



## The Director of Public Prosecution's power to delegate prosecutorial functions in Uganda: Understanding Article 120(4)(a) of the Constitution of Uganda (1995)

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### Abstract:

Article 120(3) of the Constitution of Uganda provides for the functions of the Director of Public Prosecutions (DPP). Article 120(4) states that most of the functions under Article 120(3) may “be exercised by him or her [DPP] in person or by officers authorised by him or her in accordance with general or specified instructions.” Article 120(4) does not define “officers.” The drafting history of Article 120(4) shows that it was adopted without debate. Thus, the meaning of “officer” was not discussed. It is argued that “officer” under Article 120(4) should be interpreted to mean public prosecutors in the DPP’s office and prosecutors to whom the DPP has delegated powers although they are not employed in the DPP’s office. From an interdisciplinary perspective, this ensures that the administrative powers of the DPP, which are governed by administrative law, are not used to appoint people who do not qualify to be appointed and the right of the accused to a fair trial, which is governed by human right law, is strengthened since public prosecutors are more likely to be independent. The interdisciplinary perspective of the article is also reflected in the discussion of the differences between private prosecutions and public prosecutions. The author demonstrates the several approaches that Parliament has followed to give effect to Article 120(4). In many cases, legislation does not require the DPP to delegate public officers as prosecutors. Legislation “designates” them as prosecutors. In those instances, such officers are public prosecutors and must follow policies akin to those developed by the DPP. It is also argued that the DPP can only delegate prosecutorial powers to officers in institutions that are empowered by their establishing legislation to prosecute.

**Keywords:** Director of Public Prosecutions, Uganda, Article 120, delegated prosecution.

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### **Introduction:**

Article 120(3) of the Constitution of Uganda provides for the functions of the Director of Public Prosecutions. These are:

(a) to direct the police to investigate any information of a criminal nature and to report to him or her expeditiously; (b) to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial; (c) to take over and continue any criminal proceedings instituted by any other person or authority; (d) to discontinue at any stage before judgement is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court.

Article 120(4) states that the functions under Article 120(3)(a)(b) and (c) may 'be exercised by him or her [DPP] in person or by officers authorised by him or her in accordance with general or specified instructions.' Article 120(4) of the Constitution does not define "officers." The drafting history of Article 120(4) shows that it was adopted without debate. Thus, the meaning of "officer" was not discussed or explained. In this article, it is argued that "officer" under Article 120(4) should be interpreted to mean two types of public prosecutors.<sup>1</sup> One, public prosecutors in the DPP's office and those to whom the DPP has delegated prosecutorial functions under section 222 of the Magistrates Courts Act.<sup>2</sup> Section 222 of the Magistrates Courts Act provides that:

1. The Director of Public Prosecutions may appoint generally, or in any case, or for any specified class of cases, in any local area, one or more persons to be called public prosecutors.
2. The Director of Public Prosecutions by writing under his or her hand may appoint any advocate or any person employed in the public service to be a public prosecutor for the purpose of any case or cases.
3. Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions.

As the discussion below illustrates, section 222 was introduced in the MCA in 1984. In terms of section 222(2), the DPP is empowered to "appoint any advocate or any person employed in the public service to be a public prosecutor." The advocate in question does not necessarily have to be a public servant and the public servant does not necessarily have to be an advocate. In practice, the DPP has invoked section 222(2) to appoint public servants who are advocates to act as public prosecutors in some government agencies or institutions such as the Uganda Revenue Authority,<sup>3</sup> Uganda National Bureau of Standards,<sup>4</sup> and the Uganda Wildlife Authority.<sup>5</sup> This has led to the "institutional specialisation in the" fight against some crimes.<sup>6</sup> Since the coming into force of the Constitution (1995), Parliament has enacted different pieces of legislation which provide for the circumstances in which some institutions or persons can prosecute with or without the consent of the DPP. On the basis of section 222, the DPP has appointed some public servants to prosecute some offences although the legislation establishing the government institution for which such public servants work does not empower such an institution to prosecute those offences. This has been the case for

example, with the Uganda Communications Commission<sup>7</sup> and the Public Procurement and Disposal of Public Assets Authority.<sup>8</sup> In this article, it is argued that these appointments or delegations are unlawful. In other words, these prosecutors do not have the mandate/power to prosecute on behalf of such institutions. The DPP can only appoint public servants to prosecute on behalf of an institution if the legislation establishing such an institution empowers it to prosecute. Hence, an employee of a public company or institution cannot prosecute on behalf of such an institution if the institution does not have an expressly statutory mandate to prosecute. Otherwise, by purporting to prosecute through its employee, such an institution would be acting *ultra vires*.<sup>9</sup> Otherwise, the DPP should authorise one of his/her subordinates to prosecute such offences in the name of the State (Uganda). Alternatively, he/she should appoint “any advocate” in private practice to prosecute such offences his/her behalf. In such a case, the advocate is a temporary public prosecutor who is bound by the prosecution policy or code.<sup>10</sup> Before discussing Article 120(4) in practice, it is important to briefly highlight the DPP’s powers to delegate prosecutorial functions prior to the 1995 Constitution.

**The DPP’s Power to Delegate Prosecutorial Functions in Pre-1995 Constitutions:**

The position of the Director of Public Prosecutions has been included in all the constitutions of Uganda that preceded the 1995 Constitution. These constitutions also provided for the circumstances in which the DPP could delegate his/her prosecutorial functions. Section 82(1) of the 1962 Constitution, also known as the Independence Constitution, established the Director of Public Prosecutions. Section 82(2) of the same Constitution provided for the functions of the DPP. It stated that:

The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do— (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person; (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

Sections 82(3) and (4) provided for the circumstances in which the DPP could delegate some of his/her powers. They stated that:

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority: Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

A combined reading of sections 82(2) and (3) shows that the DPP could only delegate some of his/her prosecutorial powers to prosecutors working in his/her office. This is

evident from the use of the words “subordinate to him.” Section 82(4) contemplated a situation where any other “person or authority” could also institute a prosecution. However, such a person or authority was not “acting in accordance with” the DPP’s “general or specific instructions.” The “person” contemplated under section 82(4) was the private prosecutor. As will be illustrated below when discussing the drafting history of Article 120 of the 1995 Constitution, the “authority” contemplated therein was a government body instituting its prosecutions. Sections 82(1), (2), and (4) of the 1966 Constitution were almost identical to sections 82(1), (2), and (4) of the 1962 Constitution. Thus, they will not be reproduced here. However, section 82(3) of the 1966 Constitution was slightly different from section 82(3) of the 1962 Constitution. The former provided that “[t]he powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or by officers authorised in that behalf by him acting in accordance with his general or special instructions.” The substitution of the word “subordinate” in section 82(3) of the 1962 Constitution with the word “authorised” in the 1967 Constitution created room for the argument that an authorised officer did not necessarily have to be subordinate to the DPP. In other words, he/she did not have to be an employee of the DPP. Article 71(3) of the 1967 was identical to section 82(3) of the 1966 Constitution. Thus, the discussion above on section 82(3) of the 1966 Constitution applies with equal force to Article 71(3) of the 1967 Constitution. Hence, under the 1967 Constitution, there was no requirement that the DPP could only delegate his/her prosecutorial powers to his/her subordinates. There are no reported cases in which the DPP delegated his/her powers under the above provisions of the 1962, 1966 and 1967 constitutions. Hence, it is not possible to know how courts interpreted those provisions. The 1967 was replaced by the 1995 Constitution. Article 120(4) of the 1995 Constitution empowers the DPP to delegate some of his/her prosecutorial powers. The next part of the article deals with Article 120(4) of the 1995 Constitution. For a better understanding of Article 120(4), it is necessary to start by discussing its drafting history.

#### **The Drafting History of Article 120(4):**

As indicated above, the Office of the Director of Public Prosecutions has been included in all the constitutions of Uganda since independence. In 1988, the government of Uganda embarked on the process of enacting a new constitution to replace the 1967 Constitution. As a result, it established the Constitutional Commission (the Commission). The Commission travelled to different parts of the country and gathered peoples’ views on the issues to be addressed in the new constitution. In its report, the Commission highlighted the importance of the office of the DPP. It wrote that:

It is generally accepted that if a person is suspected of committing a criminal offence, it does not automatically follow that such a person must be prosecuted. The DPP considers the evidence against the suspect and decides whether it is sufficient to justify prosecution or trial. The DPP may decide not to prosecute when he considers that it may not be in the public interest to prosecute if a conviction is doubtful, or if due to mitigating circumstances, only nominal punishment is likely to be imposed. In other cases, the DPP may decline to

Prosecute when the offence which has been committed may be a breach of "stale" legislation which most people no longer regard as relevant.<sup>11</sup>

According to the Commission, the DPP did not have to prosecute every offence. He/she had to exercise their discretion in deciding which offence to prosecute. The Commission recommended the powers and functions of the DPP that were to be included in the new constitution.<sup>12</sup> It also recommended the circumstances in which the DPP could delegate some of his/her powers. It stated that "[t]he powers conferred upon the DPP may be exercised by him or her in person or officers in his or her department subordinate to him or her."<sup>13</sup> The Commission prepared the Draft Constitution to be debated by the Constituent Assembly to promulgate the new constitution. Clause 124(4) of the Draft Constitution provided that "[t]he functions conferred on the Director of Public Prosecutions by this article may be exercised by him in person or by officers authorised by him in accordance with general or special instructions given by him." It is not clear why Clause 124(4) of the Draft Constitution was different from the recommendation that the Commission had included in its report. It is evident that the word "subordinate", which appeared in the recommendation in the Commission's report, was not included in Clause 124(4) of the Draft Constitution. This creates room for two potentially irreconcilable arguments. First, by removing the word "subordinate" from Clause 124(4), the Commission intended to allow the DPP to delegate his/her powers to officers outside his/her office. Two, that the word "subordinate" should be implied in the word "officers." This is so because officers under Clause 124(4) mean those officers in the DPP's office. It could be argued further that the word subordinate was removed because it was redundant. The Draft Constitution was debated by the Constituent Assembly. During the Constituent Assembly, Clause 124(4) was passed without any amendment or debate.<sup>14</sup> It would later become Article 120(4). Since the Constituent Assembly delegates had access to the Commission's report, nothing would have prevented them from reintroducing the word 'subordinate' into Clause 124(4) if they had thought that it was necessary to be included therein. Thus, the term "officer" under Article 120(4) is broad enough to include prosecutors in the DPP's office and other prosecutors (in private practice or government departments) appointed by the DPP to prosecute specific cases. It is necessary to take a look at the types of prosecutions contemplated under Article 120 of the Constitution.

#### **Types of Prosecution under Article 120:**

Article 120 contemplates three types of prosecutions. Firstly, prosecutions by the Director of Public Prosecutions. This could be done by the Director of Public Prosecutions him/herself or any of his/her subordinates. That is, people working in the DPP's office. As mentioned above, Article 120(4) provides that:

The functions conferred on the Director of Public Prosecutions under clause (3) of this article- may, in the case of the functions under paragraphs (a), (b) and (c) of clause (3) of this article, be exercised by him or her in person or by officers authorised by him or her in accordance with general or specified instructions.

Article 120 does not define or describe the meaning of the word "officers." As indicated above, unlike the 1962 Constitution, the 1995 Constitution does not use the word "subordinates." However, the drafting history of Article 120 suggests that the

officer in question does not necessarily have to be employed in the DPP's office. The second type of prosecution is that by "any other person." Article 120 does not define who the "person" is. However, the drafting history of Article 120 shows that the Constituent Assembly delegates understood the "person" in question as a private prosecutor. This is evident from the submissions they made on draft Article 120.<sup>15</sup> For example, one of the delegates argued that he wanted to know why the court's consent was needed for the DPP to discontinue a private prosecution.<sup>16</sup> In response, the Chairperson of the Constituent Assembly argued that:

It [draft Article 120(2)] is saying that he has power to take over and continue with it but also they are saying he can discontinue his own where he has started it or where you have began your own private prosecution. He can under (c) take it over and under (d) he can discontinue it, except that in that case he must first get the consent of the court to discontinue yours. I think these two - we are putting in written form what is an old common law rule that the crown could at anytime since we took it from England, could take over private prosecutions and discontinue. The crown did not have to go to court to seek permission but here were saying that in all fairness I think there should be permission from the court.<sup>17</sup>

A private prosecutor does not need the DPP's consent to institute a prosecution. The DPP can only discontinue a private prosecution with the consent of the court. The Magistrates Courts Act<sup>18</sup> provides for the circumstances in which a person may institute a private prosecution. Section 42(1) of the Magistrates Courts Act<sup>19</sup> provides that criminal proceedings may be instituted by a police officer,<sup>20</sup> a public prosecutor<sup>21</sup> or "by any person...making a complaint as provided in subsection (3) and applying for the issue of a warrant or a summons in the manner hereafter mentioned." Section 42 has to be read with section 43 of the same Act which provides for the circumstances in which the DPP controls private prosecutions.<sup>22</sup> Section 42 shows that all criminal proceedings have to be initiated in a magistrate's court.<sup>23</sup> In *Uganda Private prosecution by Male H Mbirizi K Kiwanuka v Anita Among Annet*<sup>24</sup> the High Court referred to section 42 and held that "[i]t is clear from section 42(1)(a) to (c) above, that a criminal case may be instituted by the police officer, public prosecutor or a private person."<sup>25</sup> In practice, section 42(1)(c) has been invoked by private prosecutors.<sup>26</sup> In *Twagira v Attorney General*,<sup>27</sup> the Supreme Court referred to section 42 and held that "[t]he duty for a magistrate to satisfy himself or herself that prima facie an offence has been disclosed is only relevant when criminal proceedings are instituted by 'any person', other than a public prosecutor or a police officer."<sup>28</sup> The High Court has held that the phrase "any person" under section 42 means "an individual" or "private citizen."<sup>29</sup> A private prosecution can also be instituted by a juristic person.<sup>30</sup> However, a company can only institute a private prosecution if its establishing legislation or instrument (articles and memorandum of association) expressly empowers it to do so. Thus, companies that are not empowered to prosecute cannot institute private prosecutions in their names or through their employees. However, their employees can institute private prosecutions in their private capacities against people who have committed offences against such

companies. Under Ugandan company law, a company is a separate entity from its employees.<sup>31</sup>

The third type of prosecution is that by “any other authority.” The Constitution does not define or describe the meaning of the word ‘authority.’ However, the drafting history of Article 120 shows that the Constituent Assembly delegates understood “authority” to mean federal or local government. As mentioned above, section 82 of the 1962 Constitution provided for the circumstances in which the DPP could delegate some of the prosecutorial powers. While making submissions on draft Article 120, one of the Constituent Assembly delegates who had participated in drafting the 1962 Constitution argued that:

This provision I remember was put in [the] 1962 Constitution. I do not know if it was in the other [1967 Constitution]. But I was there in London in 1962 and it was done because a similar provision that is to say, for the DPP to take over prosecutions instituted or started in other authority. That was the time when we had a federal kind of government. And there were various authorities, Buganda Government, other governments which had their courts and their prosecution services...The point is there were various authorities who could prosecute and which were not under the Central Government. It was felt that nevertheless, the Director of Public Prosecutions should have power to take over prosecutions especially those which might be considered to have been instituted for political or activated by political motives.<sup>32</sup>

He added that since under the new constitution prosecutorial powers were to be “concentrated in one government”, there was no need for the Constitution to provide that the DPP needed the consent of the court to discontinue prosecutions by “other authorities.”<sup>33</sup> He argued that since “[t]here are no federal states, there are no different authorities.”<sup>34</sup> However, he gave the “railway police” as another example of “other authorities” when emphasising the fact that such other authorities were public bodies. While making submissions on the right of the DPP to take over private prosecutions and prosecutions instituted by other authorities, one of the delegates asked his colleagues whether it was true that in 1984, “Parliament passed an amendment to the Magistrate Court's Act...in respect to private prosecutions which provided that anybody initiating a private prosecution must first obtain the permission of the DPP.”<sup>35</sup> In response, one of the delegates answered that:

it is true that if you want to start proceedings and prosecute a criminal case in this country, you must get the consent of the DPP. Organisations which have got statutes which allow them to prosecute like the Social Security Fund...have to get consent and in fact, the prosecutors get registered for that. They have to be known and their names get registered with the DPP.<sup>36</sup>

Another delegate added that:

the position in law is this, that a private citizen can institute criminal proceedings with the consent of the court in which he is instituting the proceedings. But the other bodies like the police are appointed as public prosecutors. The police, [t]he Weights and the Measures, the game department, the Forest Department, [and] the Fish Department. These are appointed public

prosecutors and the thinking now is that instead of having these large number of public prosecutors from other departments, [m]aybe, if funds were available, we should form a sort of organisation like the British Crown Prosecution service which would [be] binding all these departments into one body, not to investigate but to prosecute. So, you can institute proceedings in any court with consent of that court. In other words, the court must be satisfied that you have a good case to put before taking off the time of the court, not the DPP.<sup>37</sup>

A combined reading of the above submissions shows that the delegates were of the view that there is a distinction between prosecutions by “other authorities” on the one hand and prosecutions by statutory bodies although they are both public prosecutions. For a statutory body to institute a prosecution, two conditions must be in place. First, the statute establishing such a body must expressly confer on it prosecutorial powers. In other words, the statute should expressly provide that such a body has the mandate to prosecute. Second, the DPP must “consent” to that prosecution. Thus, the DPP must authorise the statutory body to prosecute. The consent of the court is not a prerequisite for such a body to prosecute. However, those express requirements were not included in Article 120 of the Constitution. In the next part of the article, the author deals with delegated prosecutions under Article 120(4) of the Constitution.

#### **Delegated prosecutions under Article 120(4):**

Since the coming into force of the Constitution, Parliament has followed different approaches in dealing with delegated prosecutions. In this part of the article, these approaches are illustrated. The first approach is to empower some officers to prosecute without stating expressly that such prosecution shall be approved by the DPP.<sup>38</sup> In this case, these officers do not need the DPP's approval before they can institute prosecutions. The second approach is to provide that such prosecution shall be instituted with the consent of the DPP. Within the second approach, there are two sub-categories. In the first sub-category, the legislation is silent on the person who requires the DPP's consent to prosecute.<sup>39</sup> The second sub-category deals with cases in which legislation mentions the person who requires the DPP's consent to prosecute. It is argued that in instances where legislation is silent on the person who requires the DPP's consent to prosecute, such cases should only be prosecuted by public prosecutors in the DPP's office or persons specifically authorised by the DPP. The latter could be officers from the company or institution enforcing the relevant legislation. Even within these two sub-categories categories, the issue of consent has been approached differently. In some cases, legislation provides that the DPP's consent has to be in writing.<sup>40</sup> However, in others, legislation is silent on whether or not such consent has to be in writing.<sup>41</sup> It is argued that where legislation is silent on whether or not the consent has to be in writing, the DPP's consent should be in writing. This is so because section 40 of the Interpretation Act requires the DPP's consent to be included in a document showing that it was given prior to the institution of the prosecution.<sup>42</sup> The form of the document is immaterial. The third approach adopted by Parliament is that such offences can be prosecuted by the DPP (although the officer is specifically mentioned, the DPP is not)<sup>43</sup> or by a specific public officer (not working in the DPP's office)<sup>44</sup> or by an institution.<sup>45</sup> In some cases, the other person who can also prosecute the offence in question is not

mentioned.<sup>46</sup> Thus, both the DPP and such an officer or person (when mentioned) have “equal” powers to prosecute. In some cases, legislation does not impose a requirement that such an officer or person has to be authorised by the DPP to conduct such a prosecution. However, there are also instances in which such an officer requires the DPP’s authorisation.<sup>47</sup> Where legislation does not provide that the mentioned officer/person requires the DPP’s authorisation before instituting such a prosecution, the DPP does not have the power to grant such authorisation. Doing otherwise would be *ultra vires*. Where legislation is silent on the person who requires the DPP’s consent to institute a prosecution or on the specific officer with the mandate to prosecute, the DPP can authorise any person to institute such a prosecution. This could be an officer in the DPP’s office or another person not employed in the DPP’s office. For example, a private practitioner authorised by the DPP for that purpose. The fourth approach is found in pieces of legislation which stipulate that some offences can only be prosecuted by the DPP or his/her authorised officer.<sup>48</sup> Hence, the DPP cannot delegate the prosecution of such offences to any person employed outside of his/her office. The fifth approach is that a public officer is empowered to prosecute “subject to the powers”<sup>49</sup> or “subject to the directions”<sup>50</sup> of the DPP. In the first situation under category five above, a prosecutor can prosecute without the directions of the DPP. However, the DPP retains the powers to intervene in such prosecutions. In the second situation, the DPP’s directions are a prerequisite before the prosecutor commences a prosecution. The sixth approach is that an officer is empowered to “cause” an offence under the relevant Act to be prosecuted.<sup>51</sup> This means that such an officer can only “cause” a person who is authorised to prosecute to institute such a prosecution. In other words, such an officer can only institute criminal proceedings “through the Director of Public Prosecutions.”<sup>52</sup> In this case, the officer in question does not have the power to prosecute. He/she must report the offence to the police for the DPP to prosecute the alleged offender. What is evident is that in all those cases, legislation empowers the relevant institutions or persons to prosecute. Without that express mandate, such an institution or person cannot prosecute or cause another person to prosecute. The above discussion shows that the DPP’s consent is not a prerequisite in every case a prosecution has to be instituted. Likewise, he/she does not have to delegate their prosecutorial powers in every prosecution. Parliament has conferred prosecutorial powers on some institutions or persons. However, such an institution is exercising public powers. Hence, these are public prosecutions. Since these are public prosecutions, they are required to prosecute in the public interest and do not abuse the court process. The DPP can take over a prosecution instituted by any person (whether private prosecutor or public prosecutor). However, the court’s consent is not a prerequisite for the DPP to discontinue a prosecution instituted by a statutory body or a person authorised by legislation. It is only a prerequisite if dealing with a private prosecution or a prosecution by another authority. The DPP can also prosecute any offence in any piece of legislation even if the piece of legislation does not stipulate that the DPP can prosecute such an offence. This is so because Article 120(3)(b) states that the DPP has the power “to institute criminal proceedings against any person or authority in any court with competent

jurisdiction.” The next part of the article deals with the manner in which the DPP appoints prosecutors under section 222 of the Magistrate Courts Act.

**The Appointment of Prosecutors:**

As stated above, section 222(2) of the Magistrate Courts Act provides that “[t]he Director of Public Prosecutions by writing under his or her hand may appoint any advocate or any person employed in the public service to be a public prosecutor for the purpose of any case or cases.” For a person to be appointed as a public prosecutor under section 222(2), he/she does not necessarily have to be an advocate. However, in practice the DPP has appointed only advocates as private prosecutors for agencies such as the Uganda Revenue Authority, the Uganda Communications Commission, the Uganda National Bureau of Standards and the Uganda Wildlife Authority. Under section 222, “only persons employed in the public service” can be appointed as prosecutors. Thus, such a person has to be a public servant (officer). Whether or not he/she is permanently employed in the public service is immaterial. The section applies to both permanent and contract public servants. However, there are other instances in which the DPP's powers to appoint prosecutors are ostensibly taken away. For example, section 83(2) of the Tax Procedures Code Act<sup>53</sup> provides that:

Notwithstanding anything in any written law, a tax officer duly authorised in writing by the Commissioner General may conduct any prosecution for an offence under this Act and for that purpose, the officer has all the powers of a public prosecutor appointed under section 42 of the Magistrates Courts Act subject to the powers of the Director of Public Prosecutions under Article 120 of the Constitution.

Under section 83, it is the Commissioner to authorise the tax officer to conduct a prosecution as a public prosecutor. The appointment is subject to the powers of the DPP under Article 120. In practice, it is the DPP who appoints tax officers to prosecute by issuing the relevant certificate. Had section 83 of the Tax Procedures Code Act been applied or interpreted as taking away the powers of the DPP to appoint prosecutors under the Tax Procedures Code Act, it would have been contrary to Article 120(4) of the Constitution which expressly provide that it is the DPP to appoint prosecutors. Thus, employees of the Uganda Revenue Authority are public servants within the meaning of section 222. They are “nominated” by the Commissioner and ‘authorised’ or appointed as prosecutors by the DPP. They prosecute tax offences with the permission of the DPP.<sup>54</sup> In cases in which those prosecutors have prosecuted tax offences, both the High Court and the Supreme Court have not questioned their powers.<sup>55</sup> Apart from the Tax Procedures Code, the Uganda Revenue Authority implements different pieces of legislation.<sup>56</sup> Some of them also empower Uganda Revenue Authority officers to prosecute. For example, section 228 of the East African Community Customs Management Act 2004 provides that “a proper officer may appear and prosecute in any prosecution before a subordinate court for any offence under this Act.” Officers of the Uganda Revenue Authority have prosecuted offences under that Act.<sup>57</sup> Prosecutors appointed under section 83 of the Tax Procedures Code Act can only prosecute offences under that Act. Likewise, those appointed under the East African Community Customs Management Act 2004 can only prosecute under that Act. In

order to avoid issuing multiple certificates to one officer with each certificate authorising him/her to prosecute offences in a specific Act, the DPP issues one certificate to each officer giving him/her “general” prosecutorial powers for all offences in the Acts implemented by the Uganda Revenue Authority.<sup>58</sup>

### **Conclusion**

Article 120 of the Constitution provides for the powers of the DPP and the circumstances in which he/she can delegate some of those powers. In this article, the author has demonstrated the types of prosecutions under Article 120 of the Constitution. He has also argued that the word “officer” under Article 120(4) of the Constitution should be interpreted to mean both public officers in the DPP’s office and those appointed by the DPP although they do not work in his/her office. The author has also illustrated that Parliament has followed different approaches to deal with the issue of delegated prosecution. Irrespective of which approach is followed, each delegated prosecution remains a public prosecution and the prosecutors must prosecute in the public interest.

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Uganda v Mpoya alias Wante & Anor (Criminal Session No. 32 of 2012) [2014] UGHCCRD 496 (1 September 2014);

### **B. Statutes**

Agricultural Chemicals (Control) Act (2007), Chapter 35;

Anti-Corruption Act (2009), Chapter 116;

Anti-Terrorism Act, Act 14 of 2002;

Capital Markets Authority Act, Chapter 64

Companies Act (2012) Chapter 106;

Education Service Act (2002), Chapter 85;

Electronic Signatures Act (2011) Chapter 98;

Employment Act, Chapter 226;

Free Zones Act (2014) Chapter 70;

Health Service Commission Act (2001), Chapter 86;

Human Rights (Enforcement) Act (2019), Chapter 12;

Insolvency Act (2011);

Judicial Service Act (1997), Chapter 87;

Kampala Capital City Act, Act 1 of 2011;

Labour Disputes (Arbitration and Settlement) Act, Act 8 of 2006;

Local Governments Act (1997), Chapter 138;

National Forestry and Tree Planting Act, Act 8 of 2003;

Non-Governmental Organisations Act (2016), Chapter 109;

Occupational Safety and Health Act, Act 9 of 2006;

Official Secrets Act (1964), Chapter 302;

Parliament (Powers and Privileges) Act, Chapter 258;

Petroleum Supply Act (2003) Chapter 163;

Presidential Elections Act, Chapter 179;

Prevention and Prohibition of Torture Act, Act 3 of 2012;

Public Procurement and Disposal of Public Assets Act, Chapter 205;

Registration of Persons Act (2015), Chapter 332;

Tax Procedures Code Act (2014), Chapter 343;

Uganda Communications Act, Act 1 of 2013;

Uganda Wildlife Act (2019) Chapter 315;

## **II. SECONDARY SOURCES**

## Journal articles and reports

### A. Journal articles

Bakibinga, DB “The role of prosecutors in preventing torture and ill-treatment of accused persons and proposals for reform”(2018) 10(1) *Revista Acadêmica Escola Superior Do Ministério Público Do Ceará* 217–235;

Bamwine, F “The Efficacy of Prosecuting Wildlife Crimes in Uganda” (2019) 49(2/3) *Environmental Policy and Law* 181;

Carson, L “Institutional specialisation in the battle against corruption: Uganda’s Anti-Corruption Court” (2015) 3(1) *The Public Sphere Journal* 13 – 25;

Schutte, S.A, “Specialised anti-corruption courts: Uganda” (2016). Available at <https://www.cmi.no/publications/file/5887-specialised-anti-corruption-courts-uganda.pdf> (accessed 23 December 2025);

### B. Reports

Annual Report of the Uganda National Bureau of Standards (2023/2024). Available at <https://unbs.go.ug/attachments/menus/34/UNBS%20Annual%20Report%20FY%202023-2024.pdf>

Annual Report of the Uganda Wildlife Authority (July 2022 – July 2023). Available at <https://ugandawildlife.org/wp-content/uploads/2024/05/UWA-annual-report-2022-2023-1.pdf> (accessed 19 December 2025);

Benson Turamye, 'PPDA Moves to Prosecute Offences Under the PPDA Act' 26 August 2025. Available at <https://www.ppda.go.ug/ppda-moves-to-prosecute-offences-under-the-ppda-act/> (accessed 22 December 2025);

Proceedings of the Constituent Assembly (1994/1995)

Report of the Uganda Constitutional Commission: Analysis and Recommendations (1993)

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<sup>1</sup> In this article, the phrase “public prosecutor” is used in its broad sense to mean prosecutors who prosecute on behalf of the government or a government entity/institution. For the discussion of the distinction between public prosecutors and state prosecutors, see David Baxter Bakibinga “The role of prosecutors in preventing torture and ill-treatment of accused persons and proposals for reform”(2018) 10(1) *Revista Acadêmica Escola Superior Do Ministério Público Do Ceará* 217–235.

<sup>2</sup> The Office of the DPP defines a “prosecutor” to mean ‘the DPP, and any person exercising delegated powers of the DPP under Article 120(4)(a) of the Constitution of the Republic of Uganda, 1995.’ See Decisions to Charge Guidelines (2024) 7. Available at <https://dpp.go.ug/wp-content/uploads/2024/03/THE-DECISION-TO-CHARGE-GUIDELINES.pdf> (accessed 22 December 2025).

<sup>3</sup> In 2022/2023, the Uganda Revenue Authority prosecuted 45 cases. See the Annual Revenue Performance Report for Financial Year 2022/2023 (2023) 51. Available at <https://ura.go.ug/en/download/annual-revenue-report-fy2022-23/?wpdmdl=10067&refresh=694850bfcde321766346943> (accessed 23 December 2025). Although the Uganda Revenue Authority prosecuted a few cases, it has a very high conviction rate, see Sofie Arjon Schutte, 'Specialised anti-corruption courts: Uganda' (2016). Available at

<https://www.cmi.no/publications/file/5887-specialised-anti-corruption-courts-uganda.pdf> (accessed 23 December 2025).

<sup>4</sup> It was reported that in 2023/2024, the Uganda National Bureau of Standards 'successfully' prosecuted ten cases. See Annual Report of the Uganda National Bureau of Standards (2023/2024) 42. Available at <https://unbs.go.ug/attachments/menus/34/UNBS%20Annual%20Report%20FY%202023-2024.pdf>

<sup>5</sup> In its 2022/2023 Annual Report, the Uganda Wildlife Authority reported that "Both the investigations and prosecution teams across the country handled several wildlife crime-related cases with 1219 cases and 1930 suspects successfully investigated. Prosecution efforts recorded a total of 642 cases prosecuted in courts of law by the end of the year with 307 cases with convictions representing 48% successful prosecutions, 38 cases dismissed/acquitted while 297 were still ongoing." See Annual Report of the Uganda Wildlife Authority (July 2022 – July 2023) at 16. Available at <https://ugandawildlife.org/wp-content/uploads/2024/05/UWA-annual-report-2022-2023-1.pdf> (accessed 19 December 2025). For the discussion of the prosecution of wildlife crimes, see Fredrick Bamwine, "The Efficacy of Prosecuting Wildlife Crimes in Uganda" (2019) 49(2/3) *Environmental Policy and Law* 181. In *Caroline Naggoli v Uganda* (Criminal Application No 72 of 2025) [2026] UGHACD 1 (26 January 2026), the High Court held that the Uganda Revenue Authority has the power to prosecute.

<sup>6</sup> Lindsey Carson, 'Institutional specialisation in the battle against corruption: Uganda's Anti-Corruption Court' (2015) 3(1) *The Public Sphere Journal* 13 – 25.

<sup>7</sup> Although the Uganda Communications Act, Act 1 of 2013 does not empower the Uganda Communications Commission to prosecute, the DPP authorizes officers from the Uganda Communications Commission to prosecute offences under the Act.

<sup>8</sup> Although the Public Procurement and Disposal of Public Assets Act, Chapter 205, does not empower the Public Procurement and Disposal of Public Assets Authority to prosecute any of the offences under the Act, in August 2025, the Public Procurement and Disposal of Public Assets Authority issued a statement informing the public that the DPP has authorised it to prosecute offences under the section 129 of the Public Procurement and Disposal of Public Assets Act. See Benson Turamye, 'PPDA Moves to Prosecute Offences Under the PPDA Act' 26 August 2025. Available at <https://www.ppda.go.ug/ppda-moves-to-prosecute-offences-under-the-ppda-act/> (accessed 22 December 2025).

<sup>9</sup> Anything done ultra vires must be set aside. It has no legal consequences. See for example, *Sekiboobo v Obonyo* (Civil Application 31 of 1993) [1994] UGSC 35 (12 July 1994); *Omunyoko Akol Johnson v Attorney General* (Civil Appeal No 06 of 2012) [2015] UGSC 129 (8 April 2015); *Attorney General v Ssemwogerere and Olum* (Constitutional Appeal 3 of 2004) [2005] UGSC 29 (7 July 2005).

<sup>10</sup> For a discussion of the roles of prosecutors in Uganda, see for example, David Baxter Bakibinga "The role of prosecutors in preventing torture and ill-treatment of accused persons and proposals for reform" (2018) 10(1) *Revista Acadêmica Escola Superior Do Ministério Público Do Ceará* 217–235.

<sup>11</sup> Report of the Uganda Constitutional Commission: Analysis and Recommendations (1993) 17.170.

<sup>12</sup> *Ibid*, para 17.178(d). These were "(i) to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a military court; (ii) to take over and continue any criminal proceedings instituted by any other person or authority; (d) with the permission of the court, to discontinue at any stage before judgement is delivered, any such criminal proceedings instituted by the DPP or by any other person or authority."

<sup>13</sup> *Ibid*, para 17. 178(e). see also para 220(e).

<sup>14</sup> Proceedings of the Constituent Assembly (1994/1995) at 3412.

<sup>15</sup> *Ibid*, at 3407 – 3408 (Mr Apuuli, Mr Musumba, Mr Mayanja, Mr Karuhanga)

<sup>16</sup> *Ibid*, at 3407 (Mr Musumba).

<sup>17</sup> *Ibid*, at 3407.

<sup>18</sup> Magistrates Courts Act, Chapter 19, 1971.

<sup>19</sup> Magistrates Courts Act, Chapter 19, 1971.

<sup>20</sup> Section 41(1)(a).

<sup>21</sup> Section 41(1)(b).

<sup>22</sup> Section 43 provides that “(1) Where criminal proceedings have been instituted by a person, other than a public prosecutor or a police officer under section 42, the Director of Public Prosecutions may— (a) take over and continue the conduct of those proceedings at any stage before the conclusion of the proceedings; (b) discontinue the prosecution of the proceedings at any stage of an inquiry or a trial before a magistrate’s court; and (c) require such person, in relation to those proceedings— (i) to give him or her all reasonable information and assistance; and (ii) to furnish him or her with any documents or other matters and things in the person’s possession or under his or her control.

(2) Where the prosecution of any proceedings has been discontinued under subsection (1)(b), section 121 shall apply as if there had been a withdrawal from the prosecution under that section.

(3) For the purposes of this section, “criminal proceedings” means proceedings before a magistrate’s court and before any court by which an appeal may be heard or a power of revision exercised, and criminal proceedings shall not be deemed to be concluded until no further appeal or petition for revision can be made in the course of the proceedings.”

<sup>23</sup> *Ssekitoleko Yasin aka Machette v Uganda* (Criminal Miscellaneous Application No. 0191 of 2025) [2025] UGHCCRD 29 (18 August 2025) at 4.

<sup>24</sup> *Uganda Private prosecution by Male H Mabirizi K Kiwanuka v Anita Among Annet* (Civil Appeal 3 of 2024) [2024] UGHACD 8 (15 October 2024).

<sup>25</sup> *Uganda Private prosecution by Male H Mabirizi K Kiwanuka v Anita Among Annet* (Civil Appeal 3 of 2024) [2024] UGHACD 8 (15 October 2024) at 5.

<sup>26</sup> See for example, *Uganda (Private Prosecution By Male H. Mabirizi Kiwanuka) v Honorable Mao and Others* (Criminal Appeal 8 of 2023) [2023] UGHCCRD 146 (6 July 2023); *Mabirizi v Obore & 5 Others* (Miscellaneous Appeal 9 of 2024) [2024] UGHACD 11 (3 December 2024); *Basajabalaba v Kakande* (Criminal Revision 02 of 2013) [2013] UGHCCRD 19 (26 April 2013); *Ssenfuka Robert and Nyanzi Umar v Walugembe Daniel* (Criminal Miscellaneous Application No. 55 of 2024) [2025] UGHCCRD 22 (2 June 2025)

<sup>27</sup> *Twagira v Attorney General* (Constitutional Appeal 1 of 2007) [2016] UGSC 36 (7 March 2016).

<sup>28</sup> *Twagira v Attorney General* (Constitutional Appeal 1 of 2007) [2016] UGSC 36 (7 March 2016) at 17.

<sup>29</sup> *Ssemakadde v Uganda* (Private Prosecution by Byamazima Joshua and Tonny Tumukunde) (Criminal Miscellaneous Application 30 of 2025) [2025] UGHCCRD 17 (11 April 2025).

<sup>30</sup> For example, section 37 of the Petroleum Supply Act (2003) Chapter 163 provides that “Any holder of a permit or licence, any consumer of petroleum product or any recognised consumer organisation may...subject to the powers of the Director of Public Prosecutions, file a criminal complaint...against any holder of a permit or licence for any offence under this Act, if he or she has previously filed a complaint with the Commissioner and feels aggrieved by any act or omission of the Commissioner in response to the complaint.”

<sup>31</sup> Section 18 of the Companies Act (2012) Chapter 106, provides that “The High Court may, where a company or its directors are involved in acts including tax evasion, fraud or where, save for a single member company, the membership of a company falls below the statutory minimum, lift the corporate veil.” Cases in which courts have dealt with the issue of lifting the corporate veil include, *Abbo v Cimeel Engineering Ltd* (Miscellaneous Application No. 29 of 2013) [2018] UGCommC 41 (12 June 2018); *Guning v Naguru Tirupati Ltd & 5 Ors* (Miscellaneous Application No. 232 of 2017) [2017] UGCommC 122 (18 September 2017); *Absa Bank of Uganda Limited and 2 Others v Enjoy Uganda Limited and 2 Others* (Miscellaneous Application 1243 of 2023) [2023] UGCommC 23 (19 September 2023).

<sup>32</sup> *Proceedings of the Constituent Assembly* (1994/1995) at 3407 (Mr. Abu Mayanja).

<sup>33</sup> *Ibid*, at 3407 (Mr Abu Mayanja).

<sup>34</sup> *Ibid*, at 3407 (Mr Abu Mayanja).

<sup>35</sup> *Ibid*, at 3409 (Mr Wacha).

<sup>36</sup> *Ibid*, at 3409 (Mr Karuhanga).

<sup>37</sup> *Ibid*, at 3409 (Mr Malinga).

<sup>38</sup> Section 13 of the Employment Act, Chapter 226, provides that “(1) A labour officer may institute civil or criminal proceedings before the Industrial Court in respect of a contravention or alleged contravention of this Act or regulations made under this Act, and may prosecute and appear in his or her own name in respect of the proceedings.

(2) The rules of evidence shall apply in any criminal proceedings under this Act, but shall not apply in any civil proceedings before the Industrial Court.’ See also section 203 of the Insolvency Act (2011) provides that ‘The Official Receiver shall...(c) prosecute any person for offences committed under this Act or discovered to have a case to answer as a result of investigations carried out; (d) investigate the conduct of insolvency practitioners and to prosecute them for any offences committed.’ See also section 9 of the Occupational Safety and Health Act, Act 9 of 2006.

<sup>39</sup> Section 179(7) of the Companies Act (2012), Chapter 106.

<sup>40</sup> See for example, section 83(1) of the Presidential Elections Act, Chapter 179; section 37 of the Labour Disputes (Arbitration and Settlement) Act, Act 8 of 2006 which states that “A prosecution for any offence under this Act shall not be instituted except by, or with the written consent of the Director of Public Prosecutions.” See also section 28 of the Parliament (Powers and Privileges) Act, Chapter 258 (the word 'sanction' is used);

<sup>41</sup> Section 179(7) of the Companies Act (2012), Chapter 106; section 49 of the Anti-Corruption Act (2009), Chapter 116; section 24 of the Judicial Service Act (1997), Chapter 87; section 3 of the Anti-Terrorism Act, Act 14 of 2002; section 19 of the Prevention and Prohibition of Torture Act, Act 3 of 2012; section 23 of the Education Service Act (2002), Chapter 85; section 12(1) of the Official Secrets Act (1964), Chapter 302; section 15 of the Agricultural Chemicals (Control) Act (2007), Chapter 35; section 24 of the Health Service Commission Act (2001), Chapter 86.

<sup>42</sup> Section 40(1) of the Interpretation Act provides that ‘Where, under any Act, the consent or authority of the Attorney General or the Director of Public Prosecutions is necessary before any action or prosecution is commenced, any document purporting to be the consent or authority of the Attorney General or the Director of Public Prosecutions shall be received as prima facie evidence in any proceeding without proof being given that the signature to the consent or authority is that of the Attorney General or the Director of Public Prosecutions, as the case may be.’

<sup>43</sup> For example, section 83(4) of the Registration of Persons Act (2015), Chapter 332 provides that “Prosecution for an offence under this Act may, without prejudice to any other powers granted to any other public officers, be instituted by a registration officer on his or her own initiative or on a complaint made by any person.”

<sup>44</sup> For example, section 278(2) of the Companies Act (2012), Chapter 106 “Subject to the powers of the Director of Public Prosecutions under Article 120 of the Constitution, proceedings in respect of any offence under this Act may, notwithstanding anything to the contrary contained in the Criminal Procedure Code Act, be taken by the Director of Public Prosecutions or by the Registrar at any time within twelve months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Registrar, as the case may be, to justify the proceedings, comes to the knowledge of the Director of Public Prosecutions or the Registrar, as the case may be; except that proceedings shall not be so taken more than three years after the commission of the offence.” See also sections 83(4) and (5) of the Registration of Persons Act (2015), Chapter 332.

<sup>45</sup> For example, section 49 of the Anti-Corruption Act (2009), Chapter 116 provides that “A prosecution under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions or the Inspector General of Government...”

<sup>46</sup> See for example, section 11(4) of the Human Rights (Enforcement) Act (2019), Chapter 12 which provides that “Criminal proceedings under this Act may be instituted in any of the following ways— (a) by the Director of Public Prosecutions preferring a charge against a person; or (b) by any person making a complaint on oath to a competent court.” See also section 37 of the Labour Disputes (Arbitration and Settlement) Act, Act 8 of 2006.’

<sup>47</sup> For example, 93(2) of the Electronic Signatures Act (2011) Chapter 98 provides that “An officer of the Controller duly authorised in writing by the Director of Public Prosecutions may conduct the prosecution for any offence under this Act.”

<sup>48</sup> Section 171 of the Local Governments Act (1997), Chapter 138.

<sup>49</sup> For example, section 66(5) of the Free Zones Act (2014) Chapter 70 provides that “Subject to the powers of the Director of Public Prosecutions, the Commissioner General may file charges and prosecute in the appropriate court any person, if the Commissioner General has reasonable grounds to suspect that criminal activities have been or are being carried committed by any person in the free zone.” Section 66(8) of the same Act provides that ‘The powers of the Commissioner General to prosecute under this section are subject to the powers of the Director of Public Prosecutions under article 120 of the Constitution.’ See also section 39(2) of the Non-Governmental Organisations Act (2016), Chapter 109.

<sup>50</sup> Section 18(4) of the Uganda Wildlife Act (2019) Chapter 315 provides that “Subject to Article 120(3) and (4)(a) of the Constitution and subject to the directions of the Director of Public Prosecutions, in any prosecution under this Act, an officer shall exercise all the powers of a public prosecutor appointed under any law in force.” See also section 100 of the Capital Markets Authority Act which provides that “Prosecution for an offence against any provision of this Act may be taken by the Director of Public Prosecutions or where the Director of Public Prosecutions so directs, by the Authority or any person appointed for that purpose.”

<sup>51</sup> Section 48(3)(h) of the National Forestry and Tree Planting Act, Act 8 of 2003 provides that one of the functions of the District Officer is “to cause to be prosecuted, any person wilfully destroying any forest resources in contravention of this Act.”

<sup>52</sup> Section 68(3)(c) of the Kampala Capital City Act, Act 1 of 2011 provides that the Minister may enact regulations “in respect of breaches of the law involving grave omissions, commissions and noncompliance specified in the regulations, dismissal from the public service, health service or education service, and where necessary, criminal proceedings at the instance of the accounting officer through the Director of Public Prosecutions.”

<sup>53</sup> Tax Procedures Code Act (2014), Chapter 343.

<sup>54</sup> Section 226 of the MCA provides that “1. Any magistrate trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the Director of Public Prosecutions for that purpose shall be entitled to do so without permission.

2. Any person conducting the prosecution may do so personally or by an advocate.”

<sup>55</sup> See for example, *Uganda v Mpoya alias Wante & Anor* (Criminal Session No. 32 of 2012) [2014] UGHCCRD 496 (1 September 2014); *Mugerwa and Another v Uganda (URA)* (Criminal Miscellaneous Application 5 of 2022) [2023] UGSC 25 (16 May 2023); *Ssekamwa James Kulubya v Uganda (URA)* (Miscellaneous Application No 3 of 2025) [2025] UGHACD 19 (11 August 2025)

<sup>56</sup> See Law, Acts and Regulations <https://ura.go.ug/download-category/laws-and-acts/>

<sup>57</sup> See for example, *Lorika & Another v Uganda (URA)* (Criminal Appeal 1 of 2025) [2025] UGHACD 8 (7 April 2025).

<sup>58</sup> A copy the certificate sent to the author by one of the prosecutors reads as follows: “IN THE EXERCISE of the power conferred upon me under Section 222(2) and (3) of the Magistrates Court Act Cap 19 and S 135(1) and (2) of the Trial on Indictments Act Cap. 25, I hereby appoint ... [name of the prosecutor] of UGANDA REVENUE AUTHORITY, TO act as a Public Prosecutor as longer as s/he remains in service of the Uganda Revenue Authority. This appointment will remain in force until ... [expiry date given]. Dated at Kampala this ...[date given]. Signed by ... Director of Public Prosecutions.”