

**THE UNITED REPUBLIC OF TANZANIA  
THE NATIONAL PROSECUTION SERVICE**

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

**2023**

## **FOREWORD**

The National Prosecutions Service (NPS) is an independent institution, responsible for bringing prosecutions of criminal cases that have been investigated by the Police and other law enforcement organisations agencies in the United Republic of Tanzania.

The duty of the Prosecutor is to ensure that the right person is prosecuted for the right offence, and to bring offenders to justice wherever possible. It is vital that Prosecutors act with independence, impartiality, and integrity in order to deliver justice in every case.

These Decision to Charge Guidelines are anchored in the Article 59B of the Constitution of the United Republic of Tanzania, and Government Notice No.49 of 13 February 2018 that established the National Prosecutions Service as an independent and autonomous body as well as the National Prosecutions Service Act, [Cap 430 R.E. 2022]. These Guidelines will form the bedrock of this professional and independent prosecution service. In developing these Guidelines, the Taskforce adopted international best practices reflecting the diverse approaches that have been adopted worldwide by prosecutorial institutions.

It is my hope that these guidelines will enhance the transparency and accountability of the exercise of prosecutorial discretion on the institution and conduct of criminal proceedings, and I believe it will positively impact the quality of prosecutions undertaken in the United Republic of Tanzania. In doing so, the National Prosecutions Service can continue to improve its service to the people across this great country.



Sylvester Anthony Mwakitalu  
**DIRECTOR OF PUBLIC PROSECUTIONS**


## **ACKNOWLEDGMENTS**

These Guidelines have been issued by the DPP under section 18 and 24 of the National Prosecutions Service Act to improve the quality of decisions to prosecute.

On behalf of the National Prosecutions Service, I wish to thank the NPS Management, acting under the authority of the Director of Public Prosecutions DPP, Mr. Sylvester Anthony Mwakitalu, for its leadership, guidance and contribution to the development of these Guidelines.

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Joseph Sebastian Pande  
**DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS**

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## **PART I INTRODUCTION**

1.1 Article 59 B of the United Republic of Tanzania Constitution of 1977 empowers the Director of Public Prosecutions to institute, prosecute and supervise all criminal prosecutions in the country. The National Prosecution Service was formally established as an independent, autonomous body, in 2018 via Government Notice No.49 of 13 February 2018.

1.2 The power to institute, prosecute and supervise all criminal prosecutions in the Tanzania Mainland represents a significant responsibility on the part of the State. It is a power that must be exercised objectively, independently, and impartially in the administration of criminal justice. This means that Prosecutors must be able to exercise their function without political interference or undue pressure or influence from any source.

1.3 The powers of the Director of Public Prosecutions (DPP) may be exercised in person or on his/her directions by officers who discharge these duties under the DPP's instructions. The DPP shall not require the consent of any person or authority for the commencement of criminal proceedings and, in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.

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

- The need to dispense justice;
- The prevention of misuse of procedures for dispensing justice; and
- The public interest.

1.5 The National Prosecutions Services Act, Cap 430 operationalizes Constitutional provisions by providing for the following functions of the Director of Public Prosecutions:

- To decide to prosecute or not to prosecute in relation to any offence;
- 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;
- To coordinate and supervise criminal investigation and conduct of criminal prosecution in Courts of law other than court-martial;
- To issue directives to any public officer performing functions relating to the conduct of criminal prosecution in Courts of law;
- To direct the police and other investigative organs to investigate any information of a criminal nature and to report expeditiously.

1.6 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, or belief of the suspect, 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.

1.7 Prosecutors must apply the principles of international conventions that apply to the conduct of a fair trial, to which the United Republic of Tanzania is signatory. Similarly, they must comply with any policies and guidance issued by the DPP. Particular guidance may be given from time to time on further evidential and public interest factors for specific offences and offenders.

1.8 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 wherever possible. Prosecutors must ensure that the law is properly applied, that relevant evidence is put before the Court and that obligations of disclosure are complied with.

1.9 These Guidelines apply to all Prosecutors within the National Prosecution Service as well as any Prosecutor exercising a delegated power of prosecution or those instructed on behalf of the DPP.

## **PART II INTERPRETATION**

2.1 For the purposes of this guidance:

**“Accused”** is used to describe a person who has been charged or summoned.

**“Authorised Officer”** means Regional Prosecutions Officer and District Prosecutions Officer.

**“Case docket”** means an official log which contains the names of the parties, the case number, the offence, and the status of action related to Court proceedings.

**“Deputy Director of Public Prosecutions”** means the Deputy Director of Public Prosecutions appointed pursuant to the provisions of the National Prosecutions Service Act Cap 430.

**“Director of Public Prosecutions”** means the Director of Public Prosecutions appointed pursuant to sub-article (1) of Article 59B of the Constitution.

**“District Prosecutions Officer”** means a State Attorney appointed by the DPP to be in-charge of prosecution matters in a district.

**“Investigation file”** means an official record from an Investigation Agency that contains the contents and results of a criminal inquiry.

**“Investigation Officer”** means the Director of Criminal Investigation, Zonal Crimes Officer, Regional Crimes Officer, Officer Commanding Criminal Investigation Department, and any other Officer In-charge of Investigation.

**“Juvenile”** means a person who is over the age of 10 years and has not yet attained the age of 18 years.

**“Law Officer”** has the meaning ascribed to it under the Interpretation of Laws Act.

**“Officer In-charge of Prosecution”** means the Director of Public Prosecutions, the Regional Prosecutions Officer, the District Prosecutions Officer, Prosecuting Attorney in charge and any other designated Prosecution Officer.

**“Plea bargaining”** has the meaning ascribed to it by the Criminal Procedure Act Cap. 20.

**“Prosecutor”** means a person appointed in accordance with the National Prosecution Service Act to conduct prosecution of a criminal case in the Court of law or a State Attorney appointed under section 5 or designated as such to perform functions under the National Prosecutions Service Act Cap 430.

**“Regional Prosecutions Officer”** means the Law Officer appointed to be in-charge of prosecution matters in a region.

**“Registry Officer”** means Law Secretary, Records Management Officer and any other officer discharging the functions of the Records Management Officer, within the National Prosecution Service.

**“Representative”** means an advocate, a relative, a friend or any other person legally competent to represent the accused.

**“Service”** means the National Prosecutions Service.

**“Suspect”** is used to describe a person who is under consideration as the subject of formal criminal proceedings.

**“Victim”** is used to describe a person against whom an offence has been committed or the complainant in a case being considered for prosecution.



## **PART III THE DECISION TO CHARGE**

### **3.1 THE DECISION TO CHARGE**

3.1.1 The decision to charge is a critical step in the criminal justice process. This guidance sets out the basis for that decision and is applicable to all agencies with powers of prosecution. This guidance on the decision to charge is the bedrock of any prosecution, and it is essential that all agencies holding this important power should apply the same standard, consistently, and transparently.

3.1.2 The decision to charge is the Prosecutor'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 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.

3.1.3 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 Holding Charge Test (or 'Threshold Test' may be passed (see section 3.2.6).

### **3.2 THE TWO-STAGE TEST**

3.2.1 The Two Stage Test comprises first an evidential test followed by a public interest test.

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

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

#### **3.2.3 The evidential test**

3.2.3.1 Prosecutors must be satisfied, on the balance of probabilities, 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'.

3.2.3.2 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** - The Prosecutor should assess whether the evidence tends to prove or disprove an element of an offence.
- **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.

- **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.
- **Credibility** - Credibility is the quality that makes something (as a witness or some evidence) worthy of belief. Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.
- **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.

3.2.3.3 It is important to note that a case that does not pass the evidential stage **MUST NOT** proceed, no matter how serious or sensitive it may be. The only exception to this is where the “Threshold Test” applies.

### **3.2.4 The public interest test**

3.2.4.1 It has never been the rule that prosecution must automatically take place once the evidential test is met. Prosecutors must then go on to consider whether it is in fact in the public interest to pursue prosecution or not. There 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.

3.2.4.2 Factors to consider whether it is in the public interest to charge are dynamic. The DPP may issue further guidance specific to certain offences that will have a bearing on public interest factors to consider. However, in general, the common principles include, but are not limited to:

3.2.4.3 **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:

- The suspect’s level of involvement in commission of the offence;
- The extent to which the offence was premeditated and/or planned;
- The extent to which the suspect has benefited from the criminal conduct;
- Where the suspect is in a position of trust or authority in relation to the victim;
- The prevalence of that particular offence and the need for greater deterrence through the criminal justice process;
- 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.

3.2.4.4 **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 participation of the victim.

**3.2.4.5 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. 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.

**3.2.4.6 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 Child (Act No. 21 of 2009) and the Law of the Child (Juvenile Court Procedure) Rules 2016. Prosecutors should also consider the maturity of the suspect – young adults will continue to mature into their mid-twenties.

**3.2.4.7 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., corruption cases, and environmental protection (wildlife cases).

**3.2.4.8 Whether prosecution is a proportionate response.** Here the Prosecutor should consider if the likely outcome 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.

**3.2.4.9 Whether sources of information require protection as well as witnesses.** Special cases should be taken where the prosecution may lead to the reveal of sources of information that may harm ongoing investigations, international relations, or national security. It is essential that such cases are kept under continuing review.

**3.2.4.10 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 or should not be disclosed in the public interest.

**3.2.4.11** Prosecution's likely to **affect public order and morals** or on public confidence in the administration of justice.

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

**3.2.4.13 Any other relevant** factor the Director of Public Prosecution may direct.

### **3.2.5 Minimum requirements of a file under the two-stage test**

**3.2.5.1** In assessing the investigation file in order to apply the Two-Stage Test, the following must be included in the investigation file in order for the Prosecutor to make that decision:

- The First Information Report;
- The Investigation Diary;
- The statements of the complainants or/and first responder;
- The statement of the key witnesses;
- The statement of the suspect(s) or video record, if any;

- Documentary exhibits: including medical reports, post-mortem reports, criminal record certificates, asset inventory, chain of custody documents, sketch map;
- Investigation Plan;
- Physical Exhibits i.e., any exhibits should be in the file if practicable to include. For any physical exhibits, there should be a certificate of seizure and there should be enough information to identify the physical location of any exhibits not included in the file;
- Proposed charge(s), if any but note that the Prosecutor is not bound by those;
- Index sheet containing the list of witnesses, suspects, exhibits and other relevant evidence or information obtained in the course of the investigation;
- Summary of the case and/or covering report from the officer in charge of the investigation;
- Certificate of completeness of the investigation signed and dated by officer in charge of the investigation.

3.2.5.2 If the Prosecutor sees there is a need for further investigation before deciding to charge, he/she should advise the police and other investigative agencies 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.

3.2.5.3 The decision to charge shall be made after a thorough review of the evidence in the case docket and the Prosecutor has prepared an Opinion, by identifying material facts, key evidence, any gaps and issues, and make recommendations of charges to his or her Supervisor. In recommending charges, the Prosecutor should consider the Two-Stage Test and Threshold Test set out in these Guidelines.

3.2.5.4 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.

### **3.2.6 The holding charge test (or ‘threshold test’)**

3.2.6.1 The Holding Charge or Threshold Test (“TT”) is applied when a suspect presents a substantial bail risk and not all the evidence is available at the time when he or she must be released from custody until charged.

3.2.6.2 The practice of using ‘holding charges’ (i.e., charging a case where not all the evidence is available at the time the decision is made) is strongly discouraged and applies in the limited circumstances in which the following features apply:

3.2.6.3 The offence falls into the categories identified under section 131A of the Criminal Procedure Act. These are:

- Causing Grievous Bodily Harm;
- Rape;
- Divulging matters of public security;
- Armed robbery;
- Human Trafficking;
- Unlawful possession of arms or ammunition;
- Trafficking in drugs;
- Unlawful possession of government trophies;

- Any other offence triable by the High Court which can include murder, treason, terrorism, import/export/dealing in government trophies, or money laundering.

3.2.6.4 Only in the above circumstances may a Prosecutor apply the following five conditions of the 'Holding Charge Test'. All five circumstances must be met. If any are not met, the suspect CANNOT be charged.

3.2.6.5 **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.

3.2.6.6 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:

- Put into an admissible format for presentation in Court;
- Reliable; and
- Credible.

3.2.6.7 **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 from as well as towards a particular suspect, it is capable of establishing a realistic prospect of conviction in accordance with the Two-Stage Test.

3.2.6.8 In applying this consideration, the Prosecutor must be satisfied that:

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

3.2.6.9 **Third condition** - The seriousness or the circumstance of the case justifies the making of an immediate charging decision. This should be assessed in relation to the alleged offence and should be linked to the level of risk created by granting bail.

3.2.6.10 **Fourth condition** - There are continuing reasonable grounds to object to bail in accordance with the law and in all the circumstances of the case it is proper to do so.

3.2.6.11 This determination must be based on a proper risk assessment, which reveals that the suspect is not suitable to be bailed, even with substantial conditions. For example, a dangerous suspect who poses a serious risk of harm to a particular person or the public, or a suspect who poses a serious risk of absconding or interfering with witnesses.

3.2.6.12 Prosecutors should not accept, without careful enquiry, any unjustified or unsupported assertions about risk if release on bail were to take place.

3.2.6.13 **Fifth 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.

### **3.2.7 Reviewing decisions based on the holding charge test**

3.2.7.1 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 Holding Charge Test must be kept under review. The Prosecutor should be proactive to secure from the Investigation Agency the identified outstanding evidence or other material in accordance with an agreed timetable. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to bail is justified. 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 prosecution case. 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.

### **3.2.8 Directions to law enforcement**

3.2.8.1 Early and continued engagement between prosecution and law enforcement authorities are essential to the proper and effective delivery of criminal justice. Certain crimes require certain powers to be exercised and applications to be made such as in the context of mutual legal assistance and extradition or where interim orders are required for the purposes of preserving proceeds of crime from being dissipated pending determination of a criminal trial.

3.2.8.2 The DPP may from time-to-time issue Standard Operating Procedures (SOPs) for investigators and Prosecutors pursuant to sections 18(1) and 24(2) of the National Prosecutions Service Act for the purposes of improving the quality of investigation and prosecution of certain crimes. Prosecutors, in discharging their mandate, must apply those SOPs where they exist.

3.2.8.3 Generally speaking, however, the power to direct, supervise and coordinate investigations is contained in sections 9(1)(g), 16 and 24 of the National Prosecutions Service Act Cap 430. Prosecutors should work in a collaborative fashion with investigation agencies whilst always maintaining their independence and objectivity. In directing or guiding an investigation, particularly when applying the Holding Charge Test above, Prosecutors must give directions that are clear, precise, realistic and time bound.

### **3.2.9 Selection of charges**

3.2.9.1 Prosecutors should select charges which:

- Reflect the seriousness and extent of the offending;
- Give the Court adequate powers to sentence and impose appropriate post-conviction orders;
- Allow for requisite orders to be made in cases with asset forfeiture potential. 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
- Enable the case to be presented in a clear and simple way.

3.2.9.2 This means that Prosecutors may not always choose or continue with the most serious charge where there is a choice, and the sentence available under a lesser charge would, in the opinion of the Prosecutor, enable sufficient sentencing powers to meet the seriousness of the conduct alleged.

3.2.9.3 Prosecutors should never proceed with more charges than are necessary just to encourage an accused to plead guilty to a few. In the same way, they should never proceed with a more serious charge just to encourage an accused to plead guilty to a less serious one.

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

3.2.9.5 Charges for multiple offences appearing on the same charge sheet must be founded on the same facts or form or be part of a series of offences of a same or similar character. Where the case involves multiple offenders, Prosecutors must have regard to section 134 of the Criminal Procedure Act, in relation to joinder of persons and charges. It is important that Prosecutors identify and correctly consider the number of files to be submitted to deal with the number and type of suspects and offenders.

3.2.9.6 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 investing public resources in having twice the same trial.

3.2.9.7 Similarly, where multiple offences include cases that must be tried in the High Court, and those that may be tried in subordinate Courts, provided there is sufficient nexus in the facts and circumstances of the offences, Prosecutors should seek to join the offences and try them together in the High Court. This is because:

- The High Court has original jurisdiction;
- Separate trials involving the same witnesses, exhibits and/or other evidence, regarding the same facts and circumstances, represent a tremendous waste of public resources;
- It is not in the public interest to force witnesses to give evidence twice on the same matter, albeit in different venues. Witness fatigue means it less likely that witnesses will return to Court on multiple occasions, particularly where they are the victims of or witnesses to violent crime. Repeated visits to Court increase the risk of confrontation, intimidation, and corruption of witnesses;
- It is unfair for the accused person to have to face trial more than once for what are essentially the same set of facts;
- Separate trials for the same facts with the same witnesses, runs the risk that a witness that is found 'not credible' in one Court venue, will 'perform' better in the subsequent trial having been primed for the line of cross-examination, and will be found credible in another Court against the same accused person;
- It doesn't make sense to non-professional witnesses and undermines public confidence in the system;
- Section 164 of the Criminal Procedure Act supports this approach.

3.2.9.8 Instead, Prosecutors should select the charges that provide the Courts with sufficient sentencing powers that would reflect the seriousness of the crime enabling appropriate ancillary orders to be made e.g., forfeiture and to try the matters together.

### **3.2.10 Consent to prosecution**

3.2.10.1 The Prosecutor shall ensure compliance with Government Notice No. 496H from 2021 and any other DPP instructions or guidelines which pertain to offences which require the DPP's personal consent or authorized officer acting on his behalf for prosecution are obtained. If the charges include a combination of offences (economic and non-economic), the Prosecutor shall ensure that the Certificate Conferring Jurisdiction contains the correct relevant provision in the law.

3.2.10.2 See for example The Economic Offences (Specification of offences for Consent) Notice, GN 496H of 2021 and Section 12(3) or (4) of the Economic and Organized Crimes Control Act [Cap 200 R.E 2022].

### **3.2.11 Drafting of charges**

3.2.11.1 For some types of crime, templates for charges have been developed e.g., on wildlife, forestry, and fisheries crimes as well as corruption and related offences. Broadly speaking, Prosecutors should aim for precision and simplicity in drafting, using the key statutory words and ensuring that the charges are drafted in a way that clearly discloses the offence in its particulars. Prosecutors should have particular regard to sections 132 to 135 of the Criminal Procedure Act.

### **3.2.12 Continuing duty to review**

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

- What becomes known of the accused's case as the matter progresses;
- Any further lines of inquiry that should reasonably be pursued;
- The receipt of further evidence or information that may have a bearing on the sufficiency of evidence or the public interest test;
- Where evidence adduced by the prosecution during the trial fails to come up to proof;
- Where a trial has started, and prosecution witnesses fail to attend on at least two occasions;
- Where the victim of a 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 summonsed and even potentially treated as hostile.

3.2.12.2. However, the responsibility for the decision whether or not to proceed rests with the Prosecutor.

### **3.2.13 Deciding not to prosecute**

3.2.13.1 Where upon applying either the Holding Charge Test or the Two Stage Test, a decision is made not to prosecute, 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 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.



3.2.13.2 Where Prosecutors are requested by complainants, 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. Any queries on the decision to charge should be responded to with a reference to this guidance which is a public document.

### **3.2.14 Review of the decision not to charge**

3.2.14.1 Occasionally there are cases where the Prosecutor will overturn a decision not to prosecute 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:

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

### **3.2.15 Recording decisions**

3.2.15.1 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.

### **3.2.16 Confidentiality of review**

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

## **PART IV ACCEPTANCE OF GUILTY PLEA, PLEA BARGAINING AND WITHDRAWAL OF CHARGES**

4.1 Accused persons may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to 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 wants to plead guilty to manslaughter.

4.2 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 194 A to 194H of the Criminal Procedure Act. A plea agreement may be entered into 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. Particular care should be taken when the accused is unrepresented – the Plea-Bargaining Guidelines offer guidance on this scenario.

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

- The Court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features;
- It enables the Court to make a confiscation order in appropriate cases, where an accused has benefitted from criminal conduct; and
- It provides the Court with adequate powers to impose other ancillary orders, bearing in mind that these can be made with some offences but not with others.

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

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

4.6 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, alone.

4.7 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.

### **4.8 WITHDRAWAL OF CHARGES**

4.8.1 Prosecutors may withdraw cases in Court under the Criminal Procedure Act, namely sections 91 (the DPP may enter a 'nolle prosequi' at any stage before verdict or judgment) and section 98 (for appointed public Prosecutors in the subordinate Courts, with the instructions of the DPP).

4.8.2 Prosecutors shall not make a withdrawal of cases in Court without the prior written consent of their supervisors.

4.8.3 In case of any amendment to the charges which can take place at any stage before judgment or verdict, the Prosecutor must consult with his/her supervisor before making any such amendments.

4.8.4 These decisions should be made in consultation with the investigating officer and as far as possible, should consider the views of the victim. However, the decision and responsibility lie on the Prosecutor alone.

#### **4.9 CONSIDERATION IN RELATION TO EXHIBITS**

4.9.1 The Prosecutor must also ensure that they are ready to tender the relevant exhibits before the Court – this may involve asking the Court to move to 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 also incur unnecessary costs on the part of the State in maintaining or looking after those exhibits.

4.9.2 Where cases involve exhibits that consist of livestock or are subject to ‘speedy and natural decay’, regard must be had to section 353 of the Criminal Procedure Code and, where appropriate, s101 of the Wildlife Conservation Act Cap 283 and disposal orders sought pending trial or other resolution.

## PART V BAIL

5.1 The Prosecutor must carefully consider whether or not to oppose bail and persuade a 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 of 2020 issued by the Judiciary of Tanzania. Certain laws will also have application such as section 148(5) of the Criminal Procedure Act and section 36(4) of the Economic and Crimes Control Act Cap 200 and section 16 of the Primary Court Criminal Procedure Code – Prosecutors must be familiar with all of these laws and guidelines.

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

5.3 Broadly speaking, the Prosecutor must be satisfied that the grounds are sufficient to establish, compelling reasons for opposing bail. The grounds include but are not limited to:

- **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, is a foreign national or has previously absconded.
- **That the suspect is likely to interfere with witnesses or the conduct of investigations.** Factors such as the proximity to prosecution witnesses or relationship with them may be relevant here as will his/her conduct upon arrest as would breach of other orders of the Court. Where the investigating officers identifies that further lines of investigation are still outstanding, this will be relevant to establishing this ground of objection.
- **That the suspect is likely to commit an offence whilst on release.** Factors would include record of previous offending (especially if on bail), other pending prosecutions.
- **That detention is necessary for the suspect's own protection or preservation of public order** e.g., where community tensions are high.

5.4 A useful template can be found in the 'Rapid Reference Guide on Wildlife and Forestry Crime for the United Republic of Tanzania' which can be adapted.

5.5 If the Court grants bail despite prosecution objections, the Prosecutor must consider whether to lodge an appeal against that decision. See section 161 of the Criminal Procedure Act, Cap.20.

5.6 Where the accused person is a child, the Prosecutor 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 VI DISCLOSURE**

6.1. An accused person has a right to know the case against him/her to the extent that he/she 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.

### **6.1.1 Subordinate Courts and the duty to disclose evidence to relied upon at trial**

6.1.1.1 For trials in the subordinate Courts, the Prosecutor may disclose the statement of the person who reported the allegations to the police station, if he/she is intended to be called as a witness during the trial, as provided in section 9(3) of the Criminal Procedure Act, Cap. 20. Subsequent disclosure of the prosecution's statements shall be done upon a successful application in Court.

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

6.1.2.1 In the High Court, there is an obligation to avail all the evidence that the prosecution intends to rely to the accused under section 245(7), 246 (2), and 289 of the Criminal Procedure Act Cap 20, and section 29 of the Economics and Organised Crime Control Act Cap 200. This should be done at the committal stage and so Prosecutors must endeavour to have a full review conducted and identify those statements to be supplied, in good time.

6.1.2.2 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 289 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.

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

6.1.3.1 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.

## **6.2 DECIDING WHAT TO DISCLOSE**

6.2.1 In order to decide what to disclose for this purpose, the Prosecutor must have conducted a thorough review of the evidence, 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:

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

6.2.2 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.

6.2.3 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 has adequate time to prepare.

6.2.4 Where a decision to charge is made under the "holding charge 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.

6.2.5 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 safety is not compromised and to mitigate the risk of interference, intimidation, or corruption of State witnesses.

## **PART VII APPEALS, REVIEW AND REVISION**

7.1 The decision to appeal against acquittal or sentence, or to seek an appeal or revision of 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.

### **7.2 APPEAL**

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

### **7.3 REVIEW**

7.3.1 Review is a remedy that Prosecutors can exercise in accordance with rule 66 of the Tanzania Court of Appeal Rules, 2009, as amended. Prosecutors should be proactive in anticipating problems 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.

#### **7.3.2 Factors to consider**

7.3.2.1 In deciding to seek a review, Prosecutors need to exercise discretion. The first step is to the ground for review. When deciding whether an order, judgment or finding is improper or incorrect, the Prosecutor must identify whether:

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

### **7.4 REVISION**

7.4.1 Revision is a remedy that the Prosecutor can exercise in accordance with section 372(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.

#### **7.4.2 Factors to consider**

7.4.2.1 When deciding if the order or finding is improper or incorrect, the Prosecutor must identify if the Court has:

- Improperly exercised its discretion; or
- Failed to take into account a material consideration; or

- Has taken into account an immaterial consideration; or
- Has exercised discretion in a way that no reasonable, sensible Court would do in the same circumstances when presented with the same facts.

7.4.2.2 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.

7.4.2.3 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 VIII STATUS AND COMPLIANCE**

### **8.1 LEGAL STATUS OF THE GUIDELINES**

8.1.1 These Guidelines have been issued under Sections 18 and 24 of the National Prosecutions Service Act. They are internal administrative directives therefore mandatory to all Prosecutors handling criminal cases in Courts of law.

### **8.2. NON-COMPLIANCE WITH THE GUIDELINES**

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

8.2.2 After receiving the report for non-compliance of the Guidelines, the DPP may issue appropriate sanctions.