

GUIDELINES ON THE DECISION TO CHARGE

AND UADILIFU CASE MANAGEMENT SYSTEM

| SPEECH BY NOORDIN HAJI |

Independence, transparency and fairness in prosecution service



Remarks by Mr Noordin M. Haji, the Director of Public Prosecutions, during the launch of the guidelines on the Decision to charge and the Case Management System on July 28.

'We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history, there is such a thing as being too late. Procrastination is still the thief of time. Life often leaves us standing bare, naked and dejected with a lost opportunity.'

- Martin Luther King Junior

As the Office of Director of Public Prosecutions, we are taking advantage of every opportunity before us and embracing that "fierce urgency of now" in discharging our mandate for Kenyans.

The ODPP is a critical link in the justice chain as the Constitution delegates immense authority to prosecutors. The reasoned exercise of prosecutorial discretion is essential to the fair, independent, and accountable administration of justice. The decision about whether to initiate charges, the charges to pursue, when to accept a negotiated plea and what to advocate at sentencing are the most fundamental duties of prosecutors. We acknowledge that such authority must be accompanied by great responsibility.

And in exercise of this authority, it is important that prosecutors follow processes and steps that ensure consistency, transparency and accountability. When these processes are applied equally and fairly, the result is not only a more efficient and effective system but also an increase in public confidence necessary in the administration of the criminal justice system.

Guidelines on the Decision to Charge

The Decision to Charge is the most significant decision a prosecutor makes in the handling of the criminal cases. The power to charge entails considerable discretion on the part of the prosecutor and the decision must, therefore, be founded in law, serve the public interest, engrain fair administration of justice and avoid abuse of the legal process.

Over the past year, we made it among our top priority to go around the country through our "All for Justice Initiative." I had the pleasure and privilege of sitting down with Kenyans to listen, learn and understand their concerns in relation to prosecutions and the justice system.

The two common questions that the Mwananchi from Lamu to Homa Bay; In the Community Social halls to the Correctional facilities asked were: how do you decide

whom to charge? and how do you make the decision to charge?

These frequently asked questions affirmed our belief that the promise of our criminal justice system depends on how we make the decision to charge and it really was about understanding our mission as the ODPP which is to provide impartial, effective and efficient prosecution services to the public.

Citizens seemed to know that being at the heart of the criminal justice system, the prosecutor must earn their trust and faith and that any decision they make must strictly follow the law and also safeguard their collective interests.

That's why – to leverage on our experiences and the lessons learnt from prosecuting crimes – we have developed these Guidelines on the Decision to Charge. The guidelines document the steps to ensure fairness, consistency, transparency and accountability in the decision-making process and that they are applied equally and fairly to bolster public confidence in the administration of justice.

The key features of the Guideline is the Two-Stage Test which comprises the Evidential and Public Interest test. Under the Evidential Test, prosecutors will have to ascertain the reliability, credibility, admissibility, sufficiency and the strength of rebuttal evidence with a realistic prospect of a conviction.

Under the Public Interest Test, prosecutors will consider the culpability of the suspect, the impact, or harm to the community or victim, the suspect's age at the time of the offence and whether prosecution is a proportionate response.

It is important to note that while coming up with these guidelines even as we benchmarked with the best practices from other jurisdictions, we made sure to customise them to our unique situation in Kenya.

In addition, to these guidelines, we have also developed more policies on the alternatives to prosecution which include:

Plea Bargain Guidelines, Diversion Guidelines, Deferred Prosecution Guidelines, Guidelines on Delegated Prosecution, Practice Directions on Delegation of Prosecutorial Powers, Guidelines for the Administration and Management of the Prosecution Fund and Traffic Rules and Guidelines.

I am confident that these policies and guidelines will bring uniformity, consistency and predictability in discharging our mandate and express our deep commitment to the

delivery of professional and quality prosecution services to the Mwananchi.

Uadilifu Case Management System

We also launch our Case Management System.

We are in the Information Age – which is really about the integration of information technologies into virtually every aspect of our existence. When leveraged, technology will provide us with enormous benefits in enhancing effectiveness and efficiency within our criminal justice system.

Our criminal justice system has been "very paper-driven" with each stakeholder, sitting within "data silos" not easily accessible or even shared with other partners. Well, time has proven that in order for us to be effective and ensure justice for our citizens, then those silos must come down and embracing technology is key to flattening these silos.

And that is why we have developed a Case Management System which will enhance efficient and expeditious disposal of criminal cases. The system is aptly named "Uadilifu". This is a Swahili word that means Integrity, which is really at the cornerstone of this system.

The system has capabilities to enable us to track and monitor the status and progress of files and further, facilitate electronic filing of pleadings and disclosure of evidentiary material.

The launch of the electronic E-Filing by the Judiciary on 1st July 2020 demonstrated how the system enhances the overall efficiency within the criminal justice system. We demonstrated the integration between the two institutions. This integration has since

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reduced the time taken to file a charge sheet from an average of 30 minutes to slightly less than five minutes.

We have since carried out the first level of integration with the Independent Police Oversight Authority (IPOA) and it is our desire that all the institutions involved in the administration of justice including those that exercise Delegated Prosecution Powers, will eventually be integrated with the ODPP Case Management System

If deployed and embraced beyond just data capture, this system will serve to enhance holistic collaborations among all partners and ensure that multiple viewpoints are embraced from analysis of crime trends, investigations, prosecutions, convictions and correctional phases. More importantly it can also help us know where to focus as we seek to improve the criminal justice system by providing real-time qualitative and quantitative data. I urge all actors in the criminal justice system to embrace the use of information technology. It will create synergy and ensure transparency, accountability and fairness in the delivery of services. Through our Prosecution Training Institute, we are setting up an e-learning center to provide resources and conduct continuous joint trainings both at an agency and interagency level including sessions on the integrated case management system. As mentioned earlier, ODPP is taking advantage of every opportunity before us and embracing that "fierce urgency of now" in discharging our mandate for Kenyans. It takes courage to push for change, and yes, we note that we will be challenged at every step, but it takes a steadfast spirit and fierceness beyond words because if not now then when? And if not us, then who? Talking about change is easy, but doing it takes courage beyond bounds and we at ODPP have committed ourselves to be a change catalyst for our beloved Kenya. So here is to my colleague's boundless courage in the face of adversity, doing what we see is right for the people of Kenya, and continuing fiercely to push forward now towards ensuring a fair, independent, transparent and just criminal justice system.

'If not now, then when? If not you then who?' this is the fundamental question for all of us. Let us renew our commitment to increased cooperation, collaboration, and coordination. When we leverage on the dedication and expertise of everyone gathered here today, I know we will be able to achieve success. We at the Office of the Director of Public Prosecutions are optimistic about the future. We pledge to uphold our solemn obligation to see that justice is done to the mwananchi, whom we are called upon to serve as ministers of justice. We assure you of our commitment to our clarion call 'Mashaka yenyeye Haki na Usawa'. And for each of our partners, it is an honor to work together and I look forward to our continued work together and even greater accomplishments in serving mwananchi.

-Noordin Haji Director of Public Prosecutions

To charge or not to charge? Key points

The Guidelines on Decision to Charge, 2019 intend to cement and enhance the growth of a stronger, streamlined and professional prosecutorial service in Kenya

The decision to charge is the prosecution Counsel's determination as to whether evidence availed by an investigator or investigative agencies is sufficient to warrant the institution of prosecution proceedings against an accused person in a Court of law. Due to its intrusive nature and potential adverse effect of the decision on the life, liberty or property of an accused person, it is the most important decision that is made by any prosecutor. The independence of the DPP and other institutions of prosecution revolves around this decision. Prosecutors are required to, and must exercise, due care in making the decision to charge.

Making the decision

The decision to charge or not to charge requires an objective and independent analysis of the case. Whilst the roles of the investigator and prosecutor are complementary, ultimately the decision to charge rests with the prosecutor, who must assess whether it is appropriate and what charges to prefer for a court to consider. It is the duty of a prosecutor to ensure that the right person is prosecuted for the right offence, properly applying the law and ensuring that relevant evidence is submitted before the court and that disclosure obligations are complied with.

When making charging decisions, prosecutors must be fair and objective and must not let personal views based on ethnic or national origin, gender, disability, age, religion or belief, sexual orientation, status, or gender identity of a suspect, accused person, victim or any witness influence their decision and must be apolitical. Prosecutors must also act in the interest of justice and not solely for the purpose of obtaining a conviction.

Prosecutors should note that certain cases require prior authorisation from the DPP e.g. terrorism, corruption cases, treason, sedition, offences under the Anti-Counterfeit Act and offences involving aircrafts. Offences that require such consent may change and so prosecutors must keep themselves up to date with the law, policy and practise directions. Similarly, there are certain classes of persons who are entitled to immunity under the Privileges and Immunities Act. When in doubt, a prosecutor must seek guidance from their supervisor before proceeding to make a decision to charge and be mindful of guidelines on thresholds for cases of this nature.

All decisions made on whether to prosecute or not and the reasons for such decisions must be conducted and written in accordance with these guidelines. In all cases prosecutors must complete the Decision to Charge Form ODPP 1A and file this in the relevant Prosecution File.

Standard required in making the decision to charge

The standard required in making the decision to charge is whether there is a reasonable prospect of conviction. The prosecutor must consider key evidence and certain minimum requirements of a file which would apply depending on which test (the Two Stage Test or the Threshold Test) is applied. The Two Stage Test and the Threshold Test are set out below.

Key Evidence

Key evidence is evidence which either alone (the evidence of one witness) or taken together with other evidence (further witnesses or exhibits) establishes; first, elements for each offence and second, person or persons to be charged who committed the offence.

The elements of an offence are defined by statute and in some cases, clarified by legal precedent. These elements must be proved in order to secure a conviction. Key evidence should be available at the point of charge. It

would usually include but not limited to:

- Statements from witnesses who give direct evidence of any element of the offence.
- Statements from police officers who have witnessed any aspect of the offence.
- Expert evidence e.g. forensic scientists whose evidence establishes one or more of the elements of the offence.
- Where numerous witnesses provide differing evidence relating to the same events, witness statements should be provided for each witness.
- Any statements of the accused whether exculpatory (not guilty) or inculpatory (incriminating).
- Any statement relating to the arrest of the accused.
- Digital and electronic evidence for example CCTV, other audio/visual multimedia and metadata that prove the offence.
- Documents or forms.
- Medical evidence – even where the full medical report is not yet available, an indication of the medical position should be provided by the officer in charge of the investigation as a minimum such as a P3 form.
- Physical evidence such as contraband e.g. drugs.

Minimum requirements of a file: Under the two stage test

Where an investigation is complete and a decision to charge is sought on the Two Stage Test, in addition to the key evidence detailed above, the prosecutor must be satisfied that the investigation file is sufficiently composed to allow the making of an informed decision to charge. In general, the file must include:

- Initial report
- Investigation diary
- Where applicable, the correspondences
- A brief summary of the facts of the case.
- Key witness statements including the complainant's addressing the necessary elements of the offence, identification of the suspect and / or the arrest.
- Statements of all investigating officers assigned to the case. Any expert report available at the time or exhibit memo.
- Any relevant documentary exhibits including photographs or financial statements. In the case of CCTV or other multimedia (e.g. from a mobile phone), if a copy is not available, an officer who has viewed the media should provide a statement summarising the content and should identify the offender or offence. The date of request for a copy of the media and timescales for return must be indicated.
- Any inventory.
- Statement of the suspect, if any, along with any cautionary statement or statement under inquiry.
- Exculpatory evidence (if any)
- Confirmation of the age of the accused where appropriate.
- Where applicable, any evidence of compensation or restitution
- Any background information considered relevant for the prosecutor to know should be included in a form marked 'confidential' e.g. the need for 'special measures' for vulnerable victims.
- The proposed charge(s).

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



When reviewing the investigation file, the prosecutor must ensure that the investigation diary is up to date and accurate. Dates, orders and any preliminary investigations should match the evidence in the file. Additionally, the prosecutor shall prepare and maintain an inventory of all the documents presented in the investigation file and indicate whether or not they are in their original state. All copies must be certified as true copies of the original. A certificate under section 106B of the Evidence Act (Cap 80) shall accompany documents that have been extracted from any electronic media.

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

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

The Two-Stage Test

The Two Stage Test, comprising an 'evidential test' followed by a 'public interest test' should be applied: when all outstanding reasonable lines of enquiry have been pursued or; prior to an investigation being completed, where the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Two Stage Test whether in favour or against a prosecution.

The Evidential Test

Evidence denotes the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved; and, without prejudice to the foregoing generality, includes statements by accused persons, admissions, and observations by the court in its judicial capacity⁴.

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

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

Relevance

Relevant evidence is evidence tending to prove or disprove a matter in issue.⁵ A prosecutor should assess whether the evidence



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prosecutors must take into consideration



ODPP Secretary Dorcas Oduor, National Police Service Inspector General Hilary Mutyambai, Director of Public Prosecutions Noordin Haji, Ethics and Anti-corruption Commission CEO Twalib Mbarak, Chief Justice David Maraga and Interior Cabinet Secretary Fred Matiang'i during the launch Guidelines on the decision to charge, 2019 and the case management system at the Prosecution Training Institute on July 28.

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tends to prove or disprove an element of an offence or does it add any probative value to make one of the elements of the offence more likely or not. See Chapter II of the Evidence Act and relevant authorities⁶.

Admissibility

Admissibility is the quality of evidence that makes it capable of being legally admitted, allowable or permissible in court⁷. Admissible evidence is therefore evidence that is relevant and is of such character (e.g., [inter alia] not unfairly prejudicial, based on hearsay, or privileged) that the court should receive it. In some cases it is called competent, proper or legal evidence⁸. A prosecutor should assess:

a) Admissibility of evidence under existing law and procedure - for example under the Evidence Act and other relevant statutes specific to the nature of the alleged offence e.g. admissibility of intercept evidence in terrorism trials or the use of digital evidence (and copies) under the Security Laws (Amendment) Act.

b) The likelihood of the evidence being held as inadmissible by the court e.g. illegally obtained evidence; confessions and hearsay.

Reliability

Reliability comes from the basic term "reliance" which means: dependence or trust by a person⁹. Prosecutors must determine if the evidence is capable of being regarded as trustworthy or accurate? Prosecutors should consider the consistency of the evidence and witnesses over time, e.g. are there questions on accuracy or integrity? In a case that relies wholly or substantially upon the identification of an accused person, the circumstances in which the identification took place must adhere to certain principles¹⁰. Also, where identification parades have been conducted, adherence to Police Service Standing Orders on the same is key. In all cases, contradictions within the evidence must be assessed to determine if they undermine the prosecution case, the totality of the evidence should be considered.

Credibility

Credibility is the quality that makes something (as a witness or some evidence) worthy of belief¹². Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence e.g. the motivation of the witness, or where a prosecution has previous convictions for dishonesty; any civil proceedings on-going between the parties or where evidence is perishable over time and has not been examined early enough¹³.

Availability

Availability is the capacity of evidence to be legally valid at the point of tendering in court¹⁴. For example, where the witnesses are foreigners, the probability of ensuring their attendance or other options such as live link must be assessed and the value of their evidence weighed against other evidence in the case - can the prosecutor proceed without them? Another example may be where cultural practice calls for a burial within 24 hours in a case involving a death or where items are perishable, such as bush meat, can the prosecutor secure samples or digital evidence of the item in a way that will ensure its admissibility?

Strength of rebuttal

Evidence Rebuttal evidence is evidence offered to disprove or contradict the evidence presented by the prosecution¹⁵. This will include considering the suspect's explanation or reliability of his confession and also a consideration of examined and unexamined material in the possession of the police as well as any material that may be obtained through reasonable lines of enquiry e.g. privilege and immunity.

The Public Interest

Test The public interest test is what is in the interest of the wider administration of justice. This is where a prosecutor exercises discretion. Sir Hartley Shawcross, a former English Attorney General, explained the rationale behind the public interest test in 1951: "It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution. Indeed, the very first regulations under which the Director of Public Prosecutions worked provided that he should intervene to prosecute, amongst other cases: wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect therefore is required in the public interest.

That is still the dominant consideration. It is not always in the public interest to go through the whole process of the criminal law if, at the end of the day, perhaps because of mitigating circumstances, perhaps because of what the defendant has already suffered, only a nominal penalty is likely to be imposed. And almost every day in particular cases, and where guilt has been admitted, I decide that the interests of public justice will be sufficiently served not by prosecuting, but perhaps by causing a warning to be administered instead. Sometimes, of course, the considerations may be wider still. Prosecution may involve a question of public policy or national, or sometimes, international, concern."

When applying the public interest test, the prosecutor should consider each of the factors set out in item 3.2.2. The factors are not exhaustive and not all will be relevant in every case. The weight to be attached to each of the factors will also vary according to the facts and merits of each case. It is quite possible that one public interest factor alone may outweigh a number of other factors that tend in the opposite direction. As always, written reasons for such an approach must be recorded.

In determining public interest, the prosecutor should consider the seriousness of the offence. The more serious, the more likely it is that a prosecution is required. When assessing seriousness, consider the suspect's culpability and the harm caused by considering the factors listed below:

Culpability of the suspect

Culpability is the tendency towards guilt or blameworthiness¹⁶. It is determined by among others, the following factors:

- The suspect's level of involvement in commission of the offence.
- The extent to which the offence was pre-meditated and/or planned.
- The extent to which the suspect has benefited from the criminal conduct.
- Whether the suspect has previous criminal conduct and/or out of court disposals and any offending whilst on bail or whilst subject to a court order.
- Whether the offence is likely to be continued, repeated or escalated
- The suspect's age and maturity (see below).
- Where the suspect is in a position of trust or authority in relation to the victim.
- The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the greater the culpability of the suspect.
- The prudence of applying state resources to prosecute the case
- The purpose of punishment

Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons. Where a suspect is of unsound mind, it may not be appropriate to prosecute through the ordinary criminal justice system where it appears that the suspect may be incapable of understanding the charges or the procedures involved or cannot give instructions. The criminal procedure code (CPC) gives guidance on how to deal with such cases, in particular section 162 of the CPC states that it is the duty of the court to inquire where it has reasonable grounds to believe that an accused person is of unsound mind and thus incapable of making his/her defence. Prosecutors should not wait for the court to inquire, but should be proactive in seeking such an inquiry where it is clear that one is required.

Harm to the victim or community

The greater the harm to the victim or the community, the more likely it is that a prosecution will be required in the public interest. However, prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.

Prosecutors should consider the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family. Note however, that the ODPP does not act for victims or their families in the same way as lawyers act for their clients, and prosecutors must form an overall view in the public interest.

The status of the victim

It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics. A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Suspect's age at the time of the offence

The criminal justice system treats children differently from adults and significant weight must be attached to the age of the suspect if

a minor. The best interests and welfare of the child must be considered, including whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offence. Prosecutors must have regard to the obligations arising under the Children's Act, No 8 of 2001 and the Constitution of Kenya, 2010. Prosecutors must be familiar with the guidelines and policy on diversion.

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

Impact on the community

The greater the impact of the offending on the community, the more likely a prosecution is required. Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.

The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offence. Government policy regarding certain offences may be a good indicator of the need for prosecution in such offences e.g. corruption cases, prevailing circumstances (during elections), and environmental protection (wildlife cases in areas with particular biodiversity and for the greater good of the country).

Whether prosecution is a proportionate response

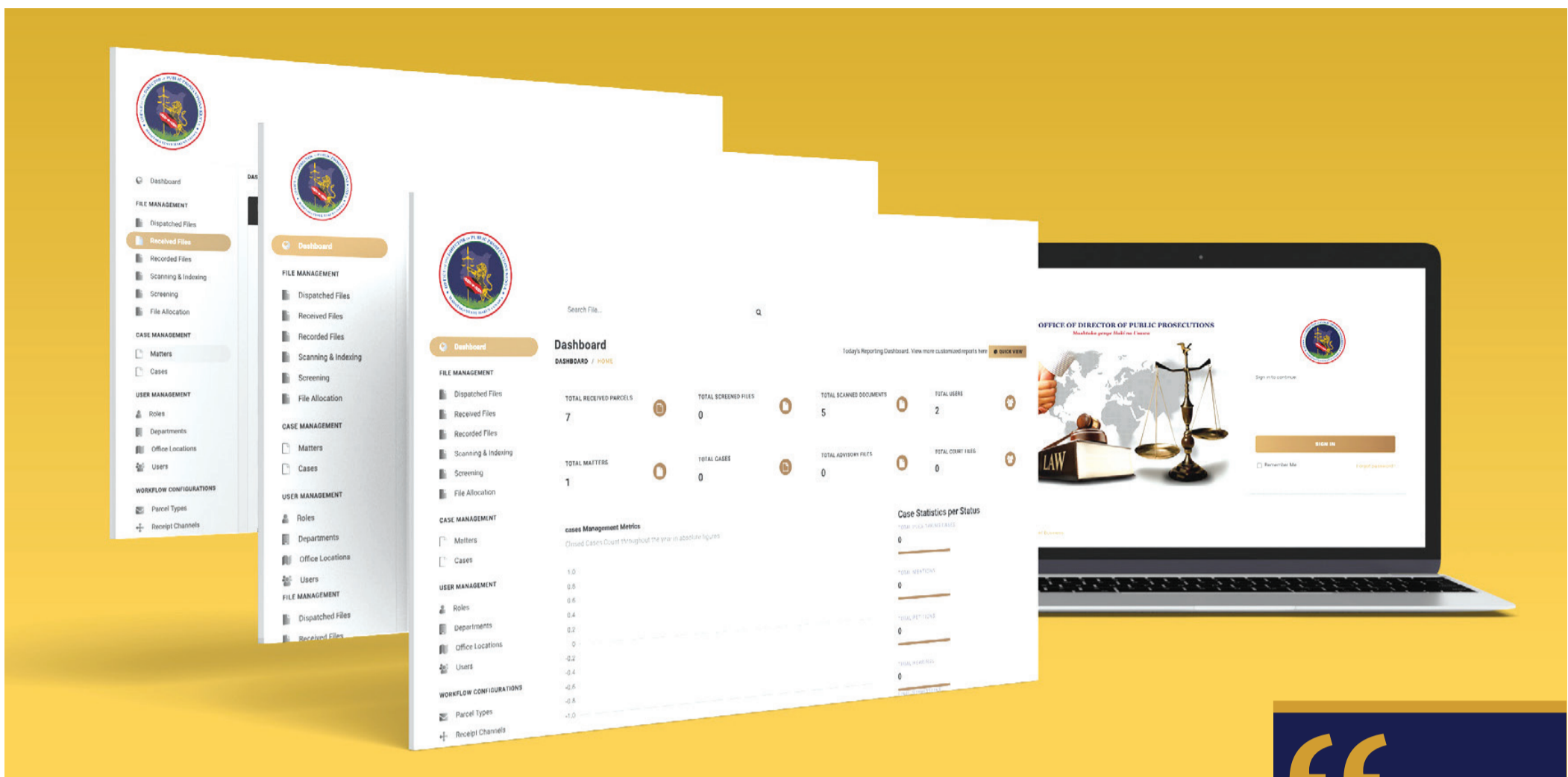
In considering whether prosecution is proportionate to the likely outcome, a prosecutor should consider the cost to the ODPP and the wider criminal justice system. This especially applies where prosecution could be regarded as excessive when weighed against any likely penalty. The consideration of prosecution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

When considering the public interest in any case, consideration will be given as to whether the matter can be appropriately dealt with out of court. Prosecutors should apply the ODPP Diversion Policy and ensure that any decision to divert a case is recorded with reasons. Similarly, cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the more culpable participants in order to avoid excessively long and complex proceedings.

Whether sources require protecting

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

Upon reaching a decision to charge, the prosecutor must consider the acceptability of alternative or lesser charges were the accused person offers to plead guilty. Where an alternative charge or lesser charge might be acceptable, this should be indicated in the review with reasons. Also, a prosecution may be unable to proceed on statutory bars such as immunity or where the suspect has been prosecuted for the same offence before.



ODPP's end to end Uadilifu case management system to ensure just and expeditious disposal of cases

A. INTRODUCTION

Case Management Systems (CMS) are being used across the globe by actors in the criminal justice system to computerise case documents. CMS involves the use of integrated menus developed for among other things receiving cases, allocating cases, managing official documents, serving documents, preserving documents. CMS involves the exchange of electronic information between the police, prosecution, the Judiciary and the Prisons Department through an information system.

B. WHAT IS CASE MANAGEMENT?

Case management refers to the skills and processes used by actors in the justice system – judicial officers, prosecutors and other advocates – to move and dispense cases. It includes the receipt of files and correspondence from investigative agencies, the case analysis, the decision to charge, plea negotiations, pre-trial sessions, trial process time keeping and organisation skills.

C. THE ODPP CASE MANAGEMENT SYSTEM

In recognition of the need to automate processes to increase efficiency and provide timely status reports, the ODPP developed an end to end case management system with three main modules: document tracking; case tracking; and e-filing, each of which are covered in the latter parts of this write-up. The ODPP Case Management System is in tandem with the Judiciary Guidelines relating

to active case management of criminal cases in magistrate's courts and the High Court of Kenya made by the Chief Justice in the interest of effective case management for the expeditious disposal of criminal cases in the Magistrate's courts and the High Court of Kenya and whose overriding objective is that criminal cases be dealt with justly and expeditiously. The system will continue to be enhanced to include other additional capabilities, such as interactive chats and e-learning to facilitate the work of prosecutors.

D. CASE MANAGEMENT AND THE DECISION TO CHARGE

When considering the decision to charge, a prosecutor must be objective and conduct an independent analysis of the case. The standard required in making the decision to charge is whether there is a reasonable prospect of conviction.

The prosecutor must consider key evidence and certain minimum requirements of a file such as the evidential and public interest test.

When applying the public interest test, the prosecutor should consider the seriousness of the offence. The more serious, the more likely it is that a prosecution is required. When assessing seriousness, consider the suspect's culpability and the harm caused.

There may be instances where, though a crime is committed, it is in the best interest of the public not to charge. In such cases it becomes necessary for the prosecutor to consider whether the

matter can be handled appropriately out of court. In such instances the prosecutor ought to seek guidance from the ODPP Diversion Policy, the Plea Bargain Policy and/or the Deferred Prosecution Guidelines by the Office.

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

E. MODULES OF THE ODPP CASE MANAGEMENT SYSTEM

1. Document Tracking

The document tracking module enables tracking of documents received by ODPP which include inquiry files from investigative agencies such as DCI, EACC, KWS, NPS, IPOA, court documents, complaints & complements and general correspondence. The key features of the Document-Tracking module include capturing data on the files such as Offenses, parties and disclosures; generating a unique QR code that is printed and placed on the physical file for tracking purposes; scanning and indexing to maintain a searchable soft copies of key documents in the file; screening of files to determine the office and individual best placed to handle the file; tracking of physical document and file movements between offices and individuals; real time reports on status of enquiry files and other reports on data captured such as list of witnesses, list of exhibits, list of cases

by thematic area.

The system will be integrated with all investigative agencies. The integration with EACC and IPOA is currently ongoing.

2. Case Tracking

The case tracking module is designed to assist prosecutors to manage the processes and information related to case analysis, decision to charge and court trial process. The key objectives of the case-tracking include providing just and timely resolutions of cases, assuring effective charging decisions, sustaining and enhancing public confidence, and efficient and effective records management. Case tracking has numerous benefits, including the enhancing of team collaboration through calendar appointments, automated meeting reminders and scheduling of the court diary. At a glance one is able to plan days, management of deadlines, pretrial meetings, and court attendances, an improved file organisation, coordinated communication and document/file retrieval, easy access to the system anywhere and anytime, improved service delivery leading to an enhanced access to justice for members of the public, and data protection and management, hence enhanced cyber security.

3. e-Filing

E-filing module enables prosecutors to file documents in the Judiciary e-filing system through automatic integration. Documents filed include court docu-



CMS involves the exchange of electronic information between the police, prosecution, the Judiciary and the Prisons Department through an information system

ments initialising a case such as charge sheets and miscellaneous applications as well as documents required during the case process including submissions, replying affidavits and preliminary objections. Information retrieved from Judiciary system includes the court case number, court assignment, hearing dates and outcomes of court case.

F. INTEGRATION WITH OTHER ACTORS IN THE CRIMINAL JUSTICE SYSTEM

The ODPP Case Management System and the Judiciary Guidelines for management of criminal cases share a common overriding objective: just and expeditious disposal of criminal cases. This calls for a collective effort of all the actors in the criminal justice system: the investigative agencies including the National Police Service (NPS), the Independent Policing Oversight Authority (IPOA) and the Ethics and Anti-Corruption Commission (EACC); the ODPP; the Judiciary and the Prison Services. The ODPP Case Management System thus improves the general effectiveness and efficiency of the criminal justice system with the common goal of improving access to criminal justice. Accordingly, the ODPP Case Management System shall be integrated to corresponding systems by the other actors such that the NPS, for example, will be able to upload evidence to the system, which will then be available to the ODPP for independent review towards making the decision to charge. Once a decision to charge has been made and a charge sheet prepared, the charge sheet is then electronically filed to the Judiciary through the Judiciary e-Filing System and a number is automatically, again electronically, issued by the Judiciary.