutionally competent institution actually exercise its own power for the purpose, on the material and within the limits the Constitution supplies.

The Ugandan authorities therefore furnish valuable foundations, but not a finished architecture. They do not definitively answer the pre-file question, formalise compliance, distinguish direction from tactics, specify closure, or create a remedy tailored to investigative omission. Kenyan jurisprudence is useful at this point because it confronts those questions more directly. It must, however, be read for principle rather than imported as a package.

6. The pre-file controversy in Kenyan jurisprudence

Kenya offers the closest textual comparison. Article 157(4) authorises the DPP to direct the Inspector-General to investigate any information or allegation of criminal conduct and expressly requires compliance. Article 245 protects the Inspector-General's independent command, recognises the DPP's direction and requires it to be in writing. The arrangement makes explicit what Uganda must derive from constitutional supremacy and sound administration: direction is binding, police command survives, and form is part of accountability.[37]

The differences remain important. Kenya names the Inspector-General as recipient and constitutionally prescribes writing. Uganda addresses 'the police', permits authorised prosecutorial officers to exercise specified functions, and separately allows magistrates to direct investigation under section 42(7) of the Magistrates Courts Act. Kenyan authority is therefore persuasive on the relation between direction, command and charge. It cannot decide the exact route or exclusivity of a Ugandan direction.

[35] *Kanaba Estates* (n 20); Constitution of the Republic of Uganda 1995, arts 120(6), 213 and 221.

[36] *Kawalya Hassan* (n 20) [42]; Constitution of the Republic of Uganda 1995, arts 120(5), 120(6) and 126.

[37] Constitution of Kenya 2010, arts 157(4), 157(10), 157(11) and 245(2)–(5); Constitution of the Republic of Uganda 1995, arts 120(3)(a), 120(4)(a), 212 and 213.

6.1 Information, not a completed police product, activates the power

The pre-file issue is squarely confronted in *Kuria and 83 Others v Director of Public Prosecutions and 6 Others*. The proceedings followed the Maai-Mahiu floods in which 76 people were reported to have died. The DPP argued, among other things, that the application was premature because no investigation file had been forwarded for prosecutorial consideration and that the DPP's role began when police work was complete. The High Court rejected that position. A matter of such gravity, it held, should have attracted the DPP's attention and Article 157(4) authority; the DPP should not wait for police to move after completing investigations.[38]

The court treated constitutional power as carrying a responsibility to confront circumstances that plainly call for its consideration. Its textual reasoning was persuasive. Article 157(4) speaks of information or allegation, not an investigation file. Institutionally, the Court also refused to let police inactivity become the measure of the DPP's jurisdiction. That reasoning applies with equal, and possibly greater, force to Uganda's expression 'any information of a criminal nature'.

The judgment's practical insight is equally strong. Catastrophic events, deaths in custody, public disasters and credible allegations against powerful actors may expose precisely the cases in which ordinary institutional momentum is least reliable. If the DPP must wait for a file, the constitutional direction power will be weakest where it was most needed. Pre-file authority does not guarantee that criminality occurred. It guarantees that the question will not disappear because no institution has accepted ownership of it.

The remedy in *Kuria* is harder to defend. The court ordered collection of evidence and prosecution within 30 days, with private prosecution contemplated upon default. Compelling investigation addressed an unlawful failure to consider and act. Compelling prosecution within the same short period risked deciding the third threshold before the first had been honestly completed. It treated the existence of a constitutional power as though it predetermined the evidential result of using it.[39]

That move has a serious constitutional consequence. A court that orders the DPP to prosecute before independent review may replace executive inertia with judicial charging. It protects Article 157(4) at the expense of the DPP's decisional independence under Article 157(10) and the public-interest and abuse duties in Article 157(11). A sound remedy should have required registration, a reasoned investigative plan, preservation of evidence, staged reporting and an independently reasoned charge decision. It could have imposed realistic deadlines for each stage and reserved further orders for non-compliance. What it should not promise is prosecution before the facts are known.

The later refusal to stay the orders pending appeal did not resolve the underlying appellate controversy. As at 16 September 2026, the pre-file holding stands as a powerful textual rejection of the file fallacy, while the remedial direction remains a warning. Courts should compel the exercise of power, not prescribe the evidential conclusion that lawful exercise must reach.[40]

6.2 A genuine investigation must be capable of disproving its own premise

Isaac Tumunu Njunge v Director of Public Prosecutions and 2 Others did not depend upon the pre-file issue. Its importance lies in the conception of a bona fide investigation. The High Court recognised that investigation and prosecution should not be restrained merely because their subject asserts innocence, but accepted judicial intervention where process is deployed for harassment, collateral purpose or without attention to material that points away from culpability. It also maintained that a police recommendation does not bind the DPP's charge decision.[41]

The court began from institutional restraint: investigators should ordinarily be allowed to investigate, and criminal liability should ordinarily be decided in the criminal process. That starting point is necessary, because judicial review cannot become a mini-trial whenever a suspect disputes facts. The reasoning became more exacting when the Court examined purpose and evidential openness. Official use of the word 'investigation' was not treated as self-validating. A process that refuses to consider material capable of undermining the accusation may be investigative in form and punitive in substance.

This produces a useful constitutional test. A genuine investigation must be capable of disproving the proposition that caused it to begin. It need not chase remote speculation or accept a suspect's account at face value. It must pursue reasonable lines whose results could materially alter identity, act, intent, reliability or a recognised defence. The practical effect is to move exculpatory inquiry from the trial's margins to the investigation's core.

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[38] *Kuria and 83 Others v Director of Public Prosecutions and 6 Others* [2026] KEHC 9810 (KLR) [6]–[7], [39]–[44].

[39] *Kuria* (n 38) [53]–[62]; Constitution of Kenya 2010, arts 157(4), 157(10) and 157(11).

[40] *Kuria and 38 Others v Director of Public Prosecutions and 6 Others* [2026] KEHC 12188 (KLR) (31 July 2026).

[41] *Isaac Tumunu Njunge* (n 13) [24]–[26], [33], [36]–[45].

Margaret Muthoni Mutai v Inspector-General of the National Police Service and Others adopts similar restraint. The High Court declined to halt an investigation merely because the claimant said it was unfounded, while preserving review for bad faith, oppression and ulterior purpose. The decision's premise is sound but vulnerable in application: if a court accepts the State's label without demanding evidence of genuine progress, 'ongoing investigation' becomes a complete answer to review.[42]

The judgment is most useful when read as conditional deference. Courts should not choose investigative theories, but investigators must be able to identify the alleged criminal question, the steps undertaken, the relationship between those steps and the question, and the reason for continued coercion or delay. The DPP's report power can generate that record before litigation. A direction followed by a report that addresses competing explanations gives a reviewing court something more reliable than institutional assurance.

Taken together, the two cases strengthen rather than weaken early prosecutorial direction. If genuine inquiry requires both inculpatory and exculpatory attention, the DPP should not wait until trial to notice that the file was built in only one direction. Their limit is that neither case establishes a duty of universal DPP oversight. The obligation arises when the DPP acts, when information properly calls for action, or when a charge decision depends upon an incomplete account.

6.3 The charge gate must remain independent of both police recommendation and prior prosecutorial involvement

In *Republic v Director of Criminal Investigation Department and 4 Others ex parte Edwin Harold Dayan Dande and 4 Others*, police arraigned the applicants before the DPP had completed the constitutionally required prosecutorial assessment. The High Court intervened and prohibited continuation until the DPP had made the decision entrusted to that office. The holding does not deny police investigative autonomy. It insists that accusation by investigators is not the constitutional equivalent of an independent decision to prosecute.[43]

The reasoning was functionally precise. The court identified the point at which police action crossed into the DPP's field and insisted that the proper decision-maker act. That analysis should not be converted into sealed institutional stages. Early legal advice or investigative direction does not produce the vice found in *Dande*. The vice was arraignment without the independent charge gate. Indeed, timely prosecutor involvement might have prevented it.

The practical difficulty is that prior involvement can make later review nominally independent but cognitively committed. A prosecutor who approved the theory, framed the evidential plan and defended police choices may sincerely review the file yet struggle to abandon the case. *Dande* therefore needs an internal dimension. Independence from police recommendation should be accompanied, in serious directed cases, by independence from the directing prosecutor's authorship. Fresh eyes make the charge gate real.

The Court of Appeal's decision in *Director of Public Prosecutions v Martin Maina and 4 Others* provides the complementary standard. It affirmed that the DPP is not bound by the DCI's recommendation and warned against judicial review becoming an evidential trial, while recognising that prosecutorial discretion remains subject to public interest, administration of justice and prevention of abuse. Autonomy supplies the starting point; legality marks its boundary.[44]

That balance is generally convincing. Its constitutional consequence is that reasons matter most where courts rightly refuse to retry the file. If the DPP records the evidence considered, the material gaps, the treatment of contrary material and the public-interest judgment, review can remain restrained without becoming blind. Where reasons are absent, judicial deference risks protecting a decision that no one can test. Independence and accountability are not competing absolutes. Reasoned independence is the form in which both can coexist.

6.4 Direction is exceptional in reach, not a system of general prosecutorial command

Lucas Omoto Wamari v Attorney General and Another rejects the proposition that Article 157(4) places every police investigation under continuous DPP oversight. The Court of Appeal treated the direction power as discretionary and applicable in proper circumstances, while separately addressing malicious prosecution and the alleged attempt to 'fix' the claimant. The holding rests on original police jurisdiction: police do not need a DPP direction before investigating ordinary crime.[45]

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[42] *Margaret Muthoni Mutai* (n 13) [27]–[38], [41]–[55].

[43] *Republic v Director of Criminal Investigation Department and 4 Others ex parte Edwin Harold Dayan Dande and 4 Others* [2016] KEHC 8031 (KLR) [91]–[107].

[44] *Director of Public Prosecutions v Martin Maina and 4 Others* [2017] KECA 93 (KLR) [38]–[39], [53]–[55].

[45] *Lucas Omoto Wamari v Attorney General and Another* [2017] KECA 334 (KLR) [28]–[36].

The method usefully distinguishes a power capable of reaching any qualifying allegation from a duty to supervise all police work. 'Any' defines possible subject matter. It does not mean 'all, at all times'. That restraint protects police command and prevents the DPP from becoming legally responsible for every defective investigative act. It does not create a file prerequisite. A discretionary power can be exercised before registration, during investigation or after first submission.

The practical consequence is a need for activation criteria. Seriousness alone should not determine intervention. Relevant factors include threatened loss of evidence, police conflict of interest, cross-border or legally complex conduct, vulnerable complainants, systemic harm, substantial public concern, repeated investigative failure, credible allegations against State actors, and a need to secure consistent legal treatment. Stated criteria reduce the risk that direction is reserved for politically visible matters or influential complainants.

Nurani v Director of Public Prosecutions and 5 Others adds form and operational restraint. The High Court stressed that directions under Article 157(4) must be in writing and preserved the police role in the manner of investigation. Writing is not bureaucracy added after the constitutional event. It is what enables the recipient, subject and reviewing court to know whether an event was a lawful direction, a request, political pressure or informal interference.[46]

The case's exclusivity language requires caution in Uganda because section 42(7) gives magistrates a defined power to direct police investigation. Its more durable principle is that a direction must remain within the legal field of its source. The DPP may state what criminal question requires investigation and what report is needed. Police decide lawful operational means. A court acting under a statutory complaint process directs within that process. No institution gains a general licence from a case-specific power.

Kinoti and 7 Others v Chief Magistrates Court Milimani and Others and *Okiya Omtatah Okoiti v Director of Public Prosecutions* sharpen the same boundary. They recognise a DPP power to identify what requires investigation without dictating the manner or a predetermined result, and they reject the suggestion that embedded or co-operating prosecutors erase the distinction between investigation and prosecution. Their occasional language implying that police responsibility ends when a file is submitted should be confined, as in *Uwera Nsenga*, to control over the charge decision.[47]

6.5 Judicial control should repair constitutional process without pre-judging outcome

The Kenyan cases yield a coherent body of principle when their holdings are kept at the correct level. Information, not a file, can activate direction. A lawful written direction binds the police, but does not transfer command of operational tactics. Investigation must be genuine enough to confront reasonable contrary material. A police recommendation cannot replace the DPP's charge decision. The DPP's independence does not preclude review for bad faith, collateral purpose, discrimination, irrationality or failure to act.

The cases also expose two recurrent errors. The first is sequential absolutism: because police investigate and prosecutors charge, any early prosecutorial role is portrayed as contamination. That ignores the express direction power. The second is institutional fusion: because the DPP may direct investigation, every police choice is treated as prosecutorially controlled. That ignores police command and the distinct legal source of coercive powers.

Remedy is the point at which those errors often return. A court faced with unlawful inaction should order the competent institutions to take constitutionally required steps, record reasons and report within staged periods. It may quash an unlawful decision, restrain oppression, preserve evidence and require reconsideration. It should be slow to order arrest, a particular coercive technique or prosecution. The court's role is to restore lawful decision-making, not to perform the investigation or charge assessment it found missing.

This remedial discipline is directly relevant to Uganda. Article 50 and the Human Rights (Enforcement) Act provide meaningful routes to relief, while Article 126 commits courts to substantive justice. Those powers are strongest when a court identifies the omitted constitutional function with precision. An order to investigate can vindicate Article 120(3)(a). An order to convict, or to prosecute regardless of the investigation's result, cannot.

[46] *Nurani v Director of Public Prosecutions and 5 Others* [2023] KEHC 22348 (KLR) [83]–[90]; Constitution of Kenya 2010, art 245(4).

[47] *Kinoti and 7 Others v Chief Magistrates Court Milimani and Others* [2022] KEHC 11622 (KLR) [12]–[16], [159]–[167]; *Okiya Omtatah Okoiti v Director of Public Prosecutions; Inspector-General of Police and Attorney-General (Interested Parties); International Commission of Jurists Kenya (Amicus Curiae)* [2022] KEHC 1165 (KLR) [159]–[167].

7. Comparative experience confirms function, but warns against institutional imitation

Comparison is useful here only if it asks functional questions. Who may cause an investigation to begin? Who defines its legal focus? Who chooses tactics? Who authorises coercion? Who decides charge? Who reviews abuse? The label 'prosecutor' answers none of them. Legal systems place prosecutors at very different points between police independence and integrated investigation. Uganda should borrow safeguards and distinctions, not institutional names detached from their legal setting.[48]

7.1 Constitutional supervision can coexist with police operational responsibility

South Africa's Constitution requires national prosecuting policy and permits intervention in the prosecuting process, while the National Prosecuting Authority Act authorises a Director of Public Prosecutions to supervise, direct and co-ordinate police investigation in relation to offences within the Director's area. The same Act separately creates Investigating Directorates and equips them with defined investigative and inquiry powers. The separation within one statute is instructive. Direction and co-ordination are not treated as synonyms for personal exercise of every investigative power.[49]

The design is close to the constitutional settlement advanced here. A DPP can require legal and evidential coherence without becoming the officer who forms every operational suspicion or executes every search. When South African law intends prosecution-led investigators to exercise more direct powers, it says so, identifies subject matter and supplies procedure. Uganda's express bank-document provisions point in the same legislative direction, though on a narrower scale.

Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors is particularly useful on thresholds. The Constitutional Court accepted a preparatory investigation on information falling below reasonable suspicion, while preserving a higher statutory and judicial threshold for search and seizure. Underlying the reasoning is a simple fact: investigation sometimes exists to discover whether the grounds for more intrusive action are present. The Court's proportional reading allowed less intrusive inquiry to begin earlier without permitting privacy to be invaded on the same basis.[50]

The constitutional consequence is not that suspicion becomes optional. It is that the law can recognise different levels of uncertainty without treating the earliest as authority for the most serious intrusion. That is the same discipline demanded by the distinction between direction, coercion and charge. The practical effect is to allow limited verification of serious information while preventing an untested allegation from carrying a warrant in its pocket.

Moussa v S makes a different contribution. The Supreme Court of Appeal rejected a formalistic approach to institutional independence and examined how the prosecution was initiated, supervised and conducted. Titles and organisational charts did not decide the issue. That method is valuable for Uganda, where an apparently police-led file may in fact reflect private or political control, and an apparently prosecutor-led inquiry may preserve genuine operational independence. Independence must be proved in conduct.[51]

The Constitutional Court's decision in *Democratic Alliance v President of South Africa* adds the institutional foundation. In reviewing the appointment of the National Director of Public Prosecutions, the Court treated prosecutorial independence, integrity and rationality as constitutional requirements rather than matters of executive preference. The immediate dispute concerned appointment, not investigative direction. Its deeper consequence is that a direction system cannot be legitimate if the directing office is structurally vulnerable to improper influence. Strong Article 120 power without credible appointment, tenure and internal integrity would concentrate influence rather than discipline it.[52]

7.2 Early legal advice is compatible with police ownership of investigation

England and Wales generally rely upon advice and a statutory charging relationship rather than a constitutional power to command initiation. Section 3(2)(e) of the Prosecution of Offences Act 1985 requires the DPP to advise police on matters relating to criminal offences. Section 37A of the Police and Criminal Evidence Act 1984 supports the Director's charging arrangements. The Director's Guidance on Charging provides for early advice in serious, sensitive and complex matters, including action plans concerning reasonable lines, legal elements, disclosure and the scope of conduct or suspects under investigation.[53]

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[48] Roberta Montana, 'Paradigms of Judicial Supervision and Co-ordination between Police and Public Prosecutors' (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice* 309, 310–15; Langer and Sklansky (n 5) 3–32; Luna and Wade (n 5) 1–14.

[49] Constitution of the Republic of South Africa 1996, s 179; National Prosecuting Authority Act 32 of 1998, ss 24(1)(c) and 26–29A.

[50] *Hyundai* (n 17) [23]–[26], [44]–[56].

[51] *Moussa v S and Another* [2015] ZASCA 61, 2015 (2) SACR 537 (SCA) [22]–[29].

[52] *Democratic Alliance v President of South Africa and Others* [2012] ZACC 24, 2013 (1) SA 248 (CC); Constitution of the Republic of South Africa 1996, s 179(4).

[53] Prosecution of Offences Act 1985, s 3(2)(e); Police and Criminal Evidence Act 1984, s 37A; Crown Prosecution Service, *Director's Guidance on Charging, Sixth Edition* (31 December 2020) paras 3.1–3.2 and 7.1–7.11.

The model begins from institutional separation with structured collaboration. Police own investigation; prosecutors own defined charging decisions; both improve the case through recorded engagement. Its method is managerial rather than constitutional: guidance identifies occasions for early advice, documents agreed actions and preserves reasons where police depart. Uganda should not borrow the advisory label, because Article 120(3)(a) is stronger. It should borrow the documentary discipline.

The practical literature is sobering. A 2025 joint inspection of case building by police and the Crown Prosecution Service found that formal allocation of functions does not itself produce good files. Quality depends on early communication, proportionate requests, clear ownership and timely completion. The lesson is easily missed. More directions do not necessarily mean better direction. Repeated generic requests can generate delay and defensive paperwork without resolving the issue that matters.[54]

R v Commissioner of Police of the Metropolis, ex parte Blackburn protects the professional discretion of the police in law-enforcement deployment. It cannot defeat Uganda's express constitutional direction power. It does identify the danger of converting case-specific authority into general control over personnel, resources and operational priorities. A DPP may require that a criminal allegation be investigated. The office should not use that route to run the Force.[55]

The Serious Fraud Office demonstrates the converse proposition. Parliament can combine investigation and prosecution within a specialised body and confer compulsory powers when policy requires. The Criminal Justice Act 1987 supplies that architecture expressly. Its existence undermines any claim that institutional separation is sacred, but strengthens the argument that integration requires legislation. A general advisory or direction provision is not a substitute for a designed investigative agency.[56]

7.3 Binding instruction works when the field and the record are clear

Scotland provides a closer functional analogy. Section 12 of the Criminal Procedure (Scotland) Act 1995 governs instructions concerning the reporting of offences, and section 17(3) of the Police and Fire Reform (Scotland) Act 2012 requires the Chief Constable to comply with lawful instructions of the Lord Advocate or procurator fiscal in relation to the investigation of offences. The formulation preserves the requirement of lawfulness and confines the power to the investigative field.[57]

The Scottish Prosecution Code, updated in June 2026, gives the legal relationship practical content. Where evidence appears insufficient, a prosecutor may instruct police, or request another reporting agency, to undertake reasonable further inquiries. The Code requires an even-handed approach, attention to anticipated defence positions, recorded reasons and continuing review. Instruction is therefore connected to an articulated prosecutorial test rather than an institutional desire for more evidence.[58]

That linkage is the model's strength. The prosecutor must be able to explain what legal uncertainty the requested inquiry is capable of resolving. If proper inquiry remains insufficient, no action follows. The power is not used to keep a desired prosecution alive indefinitely. Uganda's practice would improve materially if every supplementary direction identified the element, admissibility issue, credibility problem, public-interest fact or reasonable defence to which the requested work relates.

Scotland also illustrates the need to distinguish police from other reporting agencies. Binding statutory instruction may apply to the police while requests to another regulator rest on different authority. Article 120(3)(a) likewise names the police. The DPP may seek co-operation from regulators, auditors, local government, financial-intelligence bodies or foreign agencies under other laws and arrangements, but should not pretend that the constitutional command automatically binds every public body.

The arrangement cannot simply be copied. Scotland's Lord Advocate occupies a distinctive constitutional and historical position, and its evidential rules include requirements unfamiliar to Uganda. The transferable principle is narrower: binding prosecutorial direction and operational police independence can coexist where law defines the field, reasons connect instruction to an evidential test, and decisions remain recorded and reviewable.

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[54] His Majesty's Crown Prosecution Service Inspectorate and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, *Joint Case Building by the Police and Crown Prosecution Service: Final Report* (10 July 2025).

[55] *R v Commissioner of Police of the Metropolis, ex parte Blackburn* [1968] 2 QB 118 (CA) 135–36.

[56] Criminal Justice Act 1987, ss 1–2.

[57] Criminal Procedure (Scotland) Act 1995, s 12; Police and Fire Reform (Scotland) Act 2012, s 17(3); Scottish Government, *Scottish Law Officers: Roles and Functions Research Report* (10 March 2026) paras 4.21–4.23 and 4.50–4.56.

[58] Crown Office and Procurator Fiscal Service, 'Prosecution Code' (updated 22 June 2026) paras 1.2–1.8, 3.5, 7.1–7.2 and 9.1–9.2 https://www.copfs.gov.uk/publications/prosecution-code/html/ accessed 16 September 2026.

7.4 Separation protects both advice and the final charge decision

Canada places considerable weight on police-prosecutor separation. The Public Prosecution Service of Canada Deskbook permits legal advice during investigations but warns prosecutors not to become investigators or direct police operations. It stresses that police retain the decision whether and how to investigate, while prosecutors independently assess charge and conduct. The arrangement differs from Uganda because it lacks Article 120(3)(a)'s command. Its analysis of role integrity remains valuable.[59]

In *R v Campbell; R v Shirose*, the Supreme Court of Canada refused to treat police as agents of Crown counsel merely because legal advice had been given during an investigation. The Court examined the actual relationship and preserved the distinct responsibilities of investigators and prosecutors. The premise was not that contact contaminates prosecution. It was that ordinary legal advice does not transfer operational acts or their legal consequences to counsel.[60]

That method assists Ugandan attribution. The existence of a DPP direction should not automatically make every later police act the DPP's act. The inquiry should examine content and control. Did the prosecutor identify an evidential objective, or choose the tactic? Did police exercise an independent statutory judgment, or merely execute a detailed prosecutorial command? Were departures permitted? Responsibility should follow the decision actually made.

R v Regan exposes the danger on the other side. The Supreme Court considered prosecutorial involvement in a controversial investigation and the remedies available for abuse. The judgments differ in emphasis, but the case shows how early commitment, public controversy and blurred roles can impair the appearance or reality of independent prosecution. The practical lesson is not isolation. It is internal separation at decisive points.[61]

Krieger v Law Society of Alberta helps define those points by distinguishing core prosecutorial discretion from conduct that is not protected merely because a prosecutor performed it. Decisions such as whether to prosecute occupy a constitutionally sensitive field; professional misconduct and actions outside that core remain subject to ordinary accountability. For Uganda, Article 120(6) should be understood in the same disciplined way. It protects the honest exercise of constitutional judgment, not every act done by a person employed as a prosecutor.[62]

Fresh-eyes review follows from this comparative experience. It should not be imposed mechanically on every file. It is most valuable where the directing prosecutor participated deeply, the matter is politically or publicly sensitive, the suspect is a police or public officer, coercive steps were controversial, or material evidence points in competing directions. The reviewer should not merely countersign. The task is to reconstruct the charge decision from the full file, including the original direction, contrary material and incomplete lines.

7.5 Police wrongdoing requires structural independence, not merely better instruction

Cases in which police officers or police institutions are suspected expose the limit of ordinary Article 120 direction. The DPP may direct police to investigate, but an instruction does not by itself cure a conflict in which colleagues investigate colleagues, subordinates investigate superiors, or the implicated unit controls evidence and witnesses. The question becomes who can conduct a practically independent investigation.

In *Ramsahai and Others v Netherlands*, the Grand Chamber of the European Court of Human Rights examined the effectiveness and independence of an investigation into a fatal police shooting. The Court's method was structural and practical. It considered institutional connections, critical investigative steps and the role of prosecutorial review, rather than accepting formal independence as conclusive. Although the overall prosecutorial arrangement mattered, the case supports using investigators unconnected to the implicated officers where feasible.[63]

The constitutional consequence for Uganda is significant. Article 120(3)(a) can trigger and frame an inquiry, insist upon preservation and demand reporting. It cannot turn a conflicted police unit into an independent investigator by wording alone. A joint protocol should require immediate reassignment to an unconnected unit and, for grave allegations, external participation or oversight under a clear legal mandate. Evidence custody, witness contact and communication with affected families should be separated from the implicated command.

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[59] Public Prosecution Service of Canada (n 8) paras 1, 3.1, 3.3.1, 3.4 and 3.5.
[60] *R v Campbell; R v Shirose* [1999] 1 SCR 565 [27]–[35].
[61] *Regan* (n 8) [65], [155]–[156].
[62] *Krieger v Law Society of Alberta* 2002 SCC 65, [2002] 3 SCR 372 [29]–[32], [43]–[51].
[63] *Ramsahai and Others v Netherlands* (2008) 46 EHRR 43 [321]–[325].

The same principle applies beyond police deaths. Alleged torture, enforced disappearance, evidence fabrication and politically directed arrest require an investigation whose independence is visible to the public and to the subject. The DPP's authority is especially important in such cases, but so is restraint. Directorial supervision cannot become a certificate that an institution has adequately investigated itself.

7.6 International standards support active responsibility under law

The United Nations Guidelines on the Role of Prosecutors, the International Association of Prosecutors' Standards and the Venice Commission's work on prosecutorial independence converge on several propositions: prosecutors must act impartially, protect human rights, consider circumstances both favourable and unfavourable to a suspect, resist improper influence and remain accountable under law. None prescribes one universal police-prosecutor model.[64]

That silence is instructive. Institutional design must reflect constitutional text, legal culture and capacity. International principle does not answer whether Uganda's DPP may direct before a file. Article 120(3)(a) answers that. The standards do answer how the power should be exercised: independently, objectively, consistently, with respect for rights and through arrangements capable of review.

Comparison therefore confirms the proposed settlement without dictating it. South Africa distinguishes direction from legislated investigative machinery. England and Wales shows the value of documented early case building. Scotland demonstrates binding instruction tied to evidential reason. Canada protects the charge decision through role separation and fresh eyes. European human-rights doctrine insists that investigations of State agents be independent in fact. Uganda's Constitution already contains the power. What it lacks is the institutional grammar that would make these disciplines routine.

8. The institutional failure is under-assertion joined to under-institutionalisation

It would be inaccurate to say that Uganda's ODPP has never asserted Article 120(3)(a). The institution reports prosecution-guided investigations, has issued decision-to-charge guidance that contemplates further inquiry, and routinely engages police on evidential deficiencies. The more difficult criticism is also the more serious one: the constitutional power has not been made sufficiently visible as a distinct, rule-governed and auditable jurisdiction. Activity exists. The public record does not show whether the power consistently works at the point for which it is constitutionally distinctive, before police submission and against investigative omission.

8.1 Activity figures do not establish constitutional performance

The ODPP Strategic Plan 2025/26–2029/30 reports that guidelines for prosecution-guided investigations were developed and launched. It records 2,325 general criminal matters handled through that method against a target of 1,067, and 784 corruption-related matters against a target of 310 during the preceding plan period. The new plan retains prosecution-guided investigation as a strategic activity and sets annual targets rising from 600 to 800.[65]

Those figures disprove total passivity. They do not prove effective exercise of Article 120(3)(a). The published category does not reveal how many matters began from information delivered directly to the ODPP; how many directions preceded a police file; how many were initiated by prosecutors rather than requested by investigators; whether directions were written; how long police took to acknowledge and report; whether material departures were explained; or how often an intervention produced a justified no-charge decision. A high activity count can coexist with constitutional under-use.

The category may also combine legally different events: early initiation, advice during a live investigation, a requisition after file submission, and supplementary work after charge. All may be valuable. Only the first directly tests whether the ODPP has escaped dependence on police file creation. Aggregating them obscures the point at which the constitutional power matters most and makes institutional performance impossible to assess.

The proper diagnosis is therefore not failure in the absolute sense. It is under-assertion, uneven institutionalisation and weak auditability. That conclusion is not softened criticism. A power exercised through personal relationships, isolated specialist units or unclassified correspondence may produce occasional success while remaining unreliable as a constitutional guarantee. The test is whether comparable information receives a comparable institutional response across ordinary offices, not whether some prosecutors can point to cases in which they engaged early.

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[64] United Nations (n 7) paras 12–16; International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (23 April 1999) standards 1–4; Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II, The Prosecution Service* CDL-AD(2010)040 (3 January 2011) paras 28–31 and 62–73.

[65] Office of the Director of Public Prosecutions Uganda, *Strategic Plan 2025/26–2029/30* (2025) 14–18, 42 and 67–68.

8.2 File-receipt culture narrows the power without formally denying it

The ODPP's 2023 Guidelines on the Decision to Charge reproduce Article 120(3)(a), recognise prosecutorial independence and delegation, permit a threshold approach before investigation is complete, and require identification and follow-up of further evidence. Those are substantive gains. The Guidelines' operational centre is nevertheless the file presented for charge: its contents, sufficiency and treatment after receipt.[66]

That emphasis is understandable in a document about charging. It becomes a constitutional weakness if no equally accessible protocol governs the anterior question. How does information supplied by a victim, court, regulator, audit or media investigation enter the ODPP? Who decides whether it is criminal in nature? When is clarification preferable to a full direction? Who signs? Which police office must acknowledge? What counts as an expeditious report? How is silence escalated? How is a source protected? How is closure communicated? The absence of published answers leaves Article 120(3)(a) dependent on improvisation.

Institutional language can quietly reinforce the same culture. 'Perusal of police files and legal advice' is familiar and measurable. 'Pre-file constitutional direction' is less visible. When both are recorded as prosecution-guided investigation, the former will dominate because files already sit in registries, attract deadlines and generate prosecution statistics. Information that has not become a police file has no comparable administrative home. The constitutional power is then acknowledged in principle and displaced in workflow.

The consequence is more than missed initiative. Late engagement makes the prosecutor a critic of a record whose irreversible choices have already been made. CCTV may be overwritten, digital accounts deleted, scenes disturbed, memories weakened and vulnerable witnesses lost. A later requisition can identify the gap but cannot recreate the evidence. Article 120(3)(a) is not valuable simply because the DPP can ask more questions. Its greatest value is temporal: the office can require attention before the answer becomes unavailable.

8.3 Capacity explains selectivity but cannot determine constitutional meaning

The Strategic Plan presents a strained institution. It reports 928,094 cases prosecuted against a target of 345,084 during the preceding plan period, a conviction rate of 67.1 per cent against a target of 75 per cent, 666,681 new criminal files perused against a target of 1,060,417, and 358,247 files sanctioned against a target of 691,980. These numbers reveal extraordinary volume, uneven target construction and substantial pressure. They say little, by themselves, about the justice of any individual decision.[67]

The staffing figures explain why universal prosecutorial supervision would be fantasy. Of 1,734 approved posts, 699 were filled; 1,035 were vacant. Only 128 of 385 State Attorney posts were filled. The prosecutor-to-case ratio stood at 1:369 against a target of 1:227. The Plan also records limited automation and incomplete rollout or integration of PROCAMIS, and expressly identifies the absence of an enabling law, weak investigations, scarce resources, staffing and specialist-skills gaps as institutional constraints.[68]

These constraints support triage, delegation and digital tracking. They do not support reading the constitutional power narrowly. Legal meaning cannot rise and fall with annual staffing. Nor can scarcity justify an unlimited obligation to intervene in every allegation. The answer is a transparent risk-based system that reserves intensive direction for matters in which early legal intervention is likely to change evidence preservation, rights protection, institutional independence or the ability to make a sound charge decision.

Performance measures must change with the function. Counting directions creates an incentive to issue generic requisitions. Counting charges rewards escalation. Counting convictions can pressure prosecutors to prefer safe cases and avoid necessary but difficult ones. A sound dashboard should ask whether directions were acknowledged, completed on time, linked to a stated legal issue, attentive to contrary material, and resolved by a reasoned outcome. A timely decision not to charge after proper inquiry is a constitutional success, not a failed statistic.

8.4 Informal strength can conceal formal weakness

In practice, a telephone call from a senior prosecutor may move an investigation faster than a formal letter. That may be necessary in an emergency. As a routine method it is dangerous. Informal direction leaves scope uncertain, makes disagreement

[66] Office of the Director of Public Prosecutions Uganda, *Guidelines on the Decision to Charge 2023* (2023) paras 1.3.1–1.4.4 and 2.3.1–2.9.1.
[67] Office of the Director of Public Prosecutions Uganda, *Strategic Plan 2025/26–2029/30* (2025) 14–18.
[68] Office of the Director of Public Prosecutions Uganda, *Strategic Plan 2025/26–2029/30* (2025) 21–25.

personal, frustrates supervision and allows political or private pressure to be mistaken for constitutional authority. It also leaves the prosecutor exposed when police later attribute an operational choice to an undocumented instruction.

Selective over-assertion can coexist with general under-assertion. Highly publicised matters, complaints by influential persons or cases attracting central attention may receive immediate prosecutorial involvement, while ordinary victims remain within the file-receipt system. The problem is not attention to serious public cases. It is the absence of criteria explaining why comparable risk attracts comparable intervention. Article 120(5) and Article 21 require more than lawful treatment of the case selected; they require rational selection of the cases in which exceptional power is used.

The same concern applies to political sensitivity. A cautious office may avoid early direction for fear of appearing partisan. A less cautious office may intervene precisely because political actors expect it. Both responses surrender the constitutional judgment. The correct protection is a stronger record: source disclosed internally, conflicts checked, objective activation criteria applied, sensitive decisions allocated to an appropriate level, and fresh-eyes review preserved. Independence is not demonstrated by refusing to act or by acting forcefully. It is demonstrated by the reasons that explain either choice.

The ODPP's failure is thus one of institutional form. The Constitution confers a power capable of correcting police inertia and improving evidential fairness, but practice does not yet make its use consistently identifiable, reviewable and measurable. Reform should begin there. Another exhortation to 'enhance prosecution-guided investigations' will not be enough unless the institution defines what a direction is, how it enters the system, what it may contain and how its conclusion is known.

9. Reconstructing the power as a lawful institutional practice

The reform question is not whether to make the DPP more powerful in the abstract. Article 120(3)(a) already supplies substantial authority. The task is to convert constitutional language into a practice strong enough to overcome inertia and disciplined enough to resist abuse. That requires legislation, joint administration, internal separation, reliable records and resources directed to risk rather than volume.

9.1 A focused enabling law should clarify authority without shrinking it

Uganda should enact an ODPP law that gives operational form to Article 120 while preserving its direct constitutional force. The statute should define 'information of a criminal nature', 'direction', 'investigation report' and 'expeditiously' in a way that permits context-sensitive judgment. It should identify authorised prosecutorial officers and formal police recipients, require writing subject to an urgent-confirmation exception, and make clear that a lawful direction binds without transferring police command.[69]

The statute should also draw the operational line. It should authorise the DPP to require registration, investigation of stated legal and evidential issues, preservation, attention to reasonable exculpatory lines, status reporting and a reasoned final report. It should state that arrest, search, detention, interception, police bond and similar coercive choices remain governed by their specific legal sources. Where Parliament intends a direct DPP evidence power, it should confer it expressly and provide safeguards, as sections 224 and 137 already do for bank documents.

Legislative detail carries a risk. An exhaustive list may be used to narrow an open-textured constitutional function; rigid deadlines may be impossible in complex or cross-border matters; excessive central approval may disable regional offices. The law should therefore establish minimum conditions and principles, leaving adaptable procedure to published regulations or a protocol. It must operate as a floor of legality, not a code that makes the constitutional power unusable whenever a form is imperfect.

Source protection deserves express treatment. Information can trigger Article 120 even where the source needs confidentiality. The law should authorise protected intake, restrict internal access, prescribe secure disclosure to police where necessary for action, and permit judicial determination when fair-trial or public-interest considerations require disclosure. It should reconcile, rather than assume, the position left by section 124 of the Evidence Act.

Finally, the law should provide remedies that fit the omission. A person who supplies serious information should not acquire a right to arrest or prosecution. There should be a right to acknowledgement, lawful consideration and an intelligible outcome subject to necessary confidentiality. Courts should be able to compel consideration, quash an unlawful direction, restrain abuse and require a report. The legislation should not invite courts to dictate a charge unsupported by independent assessment.

[69] Constitution of the Republic of Uganda 1995, arts 120(3)–(6), 212 and 213; Office of the Director of Public Prosecutions Uganda, *Strategic Plan 2025/26–2029/30* (2025) 21–25 (identifying the absence of an enabling law as a key challenge).

9.2 A joint DPP–IGP protocol should turn constitutional friction into accountable disagreement

Legislation will not determine how a direction reaches an investigator at 4 pm on an ordinary working day, who records it, or what happens when the recipient believes it cannot lawfully be performed. A joint protocol between the DPP and IGP should answer those questions. It should be publicly available in its governing principles, while operational annexes concerning security and sensitive methods may remain restricted.

The protocol should distinguish four documents: an initiation direction before a file; legal guidance during an active police investigation; a requisition for further inquiry after submission; and a post-charge supplementary direction. The distinction is not semantic. Each has a different trigger, urgency, decision-maker and risk. A single generic 'PGI' label hides those differences and prevents meaningful data.

Every formal direction should contain a minimum legal core: the information assessed; the possible criminal nature without declaring guilt; the statutory or constitutional basis; the issues to be investigated; identified reasonable contrary lines; any preservation urgency; the report or milestone required; a proportionate time; the authorised prosecutor; and the escalation contact. It should avoid commanding a particular arrest, detention outcome or invasive technique unless a separate law expressly places that decision with the DPP.

Police should acknowledge receipt promptly and identify the responsible unit and officer. If part of the direction is unlawful, impossible, unsafe, duplicative or based on a factual mistake, the police response should identify the part, provide reasons and propose a lawful alternative. The disputed issue should pass to designated senior officers within a short period. Performance of undisputed lawful steps should continue. This is more faithful to binding direction than either automatic obedience or silent resistance.

Expedition should be staged rather than reduced to one universal deadline. A preservation instruction may require action within hours. Initial registration and assignment may require days. A complex financial investigation may require months with defined milestones. The direction should state why the chosen period is appropriate, and any extension should identify work completed, obstacles, outstanding steps and a new review date. Time becomes accountable when delay has an owner and an explanation.

9.3 Pre-file intake should be a real doorway, not an informal favour

The ODPP needs a protected intake channel through which criminal information can be received without pretending that every submission is already a case. It should accept written, digital and, where vulnerability requires, assisted oral reports. Each submission should receive an identifier, basic conflict and duplication checks, a security classification and an acknowledgement that carefully avoids promising investigation or prosecution.

Triage should ask a small number of disciplined questions. Is the alleged conduct capable of amounting to an offence? Is there a concrete line that can be verified? Is evidence at immediate risk? Are police already acting? Is there a conflict, vulnerability, systemic harm or public-office dimension that makes DPP intervention valuable? Is another lawful body better placed? The purpose is not to conduct the investigation at intake. It is to decide whether Article 120(3)(a) should be engaged, clarification sought, information referred or the matter closed with reasons.

A central unit can design standards and handle exceptional matters, but it should not become the only constitutional doorway. Regional and resident prosecutors require delegated authority within financial, offence and sensitivity bands. Serious matters, police suspects, politically exposed persons and inter-regional cases may require central clearance. Routine but time-sensitive matters should not wait for Kampala. Delegation should be visible in office instruments and the direction itself.

The intake function must be protected from becoming a parallel complaints bureaucracy. It should not compete with police reporting for ordinary cases or encourage complainants to shop between institutions until one accepts their preferred theory. Where police are already acting adequately, the ODPP may record and monitor without issuing a direction. Where the complaint is civil, administrative or disciplinary, referral should be candid. Constitutional seriousness lies partly in saying no early and for intelligible reasons.

Feedback must be calibrated. A complainant should know that information was received, whether it was referred or closed, and, where lawful, the general reason. The suspect is not ordinarily entitled to advance notice of covert investigative steps. Witnesses and confidential sources may require restricted communication. A transparent system does not mean publishing live strategy. It means every material decision is recorded, attributable and capable of lawful review.

9.4 Rights, contrary evidence and fresh eyes should be built into the workflow

Rights protection cannot depend upon individual memory. The direction template should prompt the prosecutor to identify foreseeable effects on liberty, privacy, property, dignity, vulnerable persons and fair trial. Where coercion may be sought, the direction should state that police and judicial thresholds remain independently applicable. Where digital or documentary material is requested, relevance, date range, custodians and preservation should be defined narrowly enough to resist exploratory seizure.

The same template should ask what reasonable material might disprove or materially qualify the working hypothesis. The question is not an invitation to invent a defence. It requires the prosecutor to acknowledge any contrary line already apparent from the information. The police report should state how it was treated. A blank or generic answer should attract supervisory attention in serious matters.

Allegations against police demand a separate conflict screen. The protocol should require immediate preservation outside the implicated unit, allocation to investigators with no direct connection, notice to an appropriate prosecutorial supervisor and an early decision on external participation. Families and victims should receive a designated contact. Where structural independence cannot be achieved within ordinary police arrangements, the DPP should identify the lawful external mechanism rather than certify a conflicted inquiry as adequate.

Fresh-eyes charge review should be mandatory for a defined class of directed matters and available by reasoned referral in others. The reviewer should be institutionally senior enough to disagree, but independence is not merely rank. The reviewer must receive the full record, including the initiating information, directions, police responses, coercive authorisations, contrary material and explanations for uncompleted work. A summary written by the directing prosecutor is not enough.

The review should produce a short reasoned record addressing the three thresholds separately. It should not be published where disclosure would prejudice proceedings, but it should be retained for internal inspection and judicial production where law requires. The object is not paperwork for its own sake. It is to prevent the person most invested in the inquiry from being the only person who decides whether the inquiry justifies charge.

9.5 Compliance and public accountability require a protected register

The ODPP should maintain a secure electronic register of Article 120(3)(a) activity linked, where appropriate, to PROCAMIS and police case systems. The register should distinguish the four intervention types, record receipt and acknowledgement, milestones, extensions, disputed directions, completion, outcome and review. Access must be role-based. Sensitive sources, covert methods and personal data should be compartmentalised rather than omitted from governance altogether.

The register should support inspection, not only counting. Periodic sampling should test whether directions identified legal issues, avoided prejudgment, included reasonable contrary lines, received timely response and produced an intelligible decision. Inspectors should compare similar categories across offices to identify selective intervention and regional disparity. A direction completed quickly but unlawfully should not receive a positive performance mark.

Public reporting can protect confidentiality while disclosing institutional performance. Annual data should show numbers of pre-file directions, mid-investigation guidance, post-file requisitions and post-charge supplementation; broad offence and source categories; median acknowledgement and reporting times; compliance and escalation rates; proportions leading to charge, no charge, referral or continuing investigation; and the frequency of fresh-eyes review. Categories with very small numbers should be suppressed or combined to protect identity.

The data should never be read as a league table for convictions. A high no-charge rate may show wasteful initiation, or it may show that the power is honestly testing uncertain information. Interpretation requires qualitative audit. The institution should publish selected anonymised case studies explaining how early direction preserved evidence, corrected a one-sided inquiry, exposed a non-criminal explanation or prevented an unlawful charge. Constitutional performance includes restraint.

Judicial and parliamentary accountability should remain principled. Courts review legality in individual disputes. Parliament funds the institution, enacts safeguards and examines aggregate performance. Neither should demand confidential charging advice or direct outcomes in particular cases. Oversight is strongest when it asks whether the system applies declared rules, not whether a politically preferred person was charged.

9.6 The power must be resourced as a selective constitutional function

The staffing deficit makes universal prosecutor-led case building impossible and undesirable. The reform should fund a modest pre-file intake and direction capacity, trained focal prosecutors in regional offices, secure digital registration, and specialist support in financial, cyber, sexual and gender-based violence, environmental, human-rights and public-officer cases. The aim is not to place a prosecutor in every investigation. It is to ensure that the right prosecutor can intervene early where intervention matters.

Training should be joint but not homogenising. Prosecutors need practical understanding of investigative feasibility, digital preservation and operational risk. Police need a clear account of constitutional direction, evidential sufficiency and the reasons exculpatory inquiry matters. Joint exercises should include disagreement: an overbroad data request, an unsupported arrest proposal, a source-protection conflict and a missed deadline. Institutions learn little from rehearsing only easy compliance.

Technology should follow the legal model. A digital form that merely counts requisitions will automate the present weakness. The system should enforce required fields, separate access to sources, prompt staged reviews, flag overdue reports and preserve revisions. Integration with police systems should transfer status and approved documents without giving either institution uncontrolled access to the other's confidential material.

Resources also include time to decide. If prosecutors are evaluated primarily by courtroom appearances and files cleared, careful pre-file analysis will remain invisible labour. Workload models should recognise direction, review and lawful closure as substantive prosecutorial work. Otherwise the institution will formally adopt the power while structurally rewarding late and superficial engagement.

10. Practices that must be undone

Reform is not complete when new structures are added. Several habits actively distort Article 120(3)(a) and must be abandoned. They are attractive because they simplify work or display authority. Each simplicity is false. It either surrenders a constitutional function or exercises power without the discipline that makes it lawful.

10.1 The completed-file prerequisite must be abandoned

The first practice to undo is the belief that prosecutorial legitimacy begins when a police file arrives. Ordinary cases will still reach the ODPP that way. The error lies in treating the ordinary route as a jurisdictional rule. Staff manuals, registry categories and training should state clearly that qualifying information may activate Article 120(3)(a) before police registration and that a direction may require a file to be opened.

Abandoning the file prerequisite does not require prosecutors to receive every complaint as a case. The pre-file intake process must preserve a distinction between information, a direction and an investigation file. That distinction prevents two equal and opposite mistakes: rejecting information because there is no file, and creating a full investigation merely because someone has submitted information.

The cultural shift is from passive receipt to accountable selection. A prosecutor should be able to explain why early intervention was or was not warranted. The institution should be able to show that serious information was not lost between registries. The public should be able to understand that access to consideration is not a promise of charge. That is a more demanding culture than file receipt because it makes omission visible.

10.2 Informal command and outcome-driven direction must end

The second practice is reliance on undocumented oral influence. Urgent oral communication will remain necessary, but it should be confirmed, attributed and placed on the register. Routine telephone direction creates an unofficial hierarchy in which personal access matters more than legal criteria. It also leaves no reliable answer when police and prosecutors disagree about what was said.

Directions framed around a desired culprit or charge must likewise end. The DPP can identify suspected offences and persons whose conduct rationally requires inquiry. The direction must remain capable of a conclusion that the offence was not committed or the person was not responsible. Language that commands police to 'prove', 'arrest and charge' or 'build a case against' a named person corrupts the investigative premise and risks violating the presumption of innocence.[70]

[70] Constitution of the Republic of Uganda 1995, arts 28(3)(a), 120(5) and 120(6); Findley and Scott (n 8) 307–23.

Political communication requires the same discipline. Ministers, legislators and public officials may possess relevant information and may properly transmit it. They should not attend operational decision-making as principals, prescribe arrests or receive privileged assurances of a charge. The ODPP should record the source and decide under ordinary criteria. Public prominence may affect urgency and harm; it cannot replace evidence.

10.3 Coercion by prosecutorial proxy must be rejected

The third practice is using a general direction as a proxy warrant. An instruction to investigate is not reasonable cause for arrest, recorded grounds for search or judicial authorisation for intrusion. Templates and training should forbid language that suggests otherwise. Where the DPP considers coercive action legally available, advice should identify the relevant statute and make clear that the authorised officer or court must independently satisfy it.

The same principle applies to police bond and detention. A prosecutor may explain that a suspect's attendance, witness safety or evidence preservation presents a lawful concern. The office should not dictate continued detention as a way of obtaining confession, repayment or settlement. Article 23 and the Police Act govern liberty. Article 120 does not give a prosecutor a private remand power.[71]

Rejecting coercion by proxy will improve evidential quality. Officers who understand that they must justify their own acts are more likely to record grounds, consider proportionate alternatives and preserve admissibility. Prosecutors who remain outside operational command can later assess legality with greater independence. The separation is not institutional etiquette. It is a safeguard against both rights violations and contaminated evidence.

10.4 Numerical success and perpetual further inquiry must be discarded

The fourth practice is treating prosecution, charge or conviction as the only successful end of a direction. The DPP's constitutional duty is to advance justice and prevent abuse, not to maximise cases. A direction that establishes a credible non-criminal explanation, identifies the wrong suspect or demonstrates insufficient evidence has performed valuable work. Institutional reporting should make those outcomes visible.

Repeated file return also requires control. 'Further inquiries' should identify the precise unresolved question and the evidence reasonably capable of answering it. A file should not circulate because a prosecutor is unwilling to record that the evidence falls short. After proportionate lines have been exhausted, the office must decide. Delay can punish an uncharged person, exhaust a victim and keep investigators tied to an evidentially dead case.

Targets should therefore measure timeliness, legality, completeness and quality rather than raw volume. Conviction rates can be informative, but they can also conceal undercharging, selective case choice and pressure to avoid difficult prosecutions. Direction counts can demonstrate activity, but not value. A mature institution reports what its interventions changed and what rights they protected, including occasions on which it stopped a case.

11. A doctrinal test for every proposed direction

A workable doctrine can be stated through seven connected inquiries. First, jurisdiction: has the DPP received identifiable information which, if materially true, is capable of disclosing criminal conduct? This is a low but real threshold. It excludes a demand to search for wrongdoing in the abstract while allowing uncertainty about the precise offender or offence.

Second, purpose and necessity: what lawful investigative problem is the direction intended to resolve, and why is prosecutorial intervention warranted at this point? The answer may be police inaction, urgency, legal complexity, evidential incompleteness, conflict, vulnerability or a need for co-ordination. 'Public interest' should not stand alone as a slogan. The direction should disclose the feature that gives it content.

Third, content and impartiality: does the direction state issues to be tested rather than conclusions to be proved, and does it include any reasonable line capable of materially weakening the working hypothesis? A direction need not set out every possible defence. It must not deliberately design an inquiry that can move in only one direction.

Fourth, institutional competence: is each requested act assigned to an officer who possesses the legal power to perform it? If arrest, search, detention, interception, compelled production or another intrusion is contemplated, has the direction preserved

[71] Constitution of the Republic of Uganda 1995, art 23; Police Act, Cap 324, ss 23–25 and 39.

the separate statutory or judicial threshold? The constitutional status of the DPP cannot cure an act performed by the wrong decision-maker.

Fifth, proportionality and rights: is the scope no broader than reasonably needed, and have foreseeable effects on liberty, privacy, dignity, property, fair trial, sources and vulnerable persons been addressed? A broad subject-matter power still requires a proportionate investigative response. 'Any information' does not authorise any method.

Sixth, form and expedition: is the direction written or promptly confirmed, attributable to an authorised prosecutor, addressed through a lawful police channel and accompanied by a realistic reporting period or milestone? Expedition depends on risk and complexity, but every open direction requires a review date. Silence is not a status.

Seventh, closure and review: does the report permit the DPP to see what was done, what was found, what remains, what points away from culpability and why any step was not completed? Has the institution separated the final charge review where prior prosecutorial involvement creates a material risk of commitment? A direction that cannot reach a reasoned end is defective even if its beginning was lawful.

These inquiries are not seven formal boxes whose completion guarantees validity. They expose the structure of the judgment Article 120 requires. A grave allegation may justify rapid initial action with detail supplied shortly afterwards; a minor but complex allegation may justify patient clarification before police resources are engaged. What cannot vary is the need for a rational criminal premise, lawful institutional allocation, impartial inquiry and an accountable conclusion.

12. Conclusion

The answer to the central question is clear. The DPP of Uganda may direct the police to investigate before a police case file has been sent. The Constitution does not make its power depend upon the administrative product it authorises the DPP to require. 'Any information of a criminal nature' is the trigger; investigation is the activity; an expeditious report is the return.[72]

That answer is not a charter for prosecutorial command of the police. Article 120(3)(a) must stand with Articles 212 and 213, the rights chapter and legislation governing arrest, search, detention, witnesses, evidence and judicial process. The DPP can determine that an allegation requires inquiry, identify the lawful and evidential questions, insist upon reasonable contrary lines and require a report. Police retain responsibility for operational methods and statutory judgments. Courts retain the functions legislation and the Constitution assign to them.

The leading cases become coherent when read through that division. *Uwera Nsenga* protects the DPP's final authority over charge but cannot end police responsibility at file submission. *Naphatal Were* permits rational differentiation but should not allow investigative selectivity to justify itself. The Kenyan cases reject the file fallacy, require genuine inquiry, preserve the independent charge gate and restrain general prosecutorial oversight. *Kuria* is right on activation and troubling on remedy: a court may require investigation and decision, but should not order a prosecution whose evidential basis has yet to be discovered.

Comparative experience reinforces the same constitutional middle. Direction can bind without becoming takeover. Early advice can improve a case without transferring operational responsibility. Further inquiry should be tied to a stated evidential reason. The prosecutor who shaped an investigation may require fresh-eyes review. Where police themselves are implicated, ordinary direction must be supplemented by structurally independent investigation.

The ODPP's difficulty is not that Article 120(3)(a) has never been used. It is that use remains insufficiently differentiated, visible and auditable. Programme counts do not show pre-file assertion, compliance, impartiality or outcome. Heavy caseloads and staffing gaps make selective, risk-based intervention necessary, but they do not justify a culture in which police file creation determines the reach of an independent constitutional office.

What should be done is therefore exacting but practical: enact focused enabling legislation; adopt a public DPP–IGP protocol; build a protected pre-file intake and register; write directions around issues rather than desired outcomes; separate direction, coercion and charge thresholds; require contrary-line analysis and fresh eyes; establish escalation and staged timelines; and report quality as well as quantity. What should be undone is equally important: the completed-file prerequisite, undocumented personal command, directions to prove guilt, coercion by prosecutorial proxy, perpetual requisitions and performance measures that count charges while ignoring justice.

[72] Constitution of the Republic of Uganda 1995, art 120(3)(a).

Article 120(3)(a) was not written to make the DPP a spectator until police choose to deliver a file. Nor was it written to place criminal investigation under a prosecutor's daily operational command. Its constitutional purpose is more careful and more demanding. It gives an independent prosecutor enough authority to ensure that serious criminal information is investigated and reported, while leaving every intrusive act answerable to its own law. Properly institutionalised, the power can correct inertia, expose exculpatory truth, protect rights and strengthen the legitimacy of the charge decision. Poorly used, it can simply move tunnel vision and unaccountable command from one office to another. The future of the provision depends upon preserving that difference.

Funding: This research received no external funding
Conflicts of Interest: The authors declare no conflict of interest
ORCiD. Amerit Timothy 0009-0007-6988-3621
Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers
Artificial Intelligence (AI) Use Disclosure: The authors declare that no artificial intelligence tools were used in the preparation of this manuscript

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