

# CAPSTONE BRIEF

## **An AI - Driven UADILIFU System for Standardising the Office of the Director of Public Prosecution (ODPP) Decision to Charge.**

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# Executive Summary

The Office of the Director of Public Prosecutions (ODPP) is established pursuant to Article 157 of the Constitution of Kenya. The DPP is vested with state powers of prosecution, which include instituting, undertaking, and discontinuing criminal proceedings in all courts in Kenya other than the Court Martial.<sup>1</sup>

The DPP is also empowered to direct investigative agencies to undertake investigations into allegations of criminal misconduct.<sup>2</sup> Beyond these Constitutional mandates, the ODPP<sup>3</sup> Act also vests the DPP with other roles<sup>4</sup> which include promoting appropriate standards for the practice of public prosecutions, implementing an effective prosecution mechanism to maintain the rule of law and contribute to fair and equitable criminal justice and cooperating with stakeholders to ensure fairness and effectiveness of public prosecutions. The DPP is the official advisor to the state on all matters relating to the administration of criminal justice.

In 2020, the DPP developed the Decision to Charge guidelines to standardise the exercise of prosecutorial discretion. The guidelines have streamlined and standardised the process by which prosecutors make charging decisions. Despite the gains achieved by applying the guidelines, prosecutors remain overwhelmed by the volume of evidentiary material they must review before making a charging decision. This significantly undermines efficiency, as the existing human resources are not commensurate with the available work.

Additionally, there is still an inconsistency in charging decisions. By leveraging Artificial Intelligence (AI), the ODPP can ensure greater consistency, reduce case backlog and mitigate human bias in charging decisions. This can be achieved by deploying an AI-powered decision-making tool for charging support.

Beyond legal principles, practical challenges in the Kenyan context for the deployment and use of AI tools and systems include the lack of relevant, high-quality data for training effective, representative AI systems and the general absence of a robust AI regulatory ecosystem.<sup>5</sup> The ODPP Kenya can leverage existing regulatory sandboxes to design, develop, and deploy an AI model to facilitate the transition to technology-driven prosecutions, thereby delivering prosecution services more effectively and efficiently.

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1. Constitution of Kenya, 2010 Article 157 (6)

2. *ibid*, Article 157 (4)

3. CAP 6B

4. *ibid* Section 5 (4)

5. CIPIT, 'Leveraging AI in the Kenyan Judiciary: A Case for Utilizing' (2024)



## 1.0 Problem Statement

Despite the implementation of the Decision to Charge Guidelines, the ODPP continues to face significant inconsistencies in charging decisions, thereby giving rise to constitutional challenges. This is likely the result of an overwhelming workload, as individual prosecutors often must review voluminous documentary and digital evidence in advice files while handling other active court files.

This reliance on manual review of advice files has become a primary bottleneck, leading to prolonged delay in concluding files submitted for directions by various investigative agencies. This not only undermines public confidence but also risks inadvertently introducing human fatigue and cognitive bias. Hence, there is a need for digital intervention to augment human capabilities.

## 2.0 Capstone Objectives

1

To standardise prosecution discretion by promoting consistency of charging decisions.

2

To enhance operational efficiency and reduce backlog by reducing the time taken to decide on a case file.

3

To strengthen evidentiary integrity by ensuring that all potential gaps are addressed before making a charging decision.

## 3.0 Policy Review

Kenya has undergone a significant digital transformation in recent years, with key government services now available online. The Kenya National AI strategy 2025-2030 has identified key sectors for AI adoption. Within the justice sector, the main concern for many is whether the deployment of AI systems is consistent with human rights, democracy and the rule of law. This review identifies the key legal and policy framework for the use of AI in prosecutorial charging decisions.



### 3.1. The Constitution of Kenya

The Constitution of Kenya recognises the centrality of the people’s sovereignty in governance while outlining fundamental rights and freedoms. The independence of the DPP in prosecutions is only subject to the public interest, the interest of the wider administration of justice and the need to avoid the abuse of the legal process.<sup>6</sup>

While the Decision to charge guidelines have been crucial in standardising prosecutorial discretion, the deployment of AI would be critical to mitigating bias and prejudice by providing a data-driven basis for charging decisions. Thus, ensuring that all crimes are prosecuted with the same rigour, in accordance with Article 27 of the Constitution.

The ODPP is bound by the national values of transparency, efficiency and accountability.<sup>7</sup> The deployment of AI in prosecutions promotes the efficient, effective, and cost-effective use of resources. For instance, automating tasks such as document review frees prosecutors to focus on roles that require complex legal reasoning. Noting the existing digital divide in Kenya, the deployment of AI ensures that prosecutors across the country have access to similar research tools, thus enhancing access to justice.<sup>8</sup>

Although AI trained on historical data may inherit biases when properly audited, AI acts as a neutral arbiter by ignoring protected characteristics that a prosecutor might subconsciously consider. Processing sensitive taxpayers or criminal data through AI models might expose private lives to unauthorised scrutiny, thus violating the right to privacy.<sup>9</sup>

Processing sensitive taxpayers or criminal data through AI models might expose private lives to unauthorised scrutiny, thus violating the right to privacy.<sup>10</sup> It is thus crucial to develop a model that embeds security both by default and by design. Embedding a human interface ensures that citizens are not subjected to automated decision-making.<sup>11</sup>

The Constitution mandates that trials need to be concluded without unreasonable delay.<sup>12</sup> The adoption of AI is crucial for reducing trial duration, as it can be deployed to support evidence and document review.

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6. Article 157 (11)

7. Article 232

8. Article 48

9. Article 27

10. Article 27

11. Article 31

12. Article 50 (2) (e)



As a result, prosecutors would devote and utilise the scarce time available to ensure that trials are concluded effectively and efficiently. Similarly, the model would assist with disclosure, as key evidence would be identified and disclosed in a timely manner.<sup>13</sup>

Although Kenya has no standalone AI regulatory framework, the Constitution and enabling statutes provide a regulatory sandbox within which AI technologies may be developed and deployed to enhance service delivery.

### 3.1.1 The Data Protection Act<sup>14</sup>

The Data Protection Act is the most relevant foundational statute on the processing of personal data. It establishes principles of data minimisation, purpose limitation, and accountability, which are critical when AI systems process sensitive criminal case data.<sup>15</sup>

Crucially, the Act grants data subjects the right not to be subject to a decision based solely on automated processing where such decisions significantly affect them.<sup>16</sup> In this context, the tool is merely to assist prosecutors in charging decisions, it does not decide to charge. Before deploying the tool, the ODPP will submit a Data Processing Impact Assessment to the Office of the Data Protection Commissioner.

Moreover, although investigative and prosecutorial agencies have access to sensitive personal data for use in criminal litigation, data security standards are crucial to preventing unauthorised disclosure of such data obtained during the criminal trial process. There would be no need for the ODPP to seek data subjects' consent, as the deployment of the AI tool already falls within the DPP's mandate. The DPP therefore has a lawful basis for such data processing<sup>17</sup> as it is necessary for the detection, prevention and prosecution of crime.

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13. Article 50 (2) (j)

14. CAP 411

15. *ibid*, s 25.

16. Section 35.

17. Section 30



### 3.1.2. Computer Misuse and Cybercrimes Act.<sup>18</sup>

The Computer Misuse and Cybercrimes Act provides a framework for governance, investigation and prosecution of cybercrimes.<sup>19</sup> The Act is a key legislation on accountability for use and misuse of AI systems. With a robust governance framework for protection of Critical Infrastructure Installations (CIIs),<sup>20</sup> The Act is vital in ensuring that AI systems are not exploited to undermine CIIs. As a criminal law statute, the Act provides a comprehensive framework on definition of offences, investigation procedures as well as mechanisms for mutual legal assistance and international cooperation in cybercrime investigations.<sup>21</sup> The Act, therefore, calls upon the ODPP to establish a system with a robust cybersecurity framework that is both resilient and secure.

### 3.1.3. Kenya National Artificial Intelligence Strategy 2025-2030

Kenya is one of the few African states that has attempted to recognise and provide a regulatory framework for the use of AI tools and systems. The strategy positions Kenya as a leader in AI innovation in Africa. Under the strategy, AI is seen not as a replacement for human judgment but as a critical enabler for efficiency and transparency in public service delivery. Although the criminal justice sector has not been prioritised for AI adoption, the deployment of AI in other sectors would have spillover effects on the broader economy. The AI strategy's focus on improving public service delivery by reducing reliance on foreign technology presents an opportunity for institutions to frame AI through both African and Kenyan lenses.

Deploying AI in charging decisions enhances operational efficiency by reducing the time taken to review police files. This would represent a move beyond the existing Uadilifu system to AI-driven analytics that can flag missing evidence or procedural gaps in real time. Effective deployment of AI would limit human biases while standardising charging decisions. Continuous bias audits would ensure that the system is ethical and free from historical bias. An audit trail would also be maintained to ensure the explainability, traceability, and transparency of every recommendation.

While the AI model would provide a thorough review and evidence scorecard in every police file, the final charging decision lies with the prosecutor. As a result, the charging decision will not be automated but augmented by an AI system.

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19. Section 47 (1)

20. Part II

21. Part III-V



## 3.2. Regional and Global Best Practices

International and regional AI regulatory frameworks may serve as essential benchmarks for the Kenyan context.

### 3.2.1. African Union AI Strategy

The AU Strategy identifies the public sector as a priority area for AI adoption. While acknowledging the crucial role of AI in reducing backlog and fostering consistency in decision-making, the strategy emphasises the need for AI to embrace Ubuntu. This, therefore, means that the use of AI in charging decisions must enhance and respect the right to human dignity.

Risk mitigation strategies must also be implemented to prevent algorithmic bias arising from historical data. Therefore, prosecutors should be able to explain every decision generated by an AI tool that augments charging decisions. This is also consistent with the human-in-the-loop requirement to avoid subjecting citizens to automated decisions without human intervention. The strategy calls upon states to update existing criminal procedure laws to recognise evidence generated or analysed by AI. The African Court on Human and Peoples' Rights (ACHPR) calls for a precautionary approach in the use of AI in criminal law without strict legislative oversight. While there is consensus that AI should be used to organise and analyse evidence, it is ethical that the decision to charge be undertaken by a prosecutor.

### 3.2.2. OECD AI Principles

The OECD principles are the current gold standards on trustworthy AI. While the principles are soft law with no binding effect, they provide a framework for national legislations and guidelines on AI trustworthiness. They emphasise the need to abide by the rule of law and procedural fairness in the use of AI. To ensure transparency and accountability, prosecutors are called upon to explain every recommendation made by the AI system. The principles advocate for the development of resilient systems that cannot be adversely manipulated to evade justice. The AI tool is merely a decision-support tool, not a decision-maker; prosecutors should therefore have the final say on the fate of an investigation file.

While there is a risk of bias stemming from the AI tool's efficiency, prosecutors would be required to thoroughly review and validate all recommendations made by the tool.<sup>22</sup> Continuous auditing of the system promotes fairness in charging decisions. In the UK, for instance, the Crown Prosecution Service places individual responsibility on prosecutors for the use and output of AI. The EU AI Act similarly cautions that the use of AI in criminal justice is high risk and should be used only under strict levels of compliance and human oversight. While AI tools offer substantial efficiency gains in managing case backlogs, these principles serve as a barrier to unaccountable automation. The use of AI by prosecutors in charging decisions must therefore be transparent, explainable, and human-led.

#### 4. Risk Mitigation Strategy

Implementing AI in prosecutorial charging decisions in Kenya is a high-risk endeavour given the potential implications for fundamental rights. Such rights include the right to privacy, fair hearing, human dignity, access to justice, access to information and fair administrative actions, among many others.<sup>23</sup> While the Data Protection Act bars the subjecting of citizens to automated decision-making. Despite adequate stakeholder participation and involvement from the outset, prosecutors might still be resistant to change. It is therefore imperative to undertake continuous awareness of all prosecutors on the safe and ethical use of the AI tool.

While acknowledging that a system built on historical datasets might amplify existing biases, quarterly system audits would be critical to ensuring fairness and transparency. Such auditing can be done by independent bodies such as the Kenya National Commission on Human Rights (KNCHR). To mitigate risks associated with the black-box problem, in which prosecutors are unable to explain an AI tool's recommendation, it will be crucial to deploy a model with traceable datasets. As a result, it is possible to explain how every recommendation is made. As a critical system, it may be susceptible to cyberattacks and unauthorised access.

It is therefore crucial that data is stored on secure servers. Additionally, the use of blockchain technology in the design setup may facilitate tracking changes to digital files. Creating a culture of cybersecurity among prosecutors and staff would be the most effective safeguard for data integrity. Arguably, using the AI tool as an assistant rather than as a prosecutor would ensure that its use complies with acceptable legal standards.

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22. OECD principle 1.2

23. Article 31, 50, 28, 48, 35, 47



## 5. Stakeholder mapping

Stakeholder mapping is key in the deployment and use of AI systems to encourage buy-in and safeguard human rights. Effective AI governance in the justice sector can be achieved through stakeholder coordination mechanisms that maintain policy coherence while respecting the separation of powers. The National Council on Administrative Justice (NCAJ) and the National Computer and Cybercrime Coordination Committee (NC4) are crucial government coordination mechanisms that provide a forum for harmonising and adopting AI policies and guidelines.

### 5.1. Primary Stakeholders (High Power / High Interest)

These are the direct owners and users of the system whose daily operations will be fundamentally altered. The DPP has final authority over prosecutorial policy and the project's constitutional alignment. The DPP, senior management, and the ODPP advisory board must be adequately engaged before undertaking this high-impact initiative.

Prosecutors are critical stakeholders, as they will be the primary end users interacting with the AI-generated advisories. Involving them from the outset by undertaking a needs assessment is critical to avoid automation bias or rejection of the tool. Noting that the project would largely require technical expertise from ICT officers, they must be involved before the design phase to ensure that the tool is secure and compliant by design. Furthermore, the ICT team would be crucial in ensuring technical integration with the Uadilifu case management system and in guaranteeing the possibility of interoperability with other systems within the criminal justice ecosystem.

### 5.2. Government agencies (High Power / Moderate Interest)

These entities provide the data inputs or receive the legal outputs of the ODPP's decisions. The National Police Service (NPS) provides the primary data (police files) that are useful in making the charging decision. Since the model would use OCR, the NPS must provide witness statements and documentary exhibits in typed form rather than in handwritten form. This might result in additional financial expenditure. The Judiciary, as the custodians of justice, would be crucial in safeguarding the rights to privacy, a fair trial, and access to justice, among others. To ensure that the use of the AI tool conforms with the Constitution.



### 5.3 Regulators and Oversight (High Interest / Regulatory Power)

These bodies ensure that the project complies with the legal framework in Kenya. The Office of the Data Protection Commissioner (ODPC) is crucial in ensuring that the tool conforms to the requirements of the Data Protection Act, particularly Section 35 on automated decision-making. The Ministry of Information, Communication and the Digital Economy will ensure that the project aligns with the National AI Strategy and the broader Digital Master Plan. The Ministry may also audit the codes used in the system's development.

### 5.4. External Influencers (Moderate Power / High Interest)

These stakeholders represent the public interest and safeguard the integrity of the legal profession. The Law Society of Kenya (LSK) and civil society organisations will scrutinise the tool for potential biases, transparency, and accountability, to avoid decisions that could adversely affect the right to a fair trial and entrench systemic biases. Development Partners such as UNODC and the USDOJ, on the other hand, are likely to provide technical assistance, funding, and international best-practice benchmarks.

## 6.0 Significance

While the ODPP is constitutionally mandated to ensure a fair and effective prosecution mechanism, individual prosecutors are currently overwhelmed by a volume of evidentiary material that far exceeds available human resources. Ultimately, this capstone is significant because it provides a scalable blueprint, through the integration of AI into the existing Uadilifu case management system, the capstone project proposes to strengthen evidentiary integrity, increase public confidence in the rule of law, and ensure that the right to a trial without unreasonable delay becomes a practical reality rather than just a constitutional ideal. Arguably, AI tools and systems present significant opportunities for the effective and efficient delivery of prosecution services. Prosecutors may utilise AI tools for case management, legal research, evidence analysis, recommendations for trial strategies or even the prediction of trial outcomes. Properly used, AI might be deployed to augment the efficient review of investigation files and to identify and mitigate instances of prosecutorial bias. Standardising the decision to charge by integrating AI into the Uadilifu system to automate the review of investigating files is a crucial step towards achieving quality prosecutions.

*The Artificial Intelligence (AI) Policy Fellowship: Foundations and Governance for Policy Makers is an initiative of the East African artificial intelligence (AI) Policy Hub, designed to strengthen policy capacity on AI governance across the public sector. To date, the Fellowship has successfully equipped two cohorts of policymakers and regulators with the knowledge and tools required to engage with AI policy and governance challenges.*



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