



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

REMARKS

BY

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**DURING THE DECISION TO CHARGE & CASE MANAGEMENT SYSTEM LAUNCH AT THE PROSECUTION
TRAINING INSTITUTE DELIVERED ON 28TH JULY, 2020**

THEME: "INDEPENDENCE, TRANSPARENCY AND FAIRNESS IN PROSECUTION SERVICE".

Hon. Chief Justice, and President of the Supreme Court of Kenya, Hon. Justice David Maraga;

Hon. Dr. Fred Matiangi, Cabinet Secretary, Ministry of Interior and Coordination of National Security;

Mr. Hillary Mutyambai, Inspector General of the NPS;

Maj. Gen. Fatma Gaiti Ahmed, Assistant Chief of Defence Forces, Personnel and Logistics, KDF;

Brig. Daniel Omondi Odeny, Chief of Legal Services, KDF;

Ms. Agnes Shikuku, Representing the DG NIS;

Mr. Nelson Havi, The President, Law Society of Kenya;

Hon. Anne Amadi, Chief Registrar of the Judiciary;

Hon. Judges and Magistrates;

Mr. Twalib Mbarak, The Chief Executive Office of the EACC;

Mr. George Kinoti, The Director of Criminal Investigations;

Ms. Anne Makori, Chairperson, Independent Police Oversight Authority;

Amb. Kyle McCarter, USA;

Amb. Simon Mordue, European Union;

Mr. Ben Shamalla, Country Director, International Justice Mission-Kenya;

Ms. Jessica Ryckman, Deputy Director, Lawyers Without Borders;

All Development Partners present;

Distinguished Ladies and Gentlemen;

Good Morning!

I take great pleasure in welcoming you all as we launch the Guidelines on the Decision to Charge and our Case Management System.

Thank you for taking time to attend this launch today. It is always a privilege to congregate together with such faithful and dedicated stewards serving to create a more efficient and effective criminal justice system. Our gathering is testament to the values of cooperation, coordination and collaboration that bind us together and today; renews, rekindles and reaffirms this necessary bond.

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

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

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

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

Guidelines on the Decision to Charge

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

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

The two common questions that the *Mwananchi* from Lamu to Homa Bay; In the Community Social halls to the Correctional facilities asked were: how do you decide whom to charge? and how do you make the decision to charge?

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

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

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

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

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

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

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

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

I am confident that these policies and guidelines will bring uniformity, consistency and predictability in discharging our mandate and express our deep commitment to the delivery of professional and quality prosecution services to the *Mwananchi*.

Case Management System

Today, we also launch our Case Management System.

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

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

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

It has been developed by local software experts who took time to research and to integrate into it our unique local prosecutorial requirements. *Uadilifu* really serves to showcase how capable our citizens are especially when we in the justice system use our power to create an environment that is fair and ethical and which in turn fosters creativity and enterprise.

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

The launch of the electronic E-Filing by the Judiciary on 1st July 2020 demonstrated how the system enhances the overall efficiency within the criminal justice system. We demonstrated the integration between the two institutions. This integration has since reduced the time taken to file a charge sheet from an average of 30 minutes to slightly less than 5 minutes!

The reduced timeline coupled with less human contact mitigates against chances of misplaced and of/lost files thereby enhancing access to justice through timely and expeditious judicial processes.

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

If deployed and embraced beyond just data capture, this system will serve to enhance holistic collaborations among all partners and ensure that multiple viewpoints are embraced from analysis of crime trends, investigations, prosecutions, convictions and correctional phases. More importantly it can also help us know where to focus as we seek to improve the criminal justice system by providing real-time qualitative and quantitative data.

I urge all actors in the criminal justice system to embrace the use of information technology. It will create synergy and ensure transparency, accountability and fairness in the delivery of services.

Through our Prosecution Training Institute, we are setting up an e-learning center to provide resources and conduct continuous joint trainings both at an agency and interagency level including sessions on the integrated case management system.

Finally, I would like to extend my gratitude to the Chief Justice, Hon. David Maraga, Interior CS Dr. Fred Matiang'i, our partners, both in government and non-governmental, who have worked with us tirelessly in ensuring that we realize this great milestone. Your continued support and commitment is appreciated.

Conclusion

As mentioned earlier, ODPP is taking advantage of every opportunity before us and embracing that "fierce urgency of now" in discharging our mandate for Kenyans.

It takes courage to push for change, and yes, we note that we will be challenged at every step, but it takes a steadfast spirit and fierceness beyond words because if not now then when? And if not us, then who?

Talking about change is easy, but doing it takes courage beyond bounds and we at ODPP have committed ourselves to be a change catalyst for our beloved Kenya.

So here is to my colleague's boundless courage in the face of adversity, doing what we see is right for the people of Kenya, and continuing fiercely to push forward now towards ensuring a fair, independent, transparent and just criminal justice system.

'If not now, then when? If not you then who?' this is the fundamental question for all of us gathered here today!

This morning let us renew our commitment to increased cooperation, collaboration, and coordination. When we leverage on the dedication and expertise of everyone gathered here today, I know we will be able to achieve success.

We at the Office of the Director of Public Prosecutions are optimistic about the future. We pledge to uphold our solemn obligation to see that justice is done to the *Mwananchi*, whom we are called upon to serve as ministers of justice. We assure you of our commitment to our clarion call '*Mashtaka yenye Haki na Usawa*'.

And for each of our partners here today, it is an honor to work together and I look forward to our continued work together and even greater accomplishments in serving *Mwananchi*.

Asanteni!
God bless you all