

The Public Prosecutor and the Constitutional Misnomer of State Attorney in Uganda

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Abstract

Uganda's constitutional order separates the Attorney General from the Director of Public Prosecutions, yet the officers who exercise delegated prosecutorial authority within the Office of the Director of Public Prosecutions are still commonly designated State Attorneys. This article argues that the designation is a constitutional misnomer. Its objection is not founded on etymology alone, nor does it claim that every prosecution conducted by an officer bearing that title is void. The argument rests on constitutional text, structure, history and role morality. Article 119 identifies the Government as the Attorney General's principal. Article 120 identifies no governmental client. It removes the DPP from external direction and replaces a principal's instructions with three controlling principles: public interest, the administration of justice and prevention of abuse of legal process. The article calls this the principal and principles distinction. It examines the genealogy of public, prosecution, prosecutor, attorney and state; compares the operative grammar of Articles 119, 120 and 250; and traces the disputed title through the 1962 and 1967 Constitutions and the Trial on Indictments Decree of 1971. That history shows that the terminology survived from an order in which the DPP was subordinate to the Attorney General. The article also confronts section 134 of the Trial on Indictments Act and comparative jurisdictions that use state based prosecutorial titles. It concludes that the title has statutory recognition and is not invalid by mere utterance, but it remains constitutionally inapt and institutionally hazardous. The proper reform is to designate ODPP counsel as Public Prosecutors or Prosecution Counsel, amend the older legislation, and make clear that prosecutorial authority derives from the DPP and is exercised for constitutional justice rather than as legal representation of the Government.

Keywords: Public prosecutor, State Attorney, Attorney General, Director of Public Prosecutions, prosecutorial independence, public interest.

1 Introduction

Uganda's Constitution places two senior legal offices next to each other and gives each a sharply different constitutional identity. Article 119 establishes the Attorney General as the principal legal adviser of the Government. Article 120 establishes the Director of Public Prosecutions and confers authority over criminal investigations and proceedings. The proximity of the two provisions does not merge their mandates. It exposes the care with which the Constitution separates government legal representation from public prosecution.¹

Administrative practice has not fully absorbed that separation. Lawyers serving in the Office of the Director of Public Prosecutions are still designated State Attorneys, the same professional description associated with lawyers serving in the Attorney General's Chambers. Section 134 of the Trial on Indictments Act also refers to a state attorney or state prosecutor.² The language has become familiar enough to appear harmless. Familiarity, however, is not constitutional justification. A title can survive long after the constitutional relationship that produced it has disappeared.

¹ Constitution of the Republic of Uganda 1995, arts 119 and 120.

² Trial on Indictments Act (Cap 25), s 134.

This article argues that State Attorney is a constitutional misnomer when used as the institutional identity of an officer exercising Article 120 authority. The expression fuses two concepts that the Constitution keeps apart. Attorney carries the logic of appointment to act for a principal. State is capable of being understood as the Executive Government. Their combination suggests a government lawyer pursuing the Government's criminal case. Article 120 creates no such relationship. It vests a controlled public power in an independent DPP and makes public interest, justice and prevention of abuse the governing standards.

The claim requires precision. The Constitution does not prescribe every subordinate title in the ODPP. The Trial on Indictments Act positively recognises State Attorneys. A court should therefore hesitate before declaring that the title, standing alone, invalidates an appointment, appearance or prosecution. The stronger conclusion is constitutional rather than merely lexical. The designation misdescribes the office, carries the genealogy of an abandoned structure, and becomes legally objectionable whenever it is used to import Government control, Government loyalty or automatic prosecutorial competence into Article 120. Existing legislation must be read subject to constitutional supremacy and conforming construction.³

The inquiry proceeds in five movements. It first studies the genealogy of the relevant words without committing the etymological fallacy of treating historical meaning as present law. It then examines the constitutional grammar of Articles 119, 120 and 250. It places the current terminology within Uganda's constitutional history, tests the older statutes against the 1995 settlement, and considers comparative practice. From that analysis, the article develops a constitutional nomenclature test based on source of authority, principal, decisional standard and accountability. That test explains why Public Prosecutor is a more faithful institutional name.

2 Constitutional Names and Institutional Identity

Constitutions create institutions through powers, relationships and restraints. Names do not replace those legal provisions, but they influence how officials and citizens understand them. A persistent institutional title can shape recruitment, training, performance assessment, court etiquette and professional self conception. It can teach an officer to see a complainant as a client, a police file as instructions, an acquittal as failure, or governmental preference as the public interest. These are not inevitable consequences, but the risk is serious where the title points towards a constitutional role occupied by another office.

Legal analysis must avoid two opposite errors. The first treats terminology as everything and assumes that a defective label automatically invalidates the underlying power. The second treats terminology as nothing and ignores the role that institutional language plays in constitutional culture. The correct approach starts from substance, asks whether the name accurately communicates that substance, and identifies the legal consequences only where the name is translated into conduct or authority.

A useful constitutional nomenclature test asks four questions. First, what is the source of the officer's power? Secondly, is there an identifiable principal whose interests the officer represents? Thirdly, what legal standards control the exercise of power? Fourthly, to whom is the officer answerable for the decision? A constitutionally sound title should not contradict the combined answers.

Applied to the Attorney General, the test reveals a representational office. The Constitution is the source of authority, the Government is the identified principal, legal advice and representation define the function, and the office is situated within Cabinet. Applied to the DPP, it reveals an independent decision making office. The Constitution is again the source, but there is no external client. Public interest and justice govern the decision, while authorised prosecutors answer within the DPP's prosecutorial hierarchy. State Attorney fits the first relationship much more naturally than the second. Etymology strengthens this interpretation because it uncovers the conceptual material from which the titles were formed. It does not decide the constitutional question by itself. Modern legal meaning is established by the Constitution and legislation, read in their historical and institutional setting. The inquiry that follows therefore uses word history as illumination, not as command.

³ Constitution of the Republic of Uganda 1995, arts 2 and 274.

3 The Genealogy of Public

The English word public passed through Anglo French from the Latin *publicus*. An earlier Latin form, *poplicus*, is connected to *populus*, meaning the people considered as a body or political community. Its historical field includes what belongs to the people, concerns the community, is exercised by public authority, or is available for common use.⁴ The semantic movement from people to public institution is understandable, but it does not make the institution identical with the people or with the Government administering it.

This distinction is vital to Article 120. The Government is a constituted apparatus, staffed by office holders and directed through political institutions. The public is the wider constitutional community from which legitimate authority is derived and for whose ordered freedom that authority exists. The Government can act for the public, but it can also mistake partisan convenience, administrative reputation or institutional self protection for public interest. Article 120(5) would perform no restraining work if public interest meant whatever the Executive preferred.⁵

Nor does public mean popular. Prosecutorial judgment is not a poll. Public anger can be intense and sincere while the evidence remains insufficient. A decision to prosecute may satisfy a majority and still violate equality, legality or fair trial. The public protected by Article 120 includes the victim seeking accountability, the accused entitled to fairness, the witness requiring protection, the taxpayer funding the process, and the community that needs institutions capable of admitting error. The public interest is therefore a disciplined constitutional judgment, not a synonym for crowd demand.

The word also distinguishes public prosecution from private vengeance. Criminal proceedings invoke powers that belong to the legal order: investigation, charge, compulsion, detention, trial and punishment. The prosecutor does not own those powers. The prosecutor holds and exercises them for legally defined public purposes. International standards accordingly require prosecutors to act impartially, protect the public interest, respect human dignity and consider circumstances favourable as well as unfavourable to a suspect.⁶

Public in the title Director of Public Prosecutions therefore performs two functions. It identifies the source and character of the authority, and it limits the purpose for which that authority may be used. It denies ownership by any private complainant, police unit, ministry, political party or office holder. It also denies the prosecutor permission to equate the Government's interest with the public interest without independent constitutional judgment.

The danger in State Attorney is what this article calls semantic capture. State can describe the entire constitutional polity, but it is frequently used to describe the apparatus of Government. When that ambiguous noun is joined to attorney, the Executive can appear to occupy the larger space belonging to the public. The Government becomes the State; the State becomes the public; and the public prosecutor is quietly recast as Government counsel. Article 120 was designed to prevent precisely that collapse.

4 The Genealogy of Prosecution and Prosecutor

Prosecute derives from the Latin *prosequi*, conventionally explained through *pro*, forward, and *sequi*, to follow. Its semantic centre is pursuit, following up or carrying a matter through. The specialised legal meaning developed around the institution and continuation of legal proceedings.⁷ Prosecutor names the person who performs that function.

The ancestry of the word can mislead if pursuit is understood as an unconditional chase for conviction. The Constitution gives the DPP authority to direct investigation, institute proceedings,

⁴ Merriam-Webster, 'Public' <<https://www.merriam-webster.com/dictionary/public>> accessed 19 September 2026; Online Etymology Dictionary, 'Public' <<https://www.etymonline.com/word/public>> accessed 19 September 2026.

⁵ Constitution of the Republic of Uganda 1995, art 120(5).

⁶ United Nations, Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, paras 12-16.

⁷ Merriam-Webster, 'Prosecute' <<https://www.merriam-webster.com/dictionary/prosecute>> accessed 19 September 2026; Online Etymology Dictionary, 'Prosecute' <<https://www.etymonline.com/word/prosecute>> accessed 19 September 2026.

take them over, continue them and discontinue them before judgment.⁸ The complete prosecutorial function therefore includes restraint. A prosecutor who stops a baseless case is not refusing to prosecute in the constitutional sense. The officer is controlling the prosecution process lawfully.

This is why conviction is an inadequate measure of prosecutorial success. A conviction secured after suppression of exculpatory material, political selection of an accused or persistence with unreliable evidence is an institutional failure. An acquittal following full and fair disclosure may show that the prosecutor performed the constitutional role properly. The classic statement in *Boucher v The Queen* explains that prosecution does not carry the ordinary adversarial idea of winning or losing and that its function is to place credible evidence before the court fairly.⁹

Contemporary prosecution codes make the same point in practical language. Prosecutors must act fairly and objectively, protect the rights of suspects and defendants, comply with disclosure duties, and serve justice rather than pursue conviction as an end in itself. They do not act for victims and families in the way a solicitor acts for a client.¹⁰ These duties are difficult to reconcile with a professional identity modelled on an attorney's undivided service to a principal.

Prosecutor is thus a function defined noun. It identifies a public decision maker responsible for controlling the lawful course of criminal proceedings. It leaves open the possibility that justice requires charge, diversion, plea, amendment, disclosure, discontinuance or acquittal. The breadth of that function is captured by Director of Public Prosecutions. Director signifies the constitutional control of the process and the authority to guide subordinate officers. Public identifies the character and purpose of the power. Prosecutions identifies its subject matter.

The title also guards against a subtle ethical error. Because the prosecutor appears for one side in an adversarial hearing, the prosecutor can begin to think like an ordinary partisan advocate. Courtroom advocacy is part of the role, but it is nested within a larger constitutional responsibility. The prosecutor must test the case before asking the court to test it. The office is a gatekeeper before it is a litigator.

5 The Genealogy of Attorney and State

Attorney entered English through Anglo French forms associated with appointment or designation. Its historical core is a person appointed to act in another's place.¹¹ Modern professional usage is broader, but the representational relationship remains central. Attorney naturally raises a further question: attorney for whom?

Article 119 supplies the answer. The Attorney General is the principal legal adviser of the Government, provides legal advice and services to it, reviews legal instruments in which it is a party or has an interest, and represents it in legal proceedings. The title matches the relationship. Attorney identifies representation; General identifies an appointment extending across the Government's legal affairs rather than a single cause.

State complicates the matter. The word developed from Latin *status*, referring to condition or standing, and later acquired its political sense.¹² In contemporary public law it may denote the entire polity, the permanent machinery of public authority, or the Executive Government. These meanings overlap in ordinary speech but must be distinguished when constitutional independence is at stake.

If State Attorney meant only a lawyer who acts for Uganda as a constitutional polity, its use for a prosecutor could be defended. Article 250(4) designates the prosecution in criminal proceedings by the word Uganda. Many jurisdictions describe public prosecutors as counsel for the State, the Crown or the People without treating the Government as a private client. The phrase is therefore not inherently unconstitutional in every legal system.

⁸ Constitution of the Republic of Uganda 1995, art 120(3)-(4).

⁹ *Boucher v The Queen* [1955] SCR 16, 23-24.

¹⁰ Crown Prosecution Service, Code for Crown Prosecutors (26 October 2018) paras 2.1-2.8 and 4.14(c) <<https://www.cps.gov.uk/publication/code-crown-prosecutors>> accessed 19 September 2026.

¹¹ Merriam-Webster, 'Attorney' <<https://www.merriam-webster.com/dictionary/attorney>> accessed 19 September 2026; OnlineEtymologyDictionary, 'Attorney' <<https://www.etymonline.com/word/attorney>> accessed 19 September 2026.

¹² Merriam-Webster, 'State' <<https://www.merriam-webster.com/dictionary/state>> accessed 19 September 2026.

Uganda's constitutional setting makes the designation particularly unsuitable. State Attorney is also embedded in the Government legal service and associated with the Attorney General's Chambers. The same title is made to serve two offices whose constitutional principals, decisional standards and accountability arrangements are different. It does not clarify that the prosecutor acts independently of Government. It blurs that fact at the point where the Constitution requires it to be clearest. The distinction can be stated simply. Attorney is relationship defined. Prosecutor is function defined. Article 119 constructs the first relationship. Article 120 constructs the second function. Applying the same attorney identity to both offices treats legal qualification as if it erased constitutional allocation. It does not.

6 The Constitutional Grammar of Articles 119 and 120

The constitutional text supplies stronger evidence than etymology. Article 119 repeatedly places the Government as the object of legal service. Article 120 uses the language of public authority and decisional control. The difference appears in the nouns, verbs, objects and restraints selected by the framers.¹³

Table 1 Constitutional allocation of legal authority

Constitutional feature	Attorney General under Article 119	DPP and prosecutors under Article 120
Institutional location	Cabinet Minister and principal legal adviser of Government	Independent constitutional decision maker with judicial level qualifications and security
Operative language	Advise provide legal services draw peruse represent	Direct investigate institute take over continue discontinue
Named principal	Government	No external client or directing principal
Governing criterion	Lawful advice and representation of Government interests	Public interest administration of justice prevention of abuse
Direction	Office situated within the Government it advises	No direction or control by any person or authority
Form of proceedings	Civil proceedings by or against Government through Attorney General	Criminal prosecution designated Uganda

Article 119 uses verbs of professional service and representation: advise, provide, draw, peruse and represent. The Government is repeatedly named as the party, interest holder or recipient. This is the grammar of counsel and client. It does not mean that the Attorney General can lawfully advance an unconstitutional objective. It means that the office's constitutional function is legal service to an identified governmental principal.

Article 120 uses verbs of sovereign gatekeeping: direct, investigate, institute, take over, continue and discontinue. Its objects are criminal information and proceedings against any person or authority. The phrase any person or authority is important. It preserves the possibility that prosecutorial power may be exercised against officials or public bodies whose conduct attracts criminal liability. A prosecutor conceived as the Government's attorney would face a structural contradiction whenever justice required action contrary to governmental preference.

Article 250 confirms the separation. Civil proceedings by or against the Government are instituted by or against the Attorney General. Criminal proceedings are designated Uganda.¹⁴ The provision is a compact constitutional map of public litigation. Government is a litigating entity represented by its attorney. Uganda is the constitutional polity in whose name criminal jurisdiction is invoked.

The modes of appointment reinforce the difference. The Attorney General is a Cabinet Minister appointed by the President with parliamentary approval. The DPP is appointed on the recommendation of the Public Service Commission, with parliamentary approval, must qualify for

¹³ Constitution of the Republic of Uganda 1995, arts 119(3)-(5) and 120(3)-(6).

¹⁴ *ibid* art 250(2) and (4).

appointment as a High Court judge, and enjoys equivalent terms and conditions of service.¹⁵ These safeguards do not make the DPP a judge. They signal the seriousness of decisional autonomy and distance the office from an ordinary government legal department.

Article 120(5) and (6) must be read together. Clause (6) removes external direction. Clause (5) prevents that independence from becoming personal dominion. The DPP is free from a political principal but bound to public interest, justice and protection of legal process. Independence is therefore structured judgment, not unreviewable preference. Comparative appellate authority similarly treats prosecutorial discretion as broad but legally bounded, especially where bad faith, improper motive or abuse is established.¹⁶

This produces the article's central thesis. Article 119 supplies the Attorney General with a principal. Article 120 removes any external principal and supplies the DPP with principles. In an ordinary attorney relationship, the principal lawfully defines the objective and gives instructions. In public prosecution, the Constitution defines the objective and constrains instructions. Article 120(6) removes the principal; Article 120(5) supplies the principles.

Ugandan courts have recognised the constitutional character of this allocation. In *Uganda v Kwoyelo*, the Supreme Court treated prosecutorial authority as vested by Article 120 and protected from direction or control.¹⁷ In *Barasa Bernard Odiemo and Another v Uganda*, the High Court emphasised the DPP's responsibility for the institution and conduct of prosecutions, including selection of the appropriate charge, subject to the constitutional standards.¹⁸ The decisions support a functional identity centred on prosecutorial judgment rather than governmental representation.

7 The Constitutional Constituency of the Prosecutor

The question whom the prosecutor represents cannot be answered by simply replacing Government with the people. The public is not an ordinary client capable of giving a unified brief. Citizens disagree about facts, punishment, policy and mercy. Public opinion can be misinformed or discriminatory. A prosecutor who follows immediate popular sentiment is no more constitutionally independent than one who follows a minister.

The better account is that the prosecutor exercises Uganda's criminal jurisdiction in trust for the constitutional administration of justice. Trust is used here as a public law description, not as a claim that all private law rules of trusteeship apply. It conveys custody rather than ownership. The prosecutor holds coercive authority for legally limited purposes and must account for its exercise through reasons, law, judicial process and institutional supervision.

This conception explains why no participant in a criminal file is the prosecutor's client. The police investigate and may seek advice, but Article 120(3)(a) permits the DPP to direct the police. A body subject to prosecutorial direction cannot simultaneously be the prosecutor's instructing client. The complainant and victim have rights and interests that deserve dignity, information and protection, but they do not control charge selection or discontinuance. The accused is the opposing party, yet the prosecutor remains obliged to protect fair process and disclose material capable of assisting the defence. The Government creates policy and provides resources, but cannot direct the outcome of a particular prosecution.

The Magistrates Courts Act expresses the correct internal relationship. The DPP may appoint persons to be called public prosecutors, and every public prosecutor is subject to the DPP's express directions.¹⁹ The individual officer is therefore not institutionally unaccountable. The chain of authority runs inward to the DPP and upward to the Constitution. It does not run sideways to the Attorney General or outward to a political office.

Professional standards support this model. The International Association of Prosecutors requires prosecutors to remain independent, impartial and objective and to serve and protect the public

¹⁵ *ibid* arts 119(1)-(2) and 120(1)-(2), (7).

¹⁶ *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780 [14]; *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 735-736.

¹⁷ *Uganda v Kwoyelo* [2015] UGSC 5 (8 April 2015).

¹⁸ *Barasa Bernard Odiemo and Another v Uganda* [2017] UGHC 139 (1 November 2017).

¹⁹ Magistrates Courts Act (Cap 19), ss 222-225.

interest.²⁰ Disclosure obligations further demonstrate that the prosecutor's role is not conventional partisan representation. In *R v Stinchcombe*, the Supreme Court of Canada linked disclosure to the Crown's duty to act fairly and to the accused's right to make full answer and defence.²¹

Uganda's Bill of Rights supplies a domestic foundation. The State must respect, uphold and promote rights. A person charged with a criminal offence is entitled to a fair hearing, and the right to a fair hearing is non derogable.²² An ODPP officer does not cease to participate in those obligations merely because the officer appears on the prosecuting side. Article 120(5) translates them into prosecutorial decision making through the administration of justice and prevention of abuse.

The constitutional constituency of the prosecutor therefore includes the integrity of the court, the rights of the accused, the legitimate interests of victims, the reliability of evidence, the equality of citizens and the public's need for lawful accountability. No ordinary attorney client description can contain that constituency without distortion.

8 The Historical Genealogy of the Disputed Title

The constitutional history explains why the terminology persists. It also shows why present practice cannot be understood from the 1995 text alone.

The 1962 Independence Constitution established an Attorney General as principal legal adviser to the Government and separately established the DPP as a public office. Section 82 conferred powers to institute, take over and discontinue criminal proceedings. It authorised subordinate officers to act under the DPP's instructions and expressly protected the DPP from the direction or control of any other person or authority.²³ The independence now associated with Article 120 therefore has roots at the beginning of Uganda's independence order.

The 1967 Constitution altered the relationship. Article 35 made the Attorney General the Government's principal legal adviser and a Minister, while authorising the Attorney General to represent Uganda in all legal proceedings. Article 71 retained the DPP's prosecutorial powers but made their exercise subject to the Attorney General's direction and control.²⁴ The distinction between government attorney and independent public prosecutor was institutionally compressed.

The Trial on Indictments Decree was enacted in 1971 within that constitutional order.²⁵ Its language is consistent with the arrangement then in force. Section 133 allowed the DPP to announce that the State did not intend proceedings to continue. Section 134 referred to the Deputy DPP, a state attorney or a state prosecutor. Section 135 provided that High Court prosecutions be conducted by a member of the Attorney General's Chambers or another person appointed by the DPP.²⁶ These provisions were not drafted against an Article 120(6) wall of independence. They came from a system in which the Attorney General constitutionally controlled the DPP.

The 1995 Constitution restored and strengthened prosecutorial autonomy. It separated the mandates in adjacent Articles, added the express standards in Article 120(5), protected the DPP from every person or authority, and distinguished Government civil litigation from criminal proceedings brought as Uganda. Yet the old statutory language and public service titles remained.

That survival creates a form of constitutional time lag. Formal constitutional change occurred in 1995, but parts of the administrative vocabulary still inhabit 1971. State Attorney in the ODPP is therefore a constitutional fossil. It preserves the linguistic imprint of an order in which prosecutors could accurately be located within the Attorney General's controlling structure.

A fossil is evidence, not destiny. Article 274 allows existing law to continue, but directs that it be construed with the modifications, adaptations, qualifications and exceptions needed to bring it into conformity with the Constitution.²⁷ The task is not to ignore the Trial on Indictments Act or pretend

²⁰ International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (23 April 1999) standards 1, 2 and 4.

²¹ *R v Stinchcombe* [1991] 3 SCR 326.

²² Constitution of the Republic of Uganda 1995, arts 20, 28 and 44(c).

²³ Uganda (Independence) Order in Council 1962, Constitution, ss 64 and 82.

²⁴ Constitution of Uganda 1967, arts 35, 71 and 123.

²⁵ Trial on Indictments Decree 1971 (Decree 26 of 1971), commenced 6 August 1971.

²⁶ Trial on Indictments Act (Cap 25), ss 133-135.

²⁷ Constitution of the Republic of Uganda 1995, art 274(1).

its words do not exist. The task is to deny those words any meaning that recreates Attorney General control, bypasses DPP authorisation or converts Government preference into prosecutorial instruction.

9 Statutory Dissonance and Constitutional Construction

Section 134 of the Trial on Indictments Act is the hardest textual objection to the argument. It states that the Deputy DPP, a state attorney or a state prosecutor may exercise powers vested in the DPP by the Act, except the power to enter a nolle prosequi. That language provides a positive statutory basis for the disputed title. Intellectual honesty requires the article to confront it rather than describe the designation as legally nonexistent.

Three readings are possible. The first is literal and title based. Any person who holds the public service designation State Attorney could exercise the listed powers merely by virtue of that title. That reading cannot survive Article 120(4), which permits the relevant functions to be exercised by officers authorised by the DPP in accordance with instructions. A pre constitutional statute cannot create an autonomous prosecutorial channel outside the DPP.²⁸

The second is a constitutionally conforming reading. State attorney in section 134 means a legally eligible officer who has been placed within, or specifically authorised by, the DPP's constitutional chain. The job title identifies a category of officer but does not itself supply authority. This reading preserves the section while making Article 120 decisive.

The third is legislative correction. Parliament should replace the inherited terminology with public prosecutor or authorised prosecution counsel. This is preferable because conforming interpretation can prevent illegality but cannot cure public confusion. A statute that says State Attorney while the Constitution constructs an independent public prosecutor continues to teach the wrong institutional lesson.

Section 135 requires the same treatment. Its reference to a member of the Attorney General's Chambers cannot mean that the Attorney General controls High Court prosecutions. At most, an officer from those Chambers can conduct a prosecution when validly appointed and while acting under the DPP's express direction. In that setting the officer's legal capacity is prosecutor for the particular matter, regardless of the officer's substantive government service title.

The Magistrates Courts Act demonstrates that the legislature already possesses a more accurate vocabulary. Section 222 states that the DPP may appoint persons to be called public prosecutors. It subordinates them to the DPP's express directions and regulates their appearance and control of prosecutions.²⁹ The coexistence of public prosecutor in one statute and State Attorney in another is not evidence of two coherent constitutional identities. It is evidence of incomplete harmonisation.

The distinction between office title and legal capacity resolves the immediate doctrinal problem. A person may be employed under a scheme of service carrying the title State Attorney, but that title alone does not prove authority to exercise Article 120 power. Authority depends upon constitutional or statutory authorisation traceable to the DPP. Conversely, the misdescription does not by itself nullify every past prosecution. Courts should examine actual authority, independence and compliance with Article 120 rather than turn nomenclature into retrospective chaos.

The case for reform is therefore strong even though the case for wholesale invalidity is weak. Constitutional supremacy demands that practice conform now. Legal certainty demands that correction preserve acts lawfully undertaken by authorised officers. Ugandan authority on Article 120 supports attention to the actual source and exercise of prosecutorial power rather than the administrative label alone.³⁰

10 The Constitutional Injuries Caused by the Misnomer

The title produces no automatic constitutional breach each morning that an officer reports for work. Its injury arises through the expectations, relationships and practices that it encourages. Those consequences deserve separate analysis.

²⁸ Constitution of the Republic of Uganda 1995, arts 2(2) and 120(4); Trial on Indictments Act (Cap 25), s 134.

²⁹ Magistrates Courts Act (Cap 19), s 222.

³⁰ *Uganda v Kwoyelo* [2015] UGSC 5; *Barasa Bernard Odiemo and Another v Uganda* [2017] UGHSC 139.

The first injury is the executive client illusion. Attorney suggests that the officer is retained to advance the lawful interest of a principal. State can easily be understood as Government. The combined expression invites the conclusion that the prosecutor's brief is to vindicate the Executive position. That conclusion is incompatible with the duty to decide independently whether evidence and public interest justify coercive criminal process.

The second injury is distortion of professional ethics. A government litigator may properly defend the Government's legal position with vigour, subject to professional duties. A prosecutor must test the prosecution case and remain open to its collapse. If the role is conceived as an attorney's brief, withdrawal can look like disloyalty, disclosure like assistance to an opponent, and acquittal like defeat. The constitutional standard is different. A fair discontinuance can be a better performance of duty than an unsafe conviction. International standards make impartiality, attention to both favourable and unfavourable circumstances, and protection of human rights part of the prosecutor's ordinary work.³¹

The third injury concerns public confidence. Article 120(6) protects actual independence, but constitutional institutions must also be intelligible. An accused, victim or witness should be able to see that the officer deciding the case is not simply another Government lawyer. This is particularly important when a prosecution affects a minister, police officer, opposition politician, critic of Government or public authority. The title needlessly complicates the appearance of independence.

The fourth injury is conflict of constitutional identity. Article 120 permits proceedings against any person or authority.³² The prosecutor may therefore be required to act where the Government has political, reputational or administrative interests. If the prosecutor is conceptually the State's attorney and State means Government, the office appears simultaneously to advise the institutional interest and judge whether criminal process should be used against it. The Constitution avoids this conflict by creating two offices. The shared title reintroduces it symbolically.

The fifth injury is confused accountability. A dissatisfied complainant may demand that the prosecutor obey the victim. Police may treat the prosecutor as counsel defending the investigation. Political actors may describe an adverse prosecutorial decision as disobedience by a Government employee. The title supplies vocabulary for these errors. Public Prosecutor directs accountability towards the DPP's instructions and the constitutional standards governing them.

The sixth injury is administrative duplication. When the same professional designation exists in both the Attorney General's Chambers and the ODPP, external actors cannot easily tell which constitutional mandate an officer carries. That confusion affects correspondence, deployment, professional training and public understanding. It may also conceal improper transfers of role assumptions between the two institutions.

These injuries reveal why institutional language is part of what might be called the soft constitution. Formal rules establish power, but repeated titles, forms, rituals and reporting lines teach officials how power is expected to behave. Soft constitutional language cannot override the written Constitution. It can, however, slowly weaken the habits on which constitutional independence depends.

11 Comparative Practice and the Limits of the Argument

Comparative practice cautions against turning the argument into a universal linguistic prohibition. Prosecutorial systems use Crown Prosecutor, State Advocate, District Attorney, State Attorney, public prosecutor and prosecution counsel. The title alone does not reveal the full institutional relationship. Constitutional context remains decisive.

Kenya's Article 157 provides a close regional comparison. It establishes an independent DPP, prohibits external direction or control, and requires regard to public interest, the administration of justice and prevention of abuse.³³ The constitutional language closely resembles Uganda's Article 120. Kenyan institutional usage of prosecution counsel helps distinguish prosecutors from lawyers who represent the national Government, although practice and legislation must still be examined rather than idealised.

³¹ United Nations Guidelines on the Role of Prosecutors (n 6) paras 13-16.

³² Constitution of the Republic of Uganda 1995, art 120(3)(b), (5) and (6).

³³ Constitution of Kenya 2010, art 157(10)-(11).

South Africa constitutionally requires the prosecuting authority to exercise its functions without fear, favour or prejudice. Its National Prosecuting Authority includes prosecutors, while State Advocate remains a familiar professional description in superior court practice.³⁴ The example shows that a state based title can coexist with formal independence. It also shows why terminology cannot be judged outside the legal culture, appointment structure and statutory definitions that give it meaning. The South African appellate courts have insisted that prosecutorial power must be exercised lawfully and without improper political motive.³⁵

England and Wales use Crown Prosecutor. The Crown Prosecution Service is established by statute, and the Code states that prosecutorial independence is central to a democratic criminal justice system.³⁶ Crown does not mean that the prosecutor is the monarch's private solicitor. Constitutional convention and statutory standards transform the title into a public office. Canada similarly uses Crown counsel while a federal Director of Public Prosecutions exercises prosecutorial functions independently, subject to a statutory framework for transparent Attorney General directives.³⁷

Some American jurisdictions use State Attorney as the formal constitutional name of an elected local prosecutor. Florida is a prominent example.³⁸ There the title belongs to the prosecuting office itself and is not borrowed from a separate government legal service. That difference matters. A name that clearly identifies the prosecutor in one architecture can obscure the prosecutor in another.

The comparative lesson is modest but important. State Attorney is not intrinsically unconstitutional in the abstract. It is constitutionally inapt in Uganda because Article 119 already assigns the attorney relationship to a Government office, Article 120 creates a separate public prosecution mandate, the title's Ugandan history is connected to the former subordination of the DPP, and existing legislation uses conflicting terms.

The same caution applies to judicial remedies. A challenge directed only at the words on an appointment letter may fail because the Constitution does not prescribe subordinate ranks and section 134 recognises the term. A challenge becomes constitutionally substantial where the title is relied upon to establish authority without DPP authorisation, justify Attorney General or executive direction, subordinate public interest to Government interest, or compromise a particular prosecutorial decision. The law should distinguish semantic misalignment from structural and decisional breach.

Comparative standards nevertheless reinforce the substantive position. Prosecutorial independence requires freedom from improper influence, objective decision making and safeguards against instructions in individual cases.³⁹ Whatever title is selected must communicate and support those requirements.

12 A Constitutional Programme for Reform

Reform should begin with a clear objective. It is not to weaken the State's authority to prosecute, sever lawful institutional cooperation or suggest that previous prosecutions were invalid. It is to align professional identity with the allocation of authority already made by the Constitution.

The most direct designation is Public Prosecutor. It is used by the Magistrates Courts Act, describes the officer's legal function and connects subordinate counsel to the Director of Public Prosecutions. Prosecution Counsel is also defensible, particularly as a graded professional title, provided legislation defines every holder as a public prosecutor authorised under Article 120.

³⁴ Constitution of the Republic of South Africa 1996, s 179(4); National Prosecuting Authority Act 32 of 1998, ss 20 and 32.

³⁵ *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1, 2009 (2) SA 277 (SCA) [37].

³⁶ Prosecution of Offences Act 1985, ss 1 and 10; Crown Prosecution Service, Code for Crown Prosecutors (26 October 2018) paras 1.1-2.8.

³⁷ Director of Public Prosecutions Act, SC 2006, c 9, ss 3 and 10.

³⁸ Florida Constitution, art V, s 17.

³⁹ Council of Europe, Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, adopted 6 October 2000, paras 11-16 and 24-36; European Commission for Democracy through Law, Report on European Standards as Regards the Independence of the Judicial System Part II The Prosecution Service, CDL-AD(2010)040, paras 23-32.

A coherent scheme of service could use Public Prosecutor, Senior Public Prosecutor, Principal Public Prosecutor and Chief Public Prosecutor, followed by the constitutionally familiar ranks of Assistant DPP, Deputy DPP and DPP. Alternatively, Prosecution Counsel could replace Public Prosecutor at the professional grades. The decisive requirement is to remove the implication that ODPP counsel belongs to the Government attorney cadre.

Sections 134 and 135 of the Trial on Indictments Act require amendment. Section 134 should provide that a Deputy DPP or an officer authorised by the DPP under Article 120(4) may exercise powers under the Act, except a function that the Constitution reserves to the DPP personally.⁴⁰ Section 135 should state that High Court prosecutions are conducted by the DPP, an authorised public prosecutor, or another person appointed in writing by the DPP and acting under the DPP's express direction. The amendment would also reconcile the terminology of the Trial on Indictments Act with the public prosecutor language of the Magistrates Courts Act.⁴¹

The amendment should contain a saving clause preserving lawful appointments, authorisations and proceedings completed before commencement. That clause would separate prospective constitutional alignment from indiscriminate retrospective invalidation.

Legislative change alone will not complete the work. Public service instruments, human resource manuals, warrants of appointment, court introductions, training curricula and performance standards should adopt the new identity. The ODPP Code of Conduct should state that a prosecutor does not have the Government, police, complainant or victim as a client. The officer acts for Uganda's constitutional administration of justice and remains bound by Article 120(5) and (6).

The Attorney General and DPP should also issue a joint institutional protocol identifying their distinct mandates and areas of lawful cooperation. Cooperation is not subordination. Government lawyers may share information, advise agencies or be appointed for a prosecution, but criminal prosecutorial authority must remain traceable to the DPP. Conversely, renaming ODPP officers should not erase the Attorney General's constitutional role in Government legal advice and civil representation.

Court practice should preserve Article 250(4). The case remains Uganda against the accused.⁴² The proposed reform does not privatise prosecution or detach it from the polity. It clarifies that Uganda is represented in criminal process through an independent prosecutorial institution rather than through the Government's attorney client relationship.

Finally, prosecutorial education must address role morality. The prosecutor's obligation to seek justice is often expressed as an ethical aspiration, but it is constitutionally concrete in Uganda. Article 120(5) requires continuing review, proportionate charging, disclosure, willingness to discontinue and vigilance against abuse. Scholarship on prosecutorial ethics shows why the duty to seek justice must influence everyday decisions rather than remain an ornamental phrase.⁴³ A corrected title should be accompanied by a corrected professional culture.

13 Conclusion

Uganda's Constitution does more than distribute legal work between two offices. It constructs two different professional relationships. The Attorney General is the Government's principal legal adviser and representative. The DPP exercises independent authority over criminal proceedings in the name of Uganda and under standards that protect the public legal order.⁴⁴

The difference is captured by the principal and principles thesis. Article 119 gives the Attorney General an identified principal. Article 120 denies the DPP an external principal and supplies controlling principles. Government interest can be the subject of legal representation. Public interest must be the product of independent constitutional judgment.

⁴⁰ Constitution of the Republic of Uganda 1995, art 120(4)(a)-(b).

⁴¹ Trial on Indictments Act (Cap 25), ss 134-135; Magistrates Courts Act (Cap 19), ss 222-225.

⁴² *ibid* art 250(4).

⁴³ Bruce A Green, 'Why Should Prosecutors Seek Justice?' (1998) 26 *Fordham Urban Law Journal* 607, 612-618; Fred C Zacharias and Bruce A Green, 'The Duty to Avoid Wrongful Convictions A Thought Experiment in the Regulation of Prosecutors' (2009) 89 *Boston University Law Review* 1, 10-18.

⁴⁴ Constitution of the Republic of Uganda 1995, National Objectives and Directive Principles of State Policy, Objective XXVI; arts 119, 120 and 250.

State Attorney fails to express that distinction. Attorney suggests representative agency. State is vulnerable to being read as Government. In Uganda the same title is associated with the Attorney General's legal service and descends from legislation enacted when the DPP was constitutionally subordinate to the Attorney General. Its continued use within the ODPP is therefore neither historically innocent nor institutionally neutral.

The conclusion must remain legally disciplined. Section 134 of the Trial on Indictments Act means that the expression has statutory recognition. The title alone does not nullify a prosecution. Its constitutionality depends upon what it is made to do. If it merely labels an officer who is validly authorised by the DPP and acts independently under Article 120, the defect is misdescription. If it is used to claim power without DPP authorisation, import Government instructions or prioritise a Government client, the defect becomes a constitutional violation.

The law should not wait for that confusion to mature into unlawful conduct. Parliament and the public service should align the statutes and professional ranks with the constitutional settlement. Public Prosecutor most accurately identifies an officer whose authority is public, whose function is prosecution, whose institutional direction comes from the DPP and whose ultimate allegiance is to constitutional justice.

The distinction is ultimately straightforward. An attorney's title asks whose legal interests the officer represents. A prosecutor's title asks what public power the officer exercises and under what restraints. Article 119 answers the first question with the Government. Article 120 answers the second with public interest, the administration of justice and prevention of abuse. The Constitution has already drawn the line. Uganda's institutional language should now respect it.

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