

**OFFICE OF THE DIRECTOR  
OF PUBLIC PROSECUTIONS**

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**SOLOMON ISLANDS**



**PROSECUTION  
POLICY**

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***WAKA BLONG OFIS BLO PROSIKIUSEN***

***LONG SOLOMON AELAN***

"The first, best, and most effective shield against injustice for an individual accused, or society in general, must be found not in the persons of defence counsel, trial judge, or appellate jurist, but in the integrity of the prosecutor."

*Associate Justice Carol A. Corrigan, 1986*

~ Policy current as at 14 May 2009 ~

## FOREWORD

The Office of the Director of Public Prosecutions (ODPP) was established soon after Solomon Islands gained political independence on 7 July 1978. The Prosecutions Service was previously part of the Attorney General's Chambers. The Office then consisted of the Director and two staff and gradually grew to where it is today with 22 staff. The first Solomon Islander Director, now Judge, Mr Francis Mwanalua, was appointed in May 1984. In the past, despite not having a written Policy, the Office conducted itself at the highest standards under the guidance of the previous Directors. The Office has operated independently of any improper considerations and jealously defended its independence as provided for by s. 91(7) of the Constitution. This included during our darkest period of time through the ethnic tension period.

The Office sensed a new direction when in 2005 the then President of the International Association of Prosecutors (IAP) and Director of Public Prosecutions of New South Wales, Australia, Mr Nicholas Cowdery, re-emphasised the importance of having a Prosecutions Policy at the IAP conference in Copenhagen and subsequently at the Hong Kong and Singapore IAP conferences in 2007 and 2008 respectively. Former Solomon Islands Director of Public Prosecutions Mr John Cauchi, also emphasised the need for a Prosecution Policy.

In 2006, ODPP Senior Prosecutions Adviser Mr Nicholas Havailolo Mirou commenced work on this Policy. At the end of 2007, Mr Paul Rutledge, Deputy Director of Queensland, Australia, in his short stint at the Office, encouraged this work to continue and from that time on, the Office was determined to speed up the process of finalising and launching the Policy. The work on this Prosecution Policy was continued by Ms Rachel Olutimayin, Senior Prosecutions Adviser. Further assistance came from Senior Prosecutions Adviser Mr Matthew Coates, my Deputy Ms Rebecca Christensen, other Prosecution Advisers and local prosecutors. I am especially grateful for the kind assistance and support given by Mr Cowdery in the final preparation of this Policy and his presence in Solomon Islands in launching this Policy.

The Director of Public Prosecutions is a pillar of the criminal justice system and that system is a central pillar of the rule of law. It is therefore incumbent upon me as the Director to ensure that the Office, which is established under the supreme law of Solomon Islands, operates in a manner reflective of that cardinal principle and according to law. The Office is equally committed to the general principles of transparency, accountability and action in the general public interest that guides all prosecution agencies. This is also in line with the requirements of the IAP and is in line with the recommendations of the third edition of the world summit of Prosecutors General in Bucharest, Romania in March of this year. We therefore adopt with this Policy the IAP standards.

Through this Policy we desire to inform the community of Solomon Islands and the international community of the principles upon which the Solomon Islands Office of the Director of Public Prosecutions will operate. It will also provide assistance to prosecutors in approaching decision-making while carrying out their public functions. By having this Policy, the Solomon Islands ODPP is truly striving for, and achieving, the standards of conduct recognised and adopted in most similar legal jurisdictions worldwide.

Solomon Islands will celebrate 31 years of nationhood in July of this year. The fact that this Policy is launched on the eve of our country's 31<sup>st</sup> anniversary of Independence is significant. Our own national Prosecution Agency has come of age and has the vision to make our country "a safe and just Solomon Islands supported by a constitutionally independent public prosecutions service under the rule of law".

God be our Guide



Ronald Bei Talasasa Jnr, LLB (UPNG)

**Director of Public Prosecutions**

Solomon Islands

14 May 2009





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Appendix 1 – International Association of Prosecutors Standards



## **1. VISION, MISSION AND VALUES**

### ***1.1 Vision***

A safe and just Solomon Islands supported by a constitutionally independent public prosecution service under the rule of law.

### ***1.2 Mission***

Delivering an independent, fair and effective prosecution service.

### ***1.3 Values***

The Office of the Director of Public Prosecutions (ODPP) values are:

#### ***Independence***

- a) We act only according to the law of Solomon Islands and in the public interest, without regard to inappropriate influences.

#### ***Accountability***

- b) We are responsible for and report upon our actions, decisions and performance.





***Respect***

- c) We understand and value our diverse community and strive to meet its needs.

***Ethical and with Integrity***

- d) We are fair to all, honest in all aspects of our work, always act in the best interests of justice, maintain confidentiality and practice our values in every aspect of our service.

***Efficiency***

- e) We will build, making best use of resources, high quality work practices and case management to meet deadlines, preparation and case completion requirements.

**2. PURPOSE OF PROSECUTION POLICY**

- 2.1 Fair, effective and open prosecution is essential to maintaining the rule of law and achieving a just and peaceful society. The purpose of this Policy is to outline the principles upon which decisions are made by the Director in the institution and conduct of prosecutions. In doing so, the aim of the policy is to assist officers in the ODPP in the assessment and conduct of individual matters.



- 2.2 In providing a standard set of principles the Policy also intends, at a broader level, to promote consistency and fairness in the exercise of discretion by the Director, and where appropriate his officers, in the making of such decisions. Standard principles promote timely and efficient resolution of matters.
- 2.3 Furthermore, in accordance with the obligations of transparency and accountability, the publication of the Policy is intended to inform persons affected by decisions made by the Director, including the public generally, of the principles upon which such decisions are made and to make those principles known in advance.

### **3. INDEPENDENCE**

- 3.1 The Director prosecutes on behalf of the Crown (that is, the Independent State of Solomon Islands) under section 91 (4) of the Constitution. In the exercise of the powers conferred on him by that section, the Director shall not be subject to the direction or control of any other person or authority except in any case that concerns the defence, security or international relations of Solomon Islands. In any such case the Director shall bring the matter to the attention of the Minister responsible for justice and shall, in the exercise of his powers in relation to that case, act in accordance with any directions that the Minister may give. He acts independently of the government and of political influence.



- 3.2 The Director also acts independently of inappropriate individual or sectional interests in the community and of inappropriate influence by the media.
- 3.3 Cases are prepared and conducted by lawyers employed in the ODPP. In all cases Prosecutors act on behalf of the Director. They are also subject to his general direction in the exercise of their professional functions, which direction may be given by way of this Prosecution Policy and published guidelines.
- 3.4 Pursuant to section 91 (5) of the Constitution the Director may delegate the exercise of particular functions.

#### **4. ROLE OF THE PROSECUTOR**

- 4.1 Every prosecutor has the duty to ensure that the right person is prosecuted for the right offence and that the Court is given all relevant evidence in each case.
- 4.2 A prosecutor is not entitled to act as if representing private interests in litigation. A prosecutor represents the community and not any individual or sectional interest. A prosecutor acts independently, yet in the general public interest.



- 4.3 A prosecutor must be fair, independent and objective. He must not be influenced by racial, gender, religious or political views or beliefs. He must never be affected by improper or undue pressure from any source.
- 4.4 It is the duty of every prosecutor to advise and review the evidence, ensuring that the law is properly applied. All obligations of disclosure must be adhered to.
- 4.5 The prosecutor must be sensitive to the interests and needs of the victims of crime. The manner in which the prosecuting authority treats the victims of crime is a measure not only of its efficacy, but also of its humanity.
- 4.6 The prosecutor must endeavour to treat victims with courtesy and respect, keep victims informed of the progress of the case, have the victim's views considered by the prosecutors and investigators, and respect the victim's privacy and confidentiality.
- 4.7 The prosecutor must always act in the interests of justice, not principally for the purpose of obtaining a conviction.



**5. FAIRNESS**

- 5.1 In the conduct of every prosecution the duty of the prosecutor is to act fairly and impartially and to assist the Court to arrive at the truth.
- 5.2 A prosecutor is entitled to firmly and vigorously urge the Crown's view about a particular issue and to test and, if necessary, to attack the view put forward on behalf of the accused; however, this must be done temperately and with restraint;
- 5.3 A prosecutor must:
- a) avoid submissions of fact which are not soundly based;
  - b) eschew prejudice or emotion in the conduct of the case;
  - c) reveal the existence of material that may assist the accused;
  - d) not advance any argument that does not carry weight in his or her own mind or try to shut out any relevant evidence that would be important to the interests of the person accused;
  - e) inform the Court of authorities or trial directions appropriate to the case, even where unfavorable to the prosecution;



- f) offer all evidence relevant to the Crown case during the presentation of the Crown case; and
- g) continually review the evidence and invite the Court to stop the proceedings if the point is reached at which the prosecutor concludes there is no longer a reasonable prospect of conviction.

**Fairness to the Prosecution**

- 5.4 The prosecution also has a right to be treated fairly and this right must not be overlooked.
- 5.5 The prosecution must maintain that right in the interests of justice. This may mean, for example, that an adjournment must be sought when insufficient notice is given to the prosecution in the following situations: listing of cases; alibi evidence; representations by an unavailable person; or expert evidence to be called by the defence.

As Lord Goddard CJ said in *R v Grondkowski (1946) KB 369* at 372 'The judge must consider the interests of justice as well as the interests of the prisoners'.



**6. EXPEDITION**

- 6.1 A fundamental obligation of the prosecution is to assist in the timely and efficient administration of justice. Accordingly:
- a) cases should be prepared for hearing as quickly as possible;
  - b) Informations should be filed as quickly as possible;
  - c) Informations should be provided to the defence as soon as possible;
  - d) any amendment to an Information should be made known to the defence as soon as possible; and
  - e) as far as practicable, an adjournment of any trial should be avoided by prompt attention to the form of the Information, the availability of witnesses and any other matter which may cause delay.

**7. THE DECISION TO PROSECUTE**

- 7.1 The decision to prosecute is the most important step in the prosecution process. Not everyone suspected or alleged to have committed a crime will be prosecuted.



7.2 "It has never been the rule in this country...that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should...prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest'. That is still the dominant consideration" (per Sir Hartley Shawcross QC, UK Attorney General and former Nuremberg trial prosecutor, speaking in the House of Commons on 29 January 1951).

This statement applies equally to the position in Solomon Islands. The finances available for prosecutions are finite and should not be wasted prosecuting inappropriate cases, thereby reducing the resources available to prosecute worthy cases.

7.3 Similarly, the cost to an accused person to defend a prosecution can be high; impacting upon the person financially, emotionally and causing irreparable damage to the person's reputation. It is therefore inappropriate to prosecute a person or persons when there is no reasonable prospect of conviction.





7.4 In making the decision to prosecute, the prosecutor must consider the following.

**1. *Does the admissible evidence available establish each element of the alleged offence?***

This is essentially the prima facie case test; however, it requires the consideration of admissible evidence. This can require the prosecutor to make a determination if evidence would be admissible.

**2. *Is there a reasonable prospect of conviction?***

This requires an exercise in judgment and an evaluation of the available evidence and the strength of the prosecution case. It will require the consideration of:

- a) the availability, competence and compellability of witnesses and their likely impression on the Court;
- b) if a witness has a motive for lying or not telling the whole truth;
- c) any conflicting statements by a material witness;
- d) the admissibility of evidence, including any alleged admission or confession;



- e) the reliability and strength of any identification evidence;
- f) the warnings and directions a Judge must give in the particular case;
- g) any defences that are available to the accused; and
- h) any other factors relevant to the merits of the Crown case.

3. ***Are there discretionary factors that dictate whether the matter should or should not proceed in the public interest?***

While there may be a prima facie case and a reasonable prospect of conviction there may be discretionary factors that dictate that a matter should not proceed. These factors may be varied and will depend upon the individual cases. Some of the discretionary factors to consider are:

- a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a 'technical' nature only;
- b) any mitigating or aggravating circumstances;
- c) the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim;
- d) the alleged offender's antecedents and background;
- e) the risk of re-offending by the alleged offender;



- f) the staleness of the alleged offence;
- g) delay and the effect of such delay, and any reasons for such delay;
- h) the degree of culpability of the alleged offender in connection with the offence;
- i) the effect on public order and morale;
- j) the obsolescence or obscurity of the law;
- k) whether the prosecution would be perceived as counter-productive: for example, by bringing the law into disrepute;
- l) the availability and efficacy of any alternatives to prosecution;
- m) the prevalence of the alleged offence and the need for deterrence, both personal and general;
- n) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- o) whether the alleged offence is of considerable public concern;



- p) any entitlement of the Crown or other person or body to criminal compensation, reparation, forfeiture or civil remedy if prosecution is taken;
- q) the attitude of the victim of the alleged offence to a prosecution and the interests of the victim;
- r) the likely length and expense of a trial;
- s) special circumstances that would prevent a fair trial being conducted;
- t) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- u) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court; and
- v) the necessity to maintain public confidence in such basic institutions as the Parliament and the Courts.

The applicability of and weight to be given to these and other factors will depend on the particular circumstances of each case.



**4. *A decision whether or not to proceed must not be influenced by:***

- a) the race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of the alleged offender or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account objectively);
- b) personal feelings of the prosecutor concerning the offence, the alleged offender or a victim; and
- c) possible political advantage or disadvantage to the government or any political party, group or individual.

**8. TAKING OVER PRIVATE PROSECUTIONS**

- 8.1 The Director may take over a matter pursuant to section 91 (4) of the Constitution. Although the right of an individual to prosecute exists, the object of having a Director of Public Prosecutions is to ensure manifest integrity, neutrality and consistency in the making of prosecutorial decisions and the conduct of prosecutions.



- 8.2 Proceedings may be taken over if:
- a) the Police officer-in-charge of the investigation so requests and there is a sound basis for doing so;
  - b) there is no reasonable prospect of conviction;
  - c) they appear to be frivolous or vexatious or brought for an inappropriate ulterior purpose;
  - d) they appear to have arisen out of a conflict of a predominantly civil nature and/or a civil legal remedy may be available;
  - e) they have been brought contrary to advice or a decision by the Director not to proceed;
  - f) they have been instituted by Police or a private person and there appears to be a conflict of interest or the risk of unfairness arising from their conduct of the prosecution; and
  - g) the public interest otherwise requires it, having regard (for example) to the gravity of the offence, its connection with another offence being prosecuted by the ODPP and all the surrounding circumstances.



- 8.3 If a decision is made to take over a private prosecution notices must be given expeditiously and before the next Court appearance. Nevertheless, the mere act of appearing before a Court in a prosecution or proceeding (including an appeal) in respect of an offence will constitute the taking over of that matter by the Director.
- 8.4 Before any matter is taken over if time reasonably permits, it must be assessed and a decision made by the Director as to its future course (e.g. to continue or discontinue the proceedings).

## **9. WITHDRAWAL OF CHARGES AND NOLLE PROSEQUI**

- 9.1 The final decision whether or not a prosecution proceeds in any court rests with the Director and must be consistent with the objective of ensuring that only fit and proper cases are brought before the courts. Accordingly, the Director will discontinue a prosecution if appropriate.
- 9.2 Where a prosecution is instituted by the Police Prosecutions or a Police Officer in circumstances where there was no prior consultation with the Director, that decision should be reviewed as soon as practicable after the case has been referred to the ODPP.



- 9.3 It is important that cases should be kept under continuous review whether or not there was consultation with the Director prior to the institution of the prosecution. New evidence or information may become available which makes it no longer appropriate for the prosecution to proceed.
- 9.4 Whenever the Director is contemplating discontinuing a prosecution the Director should consult the Police Officer or responsible department or agency. In this regard, the independence of the Director in the prosecution process does not mean that those who investigated the matter should be excluded from the decision-making process. Indeed, where the Director is contemplating discontinuing a prosecution close liaison is vital to the maintenance of a harmonious relationship between the ODPP and the relevant agency.
- 9.5 The extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the Director is contemplating discontinuing the prosecution.
- 9.6 If it is considered the available evidence is insufficient, it can be expected the Police or responsible department or agency will accept the Director's assessment of the evidence, and the consultation will be largely confined to the prospects of obtaining additional evidence.





**Declining to proceed further after commitment**

- 9.7 After the accused person has been committed for trial the question may arise, either on the initiative of the ODPP lawyer involved in the prosecution or as a result of an application by the defence, whether an Information should be filed against the accused, or, if the Information has already been filed, whether the trial on that Information should proceed.
- 9.8 In this regard, pursuant to section 68 of the *Criminal Procedure Code [Cap 7]*, the Director may decline to proceed further in the prosecution of a person who has been indicted. Notwithstanding that the Information has been filed, events may have occurred after the committal that makes it no longer appropriate for the prosecution to proceed.
- 9.9 Alternatively, the strength of the prosecution case may have to be reassessed having regard to the course of the committal proceedings.
- 9.10 Where a question arises as to the exercise of the power under section 68 of the *Criminal Procedure Code [Cap 7]*, it is determined on the basis of the criteria governing the decision to prosecute set out earlier in these Guidelines.



- 9.11 The Police or relevant department or agency should be consulted before any decision is made.
- 9.12 Where a decision has been made not to proceed with a trial on indictment, that decision will not be reversed unless:
- a) significant fresh evidence has been produced that was not previously available for consideration;
  - b) the decision was obtained by fraud; or
  - c) the decision was based on a mistake of fact; and
  - d) in all the circumstances it is in the interests of justice that the decision be reversed.

## **10. SELECTION OF CHARGES**

- 10.1 Prosecutors should select charges which:
- a) reflect the seriousness of the offending;
  - b) give the Court adequate sentencing powers; and
  - c) adequately reflect the essential and overall criminality of the alleged offender's conduct.



- 10.2 Prosecutors should not lay more charges than are necessary just to encourage an accused to plead guilty to a few. Further, prosecutors should not lay a more serious charge just to encourage an accused to plead guilty to a lesser charge. Prosecutors must in all cases guard against the risk of hearings becoming unduly complex or lengthy (although complexity and/or length in some cases may be unavoidable, necessary or otherwise appropriate).
- 10.3 In the ordinary course, the charge should be the most serious one disclosed by the evidence. In some instances, however, it may be appropriate to proceed with a charge which is not the most serious having regard to the strength of the prosecution case, probable lines of defence to a particular charge and the desirability of presenting the case in court in a clear and simple way.

## **11. DEFENCE SUBMISSIONS**

- 11.1 Any submission from the defence must be dealt with expeditiously;
- 11.2 If the matter is complex or sensitive, the defence should be asked to put the submission in writing;



- 11.3 Submissions that a charge should be discontinued or reduced should be measured by the test for prosecuting, set out in Policy 7; and
- 11.4 A submission to discontinue because of the triviality of the offence should be considered in the light of public policy considerations.

## **12. THE PROSECUTOR'S ROLE IN SENTENCING**

- 12.1 The prosecution has an active role to play in the sentencing process. A prosecutor must not seek to persuade the Court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- a) must correct any error made by the opponent in address on sentence;
  - b) must inform the Court of any relevant authority or legislation bearing on the appropriate sentence;
  - c) must assist the Court to avoid appellable error on the issue of sentence;
  - d) may submit that a custodial or non-custodial sentence is appropriate; and



- e) may inform the Court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.

12.2 In pursuing these requirements, a prosecutor should:

- a) adequately present the facts;
- b) inform the Court of the impact of the crime upon the victim;
- c) ensure that the Court is not proceeding upon any error of law or fact;
- d) provide assistance on the facts or law as required;
- e) fairly test the opposing case as required;
- f) refer to relevant official statistics and comparable cases and the sentencing options available; and
- g) if it appears there is a real possibility that the Court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, make submissions on that issue - particularly if, where a custodial sentence is appropriate, the court is contemplating a non-custodial penalty.



- 12.3 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including by informing the Court or an opponent whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate). The Director's instructions may be sought in advance in exceptional cases.
- 12.4 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing.
- 12.5 The prosecutor must be aware of any legal limitations on sentence, the maximum sentence, whether the Court has jurisdiction to impose any particular sentence, and any regular “tariffs” or guideline cases prior to sentencing. This must be brought to the attention of the sentencing Court to help it to arrive at a just and proper sentence.



**Mitigation**

- 12.6 The prosecutor has a duty to do all that reasonably can be done to ensure that the Court acts only on truthful information. Vigilance is required not just in the presentation of the Crown case but also in the approach taken to the defence case. Opinions, their underlying assumptions and factual allegations, should be scrutinised for reliability and relevance.
- 12.7 When matters advanced in mitigation can be proven wrong, it is the duty of the prosecutor to inform the defence accordingly. If the defence persists it becomes the responsibility of the prosecutor to invite the Court to put the defence to proof of the disputed material and if necessary to hear rebutting evidence.

**Criminal Histories**

- 12.8 The prosecutor must ensure that any criminal history is current as at the date of sentence and must inform the Court of the accused's criminal history and any facts which may affect the assessment of sentence, whether mitigating or aggravating in character.



### **13. CUSTOMARY LAW AND RECONCILIATION**

- 13.1 Customary law and custom reconciliation practices are part of the daily lives of many Solomon Islanders. However, where customary law and the Law of the Solomon Islands come into conflict, the Law of the Solomon Islands will prevail (Schedule 3, section 3(2) Constitution).
- 13.2 An accused person cannot avoid prosecution simply because he has paid compensation or participated in reconciliation with the victim. That an accused thought that he was authorised to act in a particular way according to customary law will rarely be taken into account as part of the decision whether or not to prosecute, and may not be taken into account in cases of assault, sexual assault or any other offence of violence.
- 13.3 In most cases, matters of customary law and/or reconciliation only become relevant in the exercise of the Court's sentencing powers.

#### **Magistrates to promote reconciliation in cases of minor offences**

- 13.4 Section 35(1) of the *Magistrates' Court Act [Cap 20]* provides that a Magistrates' Court may promote reconciliation and encourage and facilitate settlement of criminal proceedings for common assault or any offence of a personal or private nature





not amounting to a felony, and not aggravated in any degree, on terms of payment of compensation.

- 13.5 In cases where section 35(1) is relied upon by the defence, the prosecutor should assist the Court by ensuring that all relevant information about any alleged settlement of the matter is before the Court. A prosecutor must ensure that the victim understands what is happening and that they agree that the matter is settled.

**Sentencing considerations for serious offences**

- 13.6 In matters not covered by s. 35(1), where the defence relies in mitigation upon the fact that customary compensation or reconciliation has taken place, a prosecutor must confirm that compensation has been paid or reconciliation made.
- 13.7 Where defence submissions in mitigation urge substantial leniency for a serious offence on the basis of customary law or reconciliation, the prosecutor must consider whether or not there is a need to enquire into the accuracy of the matter of customary law or fact of reconciliation asserted and, if he determines there is a need to inquire, shall inform the Court and obtain a short adjournment to make the necessary inquiries. The prosecutor must then ensure that proper inquiries are made and that the Court is properly informed before passing sentence. This may



require cross-examination of witnesses or the calling of evidence from a suitably qualified person.

#### **14. ADVICE TO POLICE**

- 14.1 The ODPP will provide advice to Police upon receiving a brief of evidence and a written request for advice. The ODPP will endeavour to provide its recommendations within two months. However if the advice is required urgently all attempts will be made to complete the advice in a shorter period.
- 14.2 The advice will include reasons why charges are not recommended, or the draft wording of the charges recommended and requisitions for additional material considered appropriate. The Police brief will be returned to the Police with the advice recommendation.
- 14.3 Where there is insufficient material to enable a decision to be made a request for additional material may be made. In such matters the Police brief will be returned to the Police with a letter requesting what additional material is required before an advice can be completed.



- 14.4 When completing an advice consideration should be given to Policy 7 in determining if the suspect should be charged with an offence.

## **15. REASONS FOR DECISIONS**

- 15.1 Reasons for decisions made in the course of prosecutions may be disclosed by the Director to persons outside of the ODPP. This is because disclosure of reasons is generally consistent with the open and accountable operations of the ODPP. However, reasons will only be given when the inquirer has a legitimate interest in the matter and it is otherwise appropriate to do so. A legitimate interest includes the interest of the media in the open dispensing of justice where proceedings have been public.
- 15.2 Reasons for not prosecuting must be given to the victims of crime.
- 15.3 Reasons will not be given in any case where to do so would cause unjustifiable harm to a victim, a witness or an accused or would significantly prejudice the administration of justice.



**16. INDUCED STATEMENTS**

- 16.1 An induced statement is one taken from a person on the basis that the information contained in the statement will not be used against the person making the statement. This may be because the information in the statement may incriminate him in criminal activity and they are not prepared to give the information unless the information cannot be used against them.

Police are required to obtain written approval from the Director prior to taking an induced statement. Factors relevant to granting immunity (Policy 18) are also relevant to the taking of an induced statement and must be considered.

- 16.2 The inducement is to be recorded at the beginning of the statement or interview and should be in the following terms:

*"I am making this statement after a promise held out to me by ... that no information given in it will be used in any criminal proceedings against me in any court in the Solomon Islands, except in respect of the falsity of my statement or for the purpose of establishing the falsity of evidence given by me as a witness".*



## **17. INFORMERS**

- 17.1 An informer is a person (not being a victim in the matter) who:
- a) has given assistance to Police or investigators as a consequence of knowledge that has come into his or her possession through direct personal contact with an alleged offender; and
  - b) is a co-offender, prisoner, civilian undercover operative, or a person bargaining such knowledge for the advantage of himself or herself or another person.
- 17.2 The first decision to be made is if the informer should be called at all. Careful consideration should be given to the informer's reliability, credibility and motive for giving assistance. There also needs to be a careful evaluation of the probative weight of the proposed evidence.
- 17.3 The accused person should be informed in advance of the trial of the informer's criminal record and whether or not the Police, Criminal Records Office or Correction Services has any information which might assist in evaluating the informer's credibility, particularly as to:
- a) motivation;
  - b) previous animosity against the accused person/s;



- c) favourable/different treatment by Correction Services;
- d) mental health/reliability;
- e) the extent to which public officers have given evidence or written reports on behalf of the informer (e.g. to the Courts or Social Welfare Department);
- f) whether any monetary or other benefit of any kind has been claimed, offered or provided;
- g) whether the informer was in custody at the time of giving assistance;
- h) whether an immunity has been granted or requested;
- i) whether any discount on sentence has been given for assistance in the matter;
- j) other current or former criminal proceedings in which the informer has given evidence or was proposed to give evidence.

17.4 Public interest immunity in some circumstances may prevent the disclosure of the identity of an informer.



## **18. IMMUNITY**

18.1 In principle, the criminal justice system should operate without the need to grant immunities and concessions to persons who participated in a criminal offence to obtain their evidence. The preferred course would be for the witness to plead guilty and receive an appropriate discount in sentence for assistance to authorities and the giving of evidence.

However, it is recognised that in the interests of justice it may be appropriate to grant immunity in certain circumstances. Immunity will only be granted on the condition that the person shall give truthful evidence in accordance with his statement.

18.2 Factors to consider when recommending and considering whether an immunity should be granted are:

- a) the culpability of the witness;
- b) is the witness seeking immunity significantly less culpable than the accused?
- c) is the evidence considered necessary to secure the conviction of the accused?
- d) whether or not that evidence is available from another source;
- e) the strength of the prosecution case without the evidence;



- f) the extent to which the prosecution case will be strengthened by the evidence;
- g) the extent to which weaknesses in the case will be overcome by the evidence;
- h) is the witness willing to give evidence without immunity?
- i) the witness's reliability and credibility. Can their evidence be corroborated?
- j) the strength of the case against the witness seeking immunity;
- k) if the witness was prosecuted and gave evidence the real risk of personal safety if serving a term of imprisonment; and
- l) if it is in the interests of justice that the witness not be prosecuted so as to enable him or her to give evidence against the accused.

18.3 Where immunity is provided to a witness the terms of the agreement or immunity should be disclosed to the defence and the Court.





**19. UNREPRESENTED ACCUSED**

19.1 A prosecutor must exercise particular care when dealing with an unrepresented accused. In addition to complying with all other Policies there is a duty that the prosecution keep the accused properly informed of the prosecution case. While the prosecution has a duty of fairness to the accused the prosecutor should not advise the accused on legal issues, evidence, legal defences or how to conduct the defence case. However, the prosecutor also has a duty to ensure that the trial Judge gives appropriate assistance to the unrepresented accused person.

19.2 The prosecutor must avoid becoming personally involved with the accused and must maintain a detached professional relationship with an unrepresented accused. The prosecutor should:

- a) avoid any contact with the accused unless accompanied by a witness;
- b) take prompt and detailed notes of any communication with an unrepresented accused; and
- c) take full and prompt notes of material or information provided to an unrepresented accused.

19.3 Any admissions should be recorded and disclosed.



**20. DISCLOSURE**

20.1 Prosecutors are under a continuing obligation to make full disclosure to the accused to ensure a fair trial. This includes disclosure of all material which:

- a) is relevant or possibly relevant to an issue in the case, whether inculpatory or exculpatory;
- b) raises or possibly raises a new issue whose existence is not apparent from the evidence the prosecution proposes to use; and
- c) holds out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two situations.

20.2 In all cases, disclosure should include (but is not limited to):

- a) an accused's prior convictions;
- b) copies of all witness statements of all witnesses to be called (addresses and telephone numbers of witnesses may be deleted);
- c) copies of all documentary exhibits that the Crown proposes to tender or an opportunity to examine any exhibits that the Crown proposes to tender;



- d) copies of any tape or transcript of a record of interview or other relevant communication, or an opportunity to listen to such a tape;
- e) copies of any statement or document amounting to a prior inconsistent statement of any Crown witness;
- f) copies of any reports or statements of any expert witness to be called by the Crown;
- g) an opportunity for defence to speak with any such expert prior to the trial;
- h) copies of any warrant used in the gathering of evidence to be adduced at trial; and
- i) any information in the possession of the Crown that reflects materially on the credibility of any Crown witness including prior convictions for perjury or offences involving dishonesty; adverse findings in other proceedings (whether criminal, disciplinary, civil or Commission of Inquiry); details of any concession granted to the witness such as an undertaking not to prosecute or details of a charge negotiation/sentencing discount relating to their evidence.



- 20.3 Police should advise the prosecutor of any material in police possession that is not contained in the Crown brief, and produce copies to the prosecutor if requested. The Director may withhold or delay disclosure of specific material where the prosecutor is of the opinion that, in the public interest, the material is immune from disclosure. In such cases the Director must inform defence that material has been withheld, and claim immunity against disclosure in respect of the material and identify the basis for that claim.
- 20.4 Legal professional privilege ordinarily will be claimed against the production of any document in the nature of an internal advising and/or memorandum of the ODPP. Legal professional privilege attaching to notes of conferences/ witness proofing with witnesses made by prosecutors may be waived by the Director in appropriate circumstances (for example, if a witness provides in conference/ witness proofing inconsistent or additional information to that contained in a witness statement or preliminary inquiry hearing; but the better course in such circumstances is for Police to take a further statement containing such information and for the ODPP to disclose that to the defence).



20.5 Relevant factors for determining whether a claim for public interest immunity should be made include:

- a) the material is clearly irrelevant;
- b) withholding the material is necessary to prevent the identification of an informant;
- c) withholding the material is necessary to protect the safety or security (including protection from harassment) of persons who have supplied information to Police;
- d) the material if disclosed could prejudice an ongoing investigation, or facilitate the commission of other offences;
- e) the material discloses Police methods that are not a matter of public knowledge;
- f) the material relates to internal workings of the Police Force;
- g) the material was supplied to Police on condition that it would not be disclosed; and
- h) the material relates to national security.



- 20.6 There is an overriding duty of the Crown to present its case with fairness. Where a claim for public interest immunity is made before the Court then the question of disclosure will be settled by the Court. In cases where the claim is upheld, if the withholding of material will prevent a fair trial then the matter should be referred to the Director to determine whether or not the trial should proceed in the circumstances.
- 20.7 Where a claim to protect information claimed by the Police is unsuccessful, the Director shall determine, after consultation with Police, whether the interests of justice require that the material should be disclosed or that the charges should be withdrawn.
- 20.8 In appropriate cases a prosecutor may conditionally disclose sensitive material to the defence on the basis of a defence undertaking not to disclose the material to parties other than the accused and his counsel.



## **21. CHARGE NEGOTIATIONS**

- 21.1 There are many benefits in obtaining an early plea of guilty for both the criminal justice system and the victims of crime. It saves the victims coming to court and giving evidence and being cross-examined. It provides certainty to victims as the accused's plea of guilty acknowledges his/her criminal offending. It saves considerable costs and resources by not having the expenses of running a trial. It also assists in reducing the backlog of trials as the other trials can be listed and a greater number of matters are completed within the court year.
- 21.2 An early plea of guilty will maximise the benefits for the victim, the community and the accused. Early negotiations (within this Policy) are therefore encouraged.
- 21.3 Negotiations may result in a reduction in the level or the number of charges. This is a legitimate and important part of the criminal justice system throughout common law jurisdictions. However charge negotiations must be based upon principle and not expediency alone. A plea of guilty will be accepted only if, after an analysis of all of the facts, it is in the general public interest after considering the following considerations:



- a) The alternative charge adequately reflects the essential and overall criminality of the conduct and provides sufficient scope for sentencing;
- b) The prosecution evidence is deficient in some material way;
- c) The saving of a trial compares favourably to the likely outcome of a trial;
- d) It will save the victim and/or witnesses the ordeal of a trial;
- e) Where the prosecution has to choose between a number of appropriate alternative charges. This occurs when the one episode of criminality constitute a number of overlapping but alternative charges;
- f) Where new reliable evidence reduces the strength of the Crown case; and
- g) Where the accused offers to plead guilty to a specific count or an alternative count in an Information and to give evidence against a co-offender. The acceptability of this will depend upon the importance of such evidence to the Crown case, and more importantly, its credibility in light of corroboration and the level of culpability of the accused as against the co- offenders.





21.4 However, a plea of guilty should not be accepted if it requires the distortion of the facts and/or creates an artificial basis for sentencing. Nor should a plea be accepted if it does not adequately reflect the essential and overall criminality of the offence.

**Consultation**

21.5 In all cases, before any decision is made, the views of the investigating officer and the victim or the victim's relatives, should be sought. Those views must be considered but are not determinative. It is the public, rather than an individual interest, which must be served.

**Accountability**

21.6 It is important that there is accountability in the charge negotiation process. It is therefore important that any negotiations are recorded on the file, because it is not always possible for the same prosecutor to retain carriage of a matter throughout the course of proceedings. Any offer by the defence, including supporting material, should be clearly noted on the file.



21.7 Once a decision has been made it is critically important that the decision and the reasons for it should also be recorded and signed. If an offer has been rejected it should not be later accepted without consultation with the Director.

### **Agreed Facts**

21.8 In all cases in which the version of the facts to be placed before the Court upon a plea of guilty to an agreed charge has been agreed between the prosecution and defence, agreed facts should be prepared by the prosecution in consultation with Police and any victim and signed by the defence representative or accused person as an agreed document.

## **22. YOUNG OFFENDERS**

22.1 A young offender is a person who was under 18 years of age at the time the alleged offence was committed<sup>1</sup>. The *Juvenile Offenders Act [Cap 14]* makes it clear that young offenders are to receive special treatment from the criminal justice system. This is because it is generally accepted in the international community that early encounters with the criminal justice system can damage the development of a young person/child,

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<sup>1</sup> Section 2 of the *Juvenile Offenders Act [Cap 14]* defines a 'young person' as a person who is, in the opinion of the court having cognisance of any case in relation to such person, 14 years of age or upwards and under the age of 18 years. A person who is under 14 is classified as a 'child'.



and consequently a prosecution should be regarded as a severe measure to take against a young person/child.

22.2 However, a prosecution for serious offences will not be avoided simply because of the alleged offender's age. For the purposes of this Policy, a serious offence is any of the following:-

- a) any offence for which the maximum penalty is 5 years imprisonment or more;
- b) any offence involving use of a weapon against another person; and
- c) any traffic offence.

22.3 The ODPP recognises that a young offender should not be prosecuted for a first offence, where the offence is not serious. It is the role of the Royal Solomon Islands Police Force to fairly and transparently dispose of matters involving minor offending by young first time offenders by means other than prosecution. The ODPP recognises crime prevention strategies through community policing as a means by which this can be achieved.

22.4 Where the alleged offence in question is serious, the decision to prosecute is to be made in accordance with Policy 7 but with special regard to be had to the following:-

- a) the seriousness of the alleged offence;



- b) the age, apparent maturity and mental capacity of the young offender (including the need, in the case of children under the age of 14, to prove that they knew that what they were doing was seriously wrong and was deserving of punishment);
- c) the available alternatives to prosecution, and their efficacy;
- d) the sentencing options available to Courts dealing with young offenders if the prosecution was successful;
- e) the young offender's family circumstances, particularly whether or not the parents or guardians appear able and prepared to exercise effective discipline and control over the young offender;
- f) the young offender's antecedents, including the circumstances of any previous dealings with the Police and whether or not a less formal resolution would be inappropriate; and
- g) whether a prosecution would be harmful or inappropriate, considering the young offender's personality, family and other circumstances.

22.5 The *Juvenile Offenders Act* [Cap 14] provides special measures for the prosecution of young offenders including:-

- a) a closed Court



- b) young offenders in custody to be separated from adult offenders at Court and while traveling to Court;
- c) information identifying a young offender is not to be published by the media; and
- d) a requirement that the Court obtain information about the young offender's background prior to sentencing, including the option of a social welfare report .

22.6 It is the duty of all prosecutors to assist the Court in complying with the requirements of the *Juvenile Offenders Act [Cap 14]*. Prosecutors should also draw the Court's attention to the age of any young offender in custody if it is apparent or possible that the Court is not aware of the fact.

## **23. PROSECUTION APPEALS**

23.1 The prosecution's right to appeal against acquittal and/or sentence should be exercised sparingly, and it is the policy of the ODPP not to institute such an appeal unless it can be asserted with some confidence that the appeal will be successful.



- 23.2 A prosecution appeal should be instituted promptly, even where no time limit is imposed by the relevant legislation. Undue delay by the prosecution in the institution of an appeal may render oppressive the substitution of a conviction or an increased sentence.
- 23.3 The prosecutor in any case conducted by the ODPP should assess the sufficiency of the evidence and any sentence imposed. If it is considered to be appellable or it is a matter likely to attract significant public interest, a report should be provided promptly to the Director for determination of whether or not an appeal will be instituted. In determining whether or not to appeal, the Director will have regard to the following matters:
- a) whether or not the Court made a material error of law or fact, misunderstood or misapplied proper principles, or wrongly assessed or omitted to consider some salient feature of the evidence, apparent from the ruling, judgment or remarks;
  - b) if the sentence is manifestly inadequate which may imply an error of principle;
  - c) the range of sentences legitimately open to the sentencing Court on the facts;



- d) the conduct of the proceedings at first instance, including the prosecution's opportunity to be heard and the conduct of the case;
- e) the element of double jeopardy involved in a prosecution/Crown appeal and its likely effect on the outcome (the probable imposition of a lesser sentence than was appropriate at first instance);
- f) the appeal Court's residual discretion not to intervene, even if the sentence is considered too lenient; and
- g) whether the appeal is considered likely to succeed.

23.4 In addition to the above matters prosecutors should be aware that prosecution/Crown appeals are rare and are an exception to the general conduct of the administration of criminal justice. They should be brought to enable the Courts to establish and maintain adequate standards of convictions and punishment for crime, to enable idiosyncratic approaches to be corrected and to correct sentences that are so disproportionate to the seriousness of the crime as to lead to a loss of confidence in the administration of criminal justice.



23.5 It is no part of the prosecutor's function on appeal to seek to uphold a sentence or conviction or overturn an acquittal where he considers the sentence is manifestly excessive or the acquittal, conviction or sentence is wrong in principle or not authorised in law. Equally, the prosecutor should, if required, indicate why it is considered that the trial or sentencing Court has achieved a fair and just result in the circumstances. The duty of the prosecutor is to assist the Court achieve a just disposal of the appeal.

## **24. RE-TRIALS**

24.1 Where a conviction has been quashed on appeal and a re-trial ordered, the prosecutor on appeal should promptly consider whether a re-trial is appropriate or viable. Relevant factors include:

- a) why the Court of Appeal allowed a re-trial;
- b) whether the situation is likely to arise again;
- c) the attitude of the complainant;
- d) the seriousness of the offence; and
- e) the cost of re-trial (to the community and the accused).





**25. VICTIMS**

- 25.1 A victim is a person who has suffered harm either as a direct result of an unlawful act or as an immediate family member, or dependant, of the direct victim.
- 25.2 The ODPP will treat a victim with courtesy, compassion and respect. The ODPP will also treat a victim in a way that is responsive to his or her age, gender, ethnic, cultural and linguistic background, disability or other special needs.
- 25.3 The ODPP will assist in protecting a victim's privacy as far as possible and take into account the victim's welfare at all appropriate stages.
- 25.4 Unless there are exceptional circumstances, a conference must be held with a victim before he or she gives evidence. The purpose of the conference is to explain the prosecution process and their role. Also see Policy 26.
- 25.5 Victims should also be informed of:
- a) the charges upon which the person has been charged by Police or the charges upon which the person has been committed for trial or sentence;
  - b) the circumstances in which the charges against the defendant may be varied or withdrawn.



- c) the charges and the details of the place and date of the hearing of the charges;
- d) the reasons for any decision not to proceed with the charge or to substantially amend the charge or to accept a plea to a substantially lesser charge;
- e) the details of any bail conditions and any application for variation of any condition that may affect the victim's safety or welfare;
- f) the outcome of any proceedings, including appeal; and
- g) the nature of any sentence imposed on the offender.

25.6 The views of the victim should be sought and considered when making decisions about prosecutions; however, the views of the victim are not determinative.

## **26. WITNESSES**

26.1 In deciding whether or not to call a particular witness the prosecutor must be fair to the accused. The general principle is that the Crown should call all witnesses capable of giving evidence relevant to the guilt or innocence of the accused.



However, the prosecutor should not call unchallenged evidence that is merely repetitious. The prosecutor should also not call a witness who the prosecutor believes on reasonable grounds to be unreliable. The mere fact that a witness contradicts the Crown case will not constitute reasonable grounds.

See: Richardson v R (1974) 131 CLR 116; R v Apostolides (1984) 154 CLR 563; Whitehorn v R (1983) 152 CLR 657 at 664, 682-683.

- 26.2 The defence should be informed at the earliest possible time of the decision not to call a witness who might otherwise reasonably be expected to be called. Where appropriate the witness should be made available to the defence.

### **Improper questions**

- 26.3 Prosecutors have a responsibility to protect witnesses, particularly youthful witnesses, against threatening, unfair or unduly repetitive cross-examination by making proper objection. Questions should be framed in language that the witness understands. Prosecutors need to be particularly sensitive to the manner of questioning children and intellectually disabled witnesses.



- 26.4 Generally, questions about previous sexual activities of a complainant will be irrelevant and inadmissible and should be objected to by the prosecutor.

### **Child Witnesses**

- 26.5 In the case of a child witness the prosecutor is to ensure that the child is appropriately prepared and supported for his or her appearance in Court. Child witnesses are to be treated consistently with the provisions of the UN Convention on the Rights of the Child. Consideration should be given to use of alternative provisions (e.g. screens, closed courts/ in-camera).

### **Vulnerable Adult Witnesses**

- 26.6 Witnesses who have a disability (e.g. intellectual disability, physical disability, sensory disability or psychiatric disability) should be treated with care and consideration.
- 26.7 Consideration should be given to use of alternative provisions (e.g. screens, closed courts) for giving evidence that could assist vulnerable adult witnesses, particularly in matters related to personal violence or sexual assault.



**Conferences/ Witness Proofing**

- 26.8 There is an obligation upon prosecutors to confer with witnesses at the earliest available opportunity before all court hearings. The conference/witness proofing serves the dual purpose of obtaining information from and about witnesses on evidentiary issues and providing relevant information about the proceedings to witnesses.
- 26.9 In sexual assault matters complainants should be informed of the requirement, for the purpose of establishing the elements of the offence, to recount in precise detail the sexual assault, including explicit and detailed acts of sexual intercourse and sexual penetration.
- 26.10 Conferences/witness proofing should also be conducted for the purpose of informing victims of charge negotiations and to discuss any statement of agreed facts. Victims may wish to have the presence of a support person during a conference/witness proofing.
- 26.11 Early conferences/witness proofing enables more effective screening of cases and more accurate disclosure of relevant material.



26.12 Prosecutors must ensure that detailed notes are taken during conferences/witness proofing and that conferences/witness proofing is only conducted with an independent observer. The prosecutor must be mindful of potential disclosure requirements arising out of conferences/witness proofing.

### **IMPLEMENTATION OF THIS POLICY**

This policy will be implemented through the work and conduct of the Director and all prosecutors in the Office of the Director of Public Prosecutions. As and when required, the Director will issue guidelines to give effect to this policy.

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**Appendix 1 – IAP Standards**

***Standards of professional responsibility and statement of the essential duties and rights of prosecutors***

*Adopted by the International Association of Prosecutors on the twenty third day of April 1999*

***Foreword***

*The International Association of Prosecutors was established in June 1995 at the United Nations offices in Vienna and was formally inaugurated in September 1996 at its first General Meeting in Budapest. In the following year in Ottawa, the General Meeting approved the Objects of the Association which are now enshrined in Article 2.3 of the Association's Constitution. One of the most important of these Objects is to:*

*".. promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences."*

*In support of that particular objective a committee of the Association, chaired by Mrs Retha Meintjes of South Africa, set to work to produce a set of standards for prosecutors. A first draft was circulated to the entire membership in July 1998 and the final version was approved by the Executive Committee at its Spring meeting in Amsterdam in April 1999.*

*The International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors is a statement which will serve as an international benchmark for the conduct of individual prosecutors and of prosecution services. We intend that this should not simply be a bold statement but rather a working document for use by prosecution services to develop and reinforce their own standards. Much of the Association's efforts in the future will be directed to promoting the Standards and their use by working prosecutors throughout the world.*

***Standards of professional responsibility and statement of the essential duties and rights of prosecutors***

WHEREAS the objects of the International Association of Prosecutors are set out in Article 2.3 of its Constitution and include the promotion of fair, effective, impartial and efficient prosecution of criminal offences, and the promotion of high standards and principles in the administration of criminal justice;

WHEREAS the United Nations, at its Eighth Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba in 1990, adopted Guidelines on the Role of Prosecutors;

WHEREAS the community of nations has declared the rights and freedoms of all persons in the United Nations Universal Declaration of Human Rights and subsequent international covenants, conventions and other instruments;

WHEREAS the public need to have confidence in the integrity of the criminal justice system;

WHEREAS all prosecutors play a crucial role in the administration of criminal justice;

WHEREAS the degree of involvement, if any, of prosecutors at the investigative stage varies from one jurisdiction to another;



WHEREAS the exercise of prosecutorial discretion is a grave and serious responsibility;

AND WHEREAS such exercise should be as open as possible, consistent with personal rights, sensitive to the need not to re-victimise victims and should be conducted in an objective and impartial manner;

THEREFORE the International Association of Prosecutors adopts the following as a statement of standards of professional conduct for all prosecutors and of their essential duties and rights:

### ***1. Professional Conduct***

Prosecutors shall: at all times maintain the honour and dignity of their profession; always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession; at all times exercise the highest standards of integrity and care; keep themselves well-informed and abreast of relevant legal developments; strive to be, and to be seen to be, consistent, independent and impartial; always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial; always serve and protect the public interest; respect, protect and uphold the universal concept of human dignity and human rights.

### ***2. Independence***

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be :

- transparent;
- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

### ***3. Impartiality***

Prosecutors shall perform their duties without fear, favour or prejudice.

In particular they shall: carry out their functions impartially; remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest; act with objectivity; have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect; in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect; always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.





#### ***4. Role in criminal proceedings***

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows: where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;

b) when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights; when giving advice, they will take care to remain impartial and objective;

d) in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence; throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence; when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore; preserve professional confidentiality; in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible; safeguard the rights of the accused in co-operation with the court and other relevant agencies; disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial; examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained; refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment; seek to ensure that appropriate action is taken against those responsible for using such methods; in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

#### ***5. Co-operation***

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall: co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.



**6. Empowerment**

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled: to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability; together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions; to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished; to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases; to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures; to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards; to objective evaluation and decisions in disciplinary hearings; to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status; and to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

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**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

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