



# **GUIDELINES ON THE DECISION TO CHARGE AND RELATED MATTERS**



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## FOREWORD

The decision to charge or not to charge is a cornerstone in the administration of criminal justice. Such a decision needs to be taken in a way that is transparent, consistent and fair, it has a profound impact on the suspects, victims and the general public. In prosecuting a criminal case, the Prosecutor must ensure that the right person is prosecuted for the right offence. and to bring offenders to justice. Thus, when properly implemented it brings about uniformity in the selection of charges or any decision reached by a Prosecutor.

For a long time, the prosecution in Tanzania has faced challenges regarding the decision-to-charge process. These challenges have led to different prosecution outcomes for lack of uniformity. On the other hand, in the contemporary world, the commission of an offence is now taking the nature of transnational organised crime due to the advancement of science and technology amongst other modes of perpetration of offences, which calls for a well-grounded proper decision to charge process. Therefore, the decision to charge guidelines is a wake-up call to have in place a comprehensive tool laying down the principles governing the decision to charge.

It is my steady belief that these guidelines will help to resolve the challenges that prosecutors faces during the decision-to-charge process. It will cater as an

important tool for all prosecutors while exercising their prosecutorial functions.



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## ABBREVIATIONS

<b>CCTV</b>	<b>Closed -Circuit Television</b>
<b>DPP</b>	<b>Director of Public Prosecutions</b>
<b>DC</b>	<b>Decision to charge</b>
<b>NPS</b>	<b>National Prosecutions Service</b>
<b>TT</b>	<b>Threshold Test</b>
<b>UNODC</b>	<b>The United Nations Office on Drugs and Crime (UNODC)</b>

## LIST OF AUTHORITIES

The United Republic of Tanzania Constitution, 1977 as amended
Criminal Procedure Act, Cap 20
Economic and Organised Crimes Control Act, Cap 200
National Prosecutions Service Act, Cap 430
The Law of the Child Act Cap. 13
The Law of the Child (Juvenile Court Procedure) Rules 2016
Criminal Procedure (Plea Bargaining Agreement) Rules, 2021
Plea Bargaining Guidelines, 2023
Wildlife Conservation Act Cap 283
Tanzania Court of Appeal Rules, 2009, as amended

## PART I - INTERPRETATION

For the purposes of these guidelines:

<b>Accused</b>	is used to describe a person who has been suspected or charged with an offence
<b>Constitution</b>	Means the Constitution of the United Republic of Tanzania, Cap 2 ,
<b>Director of Public Prosecutions</b>	means the Director of Public Prosecutions appointed pursuant to sub-article (1) of Article 59B of the Constitution.
<b>District Prosecutions Officer</b>	Has the meaning ascribed to it under the National Prosecutions Service
<b>Investigation file</b>	means an official record from an Investigation Agency that contains the contents and results of a criminal inquiry.
<b>Investigator</b>	Any person (s) assigned to investigate a criminal case.
<b>Plea bargaining</b>	has the meaning ascribed to it by the Criminal Procedure Act Cap. 20.
<b>Prosecutor</b>	means public prosecutor and has a meaning ascribed to it under the Criminal Procedure Act.
<b>Regional</b>	Has the meaning ascribed to it under

<b>Prosecutions Officer</b>	the National Prosecutions Service Act.
<b>Suspect</b>	is used to describe a person who is under consideration as the subject of formal criminal proceedings.
<b>Supervisor</b>	Means the Director of Public Prosecutions, Deputy Director of Public Prosecutions, Head of Legal division and sections, Regional Prosecutions Officer, District Prosecutions Officer and Prosecutions Attorney In-charge.
<b>Victim</b>	is used to describe a person against whom an offence has been committed or the complainant in a case being considered for prosecution.
<b>Tainted Property</b>	has the meaning as ascribed to it under the Proceeds of Crime Act, Cap 256
<b>Pecuniary Penalty Order</b>	Has the meaning ascribed to it under the Proceeds of Crime Act, Cap 256
<b>The Threshold Test</b>	Means the test applied by prosecutors in order to charge a suspect upon reasonable suspicion and where there is a reasonable prospect of additional evidence being available.

# PART I

## 1.1 INTRODUCTION

The decision to charge guidelines and related matters apply in all criminal matters that a prosecutor need to make decision to charge or drafting legal opinion or issuing of directives to investigators on further investigation or closure of investigation file. These guidelines intend to strengthen and upgrade the existing directives on decision to charge incorporated in the Prosecutions General Instructions for State Attorneys and Prosecutors that existed since 2008.

The guidelines set the powers and functions of the DPP in decision to charge that stem from the Constitution and operationalized by the National Prosecutions Service Act. These powers and functions are the very foundation of having decision to charge in place to guide the prosecutors on the standards expected of them while dispensing their prosecutorial duties in the administration of Justice.

The guidelines cover the powers of the DPP, DPPs delegation of powers, compliance, professionalism and accountability, the decision to charge and prosecutors opinion, stages in decision to charge, directives to law enforcement, selection of charges, plea bargaining, bail, revisions and appeal among other things.

The guidelines are not exhaustive and must be read together with applicable existing laws, regulations, rules, policies, DPP's other guidelines, instructions and manuals to State Attorneys and Prosecutors.

## **1.2 POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

Article 59 B of the Constitution of the United Republic of Tanzania empowers the-DPP to institute, prosecute and supervise all criminal prosecutions in the country. In line with the powers vested to the DPP under the Constitution, sections 9, 17 and 25 of the NPSA mandates the DPP decided whether to prosecute or not to prosecute, to prosecute and supervise all criminal prosecution as well, and to coordinate investigation.

Further section 25(2) of NPSA empowers the DPP in consultation with the Investigative organs to develop guidelines to facilitate the effective participation of the DPP in the investigative process.

The power to institute, prosecute and supervise all criminal prosecutions in Mainland Tanzania represents a significant responsibility on the part of the State. These powers must be exercised objectively, independently and impartially in the administration of criminal justice.

### **1.3 COMPLIANCE, PROFESSIONALISM AND ACCOUNTABILITY**

All State Attorneys and Public Prosecutors have a legal duty to comply with all the guidelines and instructions issued by the DPP in respect of conduct of investigations and prosecutions and by exhibiting high level of competence throughout. Failure to adhere to the guidelines may lead to internal disciplinary action and in serious circumstances may lead to a criminal prosecution.

In exercising the decision of whether or not to charge a criminal case, the DPP shall give due regard to the following factors as identified in the Constitution:

- a. The need to dispense justice,
- b. The prevention of misuse of procedures for dispensing justice, and
- c. The public interest.

The National Prosecutions Service Act, Cap 430 operationalizes Constitutional provisions by providing for the following functions of the DPP:

- a. To decide to prosecute or not to prosecute in relation to any offence.
- b. To take and conduct criminal cases on behalf of the sovereign of the United Republic, the Central Government, independent

departments, executive agencies, and the local government.

- c. To coordinate and supervise criminal investigation and conduct of criminal prosecution in courts of law other than court-martial.
- d. To issue directives to any public officer performing functions relating to the conduct of criminal prosecution in courts of law.
- e. To direct the police and other investigative organs to investigate any information of a criminal nature and to report expeditiously.

In exercising these functions, prosecutors must be fair and objective. They must not let any personal views about ethnic or national origin, gender, disability, age, religion, belief of the accused, victim or any witness, influence their decisions. Neither must they be motivated by any political considerations. Prosecutors must always act in the interests of justice and not solely for the purposes of securing a conviction.

Prosecutors must apply the principles enshrined under the Constitution regarding the conduct of a fair trial. Similarly, they must comply with any guidance issued by the DPP which includes but not limited to the guidelines on code of ethics, money laundering, corruption and related offences, terrorism, wildlife, witness care and protection, mutual legal assistance, extradition requests, cyber and computer related

offences, forestry, and any other guidance issued from time to time.

It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice whenever possible. Prosecutors must ensure that the law is properly applied, and that relevant evidence is put before the court. This task requires calm, calculating and informed prosecutor who is able to carefully and dispassionately evaluate the evidence before arriving at such decision.

These Guidelines applies to all prosecutors within the NPS as well as any prosecutor exercising a delegated power of prosecutions or those instructed to do so, on behalf of the DPP. Failure to adhere to the guidelines may lead to internal disciplinary action and in serious circumstances may lead to criminal prosecution.

## **PART II**

### **2. THE DECISION TO CHARGE**

The decision to charge is the determination by the prosecutor as to whether evidence availed by an investigator or investigative agencies is sufficient to warrant the institution of criminal proceedings in court of law against the accused person.

The decision to charge or not to charge is a critical step in the criminal justice process and it is the bedrock of any prosecutions. It requires an objective and independent analysis of the case. These guidelines set out the basis for that decision and is applicable to all agencies with powers of prosecution. It is essential that all agencies holding this important power should apply the same standard, consistently and transparently.

The decision to charge is the prosecutor's determination as to whether evidence availed by an investigator or investigative organ is sufficient to warrant the institution of prosecution against an accused person in a Court of law. Due to its intrusive nature and potentially adverse effect of the decision on the life, liberty, or property of an accused person, it is vital that this decision is taken with the utmost care.

## 2.1 Making the decision to Charge and the Prosecutor's Opinion

In discharging this noble function, the prosecutor and investigator should work closely together although, ultimately, the final responsibility for making the decision rests with the prosecutor, who must assess whether it is appropriate and what charge to prefer for a court to consider.

All decisions by a prosecutor whether or not to prosecute and the reasons for such a decision must be conducted and written in accordance with these guidelines. In all cases prosecutors must complete and **endorse Legal Opinion** and file the same in the relevant prosecution file so that it is clear on the records of file that the case has been considered in accordance with these guidelines and all appropriate laws and processes.

If a prosecutor proposes to charge after considering the evidential test stage, he should proceed to prepare a draft of the charge, facts for preliminary hearing and a prosecution plan (**see the annexed prosecution plan template as Appendix DC4**) after being authorised to do so by supervisor.

Prosecutors should note that there are cases require prior authorisation from the DPP before institution of the case. e.g., terrorism, treason, etc., Offences that require such consent may change and so prosecutors

must keep themselves up to date with the law, policy and practise directives.

If a prosecutor forms an opinion that there is a need for further investigation before deciding to charge, he should advise the investigative organ about possible reasonable lines of inquiry, evidential requirements, and the overall investigation strategy. This can include decisions to refine or narrow the scope of the criminal conduct, and the number of suspects under investigation. Prosecutors should identify and, where possible, seek to rectify evidential weaknesses.

Any requests for further investigation must be set out clearly as an Action Plan for investigators to complete. An Action Plan must list each action required as a clear and separate bullet point. Each item requested must have a specific deadline for a response. This is essential to give clarity about what is required and deadlines to avoid delays.

Investigators are responsible for the recording and tracking of the directives given in the Action Plan and the investigative organ should allocate sufficient resources to complete them. If the deadlines may not be met the investigator must respond immediately to the prosecution so that this may be resolved.

After completing the directives in the Action Plan, the investigator should respond to the prosecutor providing a response to each of the directives which

were given. If it has not been possible to complete a direction then this must be explained including alternatives considered.

Each Regional or District Prosecutions Office should establish with the law enforcement a process by which issues of non-compliance with the directives given to the law enforcement are identified, reviewed and resolved by supervisor and law enforcement.

If the investigator fails to comply with the action plan as agreed with the assigned prosecutor(s), within the agreed deadline, the failure shall be reported to the investigator's supervisor and require the investigator to comply within 3 days.

If a prosecutor decides not to charge, reasons shall be given in writing, and where appropriate, the Investigator and the victim shall be consulted before making such a decision.

### **2.1.1 Standard Required in Making Decision to Charge**

The standard required in making decision to charge is whether there is enough evidence and reasonable prospects of conviction. The prosecutor must consider key evidence and certain minimum requirements of the file which would apply depending on which test is applied.

### 2.1.1.1 Minimum Requirements of an Investigation File

It is the responsibility of the investigator to provide all relevant information to the prosecutor to make the correct decision on whether or not a person should be charged. If the correct material is provided at the decision to charge then the prosecutor can build a strong, fair and efficient prosecutions.

The investigation file submitted to the prosecution must contain all key evidence and meet the minimum standards requirement as set out in the **Police General Order, 2021 Order 286**. Thus, prosecutor is duty bound to ensure that the minimum standards set out in the order are complied

It is also the duty of the investigator to include information which may support the suspect's defence or otherwise weaken prosecution's case. For example, information which may support the account of a suspect could include evidence supporting a defence such as alibi, wrongful identification, self-defence or lack of criminal intent.

The Investigation file to be submitted for a Two Stage Test must contain the following minimum requirements;

- a. The First Information Report
- b. The Investigation Diary

## **Statements**

The file should include all key statements relevant to proving the case which shall include but not be limited to:

- c. the statements of the complainants or/and first responder
- d. Statements from any other witnesses who gives direct evidence of any element of the offence.
- e. Statements from police officers who have witnessed any aspect of the offence, arrest, identification of suspect or chain of custody or conduct of investigation.

Statements of Expert Witnesses e.g., government chemist, medical experts, forensic analysts, ballistic expert, handwriting expert etc.

## **Exhibits**

- f. Documentary exhibits: including certificate of seizures, search warrants, medical reports, post-mortem reports, criminal record certificates, asset inventory, chain of custody documents, sketch map
- g. Investigation Plan
- h. Physical Exhibits (to be recorded or listed in the index sheet). For any physical exhibit, there should be enough and verified information to identify the physical location of any exhibits not included in the file.
- i. Digital and electronic evidence; for example, CCTV footage or extractions from electronic devices. The file must indicate

- whether relevant electronic material exists (e.g., CCTV footage, recordings, device extractions).
  - show the date the electronic evidence was requested and the expected timeframe for obtaining it.
  - reflect steps taken to preserve and safeguard the electronic material to maintain evidential integrity.
- j. Financial records and assets. The file must contain;
- Financial documents relevant to the case.
  - Include details of any assets considered relevant for potential forfeiture or confiscation

**The account of the suspect and any material which may undermine a prosecution or support any defence of the suspect including:**

- k. Any denial, admission or comment made by the suspect to police officers
- l. Any written statement of the suspect
- m. The record of the account of the suspect to police interview either recorded in writing or on audio
- n. Any witness statements from persons whose evidence undermines a prosecution or supports the defence. If they are not willing to provide a statement then a copy of the record of their account should be given and highlighted in the investigators report.

## Other

- o. Index sheet containing the list of witnesses, suspects, exhibits and other relevant evidence or information obtained in the course of the investigation.
- p. Investigators Report to the Prosecution

A file which does not meet the minimal requirements the prosecutor may convene a round table discussion with an investigator and resolve the pending issues.

If a decision to charge is required for a Threshold Test (**see below section 2.2.3 for details**) then not all material may be available. **See section 2.1.1.1 above** for what material should be provided.

Prosecutors must only start or continue a prosecution where the case has passed BOTH stages of the Two-Stage Test. The exception is where the 'Threshold Test') may be passed (*see 2.2.3*).

## 2.2 The Decision to Charge Tests

The prosecutor when making decision to charge applies the Two-Stage Test, a structured assessment designed to ensure that criminal charges are brought only where there is a sound evidential basis and where prosecution aligns with the broader public interest. This test consists of the **Evidential Test** and followed by a **Public Interest Test**, both of which must be satisfied before any case can proceed.

The Two Stage Test should only be applied in the following circumstances:

- a. When all outstanding reasonable lines of investigation have been pursued, as may or may not be directed or guided by the prosecution; or
- b. 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 prosecution.

### **2.2.1 The Evidential Test**

Prosecutor must be satisfied, that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge, in other words, that there is a 'prima facie case' established. The standard of proof required at this stage is lower than that required of the trial court which is 'beyond reasonable doubt.

When deciding whether there is sufficient evidence to prosecute, prosecutor 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:

- 2.2.1.1 **Relevance** - A prosecutor should assess whether the evidence tends to prove or disprove an element of an offence.
- 2.2.1.2 **Admissibility** - Admissibility is the quality of evidence that makes it capable of being legally admitted, allowable or permissible in court. Admissible evidence is therefore evidence that is relevant and is of such character that the court should receive it.
- 2.2.1.3 **Reliability** - 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 prosecutor must be aware of the special need for caution and may visit locus in quo depending on the circumstances of the case.
- 2.2.1.4 **Credibility** - Credibility is the quality that makes something (as a witness or some evidence) worthy of belief. Prosecutors should assess whether there is need to have a face-to-face interview with the witness upon discovering any reasons to doubt the credibility of the evidence

based on the evidence on the investigation file.

**2.2.1.5 Rebuttal evidence** -whether anything raised by the defence at this point, negates or undermines the prosecution's evidence - and the extent to which that affects the prospect of conviction.

It is important to note that a case that does not pass the evidential test **must not** proceed. The only exception to this is where the "Threshold Test" applies.

## **2.2.2 The Public Interest Test**

It has never been the rule that prosecution must automatically take place once the evidential test is met. Prosecutor must then go on to consider whether it is in fact in the public interest to pursue prosecution or not. There may be some cases where the prosecutor is satisfied that the public interest can be properly served without a prosecution for example by seeking an order to keep the peace, or where there are factors that suggest a prosecution is not necessary for the public interest.

Factors to consider whether it is in the public interest to charge are dynamic. However, in general, the common principles include, but are not limited to:

**2.2.2.1 How serious is the offence committed?** 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 such as:

- a. The suspect's level of involvement in commission of the offence;
- b. The extent to which the offence was premeditated and/or planned;
- c. The extent to which the suspect has benefited from the criminal conduct;
- d. Where the suspect is in a position of trust or authority in relation to the victim;
- e. The prevalence of that particular offence and the need for greater deterrence through the criminal justice process; and
- f. Where the suspect is a repeat offender or has committed the offence or other offences whilst on bail or whilst subject to a court order.

**2.2.2.2 Impact or harm to the victim.** 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 testimony of the victim.

**2.2.2.3 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; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.

**2.2.2.4 The suspect's age and maturity at the time of the offence.** The best interests and welfare of the child must be carefully 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. The criminal justice system treats children differently from adults and so prosecutors must have regard to the obligations arising under the Law of the Child Cap. 13 and the Law of the Child (Juvenile Court Procedure) Rules 2016.

**2.2.2.5 Impact on the community.** The greater the impact of the offending on the community, the more likely a prosecution is required. 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., Gender Based Violence, Corruption Cases, Environmental Protection etc.

**2.2.2.6 Whether prosecution is a proportionate response.** Here the prosecutor should consider if prosecution is proportionate to the resources likely to be invested in pursuing a prosecution. Costs can be a relevant factor but must be balanced against the other public interest factors. In some circumstances, civil or administrative action may be the most appropriate recourse. Where such an action is already in play for essentially the same circumstances or involving the same parties, the prosecutor must take care that the criminal justice system is not used to press an advantage in the civil courts.

**2.2.2.7 Whether sources of information require protection as well as witnesses:** Whether prosecution would require or cause the disclosure of information that would be injurious to international relations, national defence, national security, integrity of the Government should not be disclosed in the public interest.

Here the prosecutor should consider to take Special Measures in cases where the prosecution may lead to reveal sources of information that may harm ongoing investigations, international relations, or national security. It is essential that such cases are kept under continuing review.

Whether prosecution is likely to affect public order and morals or on public confidence in the administration of justice.

Prevalence of the alleged offence in the community and the need for general and specific deterrence.

Any other relevant factor the DPP may direct.

### 2.2.3 Threshold Test (“TT”)

Threshold Test “TT” is applied by prosecutors to decide whether a suspect should be charged, before all evidence is fully available at the time when the file is submitted to make a decision to charge. It acts as an exception to the two-stage test.

The application of Threshold Test, permitting a charge when evidence is not yet complete is strictly discouraged and may only be employed in narrowly defined circumstances recognised under the Criminal Procedure Act, Cap 20 the National Prosecutions Service Act, Cap 430.

Only in the above circumstances may a prosecutor apply the following four conditions of the Threshold Test’ which must be met. If any are not met, the suspect cannot be charged.

**2.2.3.1 First condition** – The prosecutor is satisfied that on objective assessment of the evidence, there are reasonable grounds to suspect that the person to be charged has committed the offence. The

assessment must consider the impact of any defence or information that the suspect has put forward or on which they might rely; In determining whether there are reasonable grounds to suspect, prosecutors must consider all of the material or information available, whether in evidential format or otherwise. Prosecutors must be satisfied that the material to be relied on at this stage is capable of being:

- a. Put into an admissible format for presentation in court (Relevance),
- b. Reliable, and
- c. Credible.

**2.2.3.2 Second condition** – The prosecutor is satisfied that further evidence can be obtained to provide a realistic prospect of conviction, within a reasonable period of time, so that when all the evidence is considered together, including material which may point away a particular suspect, it is capable of establishing a realistic prospect of conviction in accordance with the Two-Stage Test. In applying this consideration, the prosecutor must be satisfied that:

- a. The likely further evidence must be identifiable and not merely speculative;

- b. The nature, extent and admissibility of any likely further evidence and the impact it will have on the case.
- c. The charges that all the evidence will support.
- d. The reasons why the evidence is not already available.
- e. The time required to obtain the further evidence does not exceed prescribed time limits on investigation under the Criminal Procedure Act.
- f. Whether the delay in applying the Two-Stage Test is reasonable in all the circumstances.

**2.2.3.3 Third condition** - The seriousness or the circumstance of the case justifies the making of an immediate charging decision.

**2.2.3.4 Fourth condition** - It is in the public interest to charge the suspect. Prosecutors must apply the public interest stage of the Two Stage Test based on the information available at that time. If the four conditions apply and Charging decision is appropriate then the investigator must provide to the prosecutor all relevant and available material to enable an informed charging decision to be made. It is not likely that all evidence to prove evidential test will be available at this stage.

However, the minimum that must be provided are:

- a. All available key evidence or information that raises reasonable grounds to believe that the suspect has committed the offence.
- b. An Investigation Summary. This summary must contain a description of all outstanding lines of enquiry and anticipated deadline to obtain further evidence.

Where a charge is based on the Threshold Test, the Prosecutor's Opinion shall expressly state that the Threshold Test is being applied pending receipt of further information, with a view to applying the **full two-stage test** at the earliest opportunity.

The Prosecutor shall set out, in the Action Plan (**Form DC1**), all outstanding investigative actions and the timelines for compliance.

If the investigator determines that any required material will not be available or that the specified timelines cannot be met, the investigator shall notify the Prosecutor immediately.

#### **2.2.4 Reviewing Decisions based on the Threshold Test**

Once a charging decision is made under this Test, even where the court grants bail, the decision to charge will still stand. However, a decision to charge under the Threshold Test must be kept under review. The prosecutor should be proactive to secure from the

investigation organ the identified outstanding evidence or other material in accordance with the action plan. The evidence must be regularly assessed to ensure that the charge is still appropriate.

The Two Stage Test must be applied as soon as the anticipated further evidence or material is received and, in any event, before the formal service of the investigation file. If that further evidence is not forthcoming, or it becomes known to the prosecutor that the evidence does not meet the required standards, a review with a view to withdraw the case must be conducted without delay.

### **2.2.5 Directives to Investigative Organ**

Early and continued engagement between prosecution and investigative organ are essential to the proper and effective delivery of criminal justice. Certain categories of offences necessitate the exercise of specific statutory powers and the making of formal applications, particularly in matters involving mutual legal assistance and extradition, or where interim orders are required to preserve the proceeds of crime from dissipation pending the determination of criminal trial.

Prosecutors should work in a collaborative fashion with investigative organs whilst always maintaining their independence and objectivity. In directing or guiding an investigation, particularly when applying the "*Threshold Test*" above, prosecutors must give

directives that are clear, precise, realistic and time bound.

### **2.2.6 Selection of Charges**

Selection of charges is a process by which a prosecutor evaluates the evidence in the investigation file and decides which specific offence or offences under the law should be preferred against the suspects(s).

The process is executed when the prosecutor has assessed the evidence on file based on which has made the decision to charge the suspect, then he has to frame the charges appropriately for court.

Prosecutors should select charges basing on the factors which:

- a. Reflect the seriousness and extent of the offence;
- b. Give the court adequate powers to sentence and impose
- c. Allow for requisite orders to be made in cases with asset recovery potential, prelude to forfeiture to the State or identifiable victim. Asset recovery is to be made in appropriate cases, where an accused has benefitted from criminal conduct, with particular regard to any guidelines issued by the DPP on asset forfeiture and recovery; and

- d. Enable the case to be presented in a clear and simple way.

Where an act or omission is an offence under more than one law, a prosecutor shall consider charging the suspect under a specific law. Provided that where one law provides for a stiffer sentence than the other, the prosecutor shall charge the suspect under the law providing for a stiffer sentence.

Prosecutors must take into account of any relevant change in circumstances as the case progresses after charge.

If offences are founded on the same facts or a part of a series of offences of the same or similar character, prosecutor must have regards to **section 136** of the Criminal Procedure Act. In case of joinder of persons, prosecutor must have regards to **section 137** of the Criminal Procedure Act. In case the joinder of counts and, or suspects is impossible, the prosecutors must identify and correctly consider the number of files to be submitted to deal with the number and type of suspects.

Where an accused is to be jointly charged with a juvenile, for an offence or offences concerning conduct founded on the same facts or forming part of a series of offences of a same or similar character, the prosecution should, at the earliest opportunity, seek a pre-trial with the court to ensure the application of **the Law of the Child (Juvenile Court Procedure) Rules 2016**; and should robustly resist any application

by an adult accused to sever the trial to avoid a waste of public resources in having the same trial, twice.

### **2.2.7 Consent to Prosecution**

The Prosecutor shall ensure full compliance with all applicable laws, as well as any instructions or guidelines issued by the Director of Public Prosecutions (DPP), in respect of offences that require the DPP's consent for prosecution, whether such consent is granted personally by the DPP or by an authorised officer acting on his behalf.

Where the charges comprise a combination of economic and non-economic offences, the Prosecutor shall ensure that the Certificate Conferring Jurisdiction cites the correct and applicable provision of the law, namely **section 12(3) or section 12(4)** of the Economic and Organised Crimes Control Act, [Cap. 200 R.E. 2023], as appropriate.

The Prosecutor shall further identify and confirm those offences for which consent must be issued personally by the DPP and those for which consent may be issued by a delegate, in accordance with the **Consent to Prosecute (Delegated Powers) Regulations, 2019**.

### **2.2.8 Drafting of Charges**

Prosecutors shall draft charges with precision and simplicity, avoiding duplicity, and shall use the relevant statutory language to ensure that each charge

clearly and fully discloses the offence and its particulars.

In doing so, Prosecutors shall give due regard to sections 135 to 138 of the Criminal Procedure Act and shall substantially comply with the established charge templates, including those set out in the Second Schedule to the Criminal Procedure Act and those provided in applicable guidelines, such as for wildlife, forestry, cybercrimes, fisheries offences, and corruption and related offences.

Without prejudice to the sample charges contained in the specific guidelines, a limited number of sample charges are annexed to this Guideline as **Appendix DC3**.

### **2.2.9 Continuing Duty to Review**

Prosecutors must review every case file they receive from the Police or other Investigation organs. Review is a continuing process, and prosecutors must take account of any change in circumstances that occurs as the case develops. This may include:

- a. What becomes known of the accused's case as the matter progresses;
- b. Any further lines of inquiry that should reasonably be pursued;
- c. The receipt of further evidence or information that may have a bearing on the

sufficiency of evidence or the public interest test;

- d. Where evidence adduced by the prosecution during the trial fails to come up to proof;
- e. Where a trial has started, and prosecution witnesses fail to attend on at least two occasions; and
- f. Where the victim of a minor crime indicates that they wish to withdraw their complaint. This does not always mean that the case will end as in some cases, the public interest will demand a prosecution and the witness may have to be summoned and even potentially treated as hostile.

However, the responsibility for the decision whether or not to proceed rests with the prosecutor's supervisor.

### **2.2.10 Deciding to Charge**

Where upon applying either the Threshold Test or the Two Stage Test, a decision is made not to charge, this decision shall be communicated in writing, to the Investigating Officer setting out the reasons why and containing advice as to what to communicate to the victim. This should be done within fourteen (14) days of the making of the decision. If a longer period is required due to the complexity of the case, this should be communicated and agreed with a supervisor.

Where prosecutors are requested by victims, family members of deceased persons, accused persons or their representatives to provide reasons for a decision not to prosecute, this should be communicated in a written letter and approved by a supervisor.

### **2.2.11 Review of the Decision to Charge**

Occasionally there are cases where the prosecutor will overturn a decision not to charge or to deal with the case by way of an out-of-court disposal. This will usually be triggered by further evidence or information that comes to light. These cases include:

- a. Cases where a further review of the original decision shows that there was an oversight in decision making and, in order to maintain confidence in the criminal justice system, charges should be instituted;
- b. Cases which charges were not filed for lack of sufficient evidence but where more significant evidence is discovered later; and
- c. Cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought.

### **2.2.12 Recording Decisions**

All reviews conducted by the prosecutor must be in writing and recorded or appended to the prosecution file. Similarly, any endorsement on the file and any record of judgments, orders, comments, and evidence

taken during proceedings must be clearly and legibly recorded.

### **2.2.13 Confidentiality of Review**

Written reviews are internal forms and **MUST NEVER** be given to unauthorised persons under any circumstances. They are subject to legal professional privilege between the Law Enforcement Organs and the National Prosecutions Service.

## PART III

### 3.1 ACCEPTANCE OF GUILTY PLEA, PLEA BARGAINING AND WITHDRAWAL OF CHARGES

Accused persons may wish to plead guilty to some, but not all, of the charges. Alternatively, they may plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime - for example, where the prosecution have charged murder but the accused wishes to plead guilty to manslaughter.

Prosecutors must be familiar with the Plea-Bargaining Guidelines issued by the DPP, as read together with the Criminal Procedure (Plea Bargaining Agreement) Rules issued by the Chief Justice, and sections 201 to 208 of the Criminal Procedure Act. A plea agreement may be entered between the Prosecutor and an accused person where an accused person has been charged in court and at any time before the court passes judgment. Care should be taken when the accused is unrepresented - the Plea-Bargaining Guidelines offer guidance on this scenario.

Prosecutors should only accept the accused person's plea if:

- a. the court is able to pass a sentence that matches the seriousness of the offence,

particularly where there are aggravating features;

- b. it enables the court to make a confiscation order in appropriate cases, where an accused has benefited from criminal conduct, and
- c. it provides the court with adequate powers to impose other ancillary orders, bearing in mind, that these orders cannot be granted in all offences.

Care must be taken when considering pleas which would enable the accused to avoid the imposition of a mandatory minimum sentence.

Prosecutors must never accept a guilty plea to a lesser charge, just because it is convenient.

In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are considered when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor's supervisor.

After the court convicts the accused, the prosecutor should be proactive in making sentencing submissions, highlighting any relevant aggravating and mitigating factors; this is because the prosecutor is supposed to be impartial and objective throughout these proceedings.

### **3.2 WITHDRAWAL OF CHARGES**

Prosecutors may at any stage before judgment withdraw cases in court under sections 92 for the State Attorney or section 99 for appointed public prosecutors in the subordinate courts, with the instructions of the DPP.

Prosecutors shall not withdraw or amend cases without a prior written consent of their supervisors.

In case of any amendment to the charges which can take place at any stage before judgment, a prosecutor must consult his/her supervisor before making any such amendments.

These decisions should be made in consultation with the investigator and as far as possible, should consider the views of the victim. However, the decision and responsibility lie on the prosecutor's supervisor.

### **3.3 CONSIDERATION IN RELATION TO EXHIBITS**

Prosecutor must also ensure that relevant exhibits are tendered before the court; this may involve asking the court to move where the exhibits are held. This is vital to ensure that the necessary orders for forfeiture and disposal are made. Failure to do so may result in the instrumentalities and proceeds of crime being returned to the accused person and may result to

unnecessary costs on the part of the State in maintaining or looking after those exhibits.

Where cases involve exhibits that consist of livestock or which are subject to 'speedy and natural decay', regard must be made to section 375 of the Criminal Procedure Act, section 38 of the Drug Control and Enforcement Act, Cap 95, section 101 of the Wildlife Conservation Act Cap 283, and any other relevant laws applicable in pretrial disposal of exhibits.

## PART IV

### 4. BAIL

A prosecutor must carefully consider whether or not to oppose bail and persuade the court that a suspect or accused person's right to bail should be curtailed in line with Article 15 of the Constitution and in accordance with the Bail Guidelines issued by the Judiciary of Tanzania. Certain laws will also have application such as section 151(5) of the Criminal Procedure Act and section 36(4) of the Economic and Crimes Control Act Cap 200, section 30 of the Drug Control and Enforcement Act, Cap 95 and section 16 of the Primary Court Criminal Procedure Code. Prosecutors must be familiar with all of these laws and guidelines.

Prosecutors should remain objective when assessing an investigating officer's opposition to bail.

The Prosecutors should understand that making bail decision is a crucial stage in the administration of criminal justice. The decision-making process for aailable offence should entirely be about enduring good behavior during the bail period and ensuring attendance to court. At this stage it is not about guiltiness or innocence of the accused person. The Prosecutor may consider objecting bail on the following factors;

- a. The suspect would fail to attend trial. Factors would include the seriousness of

- the offence and the severity of any likely sentence (as an incentive to abscond), where the suspect has no community ties, no family ties, or no fixed place of abode, or has previously absconded;
- b. That the suspect is likely to interfere with witnesses or the conduct of investigations.
  - c. That the suspect is likely to commit an offence whilst on release;
  - d. That detention is necessary for the suspect's own protection; or
  - e. preservation of public order.

If the Court grants bail despite prosecution objections, the Prosecutor must consider whether to lodge an appeal against that decision. See section 164 of the Criminal Procedure Act, Cap.20

Where the accused person is a child, prosecutors should have regard to the best interests of the child and should be proactive in seeking the support of a social welfare officer where there is no suitable parent or guardian available.

## PART V

### **5. DISCLOSURE OF EVIDENCE**

An accused person has a right to know the case against him to the extent that he can properly prepare his/her defence. This is a fundamental principle of any fair trial where the might of the State is brought to bear upon an individual. The consequences of a prosecution are serious. The duty of disclosure that rests solely on the part of the prosecution represents an intention to enable equality of arms in proceedings.

#### **5.1 Subordinate courts and the duty to disclose evidence to relied upon at trial.**

For trials in the subordinate courts, the prosecutor is duty bound to disclose to the accused the statements and documents of the person(s), if he or she is intended to be called as a witness during the trial, as provided by law.

#### **5.2 The High Court and the duty to disclose evidence to relied upon at trial.**

In the High Court, there is an obligation to avail all the evidence that the prosecution intends to rely to the accused under section 262(7) and 263 (2) of the Criminal Procedure Act, Cap 20, and section 29 of the Economics and Organized Crime Control Act, Cap 200. This should be done at the committal stage and so prosecutors must endeavor to have a full review

conducted and identify those statements to be supplied.

Where the prosecutor wishes to rely on evidence that has not yet been disclosed during the committal, reasonable notice to the accused must be given under section 308 of the CPA. The court will then determine what notice is deemed 'reasonable' considering all the relevant circumstances surrounding the obtaining of that further evidence and the reasons for the delay, if any.

### **5.3 Juvenile Courts and the duty to disclose evidence to be relied upon at trial**

In the Juvenile Court, there shall be a disclosure of all evidence to be relied upon, to the accused person before the preliminary hearing as per Rule 36 (1) (2) and (3) the Law of Child (Juvenile Court Procedure) Rules 2016.

### **5.4 Deciding what to disclose.**

In order to decide what to disclose for this purpose, the prosecutor must have conducted a thorough review of the evidence, make an assessment of witness protection consideration in liaison with investigator, consider potential details that may lead to interference of witnesses, applying the principles under the Guidelines on the Decision to Charge, and bearing in mind the fundamental rights

of a fair trial as stipulated under Article 13 (6) (a) of the Constitution in particular, that the accused must:

- (a) Be informed of the charge, with sufficient detail to answer it;
- (b) To have adequate time and facilities to prepare a defence;
- (c) To have the trial begin and conclude without unreasonable delay; and
- (d) To be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence.

The prosecutor must conduct a thorough scrutiny of the investigation file in order to determine what is going to be disclosed, for what purpose and its effect in the prosecution of the case against the accused.

At the time of plea taking, as a minimum, and following an application of the Two-Stage Test, the prosecutor must ensure that the charge is drafted with sufficient details and in simple language in order for the accused to understand, answer and decide on plea, and consider his defence. This is 'initial disclosure'. Subsequent disclosure of statements as outlined above should take place well in advance of trial in order to ensure the accused as adequate time to prepare.

Where a decision to charge is made under the "threshold test", disclosure of the evidence should

be deferred until the completion of the outstanding areas of investigation. Upon the completion of the outstanding areas of investigation, a further review of the evidence must be completed as soon as possible thereafter, and upon being satisfied that the Two-Stage test has been met, the prosecutor shall disclose the evidence depending on where the trial is taking place.

When disclosing statements of witnesses, the prosecutor should ensure that the witness' address and telephone number are redacted (blacked out) unless the address or telephone number is a relevant fact in issue in the trial. This is to ensure that witness or victim safety is not compromised and to mitigate the risk of interference, intimidation, or corruption of State witnesses.

## **PART VI**

### **6. APPEALS, REVIEW AND REVISION**

The decision to appeal against acquittal or sentence, or to seek an appeal or revision of order (save for interlocutory order) or finding should be exercised with extreme care and only with consultation with a supervisor. This should be undertaken without delay, and a written review justifying the decision to appeal should be conducted as soon as possible.

#### **6.1 Appeal**

The decision to appeal should only be made when there is an erroneous decision based on law or fact, or both. A written opinion must be submitted setting out the basis for pursuing this course of action.

#### **6.2 REVIEW**

Review is a remedy that a prosecutor can exercise in accordance with Tanzania Court of Appeal Rules, 2009. Prosecutors should be proactive in anticipating legal challenges and should be advancing the correct law and procedure before an order is made by the court. In exercising this power, prosecutors need to act quickly. If the order appears illegal or incorrect, the prosecutor should diplomatically and courteously draw the courts attention to the problem and invite the court to reconsider. In this way, problems can be

handled without the need for a formal review or revision.

### 6.2.1 Factors to consider

In deciding to seek a review of an order, judgment or findings, the prosecutor must identify whether:

- a. The decision was based on a manifest error on the face of the record resulting in the miscarriage of justice;
- b. A party was wrongly deprived of an opportunity to be heard;
- c. The court's decision is a nullity;
- d. The court had no jurisdiction to entertain the case; or
- e. The judgment was procured illegally or by fraud or perjury.

The prosecutor shall lodge an application for review which must be filed **within prescribed time** from the day of judgment or the order on which a review is sought.

## 6.3 REVISIONS

Revision is a remedy that a prosecutor can exercise in accordance with section 394(2) of the Criminal Procedure Act. The grounds for a revision must be clearly identified. Note that revision cannot be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision

or order has the effect of finally determining the criminal charge. As with the case concerning reviews, the prosecutor should be proactive in advancing the correct law and procedure; it is better to avoid the problem arising in the first place. However, where it appears that an error has been made, the prosecutor must act quickly in seeking a revision if that is appropriate course.

### **6.3.1 Factors to consider**

When deciding if the order or finding is improper or incorrect, the prosecutor must identify if the court has:

- a. Improperly exercised its discretion;
- b. Failed to take into account a material consideration;
- c. Has taken into account an immaterial consideration; or
- d. Has exercised discretion in a way that no reasonable, sensible court would do in the same circumstances when presented with the same facts.

Once the ground has been identified, the prosecutor must also assess the likelihood of the High Court reversing or amending the ruling as well as the impact of such a ruling.

As with all such decisions, consultation must be had with a supervisor. Where time does not allow this, the prosecutor should alert the court of the intention to seek a revision and should seek an adjournment and move as soon as possible to submit the application.

## **PART VII**

### **7. STATUS AND COMPLIANCE**

#### **7.1 LEGAL STATUS OF THE GUIDELINES**

These Guidelines have been issued under Sections 19 and 25 of the National Prosecutions Service Act. They are internal administrative directives therefore mandatory to all prosecutors and investigative organs handling criminal cases.

#### **7.2 NON-COMPLIANCE WITH GUIDELINES**

Any violation or non-compliance with these Guidelines shall be reported to the DPP.

After receiving the report for non-compliance of the Guidelines, the DPP may issue or cause to be issued appropriate sanctions, in addition to those stipulated in the Code of Professional Conduct and Etiquettes for Public Prosecutors of 2023.

## APPENDICES

### Appendix 1 - (Form DC 1) Recommendation and Action plan for investigation

ACTION PLAN	
Case Reference Number	
NPS Case file Number	
Police Station/ Investigation Organ	
Name of the Investigator	
Name of Prosecutor	
Assignment Date	
Name of Suspect(s)/ Accused(s)	

Action Plan for investigators to do (Set out in clear points with target dates what is required by the police/ investigators and why)	
1.	
2.	
3.	
4.	
5.	
6.	

<b>Prosecutor certification</b>	
Name of Prosecutor	
Date	
Signature	

<b>Officer In charge of Prosecution/Supervisor Comments</b>	
Name of Supervisor	
Date	
Signature	

## Appendix 2 - (Form DC 2) Things to consider when writing legal opinion

No.	Parts of Opinion	What to be included
1.	Introductory part	State briefly and clearly what is the subject matter, description of the suspects and victim. This should be a very short statement in general terms to tell the reader what are the allegations and area of law violated. Example; whether the opinion deal with murder, Rape or Robbery.
2	Facts	Material facts shall be extracted from the evidence gathered and documents reviewed from submitted from case file. Material facts extracted shall be accurate, comprehensive, clear, precise and composed in order to make the reader understand the subject matter in question.
2	<b>Legal issues</b>	The statement of issues to be addressed in the legal opinion, these issues shall be formulated in a manner that determines the legal principles to be applied. The issues shall

		<p>be listed in logical order and numbered consecutively and precise.</p> <p>These set of questions relating to the law need to be answered before any advice can be given.</p>
3	<b>Analysis of legal issues</b>	Each legal issue should be examined in sequence with reference to court decisions, legal texts and statutes for each separate legal issues and there should be a corresponding analysis
4	<b>Legal Opinion</b>	This draws up the conclusion from the analysis and sets out the formal legal opinion in detail addressing al the questions raised.
5	<b>Recommendation and conclusion</b>	This should tell the reader what the writer recommends as the practical cause of action to be taken to deal with the issues raised, for example; further investigation, charging the suspects, withdraw the case etc.
6	Dated and signature of the writer	

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**Appendix 3 - (Form DC 3)**  
**MODEL CHARGES**

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**FALSE PRETENCES**

**STATEMENT OF OFFENCE**

Obtaining goods by false pretences, contrary to section 302 of the Penal Code. [CAP 16 R.E 2023]

**PARTICULARS OF OFFENCE**

A.B., on the ..... day of ..... in the region of ..... with intent to defraud, obtained from S.P. 5 metres of cloth by falsely pretending that the said A.B. was a servant to J.S. and that he, the said A.B., had then been sent by the said J.S. to S.P., for the said cloth, and that he, the said A.B. was then authorised by the said J.S. to receive the said cloth on behalf of the said J.S.

**CORRUPTION OFFENCES**

**STATEMENT OF OFFENCE**

**CORRUPT TRANSACTIONS**, Contrary to section 15(1) (a) and (2) of the Prevention and Combating Corruption Act, [CAP. 329 R.E 2023]

**PARTICULARS OF OFFENCE**

**A.B.** on (date) at (area) within the ..... District in ..... Region, being employed by Tanzania Revenue Authority as a Tax Assessor, corruptly solicited

advantage namely, Tanzanian Shillings Five Hundred Thousand (TZS 500,000/=) from **C.D.**, as an inducement to forbear from including **C. D's** name in the list of tax defaulters, an act which was in relation to his principal's business/affairs.

### **STATEMENT OF OFFENCE**

**CORRUPT TRANSACTION;** Contrary to Section 15(1) (b) and (2) of the Prevention and Combating Corruption Act, [CAP. 329 R.E 2023].

### **PARTICULARS OF OFFENCE**

**C.D.** on (date) at (area) within the ..... District in ..... Region, corruptly offered an advantage namely, Tanzanian Shillings Five Hundred Thousand (TZS 500,000/=) to **A.B**, who is an employee of Tanzania Revenue Authority as Tax Assessor, as an inducement to forbear from including **C. D's** name in the list of tax defaulters, an act which was in relation to the latter's (**AB's**) principal's business/affairs.

### **STATEMENT OF OFFENCE**

**ABUSE OF POSITION;** Contrary to section 31 of the Prevention and Combating of Corruption Act, [CAP. 329 R.E 2023] read together with Paragraph 21 of the First Schedule to, and Sections 57(1) and 61(2) of the Economic and organized Crime Control Act, [CAP. 200 R.E 2023].

## **PARTICULARS OF OFFENCE**

**A.B.**, on 20<sup>th</sup> day of June, 2024 at Mjengoni area within Dodoma District in Dodoma Region, in the course of discharging his functions as a District Treasurer, intentionally abused his position by failure to bank the collected revenues of the District Council amounting to Tanzanian Shillings Twenty Million (TZS 20,000,000/=) to the District revenue account within the prescribed time, in violation of section....of the Local Government Finance Act, for the purposes of obtaining an undue advantage of the said amount for himself.

## **MONEY LAUNDERING**

### **STATEMENT OF OFFENCE**

Money Laundering: Contrary to Sections 12(1)(a) and 13 (1) (a) of the Anti-Money Laundering Act, [CAP 423 R.E 2023], read together with Paragraph 22 of the First Schedule to, and Sections 57(1) and 61(2) of the Economic and organized Crime Control Act, [CAP. 200 R.E 2023].

## **PARTICULARS OF OFFENCE**

(Name of Accused) on or about the (date) at (location), knowing or ought to have known that the property was proceeds of crime, engaged..... (Details of property) which is the proceeds of a predicate offence, namely (crime).....

## **STATEMENT OF OFFENCE**

Money Laundering: Contrary to Sections 12 (1) (b) and 13(1) (a) of the Anti-Money Laundering Act, [CAP 423 R.E 2023], read together with Paragraph 22 of the First Schedule to, and Sections 57(1) and 61(2) of the Economic and organized Crime Control Act, [CAP. 200 R.E 2023].

## **PARTICULARS OF OFFENCE**

(Name of Accused) on or about the (date) at (location), knowing or ought to have known that the property was the proceeds of crime, converted/transferred, transported or transmitted (property), and for the purposes of concealing its illicit origins/assisting (person) to evade legal consequences

## **STATEMENT OF OFFENCE**

Money Laundering: Contrary to Sections 12 (1)(c) and 13 (1) (a) of the Anti-Money Laundering Act, [CAP 423 R.E 2023], read together with Paragraph 22 of the First Schedule to, and Sections 57(1) and 61(2) of the Economic and organized Crime Control Act, [CAP. 200 R.E 2023].

## **PARTICULARS OF OFFENCE**

(Name of Accused) on or about the (date) at (location), knowing or ought to having known that the property was the proceeds of crime, concealed/disguises/ impedes discovery of information relating to a property (details of property) by.... which is the

proceeds of a predicate offence namely (crime).....

### **STATEMENT OF OFFENCE**

**Money Laundering:** Contrary to Section 12 (1) (d) and 13 (1) (a) of the Anti-Money Laundering Act, [CAP 423 R.E 2023], read together with Paragraph 22 of the First Schedule to, and Sections 57(1) and 61(2) of the Economic and organized Crime Control Act, [CAP. 200 R.E 2023].

### **PARTICULARS OF OFFENCE**

(Name of Accused) on or about the (date) at (location), knowing or ought to having known that the property was the proceeds of crime, acquired, possessed, used or administered (property), at the time of receipt knowing/ought to know is the proceeds of a predicate offence namely (crime).

### **STATEMENT OF OFFENCE**

Participating in/associating with/conspiring to commit/attempted, aiding and abetting/facilitating and counselling money laundering: Contrary to Section 12 (1) (e) and 13(1) (a) of the Anti-Money Laundering Act [CAP 423 R.E 2023], read together with Paragraph 22 of the First Schedule to, and Sections 57(1) and 61(2) of the Economic and Organized Crime Control Act, [CAP. 200 R.E 2023].

## **PARTICULARS OF OFFENCE**

(Name of the accused) on or about the (date) at (location), with the [knowledge or intent requirement for form of commission/mode of liability], [participated in/associated with/conspired to/attempted to/aided and abetted/facilitated and counselled] money laundering by (act or omissions constituting form or mode of commission).

## **CYBERCRIME**

### **STATEMENT OF OFFENCE**

#### **PUBLICATION OF FALSE INFORMATION:**

Contrary to Section 16 of the Cybercrimes Act No. 14 of 2015.

### **PARTICULARS OF THE OFFENCE**

CD, on 15th November 2022 within the United Republic of Tanzania, did publish a false information to wit “**HATIMAYE SERIKALI YARUHUSU BANGI**” in a computer system namely (*insert the computer system (the device and program) eg mobile phone, laptops, Facebook or Instagram or WhatsApp*) with intent to mislead the public while knowing that such information to be false.

## **ARMED ROBBERY**

### **STATEMENT OF OFFENCE**

ARMED ROBBERY; Contrary to Section 287A of the Penal Code, [Cap. 16 R. E. 2023]

## PARTICULARS OF OFFENCE

*(Name of the accused)*, on the (date) at (location), did steal (*indicate the things stolen*) the properties of (name of the victim) and at, immediately before and after such stealing, did use (*name the weapon used*) to the threaten one (*name the person threatened*) in order to obtain and retain the said property.

## SEXUAL OFFENCES

### STATEMENT OF OFFENCE

RAPE; Contrary to Sections 130(1) and (2) (e) and 131 (1) of the Penal Code (Cap16, R.E 2023).

### PARTICULARS OF THE OFFENCE

*(Name of the accused)*, on the (date) at (location), did had sexual intercourse with one (*name of the victim and age*).

### STATEMENT OF OFFENCE

RAPE; Contrary to Sections 130(1)(4) (a) and 131 (1) of the Penal Code (Cap16, R.E 2023).

### PARTICULARS OF THE OFFENCE

*(Name of the accused)*, on the (date) at (location), did had sexual intercourse with one (*name of the victim and age*), without her consent.

### STATEMENT OF OFFENCE

GANG RAPE; Contrary to Sections 130(1) and (2) (a) - (e) and 131A (1) (2) of the Penal Code (Cap16, R.E 2023).

## **PARTICULARS OF THE OFFENCE**

*(Name of the accused person(s)), on the (date) at (location), did had sexual intercourse with one (name of the victim and age), without her consent.*

### **STATEMENT OF OFFENCE**

UNNATURAL OFFENCE; Contrary to section 154(1) (a) and (2) of the Penal Code [Cap 16 R.E 2023].

## **PARTICULARS OF OFFENCE**

*(Name of the accused), on the (date) at (location), did had carnal knowledge of (name of the victim and age), against the order of nature.*

### **STATEMENT OF OFFENCE**

GRAVE SEXUAL ABUSE; Contrary to section 138C (1) (a) (b), (2) (a) (b) of the Penal Code [Cap 16 R.E 2023].

## **PARTICULARS OF OFFENCE**

*(Name of the accused), on the (date) at (location), for sexual gratification and by use of intimidation, did insert his index finger into the vagina of (name of the victim and age), without her consent.*

### **STATEMENT OF OFFENCE**

IMPREGNATING A SCHOOL GIRL; Contrary to Sections 60A (3) of the Education Act Cap.353.

## PARTICULARS OF THE OFFENCE

*(Name of the accused)*, on the *(date)* at *(location)*, did have sexual intercourse with one *(name of the victim's name and age)*, a student of primary/secondary school and as a result impregnated her.

### **Appendix 4 (Form DC 4) Prosecution Plan**

## **IN THE UNITED REPUBLIC OF TANZANIA NATIONAL PROSECUTIONS SERVICE**

### PROSECUTION PLAN

**NAME OF THE COURT:** Mlele District Court

**IR No.:** MLL/IR/3488/2025

**CASE No.:** EC 20358/2025

**DATE OF COMMENCING TRIAL** 20/09/2025

**ACCUSED NAMES** HP  
HK  
MM

**OFFENCE:** Unlawful Possession of Government Trophy

**INGREDIENT OF THE OFFENCE:** Possession, Government Trophy, without licence.

**STATUS OF PHYSICAL EXHIBITS & LOCATION:** Elephant tusks are with TAWA office, Mlele, and were inspected and are in good condition.

**STATUS OF DOCUMENTARY EXHIBITS:**  
**Certificate of seizure, valuation certificate and  
sketch map are in good condition and are in the file**

NAME OF THE WITNESS	SERIAL ORDER OF TESTIMONY	DATE OF TESTIMONY	INGREDIENTS OF OFFENCE TO BE PROVED BY THE WITNESS	FACTS TO BE PROVED	EXHIBIT(S) TO BE TENDERED AND AUTHORITY FOR ADMISIBILITY	ADMISSIBILITY /RELEVANCY OF EXHIBITS	POSSIBLE OBJECTION (S) FROM DEFENCE (S) ON TENDERING THE EXHIBIT	STRENGTH OR WEAKNESS OF WITNESS AFTER TESTIMONY	REMARKS (WHETHER TESTIMONY COMPLETED/ DEFERED)
Majuto Mjukuu	Pw1– Exhibit Keeper	27/09/2025	Government Trophy	<ul style="list-style-type: none"> <li>✓ Police</li> <li>✓ Education background</li> <li>✓ Duties including storekeeper</li> <li>✓ Storekeeper (duties of a storekeeper)</li> <li>✓ Type of exhibits he/she receives</li> <li>✓ How exhibits are kept (procedures)</li> <li>✓ How exhibits move from exhibit room</li> <li>✓ Received elephant tusks</li> <li>✓ Mark them with No.....</li> <li>✓ Filled PF16</li> <li>✓ Movement of exhibit of the tusks</li> </ul>	<ul style="list-style-type: none"> <li>✓ Exhibit Register book</li> <li>✓ Elephant Tusks</li> </ul>	<ul style="list-style-type: none"> <li>✓ Provision of law(s)/rules (Section 177 of TEA)</li> <li>Precedents (case laws) (Mitzrai etc)</li> </ul>	Non-filling of all parts of the PF16 or the tusks contained more marks than what he put on them		Noncompliance with rules of filling Exhibit on the register book.
Kidaga a Dagaa	Pw2 – Arresting Officer	29/09/2025	<ul style="list-style-type: none"> <li>✓ Possession</li> <li>✓ Government trophy</li> <li>✓ Without permit</li> </ul>	<ul style="list-style-type: none"> <li>✓ The accused was found with possession with elephant tusks</li> <li>✓ The accused was found with tusks</li> </ul>	<ul style="list-style-type: none"> <li>✓ Certificate of Seizure</li> <li>✓ Identification of the Elephant Tusks</li> </ul>	<ul style="list-style-type: none"> <li>✓ Provision of law / Rules</li> <li>✓ Precedents (case laws)</li> </ul>	<ul style="list-style-type: none"> <li>✓ Documents are photocopied.</li> <li>✓ Witness is not the maker of the</li> </ul>	<ul style="list-style-type: none"> <li>✓ The witness adduced credible testimony in court.</li> </ul>	

NAME OF THE WITNESS	SERIAL ORDER OF TESTIMONY	DATE OF TESTIMONY	INGREDIENTS OF OFFENCE TO BE PROVED BY THE WITNESS	FACTS TO BE PROVED	EXHIBIT(S) TO BE TENDERED AND AUTHORITY FOR ADMISSIBILITY	ADMISSIBILITY /RELEVANCY OF EXHIBITS	POSSIBLE OBJECTION (S) FROM DEFENCE (S) ON TENDERING THE EXHIBIT	STRENGTH OR WEAKNESS OF WITNESS AFTER TESTIMONY	REMARKS (WHETHER TESTIMONY COMPLETED/ DEFERED)
				<p>in his house</p> <ul style="list-style-type: none"> <li>✓ Accused had no permit to possess the government trophy</li> <li>✓ He marked the tusks on the scene Infront of accused and independent witness</li> <li>✓ He filled certificate of seizure</li> <li>✓ He read the certificate to accused before causing him to sign</li> <li>✓ Accused and independent witness signed and gave copy to accused</li> <li>✓ Took exhibits and accused to Police Station</li> </ul> <p>Opened</p>			<p>documents</p> <ul style="list-style-type: none"> <li>✓ No independent witness was involved</li> </ul> <p>The location of search is not indicated, etc.</p>		

NAME OF THE WITNESS	SERIAL ORDER OF TESTIMONY	DATE OF TESTIMONY	INGREDIENTS OF OFFENCE TO BE PROVED BY THE WITNESS	FACTS TO BE PROVED	EXHIBIT(S) TO BE TENDERED AND AUTHORITY FOR ADMISSIBILITY	ADMISSIBILITY /RELEVANCY OF EXHIBITS	POSSIBLE OBJECTION (S) FROM DEFENCE (S) ON TENDERING THE EXHIBIT	STRENGTH OR WEAKNESS OF WITNESS AFTER TESTIMONY	REMARKS (WHETHER TESTIMONY COMPLETED/ DEFERED)
				Investigation file and handle the exhibits to exhibit keeper					
Timbwi Tambwe	Pw3 – Valuer	04/10/2025	Government trophy	<ul style="list-style-type: none"> <li>✓ Education background</li> <li>✓ Experience</li> <li>✓ Duties including analysis and valuation of trophies</li> <li>✓ What amounts to trophies</li> <li>✓ How analysis of trophies is conducted</li> <li>✓ Types of analysis of trophies</li> <li>✓ How valuation is done</li> <li>✓ On.. did analysis and valuation of elephant tusks trophies</li> <li>✓ Expert explanation of</li> </ul>	<p>Tender Valuation certificate</p> <p>Identification of the elephant tusks</p>		Valuation contravenes GN 207 of 2012 for not indicating kilograms	Witness did well in explaining the peculiar features of the elephant tusks from mammoth	Defence were not aware of the new GN of 2023 of valuation.

NAME OF THE WITNESS	SERIAL ORDER OF TESTIMONY	DATE OF TESTIMONY	INGREDIENTS OF OFFENCE TO BE PROVED BY THE WITNESS	FACTS TO BE PROVED	EXHIBIT(S) TO BE TENDERED AND AUTHORITY FOR ADMISSIBILITY	ADMISSIBILITY /RELEVANCY OF EXHIBITS	POSSIBLE OBJECTION (S) FROM DEFENCE (S) ON TENDERING THE EXHIBIT	STRENGTH OR WEAKNESS OF WITNESS AFTER TESTIMONY	REMARKS (WHETHER TESTIMONY COMPLETED/ DEFERED)
				<ul style="list-style-type: none"> <li>tusks</li> <li>✓ Filled valuation</li> <li>✓ Tender Valuation</li> <li>✓ Read the valuation after tendering</li> <li>✓ Expound the valuation,</li> <li>✓ ID the tusks and explain on their peculiar features</li> </ul> <p>Impacts of eliminating from the ecosystem such kind of animal ( in ecology, economy and cultural) etc</p>					
PW4	Pw4 – GIS au/na Cartographer officer	05/10/2025	Possession Without Permit	<ul style="list-style-type: none"> <li>✓ Majukumu ya kazi</li> <li>✓ Uzoefu, elimu na uchukuaji wa majira nukta</li> <li>✓ GN iliyoanzisha eneo la hifadhi.</li> <li>✓ Maana ya Majira Nukta</li> </ul>	GN iliyotangaza eneo la hifadhi Ramani ya eneo la tukio	Ramani inakinzana na kifungu cha 19 cha Electronic and Transactions Act.	Ubora wa vifaa vilivyokulia majira nukta kutokuelezwa		

NAME OF THE WITNESS	SERIAL ORDER OF TESTIMONY	DATE OF TESTIMONY	INGREDIENTS OF OFFENCE TO BE PROVED BY THE WITNESS	FACTS TO BE PROVED	EXHIBIT(S) TO BE TENDERED AND AUTHORITY FOR ADMISIBILITY	ADMISSIBILITY /RELEVANCY OF EXHIBITS	POSSIBLE OBJECTION (S) FROM DEFENCE (S) ON TENDERING THE EXHIBIT	STRENGTH OR WEAKNESS OF WITNESS AFTER TESTIMONY	REMARKS (WHETHER TESTIMONY COMPLETED/ DEFERED)
				<ul style="list-style-type: none"> <li>✓ Namna ya kukusanya majira nukta</li> <li>✓ Vifaa vya kuchukulia majira nukta na ubora wake unazingatiwaje</li> <li>✓ Matokeo ya majira nukta</li> <li>✓ Majira nukta yanatoa mjibu gani</li> <li>✓ Namna ya kufsiri majira nukta kwenda kwenye ramani.</li> <li>✓ Mtuhumiwa alikamatwa umbali gani kutoka mipaka ya hifadhi.</li> <li>✓ Umadhubuti wa taarifa za majira nukta</li> <li>✓ Atatoa GN pamoja na ramani.</li> </ul>					

NAME OF THE WITNESS	SERIAL ORDER OF TESTIMONY	DATE OF TESTIMONY	INGREDIENTS OF OFFENCE TO BE PROVED BY THE WITNESS	FACTS TO BE PROVED	EXHIBIT(S) TO BE TENDERED AND AUTHORITY FOR ADMISSIBILITY	ADMISSIBILITY /RELEVANCY OF EXHIBITS	POSSIBLE OBJECTION (S) FROM DEFENCE (S) ON TENDERING THE EXHIBIT	STRENGTH OR WEAKNESS OF WITNESS AFTER TESTIMONY	REMARKS (WHETHER TESTIMONY COMPLETED/ DEFERED)
PW5	PW5- Arresting Officer	06/10/2025	<ul style="list-style-type: none"> <li>✓ Possession</li> <li>✓ Government trophy</li> <li>✓ Without permit</li> </ul>	<ul style="list-style-type: none"> <li>✓ Kituo cha kazi, elimu na muda wa kazi</li> <li>✓ Vitu vilivyofanyika kwenye upelelezi</li> <li>✓ Alikusanya vilelezo vipi au vya aina zipi.</li> <li>✓ Alitumia uratatibu upi kupata vilelezo, pia utaratibu wa kupata vilelezo kwa mtuhumiwa aliotumia.</li> <li>✓ Namna alivyopata maelekezo ya kupeleleza kesi hii.</li> <li>✓ Namna mtuhumiwa alivyokamatwa</li> <li>✓ Aina ya</li> </ul>					

NAME OF THE WITNESS	SERIAL ORDER OF TESTIMONY	DATE OF TESTIMONY	INGREDIENTS OF OFFENCE TO BE PROVED BY THE WITNESS	FACTS TO BE PROVED	EXHIBIT(S) TO BE TENDERED AND AUTHORITY FOR ADMISSIBILITY	ADMISSIBILITY /RELEVANCY OF EXHIBITS	POSSIBLE OBJECTION (S) FROM DEFENCE (S) ON TENDERING THE EXHIBIT	STRENGTH OR WEAKNESS OF WITNESS AFTER TESTIMONY	REMARKS (WHETHER TESTIMONY COMPLETED/ DEFERED)
				<p>Ushahidi aliokusanya,</p> <p>✓ Taratibu alizofuata na namna alivyochukua kila aina ya Ushahidi.</p> <p>✓ kila Ushahidi aliokusanya alibaini nini.</p> <p>✓ Utambuzi wa mtuhumiwa.</p>					

**ASSIGNED PROSECUTOR: XYZ**

**PREPARED BY: NAME .....**

**SIGNATURE .....**

**DATE.....**

**APPROVED BY:**

**SIGNATURE.....**

**NAME .....**

**TITLE (RPO, DPO OR PAI)**



**Nationa Prosecutions Service (NPS)**  
**P.O. Box 1733, DODOMA**