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CONSTITUTIONAL STATUS AND AUTONOMY OF THE PROSECUTION SERVICE

Constitution-Building Primer No. 26

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Chapter 1

INTRODUCTION

The prosecution service is central to the functioning of the justice system, alongside courts and other law enforcement bodies. While the courts are mainly designed to redress legal and constitutional violations, the prosecution service must act proactively and plays an important role in applying the law and ensuring respect for legality and serving justice. In many cases, especially where plea bargaining is the norm, the prosecutor is effectively the final arbiter of fact and law (Barcow 2009: 871). In this sense, prosecutors 'decide who is and is not a legitimate subject of the law's application' (Holder 2019: 15). Accordingly, independent courts and the right to a fair trial offer a certain degree of protection to citizens against the abuse of state power; however, significant harm might be done to societal interests, as well as to the dignity and status of individuals, as a result of malicious, corrupt or politically motivated failure to prosecute, or improper decisions to prosecute, even if the accused is eventually found not guilty. A functioning and fair prosecution service, therefore, constitutes 'an indispensable corollary to the independence of the [courts]' (Consultative Council of European Prosecutors 2014: para. iv).

Constitutions increasingly regulate the status and design of the prosecution service.

In view of the prosecution service's importance to the justice system, constitutions increasingly regulate its status and design. Constitutional regulation often seeks to balance the protection of the neutrality of the prosecution service with the need to secure its democratic accountability and the power and responsibility of political actors to make policy and ensure law and order.

This primer seeks to identify and distil key issues, options and considerations based on comparative insights and international norms for the regulation of the prosecution service at the constitutional level. It particularly focuses on the status of the chief

prosecutor, who is often the principal subject of constitutional regulation while details of other prosecutors are often addressed through legislation.[1] The primer also includes examples of constitutional provisions for the design of the prosecution service and questions to aid decision making.

The primer is aimed at inspiring and informing the deliberation and decisions of constitution makers, constitutional advisors, international rule of law and democracy-promoting actors, civil society organizations, think tanks and academics on issues related to the constitutional status and regulation of the main aspects of the prosecution service. While the main focus is on the constitutional level, the insights and ideas expounded in this primer are relevant regardless of the level of regulation of the prosecution service, and they may inform reform efforts involving statutory and other subordinate pieces of legislation.

1 The chief prosecutor may have different designations depending on the specific legal tradition—for example, prosecutor general, general prosecutor, attorney general, national prosecutor and director of public prosecutions. While the primer recognizes the critical importance of the status, process of appointment, promotion, transfer and discipline of the prosecutors serving under the chief prosecutor, which may benefit from some level of constitutional regulation, its consideration of specific issues of appointment and removal focuses mainly on the chief prosecutor. This is an important limitation to the scope of the primer.

Chapter 2

WHAT IS THE ISSUE: WHY THE PROSECUTION SERVICE?

The functioning of the prosecution service has implications for the public's experience and perceptions of the rule of law, the justice system and, more broadly, the integrity of the state and government. The rule of law and the justice system, in turn, affect the functioning and legitimacy of the democratic system, as noted in Box 2.1.

Box 2.1. **The prosecution service and democracy**

The direct connection between the prosecution service and democracy is starkly illustrated by events in Guatemala after the 2023 presidential elections (Al Jazeera 2023). The then chief prosecutor, appointed during the previous regime, sought to initiate criminal proceedings against the newly elected candidate (who was yet to be inaugurated) and threatened to overturn the elections. While the threat was ultimately not pursued, the inauguration was delayed as a consequence. The situation shows how prosecutorial measures may affect significant political decisions and perceptions, such as those related to the credibility of elections and democracy.

A neutral, accountable prosecution service can help ensure nonpartisan decisions, avoid the instrumentalization of the justice system and prevent violations of rights and attacks on civic space and political pluralism. In particular, it can limit the abuse of law to prevent the prosecution of allies and to simultaneously harass dissenting political groups, civil society, the media and other crucial actors, and threaten academic freedom. The instrumentalization, whether real or perceived, of the prosecution service by incumbent governments and organized crime, or through corruption, could fuel popular dissatisfaction and political polarization, even in places with relatively well functioning and independent courts.

A neutral, accountable prosecution service can avoid the instrumentalization of the justice system.

Well-designed prosecution services may slow processes of democratic backsliding.

Moreover, in many instances of democratic backsliding, the prosecution service is seen as an important site of potential resistance and an instrument to harass the opposition. This can make it the subject of attacks and reforms to capture and bring the office under direct political control or otherwise weaken it, for instance, by changing the mechanisms for the appointment and accountability of the chief prosecutor. Well-designed prosecution services may strengthen collective efforts to slow processes of democratic backsliding, as autonomous prosecutors may be more able to withstand political efforts to harass and silence critics, and broadly ensure government respect for the rule of law. Accordingly, while constitutional and democratic culture can influence the operation of the prosecution service, its institutional design—as reflected in its constitutional status, level of autonomy and accountability—has implications for the effective performance of its core functions and the overall resilience of the democratic framework.

Worldwide, as constitution-making processes have become more inclusive and participatory, and are conducted following historic abuse of the prosecution service (and, more broadly, bureaucracy and the police), the service is receiving growing constitutional prominence. Indeed, some supranational actors advise countries to regulate key aspects of the prosecution service at the constitutional level (Venice Commission 2022).

It is important to note that the power to set policy on criminal law, define priorities for law and order, and allocate resources generally remains with the government of the day. However, the prosecution service may have some formal role in the policymaking process (e.g. South Africa 1996: articles 179(1)(a), (4) and (5)(a)) in addition to opportunities for (informal) consultations and input, which are common in most jurisdictions. The adoption of policy guidelines for prosecution by political bodies not only is compatible with democratic accountability but can also help ensure some level of coherence in the application of the law (Jasch 2019: 216). An unchecked power of a prosecution service to determine policy 'may result in inefficient use of resources, wide discretion and a lack of focus' (Adedeje 2019: 226; see also Gold 2011). Accordingly, this primer is mainly concerned with how constitutions can enhance the autonomy of the prosecution service in interpreting and applying relevant laws and policies without improper interference while ensuring the service's accountability. The constitutional protection of the prosecution service need not necessarily include granting policymaking autonomy to the service.

The primer recognizes that important aspects of the prosecution service are regulated outside the constitution—constitutions cannot and need not include details of the operation of state institutions. Thus, key questions for constitution makers are what aspects of the prosecution service are fundamental to the rule of law and democracy, thus necessitating constitutional regulation, and what should be left to ordinary legislation? In responding to these questions, constitution makers should consider the competing needs of promoting an autonomous and accountable prosecution service, while allowing sufficient flexibility to ensure its effectiveness through regular learning and adaptation.

Chapter 3

PRINCIPLES AND FUNCTIONS OF THE PROSECUTION SERVICE

Constitutions may define, explicitly or implicitly, the values, principles and functions underlying the prosecution service and, more broadly, the justice system. These can guide the institutional design of the prosecution service, especially concerning aspects of the service left to legislative regulation. They may also shape the specific decisions of prosecutors and other actors in the justice system, including judges, legal practitioners, the police, and academic and media commentators.

Commonly, such values and principles emphasize that the prosecution service is established to advance the interests of the public in the administration of justice and the need to prevent abuse of the legal process (e.g. Kenya 2010: article 157(11)), rather than to protect the interests of the government of the day. The 1958 French Constitution characterizes the judicial authority, consisting of courts and the prosecution service, as 'the guardians of individual freedom' (France 1958: article 66), while, in the Maldives, the service is seen as critical to ensure 'fairness, transparency, and accountability' (Maldives 2008: article 220(c)). In Argentina, the 1983 Constitution defines the prosecution's role as the 'defense of lawfulness and of the general interests of society' (Argentina 1983: article 120). The Brazilian Public Prosecutor's Office is charged with 'defending the legal order, the democratic regime and indispensable social and individual interests' (Brazil 1988: article 127, chapeau). The prosecution service in Cabo Verde is mandated to 'defend democratic legitimacy', as well as to protect the public interest and fundamental rights (Cabo Verde 1980: article 247(1)).

The main function of the prosecution service is related to criminal law, involving the assessment of evidence—usually gathered by the police and investigators, sometimes under the direction or

supervision of prosecutors also who decide whether to prosecute and who prosecutes cases in the courts. Here, the principal function of the prosecution service is to see that justice is done and not merely to secure convictions—this is partly manifested in the prosecutor's obligation to share with the accused any evidence that proves their innocence.

The principal function of the prosecution service is to see that justice is done and not merely to secure convictions.

In addition, in some countries, prosecutors are responsible for ensuring compliance with non-criminal laws. The prosecution service may be charged with safeguarding the interests of vulnerable members of society, such as defending the rights and interests of Indigenous peoples and protecting the environment (e.g. Brazil 1988: article 129 (III) and (V); Colombia 1991: article 277), minors and people with mental health conditions (e.g. Timor-Leste 2002: article 132(1); see also Venice Commission 2022: 21). In some countries, the prosecution service has constitutional powers to propose laws, mainly related to policy on crimes (Colombia 1991: article 156; Laos 1991: article 59(4); Azerbaijan 2016: article 96(1)).

Under the Constitution of Belarus, the prosecution service has broad powers 'to supervise the strict and unified implementation of the laws, decrees, regulations and other enforceable enactments by ministers and other bodies subordinate to the Council of Ministers, as well as by local representative and executive bodies, enterprises, organizations, establishments, public associations, officials and citizens' (Belarus 1994: article 125). Such broad powers are common in countries where the influence of the legal system of the former Soviet Union remains important (e.g. Azerbaijan 1995: article 133(1)).

The expansive functions of the prosecution service may increase the incentives for political instrumentalization and interest-group control, as well as possibilities for corruption, particularly in cases where the constitutional autonomy of the prosecution service is limited. The wide functions also increase the dilemmas and choices of prosecutors, who must decide how to allocate limited resources (including staff time) among competing demands; such allocations may not necessarily align with the priorities of policymakers, potentially creating tensions with and challenges to democratic accountability (Gomes de Mattos 2021: 1087).

Wide prosecutorial functions increase the dilemmas and choices of prosecutors, which may not align with the priorities of policymakers.

While recognizing the potentially broad functions of the prosecution service, the issues discussed in this primer have a particular focus on its mandate to prosecute crimes. In this regard, questions around autonomy are particularly important as the prosecution of crimes can have tremendous consequences for the liberty, property and even

the lives of individuals. The politicization and instrumentalization of criminal law are areas where the design of the prosecution service can have significant implications for the maintenance of constitutionalism, the rule of law and democracy.

Chapter 4

DESIGNING THE PROSECUTION SERVICE: CONSTITUTIONAL STATUS AND AUTONOMY

The design of the prosecution service involves several distinct but interlinked aspects, each affecting the ability of the service to function in a fair, efficient and accountable manner to enable it to advance the rule of law, democracy and the public interest. While there are diversities and idiosyncrasies in the design of the prosecution service across jurisdictions and the particular history of each country informs this design, the past few decades have seen the cross-fertilization of ideas, including across the common-law and civil-law divide (Stenning, Colvin and Douglas 2019: 3, 5). There is also 'almost as much variation within each of these systems as there is between them' (Colvin and Stenning 2019: 267). In all cases, the idea that the rule of law and democracy require a neutral and nonpartisan prosecution service has broad resonance.

The constitutional recognition of the prosecution service and its autonomy reflects the symbolic status and value that constitution makers attach to it, as well as the desire to insulate the service from unilateral manipulation by transient political majorities. Constitutional rules particularly seek to guarantee the functional and increasingly institutional autonomy of the service in interpreting and applying relevant laws and policies.

4.1. FUNCTIONAL AUTONOMY

Functional autonomy is critical to avoid the abuse of criminal law and procedure.

The key questions in relation to functional autonomy relate to whether and under what conditions the decisions of prosecutors are subject to review by political bodies, particularly the minister in charge of justice. Functional autonomy mainly involves prohibiting political and other external actors from interfering in prosecutors'

decisions in specific cases, as well as providing guarantees of immunity of prosecutors for decisions related to their prosecutorial functions. Functional autonomy is critical to avoid the selective and politicized enforcement and the abuse of criminal law and procedure, which undermine the rule of law. While the government of the day is often responsible for setting policy and enforcing law and order, this need not extend to interference in prosecutors' specific decisions.

For instance, the directors of public prosecutions in Jamaica and in the Maldives may 'not be subject to the direction or control of any other person or authority' (Jamaica 1962: article 94(6); Maldives 2008: article 220(c)). Under the 2010 Constitution of Kenya, the director of public prosecutions 'shall not require the consent of any person or authority for the commencement of criminal proceedings and, in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority' (Kenya 2010: article 157(10)). Similar rules exist in relation to the attorney general, who exercises prosecutorial functions, in the 1993 Seychelles Constitution (article 76(10)). Such constitutional provisions are widespread in common-law jurisdictions.

To secure functional autonomy, some constitutions expressly guarantee the immunity of prosecutors. For example, in the 2010 Angolan Constitution, public prosecutors may be imprisoned only after being charged and when the sentence carries a minimum of two years' imprisonment, except when they are caught committing a serious crime (Angola 2010: article 188). Similarly, under the 1991 Bulgarian Constitution, prosecutors have immunity from 'civil or criminal liability for their official actions or for the acts rendered by them, except where the act performed constitutes an indictable intentional offence' (Bulgaria 1991: article 132(1)).

Functional autonomy does not mean the absence of accountability. As such, it does not prevent the subjection of certain prosecutorial decisions to judicial control, for instance, in relation to decisions on the withdrawal or discontinuation of cases (e.g. Kenya 2010: article 157(8)). Moreover, political actors may be empowered to provide general instructions that are unrelated to specific cases. For instance, the Namibian Prosecutor General's Office is standalone and autonomous. Nevertheless, the attorney general retains the 'final responsibility' in relation to the office of the prosecutor general (Namibia 1990: 87(a)). This 'final responsibility' entails the duty of the prosecutor general to keep the attorney general properly informed and consulted about cases which might arouse public interest or involve important aspects of legal or prosecutorial authority, so the

latter may exercise ultimate responsibility for the office (Namibian Supreme Court 1995). Similarly, in South Africa, the minister in charge of justice exercises final responsibility over the national director of public prosecutions (South Africa 1996: article 179(6)). Here, 'final responsibility' includes a duty to provide the relevant minister with reports or information relating to any case, matter or subject dealt with by the prosecuting authority, including policy directives, as well as to provide the reasoning behind any decision of the national director relating to their duties as stated in the National Prosecuting Act of 1998 (South Africa 1998: section 33). Comparable designs exist in many common-law jurisdictions.

To ensure the autonomy of the prosecution service, the exercise of such 'final responsibility' or similar general instructions to the service from the attorney general or other political bodies, if and when allowed, should be carried out transparently, clearly and in a written format. In Papua New Guinea, the prosecutor general may only take instructions from the head of state in the form of a general direction on any matter that might prejudice security, defence or international relations. In such cases, the prime minister should table the guidance before parliament (Papua New Guinea 1975: article 176(3) and (4)), except in cases where the prime minister, after consultation with the leader of the opposition, considers such tabling prejudicial to the security, defence and international relations of the country.

Any instructions to prosecutors from the attorney general or other political bodies should be written and provided transparently.

While functional autonomy mainly relates to protection from interference from outside the prosecution service in specific cases, it also has implications for hierarchical relations within the service. As such, in cases where higher-level prosecutors have the authority to provide instructions to lower-level ones, requirements around transparency, clarity and the written format of instructions may be equally important to prevent abuses within the prosecution service. Regulations around promotions, transfers and other key issues should also consider the need to ensure the protection of lower-level prosecutors from the improper influence from higher-level ones.

4.2. **INSTITUTIONAL AUTONOMY**

Institutional autonomy relates to the existence and hierarchical separation of the prosecuting body, notably separation from the executive branch. There are three broad approaches, which are common worldwide, to the institutional placement of the prosecution service:

1. The prosecution service may be part of the executive branch in charge of justice and formally subject to its direction and supervision. For instance, in The Gambia, the office of the director of public prosecutions leads the criminal prosecution department within the office of the attorney general (The Gambia 1996: articles 84 and 85). England and Wales have a director of public prosecutions, under the superintendence of the office of the attorney general, who provides legal advice to the government and exists alongside the minister of justice, who sets government policy. In such contexts, the prosecution service does not have institutional autonomy. Where the service is part of the executive branch, the levels of functional autonomy of the prosecution department from the minister of justice and attorney general, especially regarding decisions in specific cases, determine the extent of the potential politicization of the service.

2. In some constitutions, notably in Francophone civil-law countries, there is an established principle of unity in the judicial authority, including both courts and the prosecution service, which is partly reflected in the establishment of a single judicial council governing members of both entities. Nevertheless, even here, the prosecution service may be formally overseen by the executive branch, which is not the case for the courts (Cohen 2017).

3. The prosecution service may be separate from both the judiciary and the executive, thus leading to the separation of the prosecution function from the policymaking and legal advice functions of the government. For instance, in many Latin American countries, the chief prosecutor heads what is commonly known as the public ministry, an autonomous body with extensive powers (e.g. Brazil 1988: article 127; Colombia 1991: article 277). Under the 1991 Constitution of North Macedonia, there exists a single, autonomous public prosecutor's office (North Macedonia 1991: article 106). The public prosecutor of Papua New Guinea (Papua New Guinea 1975: article 176) and the director of public prosecutions in Kenya (Kenya 2010: article 157) are also institutionally autonomous bodies.

In some countries, the institutional autonomy of the prosecution office may include the power to prepare the office's budget (e.g. Brazil 1988: article 127(3)). In the Seychelles, the salary, benefits, pension and any bonuses of the attorney general are paid directly from the consolidated fund and the office holder is protected from disadvantageous alterations to the terms and conditions of

appointment during their term (Seychelles 1993: article 76(12) and (13)).

Whenever reforms are focused on the prosecution service, the trend is increasingly towards institutional autonomy and separation from the executive and judiciary. Institutional autonomy may be seen as less urgent in countries with an established political culture of respect for the autonomy of the prosecution service. Nevertheless, in view of the potential erosion of such political conventions and in order to prevent opportunist (ab)uses of the law to undermine democratic competition and freedoms, it may be wise to consider the added value (and associated trade-offs) of constitutionally guaranteeing both the functional and institutional autonomy of the service, much like the judiciary.

The reform trend is increasingly towards institutional autonomy and separation of the prosecution service from the executive and judiciary.

The institutional separation of the prosecution service from the political bodies of the executive can remove the formal possibilities of political influence on and reinforce perceptions of the autonomy of the service. At the same time, it could place a strain on levels of coordination, and even lead to competition and conflict, between the policymaking bodies and the prosecution service, potentially reducing effectiveness. To address this risk, decisions about guaranteeing the institutional autonomy of the prosecution service should be accompanied by coordination, consultation mechanisms and transparent lines of communication. This will also ensure that the prosecution service has access to information and analysis crucial to making informed decisions in the public interest. Institutional autonomy may also lead to dangers of corporativism and corruption. Accordingly, such autonomy should be combined with mechanisms for effective accountability (Richman 2017—also discussed in relation to the chief prosecutor (see Chapter 5: The chief prosecutor)).

As noted earlier, the broader power to set policy remains with the political actors and institutional autonomy does not necessarily exclude the possibility of the issue of broad guidance to the prosecution service from politically accountable government branches. Institutional autonomy is also compatible with requirements for the prosecution service to submit annual reports to parliament (e.g. Georgia 1995: article 65(4); Timor-Leste 2002: article 133; Zimbabwe 2013: article 259). Nevertheless, if parliament or any member of the executive has the authority to interfere in or otherwise influence specific cases, that would be inconsistent with functional autonomy and this power should, at a minimum, include requirements of transparency and the formal recording of such instructions.

4.3. **SPECIAL PROSECUTORS**

In some contexts and cases, there may be a need for special prosecution bodies. For example, where the prosecuting body is institutionally under a political appointee, due to constitutional or other arrangements, the need for special prosecution bodies may arise out of a desire to avoid perceptions of politically motivated measures in high-profile cases (see Box 4.1). Even in countries where the constitution establishes an institutionally autonomous prosecution service, there may be a need for special prosecution bodies for particular issues, for example organized crime and financial crimes or corruption, which may require special expertise.

Box 4.1. **Special prosecutions in the USA**

In the United States, the federal attorney general, who is in charge of prosecutions among other issues, is accountable to and can be unilaterally dismissed by the president. In view of this, where politically sensitive cases arise, a special prosecutor is appointed. Nevertheless, considering that the initial decision on whether to appoint a special prosecutor is made by the attorney general, who could legally interrupt the process, the extent to which special prosecutors in the USA reduce perceptions of politicization remains questionable.

One challenge with establishing special prosecution bodies without constitutional protection is that they can be unilaterally and capriciously abolished by transient political majorities. For example, in Slovakia the elected legislative majority in the 2023 elections—many of whose members were under investigation—fast-tracked legislative reform to abolish the office of the special prosecutor, thus ending the ongoing investigations (Domin 2024). Alternative approaches would be to constitutionally make provision for a special prosecutor's office or to mandate a constitutionally protected body with prosecuting relevant crimes such as corruption (e.g. the anti-corruption commission in Nepal 2015: article 239; the ombudsperson's office in Philippines 1987: article XI, sections 5–13).

Furthermore, the constitutional protection and autonomy of the prosecution service would be severely undermined if special prosecution bodies were established without limit, giving incumbent governments the opportunity to establish less autonomous bodies that encroach on the power of the prosecution service. To prevent this, constitutions: (a) may specifically make provision for special prosecution offices in relation to specific crimes with largely similar

safeguards to the broader prosecution service (e.g. Albania 1998: articles 148(4) and 148(dh) in relation to corruption and organized crime; or (b) make provision for the establishment of any special prosecutor to require the same processes of appointment and legal protection as those for chief prosecutors. In Kenya, the Constitution allows parliament to confer prosecutorial powers on entities other than the director of public prosecutions (Kenya 2010: article 157(12)) but without any specific guarantees of autonomy. In all cases, procedures that allow the extant political majority to withdraw powers from existing institutions and confer them on newly established ones create possibilities for partisan opportunism, even when there are guarantees to ensure autonomy.

Overall, it can be argued that functional autonomy is critical to the ability of the prosecution service to deliver on its mandate to impartially protect the rule of law and democracy. Where political bodies can issue instructions to prosecutors on specific cases, the potential for abuse is high. Such possibilities should be limited, if allowed at all, and subjected to requirements of transparency and accountability. Institutional autonomy can complement functional autonomy and strengthen the protection of the prosecution service. Nevertheless, both functional and institutional autonomy do not necessarily entail the absence of accountability nor the granting of wide discretionary powers to prosecutors. As discussed in relation to the chief prosecutor (see Chapter 5: The chief prosecutor), in view of the interests of the government of the day in ensuring law and order, mechanisms for the political, public and legal or judicial oversight of the prosecution service are not only necessary but also desirable. Such mechanisms can enhance accountability of decisions of prosecutors and reduce instances of abuse.

Functional and institutional autonomy do not necessarily entail the absence of accountability.

Chapter 5

THE CHIEF PROSECUTOR

Regardless of its institutional status and autonomy, the prosecution service is often (hierarchically) headed by a chief prosecutor (or in some countries with Francophone traditions, several top prosecutors of equal status who are generally overseen by the ministry in charge of justice). This primer uses *chief prosecutor* to refer generally to the highest-level prosecutor and uses the actual designation in the relevant constitution when referring to a specific country. While the primer focuses on the chief prosecutor, it is important to consider the status of other prosecutors, including the process of their appointment, transfer and discipline, to understand the full scope of autonomy of the service. For instance, while the Russian Prosecutor General is appointed through a process that nominally involves checks and balances, based on nomination by the president and confirmation of the Council of the Federation (second legislative house), most other prosecutors are unilaterally appointed and dismissed by the president (Russian Federation 1993: article 129(3) and (4)).

Constitutions increasingly recognize and define the chief prosecutor's mandate and process of appointment and removal.

As part of a broader drive to ensure the status and autonomy of the prosecution service, constitutions increasingly recognize and define the chief prosecutor's mandate and process of appointment and removal. Some constitutions make detailed provisions concerning the chief prosecutor to ensure that transient majorities cannot unilaterally undermine the office's status and operation (e.g. Albania 1998: article 149). The 1991 Constitution of North Macedonia adopts an interesting approach: rather than providing details at the constitutional level regarding the prosecution service, it leaves the regulation of the competences, establishment, termination, organization and functioning of the public prosecutor's office to statutes, but the adoption of such statues requires approval by two-thirds of the total membership of parliament (North Macedonia 1991:

article 1(amendment xxx)).[2] The two-thirds majority requirement recognizes the need for cross-party deliberation and consensus in view of the need to ensure the autonomy of the prosecution service.

Some constitutions contain almost no details about the chief prosecutor. For instance, the 1997 Constitution of Poland mentions but does not provide any detail on the public prosecutor general (Poland 1997: article 191(1)). Such an approach presents opportunities for transient political majorities to unilaterally design and instrumentalize the prosecution service without the need to change the constitution (see Box 5.1).

Box 5.1. **Constitutional regulation of the prosecution service in Poland**

Between 2015 and 2023, the Law and Justice (PiS) administration in Poland politicized the public prosecutor's office, notably by merging the roles of minister of justice and chief prosecutor. The office quashed dissent, forced self-censorship on critical voices and systemically pursued political and business rivals, while shielding 'ruling officials from accountability, concealing the ruling coalition's own abuses of power, corruption, and other serious crimes', arguably causing 'the most direct harm to Polish citizens' in the process (Myceilski 2025). The PiS Government achieved this through legislative and other operational changes. Constitutional guarantees on the status of the prosecution service would have necessitated broad political consensus that the PiS Government could not have secured.

5.1. **MANDATE OF THE CHIEF PROSECUTOR**

In cases where the prosecution service is established as a separate entity, the chief prosecutor has ultimate authority over the service. For instance, in Kenya, the director of public prosecutions is free from the direction or control of any other person or authority in exercising the powers of the office (Kenya 2010: article 157(10)). Comparable language is used in many Commonwealth of Nations' constitutions, particularly those of Caribbean countries (e.g. Jamaica, 1962: article 94). This autonomy does not exclude the duty of the prosecution service to report regularly to the legislature, and even the executive, on the general state of the service nor to fulfil broad auditing requirements. The role of the chief prosecutor in the making of prosecution service policy may vary. In South Africa, for instance, the national director of public prosecutions has an active role and

2 This approach broadly aligns with practices in some French-speaking countries where the prosecution service is regulated through organic laws, which require an absolute majority (half of the total membership of parliament) to pass.

determines prosecution policy in consultation with other prosecutors and in agreement with the minister responsible for justice (South Africa 1996: article 179(1)(a), (4) and (5)(a)). In most other countries, the government sets overall criminal justice policy and general priorities for the allocation of prosecutorial resources to guide the work of the prosecution service, which may have formal and informal opportunities to influence the policy.

Even in cases where the service is formally under the office of the attorney general or minister of justice, as is the case in some countries from both civil-law and common-law traditions, the chief prosecutor is protected from political interference in specific cases. For instance, in the Maldives, the prosecutor general is independent and impartial and the attorney general has the power to issue 'general directives' only on the conduct of criminal proceedings (Maldives 2008: article 133(g)). Such instructions may relate to the broader choices of the chief prosecutor, for example, in prioritizing the deployment of (limited) resources towards the prosecution of certain types of offence, rather than to specific cases. Moreover, certain decisions of the chief prosecutor, especially the power to discontinue prosecution, may be subject to judicial authorization or review (e.g. Kenya 2010: article 157(8)).

The chief prosecutor often has a general power to administer the prosecution service, including its budget; to issue general prosecution guidelines to prosecutors based on government policy; and to directly prosecute cases at the highest-level courts or in all courts, often through other prosecutors (e.g. Kenya 2010: article 157(9)). The chief prosecutor may also have constitutional powers to supervise or direct police investigations and to ask the police to investigate any information or allegation of criminal conduct (e.g. Chile 1980: article 83).

In some cases, the chief prosecutor appoints other prosecutors within the service (e.g. Moldova 1994: article 125(2); Timor-Leste 2002: article 132(5)). The power of appointment does not necessarily imply the authority to interfere in specific decisions of other prosecutors, who often enjoy the personal independence to make decisions on specific cases, subject to the law, guidelines from the chief prosecutor and government policy. In view of the role of the service, leaving the power of appointment (and dismissal) of special prosecutors to the chief prosecutor could lead to personalization and also incentivize political attempts to control the office of the chief prosecutor. Ensuring the involvement of, for example, the prosecution council (see Chapter 6: Prosecutorial councils) in this process can

provide added constraints to both personalization and political control.

Chief prosecutors may also have powers to submit cases to constitutional courts (Mongolia 1992: article 66(1); Timor-Leste 2002: articles 133(5) and 150(c)). The power to submit cases to the constitutional court allows the chief prosecutor to shape law and policy in line with the office's mandate to advance justice. At the same time, in cases where the constitutional court upholds laws that the chief prosecutor challenged, doubts may arise as to whether the prosecution office would correctly apply the challenged law in future cases. Possible alternative approaches are to require consultation with the prosecution office in the development of relevant laws and policies, and, in court cases, to empower it to appear as amicus curiae (friend of the court) to share its experiences and knowledge with the court, rather than to adopt strong positions on a particular law or policy that it may subsequently be called upon to apply.

5.2. **APPOINTMENT OF THE CHIEF PROSECUTOR**

Appointment processes should recognize legitimate political interests without unduly subjecting the chief prosecutor to the whims of transient majorities.

Constitutions that expressly establish the office of chief prosecutor show remarkable diversity regarding the process of appointment—including the actors involved, the legislative majority required, transparency, competitiveness and timelines. A key consideration is enabling a process that recognizes the legitimate interests of political bodies to have their say, possibly through the power of final approval, without unduly subjecting the chief prosecutor to the whims of transient political majorities. There is no blueprint to identify an appropriate trade-off in balancing the two objectives; constitution makers need to consider the relevant sociopolitical culture, context and experiences, as well as the broader institutional framework in making their choices.[3] This balance may be struck through appointment processes that take account of the views of autonomous bodies, such as the prosecutor or judicial council; supermajority support from the legislature; and competitive processes (e.g. Papua New Guinea 1975: article 176(2); Albania 1998: article 148-a(2)).

3 It is important to note that there is often legislation that expounds on the relevant constitutional provisions on appointment. For instance, in South Africa, the enabling act of the prosecution authority provides that the national director of public prosecutions must be a 'fit and proper' person, which has been interpreted by courts to require a 'rational' decision from the president to consider all relevant information, rather than being left entirely to the sole discretion of the president (*Democratic Alliance v President of the Republic of South Africa and others* (263/11) [2011] ZASCA 241).

In addition, transparency and the time required between nomination and appointment may be critical to allow stakeholders—such as opposition parties, bar associations, the media and civil society—to express their views, create awareness and mobilize public opinion. This can be achieved through requiring a public, competitive selection of the list of candidates, while leaving the final selection among shortlisted candidates to political or other bodies. These additional requirements may be found in statutes and other subordinate legislation, but these are easier to change than constitutional regulations. Constitution makers and advisors may consider regulating competitiveness, transparency and timelines at the constitutional level.

Many countries in central and eastern Europe and Latin and Central America have adopted an appointment procedure requiring supermajorities, with varying roles for the prosecutorial council. Where elections are competitive and relatively free and fair, supermajority rules can ensure that no single political group unilaterally appoints the chief prosecutor, necessitating cross-party engagement, moderation and compromise. For example:

1. In Montenegro, parliament appoints the supreme state prosecutor with a two-thirds majority following a proposal from the prosecution council; if the required majority is not achieved in the first round, the prosecutor may be appointed with a three-fifths majority among all the candidates who meet the legal requirements—not just those nominated by the prosecution council (Montenegro 2007: article 91).

2. In Bolivia, the prosecutor general, who heads the public ministry, is selected through a public, competitive process with the final two-thirds approval of parliament (Bolivia 2009: article 227).

3. In Chile, the national prosecutor is nominated by the president, based on a five-candidate list proposed by the Supreme Court, and approved with a two-thirds majority in the Senate (the lower house of parliament is not involved) (Chile 1980: article 85).

In some countries, the appointment of the chief prosecutor involves the formal role of the leader of the opposition. This may temper unilateral appointments by a single political group and lead to the selection of moderate candidates but does not necessarily depoliticize the process. For example:

1. The Seychelles has a strong and unusual mechanism to ensure the influence of the leader of the opposition in all key appointments. Accordingly, the president appoints the attorney general based on the proposal of the Constitutional Appointments Committee, which is a permanent body composed of two members nominated by the president, two members by the leader of the opposition, and a fifth member, who also becomes chair, selected by the first four (Seychelles 1993: article 76(1)).

2. In Belize, the governor-general (who formally represents the British monarch), appoints the director of public prosecutions, acting in accordance with the advice of the Judicial and Legal Services Commission and with the agreement of the prime minister, which is given after consultation with the leader of the opposition (Belize 1981: article 108). As the leader of the opposition does not have a veto on appointments, the effectiveness of the consultation requirement rests on political conventions of goodwill and fair play, which may not always be forthcoming.

In cases where constitutions require a supermajority or where approval requires the agreement of several bodies, or deliberation or agreement among incumbent and opposition leaders, a deadlock-breaking mechanism is necessary to avoid impasses when the required consensus is not achieved. The Venice Commission has often emphasized the importance of deadlock-breaking mechanisms, as the absence of such mechanisms could lead to long periods of vacancies that may undermine trust in democratic politics and the rule of law (Venice Commission 2021a on Montenegro: paras 37 and 55; Venice Commission 2018 on Georgia: para. 38). Such mechanisms should be designed to incentivize deliberation and compromise rather than effectively making the deadlock-breaking procedure the preferred choice for any actors.

Deadlock-breaking mechanisms are necessary to avoid impasses in appointment processes.

For instance, in Albania, the prosecutor general is appointed with a three-fifths majority in parliament from a list of three candidates selected by the High Prosecutorial Council; if parliament does not select a candidate within 30 days, the first person on the list automatically becomes the prosecutor general (Albania 1998: article 148a(4)). This procedure empowers the council vis-à-vis the political actors, who must build a broad consensus if they wish to deviate from the council's first choice. It emphasizes that the office of the prosecutor general is professional and independent, rather than political. Indeed, in some countries, political bodies may not have a direct role in the appointment of the chief prosecutor. For instance,

in Papua New Guinea, the Judicial and Legal Services Commission appoints the public prosecutor (Papua New Guinea 1975: article 176(2)) without the direct involvement of political bodies.

Overall, in view of the importance of the actual and perceived independence of the office of the chief prosecutor, the appointment process should ideally require broad political consensus, which can be achieved through a legislative supermajority requirement or formal roles for the opposition, alongside deadlock-breaking mechanisms. Where the power of appointment resides with the regular parliamentary majority or head of state, there should be requirements for nominations from the prosecutorial council or other independent bodies. In all cases, competitive processes, transparency and defined timelines enhance confidence in the autonomy and competence of the chief prosecutor.

Competitive processes, transparency and defined timelines enhance confidence in the autonomy and competence of the chief prosecutor.

5.3. QUALIFICATIONS AND ATTRIBUTES OF THE CHIEF PROSECUTOR

Beyond the process of appointment, constitutions may make provisions regarding the competence and integrity of the chief prosecutor (and, more broadly, all prosecutors). In particular, the autonomy of the prosecution service may require the exclusion of individuals who are active politicians or have held key political positions in the recent past, which may be seen as incompatible with the mandate and autonomy of the prosecution service (e.g. North Macedonia 1991: article 106; Albania 1998: article 148a(3)). There may also be specific requirements regarding the legal education and years of relevant experience of the chief prosecutor, which are sometimes defined based on comparable requirements for the highest-level judges, as is particularly the case in countries with a common-law tradition. These specific requirements reinforce the objectives of the appointment process to ensure the integrity, autonomy and competence of chief prosecutors and, more broadly, the prosecution service and legal profession.

Some countries require the chief prosecutor to be appointed from within the prosecution service. In Hungary, for instance, prior to a constitutional amendment in 2024, the chief prosecutor was selected from within the service (Hungary 2011: article 29(4)). Restricting eligibility for the position of chief prosecutor to members of the prosecution service may limit the possibility of partisan appointments, but it can also narrow the pool of expertise and

exclude suitably qualified outsiders. The Venice Commission has welcomed legal changes in Montenegro that broaden eligibility requirements to include independent and experienced professionals from outside the prosecution service (Venice Commission 2022: para. 36). Overall, if the process of appointment is designed to require broad political consensus or nomination from independent bodies through competitive and transparent processes, narrowing the pool of candidates may present more disadvantages than benefits.

5.4. **TENURE AND ACCOUNTABILITY OF THE CHIEF PROSECUTOR**

Beyond the appointment process, the autonomy and effectiveness of the prosecution service and chief prosecutors may require guaranteed tenure (term of office), security against unjustified dismissals and other protections to ensure non-partisanship, including salaries and benefits, as well as restrictions on political activity.

Term of office of chief prosecutors

Ensuring that the terms of office of chief prosecutors are not too short nor aligned with the electoral cycle of political bodies reduces the chances of politicization. The renewability of terms of office may also present the possibility to influence the chief prosecutor's decisions, especially where the appointment process involves political actors. In view of these considerations, the Venice Commission has indicated a preference for appointments of relatively long, single terms, without the possibility of renewal, or life appointments until retirement (Venice Commission 2011: para. 37; Venice Commission 2017 on Poland: para. 34).

Terms that are not too short nor aligned with the electoral cycle of political bodies reduce the chances of politicization.

Given that one person often occupies the office of chief prosecutor and has significant powers, then single and relatively long terms of office, or limited renewability, may be more appropriate than life appointments (until retirement), or an unlimited number of short terms. Such an approach can ensure an acceptable balance between the demands of the rule of law, focused on non-partisanship and professionalism, and the democratic responsiveness and regular renewal of key officials. In practice, life appointments are uncommon (e.g. Netherlands 1814: article 117(1); Malta 1964: article 91(4) where the chief prosecutor is appointed until retirement) as are short-term and renewable appointments (e.g. Brazil where the prosecutor

general is appointed for a two-year term, renewable indefinitely (Brazil 1988: article 120(para. 1)).

Constitutions contain diverse rules on the terms of office for chief prosecutors. In Kenya (2010: article 157(5)) and Chile (1980: articles 85 and 89), for instance, the chief prosecutor is appointed for a single, non-renewable eight-year term, and in Bolivia for a single, six-year term (Bolivia 2009: article 228). In Armenia, the chief prosecutor has a six-year term and the same person may not serve more than two consecutive terms (Armenia 1995: article 177(1)). To exclude the possibility of politicized decisions, there may be requirements excluding the appointment of the chief prosecutor to government positions within a limited period after the end of the term.

Grounds and procedures for removal of the chief prosecutor should be clearly laid out and exclude arbitrary or political dismissals.

Grounds for and process of removal for the chief prosecutor

The autonomy of the prosecution service does not entail a lack of accountability for the chief prosecutor (and other prosecutors). Indeed, confidence in the rule of law and democracy requires that effective accountability mechanisms, including through the possibility of removal before the end of the term, are in place. In addition, mechanisms such as requirements to transparently, and in written format, justify prosecutors' decisions provide important means of ensuring the accountability and responsiveness of the prosecution service. In particular, where the constitution and legal system provide wide discretion to the prosecution office on whether or not to prosecute,[4] accountability mechanisms are critical to avoid political interference, corporatization, and corruption and tyranny within the prosecution service, including potential capture by non-governmental actors, such as organized crime. Nevertheless, effective autonomy requires that the grounds and procedures for removal of the chief prosecutor be clearly laid out in advance and exclude arbitrary or political dismissals.

In view of the quasi-judicial nature of the role of the chief prosecutor, the constitutional grounds for removal may be similar to those applicable to judges (Bulmer 2017). For instance, in Kenya, the director of public prosecutions may be removed from office only on the grounds of inability to perform the functions of office arising from mental or physical incapacity, noncompliance with constitutional integrity requirements, incompetence, gross misconduct or

4 Some countries with common-law traditions follow the 'opportunity' principle, allowing prosecutors discretion to decide whether or not to prosecute a criminal offence based on the 'public interest', even where factual and legal requirements are satisfied. In countries with civil-law traditions, the 'legality' principle tends to dominate, where there is a prima facie duty to prosecute all criminal offences where there is sufficient evidence, presumably reducing the discretion of prosecutors.

misbehaviour, or bankruptcy (Kenya 2010: article 158(1)). The Albanian Prosecutor General may only be removed from office for serious professional or ethnical misconduct, or for final, non-appealable conviction for a crime (Albania 1998: article 149(c)(2)). In Papua New Guinea, the prosecutor general may only be removed on grounds of physical or mental inability to perform the functions of the office, misbehaviour or misconduct (Papua New Guinea 1975: article 178). In Chile, the grounds for removal are limited to 'ineligibility, misconduct or gross negligence in the performance of their functions' (Chile 1980: article 89).

The procedure for removal is also critical to protect the autonomy and reduce the politicization of the prosecution service. Similar to the appointment process, the removal process should ideally require broad political consensus (e.g. through a supermajority requirement) or the ascertainment of the grounds for removal by independent bodies, such as a constitutional court, judicial or prosecutorial council, or a tribunal established for this purpose. Here are some examples of the diverse ways in which a removal procedure can balance the needs of neutrality with accountability:

Removal processes should ideally require broad political consensus and/or the ascertainment of the grounds for removal by independent bodies.

1. The Kenyan Constitution (2010: article 158(2–6)) contains an elaborate procedure to ensure the depoliticized accountability of the director of public prosecutions. Accordingly, any person who believes there are grounds for removal can present a petition to the Public Service Commission, an autonomous body in charge of the administration of the civil service. If the commission is satisfied that the petition has merit, it is forwarded to the president, who must suspend the director and establish a tribunal within 14 days, in line with the advice of the commission, to investigate the petition and provide recommendations. The president must act in accordance with the recommendations of the tribunal. During the suspension period, the director is entitled to half their salary and benefits until their removal or reinstatement.

2. The Albanian Prosecutor General may be dismissed only upon a decision of the Constitutional Court (Albania 1998: article 149c (1)).

3. In Chile, the prosecutor general is removed based on the decision of the Supreme Court at the request of the president of the republic or at least 10 members of the House of Representatives (Chile 1980: article 189).

4. In Guyana, the director of public prosecutions can be removed by the Judicial Service Commission, which also appoints them (Guyana 1980: article 199(3)).

5. Under the Namibian Constitution, the president can remove the prosecutor general based on a decision of a tribunal established by the Judicial Service Commission (which, interestingly, does not have prosecutor members). If the tribunal recommends removal and the commission confirms, the president must remove the prosecutor (Namibia 1990: article 88A).

6. In Malta, the attorney general may only be removed by the president upon a two-thirds majority decision of parliament and only on the grounds of proved inability to perform the functions of the office (whether arising from physical or mental disability or any other cause) or proved misbehaviour (Malta 1964: articles 91(5), and 97(2) and (3)).

7. In Georgia, the prosecutor general may be removed through an impeachment procedure on the application of one-third of the members of parliament (Georgia 1995: article 48). In such a case, the petition is transferred to the Constitutional Court to ascertain whether the prosecutor has violated the constitution or otherwise committed a crime. If the court confirms these grounds exist, parliament must deliberate within two weeks of the decision of the court. The prosecutor general is removed if parliament confirms the decision of the court with a majority of the total number of members of parliament (Georgia 1995: article 48(2) and (3)).

In view of the seriousness of the grounds for removal, the procedure for removal should consider guaranteeing the chief prosecutor's right to be heard (Venice Commission 2012 on Hungary: para. 61). For instance, in Peru, the Constitution states that the final decision on removal should provide clear reasoning for the removal and the process should include a prior hearing of the interested party (Peru 1993: article 154(3)). See Box 5.2 on Guatemala.

Constitutions may allow for the possible suspension of the chief prosecutor pending a decision of the relevant body following preliminary (prima facie) ascertainment of grounds of removal (e.g. Albania 1998: article 149(c)(3)). To discourage the abuse of this process, time limits on the suspension period may be necessary. In addition, as noted above in relation to Kenya (2010: article 158(6)), the constitution may guarantee the full or partial payment of the chief

Box.5.2. **Removability of the chief prosecutor in Guatemala**

While the grounds and procedure for removal of the chief prosecutor must seek to preclude arbitrary removals, they should not effectively block removal as an important and last-resort accountability mechanism. For instance, in Guatemala, the 1993 Constitution (article 251) makes provision for the president to remove the attorney general for 'a duly established just cause'. Until 2016, the organic law governing the office provided that 'just cause' includes conviction for an intentional crime or 'poor performance'. A 2016 reform removed the second requirement to prevent abusive removal of the chief prosecutor. The unintended consequence of this change has been that the attorney general can only be removed upon conviction for an intentional offence, but all prosecutions are effectively under the attorney general—meaning that the attorney general must first prosecute themselves before removal proceedings can commence, which is impractical (Paiz Lemus 2025). This has had serious consequences for Guatemalan democracy (see Box 2.1). The attorney general has also been accused by domestic and international actors of deliberately undermining civic space and targeting individuals associated with the president. Despite these abuses, the attorney general is effectively unremovable. The president has proposed amending the relevant law to enable the removal of the chief prosecutor on additional grounds, but this has so far not succeeded.

prosecutor's salary during the period of suspension. Any payments made during the suspension may be reclaimed if the removal is confirmed.

Immunity of the chief prosecutor

Beyond their removal from office, chief prosecutors may enjoy immunity from responsibility in relation to good faith decisions regarding their prosecutorial functions, but they may also face civil or criminal charges where they have committed illegal misconduct or crime. Without guarantees of immunity, which may only be removed based on broad political consensus (such as through a legislative supermajority) or the decisions of independent bodies, the autonomy of the prosecution service would be in danger, regardless of the robustness of appointment and removal procedures. For instance, the Slovakian Prosecutor General may only be criminally prosecuted or remanded (detained before trial) upon the decision of the Constitutional Court (Slovakia 1992: article 136(3)). The prosecutor general in Montenegro enjoys the same level of immunity as members of parliament (Montenegro 2007: articles 86(para. 4) and 137); see also Serbia 2006: article 162). Similarly, in North Macedonia, the prosecutor general enjoys immunity and may only be removed by the National Assembly (North Macedonia 1991: article 107).

Without guarantees of immunity of prosecutors, the autonomy of the prosecution service would be in danger.

Reporting requirements

Autonomy and authority without accountability are both normatively indefensible and practically dangerous in a democracy (Duff 2017: 32). Accordingly, constitutions can and should make provision for political accountability mechanisms for the exercise of prosecutorial power and discretion. In addition to the possibility of removal, and similar disciplinary procedures, a requirement on the chief prosecutor to report regularly to parliament or the government provides mechanisms to ensure a level of influence and the democratic responsibility of the prosecution service. For instance, in Timor-Leste, the prosecutor general must submit annual reports to parliament (Timor-Leste 2002: article 133). While not specifically mentioned in the Constitution, this appears to relate to general enquiries about the prosecution service rather than to specific decisions made by the chief prosecutor, which would be contrary to the functional autonomy of the office.

Judicial accountability

In addition to public and political accountability mechanisms, constitutions and relevant laws often make provision for judicial accountability by defining circumstances under which a prosecutor's decisions may be challenged in court. In Kenya, for instance, the power to discontinue prosecutions is subject to judicial review (Kenya 2010: article 157(8)), which presents the possibility to question the prosecutor's judgments without unduly undermining the effectiveness and neutrality of the prosecution service.

Chapter 6

PROSECUTORIAL COUNCILS

One institution that can play a useful role in ensuring the autonomy of the prosecution service is the prosecutorial council. Such councils are recognized in some constitutions and play a key role in the appointment of and disciplinary measures against prosecutors, with a view to balancing the needs for autonomy, professionalism and competence with democratic accountability and responsiveness. In comparison to judicial councils, prosecutorial councils are less frequently recognized at the constitutional level, and when they are recognized, details are minimal. This may be partly explained by the tendency to see the prosecution service more as an executive than a judicial body. For instance, in Montenegro, the Constitution clearly outlines the composition of the judicial council (Montenegro 2007: article 127) but leaves the composition of the prosecution council (article 136) to legislation. Similarly, in Burundi, the 2018 Constitution contains detailed provisions on the mandate and composition of the judicial council (Burundi 2015: article 222) but leaves the composition of the prosecution council to organic law (article 226).

Where they exist, the principal function of prosecutorial councils is to be involved in the appointment, promotion, transfer of and disciplinary measures against the chief prosecutor and other prosecutors, and, more broadly, the administration of the prosecution service. The council may also be involved in the continued training and evaluation of prosecutors.

A minimal level of constitutional recognition and the outlining of the mandate and composition of prosecutorial councils allow better flexibility to adapt to emerging needs and challenges. At the same time, this also increases the potential for transient political majorities to unilaterally manipulate the prosecution service. In view of their importance to the justice system, the rule of law and

Constitution makers may consider the advantages and pitfalls of constitutionally regulating the mandate and composition of prosecutorial councils.

democracy, constitution makers may consider the advantages and pitfalls of constitutionally regulating the mandate and composition of prosecutorial councils, based on their legal–political tradition, historical experiences and comparative insights.

Depending on their mandate, prosecutorial councils can be organized in different ways. In a few countries, the prosecutorial council is part of a larger body also covering judges. Under the 1958 Constitution of France, for instance, where the judicial authority is seen to include both judges and prosecutors, there is a single High Council of the Judiciary with separate sections for judges and prosecutors (France 1958: article 65). Bulgaria (1991: article 130), Belgium (1931: article 151) and Türkiye (1982: article 159) also have joint councils. In cases where judicial councils have a mandate over the prosecution service, it is crucial to ensure that the council includes sufficient prosecutor members. Some countries establish a separate council for prosecutors (e.g. Portugal 1976: article 220(2); Albania 1998: article 149; Timor-Leste 2002: article 134; Rwanda 2003: article 146; Mozambique 2004: article 238). While recognizing that joint councils are not unusual, the Venice Commission has recommended that it is better to have separate councils for judges and prosecutors in view of the distinct roles of the two bodies (Venice Commission 2014 on Bosnia and Herzegovina: para. 58).

The composition and decision-making processes of prosecutorial councils often aim to address the twin dangers of politicization and corporativism.

Regardless of how prosecutorial councils are organized, their composition and decision-making processes often aim to address the twin dangers of politicization and *corporativism* (undue emphasis on self-interest (corruption) or the interests of non-governmental actors, such as organized crime, rather than the interests of the service). Attempts to reduce the politicization of prosecutorial councils are often pursued through limiting political appointees to council membership or guaranteeing a majority for prosecutors (e.g. Albania 1998: article 149). According to the Venice Commission, prosecutorial councils should be 'pluralistic', prosecutors should represent a 'substantial part' (not necessarily a majority) (Venice Commission 2021a on Montenegro: para. 42) and politically affiliated appointees should not have a majority (Venice Commission 2021c on Kosovo: para. 26). The presence of non-prosecutors, who may be automatically legally mandated to chair the council (e.g. Albania 1998: article 149(9)), can help address concerns around corporativism within the prosecution service, which can lead to corruption, but it may also influence the autonomy of the service. To reduce the risk of political control, especially where lay members are appointed by parliament, different safeguards may be considered, for example: a supermajority may be required; all parties represented

in parliament may appoint members (proportionate to their share of seats—Portugal 1976: article 163(g)); and appointments may be staggered (Venice Commission 2021b on Montenegro: para. 13). Appointment of lay members by external non-governmental entities (professional and academic organizations or civil society) may also help reduce corporativism without leading to politicization. In these cases, it is crucial to clearly regulate how the various organizations will appoint the members, with a view to reducing the risks of politicization.

The terms of office for members of prosecutorial councils may vary. In Albania (1998: article 149(10)), for instance, they serve five years without the possibility of immediate re-appointment. As is the case for chief prosecutors, the establishment of relatively long but unrenewable terms for non-ex-officio members of prosecutorial councils may be preferrable to short terms with an unlimited number of renewals. In view of the role of such councils and the value of the regular renewal of membership, life appointments until retirement may be less appropriate.

Setting the exact number or a maximum number of members of prosecutorial councils can reduce undue increases of the number.

Some constitutions that make provision for prosecution councils tend to leave their composition, tenure, decision-making rules and other details to legislation. Some simply state that a certain share of the membership should be prosecutors and that prosecutors of all levels should be represented on the council but leave the details to legislation, or alternatively delegate the regulation of all issues concerning the composition of the council and other details to legislation (e.g. Montenegro 2007: article 136). Setting the exact number or a maximum number of members (e.g. Georgia 1995: article 65(3); Albania 1998: article 149) could reduce the possibility of unduly increasing the number of members with a view to appoint new members to dilute the autonomy of such councils.

In general, the process of decision making, including transparency, timelines and required majorities, should take into account the composition of and manner of appointment to the council. In cases where the minister of justice or similar political officeholder is a member of the council, restrictions may be imposed on their role, for example, in relation to decisions on disciplinary proceedings against prosecutors (e.g. Romania 1991: article 134(2)).

The existence of an autonomous prosecution council with a mandate to oversee the management of the prosecution service, particularly the appointment and disciplining of regular prosecutors, can make a significant difference, even in places where the prosecution

service is formally part of the executive. Dedicated councils can enhance opportunities for continually supporting the competence, professionalism and integrity of prosecutors, thereby advancing the functional autonomy and effectiveness of the service and reducing its vulnerability to capture or curtailment of its autonomy. As such, constitutions that allow for discretion regarding the number and broad composition of prosecutorial councils may enable the opportunistic reshuffling of councils by political majorities; this can potentially induce instability and trigger accusations of politicization of the justice system, which is detrimental to the rule of law and democracy.

Legal traditions influence the broad domain of choices available to decision makers.

Contextual considerations

As in all constitutional matters, context can influence the institutional design of the prosecution service. The common-law and civil-law divide is increasingly blurred regarding institutional choices, with 'a gradual breaking down of traditional distinctions between prosecution systems and practices in common law and civil law jurisdictions' (Stenning, Colvin and Douglas 2019: 3, 5) and there are notable divergences within each system. However, legal traditions still influence the broad domain of choices available to stakeholders and decision makers. Beyond the legal system, levels of social diversity and decentralization of government power (federalism) may affect the design of the prosecution system, notably regarding the eligibility requirements and the process of appointment for the chief prosecutor.

In federations, the division of responsibilities regarding criminal law, in general, and the power of prosecution, in particular, may vary. In spite of this, the ideas around the prosecution service discussed throughout this primer are equally relevant in federations. In addition to the division of prosecutorial responsibilities and a desire for the autonomy of the service, there may be mechanisms to ensure that the central prosecution service receives broad acceptance and has legitimacy among the constituent units. Notably, the legislative chamber representing the people or the governments of the constituent units may be involved in the appointment of the chief prosecutor to ensure sufficient representation of their views and interests.

For instance, the Brazilian Prosecutor General, who heads the public ministry, is appointed by the president with the absolute-majority approval of the Senate (Brazil 1988: article 120, para. 1). Meanwhile, in the USA, the president appoints the attorney general with the

advice and consent of the Senate (United States 1789: article II, section 2, read with 28 U.S. Code § 503).

In countries with populations that are politically mobilized and diverse (along regional, religious or ethnic lines), constitutions may require the involvement of representatives of the various communities. For example, the 2008 Constitution of Kosovo requires the broad representativeness of the prosecution service (Kosovo 2008: articles 109 and 110) and the need to ensure the appointment of prosecutors from unrepresented and underrepresented groups, including minorities (article 110(2)) and gender (article 110(3)).

Chapter 7

CONCLUSION

The functioning of the prosecution service has serious implications for the rule of law and democracy. In recognition of this, constitution makers should and do pay attention to the status, mandate and both functional and institutional autonomy of the service, as well as its accountability.

This primer discusses the constitutional recognition of the prosecution service and the diverse ways in which constitution makers may ensure that the service effectively plays its role, mainly in the criminal-law sphere. The primer also discusses ways to reduce the (ab)use of the prosecution service to undermine constitutional democracy, particularly in view of contemporary challenges of anti-institutional tendencies and democratic backsliding that target or instrumentalize the service.

The level of constitutional coverage does not necessarily entail better autonomous functioning of the prosecution service.

It is important to note that the level of constitutional coverage does not necessarily entail better autonomous functioning of the prosecution service. Indeed, in places where there is greater constitutional coverage, this tends to be in response to historical abuse and corruption and a lack of autonomy and effective accountability within the service. Moreover, contextual considerations, such as historically strong and autonomous prosecution conventions, as well as the quality of legislative and other standards regulating the service, can have significant implications for the practical functioning of the prosecution service, regardless of the level of constitutional coverage. Nevertheless, constitutional recognition and regulation can provide a symbolic relevance and practical safeguard that political convention and sub-constitutional provisions may not offer.

With a growing number of constitutions recognizing and regulating the prosecution service, and an increasing recognition of their role in democracy and the rule of law, the prosecution service can be expected to attract more attention in constitution and legal reform processes. It is hoped that the ideas and comparative examples this primer presents will inspire conversations, enhance understanding, expand imaginations and aid deliberations and decision making in these reform endeavours.

7.1. **QUESTIONS TO AID DECISION MAKING**

Based on the discussions throughout the primer, this section identifies questions that can help decision makers to frame the issues and discuss alternative approaches based on comparative experiences and insights.

1. Does the country have a tradition of an autonomous and competent prosecution service? To what extent is the answer to this question related to the constitutional or legal status of the service, or is a matter of democratic convention?

2. Does the prosecution service enjoy sufficient levels of protection in law and practice to discharge its mandate, including potentially against its capture and unilateral reforms?

3. Have there been challenges and threats to the autonomy of the prosecution service in a manner that may undermine the rule of law and democracy?

4. Would providing the prosecution service with (further) constitutional recognition and regulation enhance its status and role? Are there any dangers to an expanded constitutionalization?

5. What constitutional principles should guide the work of the prosecution service?

6. How much autonomy should the prosecution service enjoy in a way that balances the responsibility of the government of the day to ensure law and order with the neutral application of laws?

7. Is the functional autonomy of the prosecution service sufficient or is institutional autonomy also critical from the perspective of the rule of law and democracy?

- What are the implications of separating policymaking, legal advice and prosecution functions in the specific context of the country?

8. If the prosecution service falls institutionally under another (executive) body, what can the constitution do to ensure that this does not undermine its functional autonomy?

9. In view of the relevant context, how best can the constitutional and legislative regulation ameliorate the twin dangers of the politicization and corporativism (and resulting lack of effective accountability) of the prosecution service that autonomy may entail?

10. What should be the mandate of the chief prosecutor?

11. How should the chief prosecutor be selected?

- What should be the requirements for appointment, including timelines and the transparency and competitiveness of the selection process?

- Should individuals who hold or have held (in the recent past) a high-level political position be disqualified from holding the position? Should chief prosecutors be restricted from holding certain prominent positions through political appointment (for a determined time) after the end of their term?

- In federations and diverse societies, should bodies representing constituent units or communities have direct influence on the appointment of the (national/federal) chief prosecutor?

12. What should be the term of office of the chief prosecutor? Should it be renewable (consecutively or otherwise)?

13. What should be the grounds and procedure of removal for the chief prosecutor?

14. Should a prosecution council be established? If so:

- Should it be separate to or part of a larger judicial council also covering judges?

- What should be its mandate and decision-making rules, including timelines and transparency?

- How should it be composed, including tenure?

- Should the mandate be defined in the constitution or left to legislation? If the latter, should the constitution provide guidelines, such as on the relative share of prosecutors (from all levels) on the council, vis-à-vis lay persons and politically affiliated members?

Chapter 8

EXAMPLES OF CONSTITUTIONAL REGULATIONS OF THE PROSECUTION SERVICE

These examples are based on applicable constitutional provisions. Most of the issues in the tables of this chapter are frequently expounded in national legislation. Tables 9.1 to 9.6 on Albania, Brazil, Kenya, Timor-Leste, Jamaica and Papua New Guinea were prepared by the author.

Table 9.1. **Albania, 1998 Constitution, as amended**

Autonomy of the prosecution service	An institutionally and functionally autonomous prosecution office headed by a prosecutor general. Special prosecution office anticipated for corruption and organized crimes (article 148).
Appointment/tenure of chief prosecutor	Prosecutor general appointed from three candidates proposed by the High Prosecutorial Council through an open and transparent procedure, and approved with a three-fifths majority of all members of the National Assembly. If the National Assembly cannot elect the prosecutor general within 30 days of receiving the proposals from the council, the highest-ranking candidate from the three is automatically appointed. A seven-year, non-renewable term (article 148-a).
Grounds for and process of removal of chief prosecutor	Removal on grounds of committing serious professional or ethical misconduct by the High Prosecutorial Council, and upon conviction with final court decision for committing a crime. May be suspended upon decision of the Constitutional Court (article 148c and 149-c).
Prosecution council	High Prosecutorial Council composed of 11 members: 6 elected by prosecutors of all levels; 5 non-prosecutor 'lay' jurist members elected by the National Assembly. For the lay members, two of the five are elected from advocates, two from the body of law professors and the School of Magistrates, and one from civil society, based on an open call and transparent procedure (article 149).

Table 9.2. **Brazil, 1988 Constitution, as amended**

Autonomy of the prosecution service	An institutionally and functionally autonomous public ministry, with exclusive power to bring public criminal prosecutions and perform other functions to protect shared interests, such as the environment and Indigenous peoples, led by the prosecutor-general of the republic (articles 127, 128(1), 129).
Appointment/tenure of chief prosecutor	The federal prosecutor-general appointed by the president with approval of an absolute majority in the Senate. A two-year, renewable term (article 128(1)). State/federal district/territory prosecutors-general are nominated by their respective public ministry, which prepares a list of three names from serving prosecutors, and appointed by heads of the executive branch. A two-year term, with one possible reappointment (article 128(3)).
Grounds for and process of removal of chief prosecutor	The federal prosecutor general can be removed on the initiative of the president and the approval of an absolute majority of the Senate (article 128(2)). Prosecutors general of the states and of the federal district and territories may be removed from office by an absolute majority of the state legislature. The Constitution does not provide specific grounds for removal.
Prosecution council	National Council of the Public Ministry, with 14 members: the prosecutor general, who presides; 4 members of the Federal Public Ministry, representing each career level within the ministry; 3 members of the Public Ministry of the States; 2 judges—1 selected by the Supreme Federal Tribunal and 1 by the Superior Tribunal of Justice; 2 lawyers selected by the Federal Council of the Brazilian Bar Association; 2 citizens with notable legal knowledge and unblemished reputation—1 selected by the Federal Chamber of Deputies and the other by the Federal Senate. The members of the council from the public ministry are selected by the respective public ministries (article 130-A).

Table 9.3. **Kenya, 2010 Constitution**

Autonomy of the prosecution service	An institutionally and functionally autonomous director of public prosecutions (article 157(1)). Parliament may confer powers of prosecution on authorities other than the director of public prosecutions (article 157(12)).
Appointment/tenure of chief prosecutor	The director is nominated and, with the approval of the National Assembly, appointed by the president (article 157(2)). An eight-year, non-renewable term (article 157(5)).
Grounds for and process of removal of chief prosecutor	The director may be removed on grounds of: inability to perform the functions of the office arising from mental or physical incapacity; noncompliance with chapter six (integrity provisions); bankruptcy; incompetence; or gross misconduct or misbehaviour. The Public Service Commission receives and processes petitions for removal, and, if persuaded, transfers them to the president, who establishes a tribunal of four current or former senior judges and one advocate; the president acts in line with the findings of the tribunal (article 158).
Prosecution council	No specific prosecution council. The director appoints all prosecutors who serve under them. Under implementing statutes, a board that advises the director on the performance of the office's functions, including on removal.

Table 9.4. **Timor-Leste, 2002 Constitution, as amended**

Autonomy of the prosecution service	An institutionally and functionally autonomous office of public prosecutors, headed by a prosecutor general (article 132(1)).
Appointment/tenure of chief prosecutor	The prosecutor general is appointed by the president of the republic for a six-year term (article 133(3)). NB: Timor-Leste has a semi-presidential system whereby the president is seen as less political than the government that is led by the prime minister.
Grounds for and process of removal of chief prosecutor	Prosecutors may only be suspended, retired or dismissed under the circumstances provided for in the law (article 132(4)).
Prosecution council	The Superior Council of the Prosecution is part of the office of and headed by the prosecutor general and is composed of members each appointed by: the president of the republic, the national parliament, the cabinet and the magistrates of the public prosecution service from among their peers (article 134).

Table 9.5. **Jamaica, 1962 Constitution, as amended**

Autonomy of the prosecution service	An institutionally and functionally autonomous director of public prosecutions with sole authority over criminal prosecution (article 94).
Appointment/tenure of chief prosecutor	The director is appointed by the governor-general, acting on advice of the Public Service Commission (articles 94(1) and 125(1)). May serve up to 65 years, subject to extension up to 70 for a serving director, by the governor-general, acting on the recommendation of the prime minister after consultation with the opposition (article 96(1)).
Grounds for and process of removal of chief prosecutor	Director of public prosecutions may be removed from office only for the inability to discharge the functions of their office (whether arising from physical or mental disability or any other cause) or for misbehaviour (article 96(4)). Removed by the governor-general, subject to the decision of a tribunal composed of three current or former senior judges, established on the advice of the prime minister (article 96(5 and 6)). The governor-general, acting in accordance with the advice of the prime minister, may suspend the director of public prosecutions from performing the functions of their office (article 96(8)).
Prosecution council	There is no specific prosecution council.

Table 9.6. **Papua New Guinea, 1975 Constitution, as amended**

Autonomy of the prosecution service	A functionally autonomous prosecution office headed by a public prosecutor (article 176(3)).
Appointment/tenure of chief prosecutor	The public prosecutor is appointed by the Judicial and Legal Services Commission (article 176(2)).
Grounds for and process of removal of chief prosecutor	May be removed for inability (physical or mental) to perform the functions and duties of their office, for misbehaviour or for misconduct in office (article 178). In cases of such accusation, the Judicial and Legal Services Commission establishes a tribunal; if the tribunal reports that there are good grounds for removing the public prosecutor from office, the commission may, by giving written notice to the prosecutor, remove them from office (article 180(2)).
Prosecution council	No separate prosecution council; regulated as part of the Judicial and Legal Services Commission.

References

Adedeje, A., 'Prosecutorial independence and effectiveness of the Nigerian criminal justice system', in V. Colvin and P. Stenning (eds), *The Evolving Role of the Public Prosecutor: Challenges and Innovations* (Routledge: New York and London, 2019), <https://doi.org/10.4324/9780429467547>

Al Jazeera, 'UN raises alarm on attempts to annul Guatemala's general election results', 9 December 2023, <https://www.aljazeera.com/news/2023/12/9/un-raises-alarm-on-attempts-to-annul-guatemalas-general-elections-results>, accessed 22 December 2024

Barcow, R., 'Institutional design and the policing of prosecutors: Lessons from administrative law', *Stanford Law Review*, 61/4 (2009), p. 869

Bulmer, E., *Judicial Tenure, Removal, Immunity and Accountability*, International IDEA Constitution-Building Primer 5 (Stockholm: International IDEA, 2017), <https://www.idea.int/publications/catalogue/judicial-tenure-removal-immunity-and-accountability?lang=en>

Cohen, M., 'The French prosecutor as judge: The carpenter's mistake?' in M. Langer and D. A. Sklansky (eds), *Prosecutors and Democracy: A Cross National Study* (Cambridge: Cambridge University Press, 2017)

Colvin, V. and Stenning, P., 'Conclusion' in V. Colvin and P. Stenning (eds), *The Evolving Role of the Public Prosecutor: Challenges and Innovations* (Routledge: New York and London, 2019), <https://doi.org/10.4324/9780429467547>

Consultative Council of European Prosecutors, Opinion No. 9 (2014) to the Committee of Ministers of the Council of Europe on European Norms and Principles Concerning Prosecutors, 11 December 2017, <https://rm.coe.int/168074738b> accessed 29 September 2025

Domin, M., 'Abolition of the Special Prosecutor's Office in Slovakia: Violation of the rule of law in the name of protecting human rights?', ConstitutionNet, 26 February 2024, <https://constitutionnet.org/news/voices/abolition-special-prosecutor-office-slovakia-violation-rule-law>, accessed 24 March 2025

Duff, A., 'Discretion and accountability in a democratic criminal law', in M. Langer and D. A. Sklansky (eds), *Prosecutors and Democracy: A Cross National Study* (Cambridge: Cambridge University Press,, 2017)

Gold, R. M., 'Promoting democracy in prosecution', *Washington Law Review*, 86 (2011), p. 69

Gomes de Mattos, K. D., '"We the prosecutors": Challenges to social participation in Brazilian public law litigation', *International Journal of Constitutional Law*, 19/3 (2021), p. 1084

Holder, R., 'Decoding hegemony: Exploring the discourse of a prosecuting elite' in V. Colvin and P. Stenning (eds), *The Evolving Role of the Public Prosecutor: Challenges and Innovations* (Routledge, New York and London, 2019), <https://doi.org/10.4324/9780429467547-2>

Jasch, M., 'Prosecution and politics in Germany: The struggle for independence' in V. Colvin and P. Stenning (eds), *The Evolving Role of the Public Prosecutor: Challenges*

and Innovations (Routledge: New York and London, 2019), <https://doi.org/10.4324/9780429467547-14>

Myceilski, M., 'A PR stunt over accountability: Review of political prosecution cases in Poland', Verfassungsblog, 12 March 2025, <https://doi.org/10.59704/c9349ef316617326>

Paiz Lemus, L. F., 'Legality over accountability: How to resolve the rule of law dilemma in Guatemala', Verfassungsblog, 21 May 2025, <https://doi.org/10.59704/ee098e482c30637e>

Richman, D. C., 'Accounting for prosecutors', in M. Langer and D. A. Sklansky (eds), *Prosecutors and Democracy: A Cross National Study* (Cambridge: Cambridge University Press, 2017)

Stenning, P., Colvin, V., and Douglas, H., 'Introduction', in V. Colvin and P. Stenning (eds), *The Evolving Role of the Public Prosecutor: Challenges and Innovations* (Routledge: New York and London, 2019), <https://doi.org/10.4324/9780429467547-1>

Laws and reports

European Commission for Democracy through Law (Venice Commission), Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service, CDL-AD(2010)040, 3 January 2011, <https://www.coe.int/en/web/venice-commission/-/report-on-european-standards-as-regards-the-independence-of-the-judicial-system-part-ii-the-prosecution-service-adopted-by-the-venice-commission-at-its-85th-plenary-session-venice-17-18-december-2010-1>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Opinion on Act CLXIII on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career of Hungary, CDL-AD(2012)008, 19 June 2012, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)008-e>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Opinion on the Draft Law on the High Judicial Prosecutorial Council of Bosnia and Herzegovina, CDL-AD(2014)008, 24 March 2014, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)008-e>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Poland: Opinion on the Act on the Public Prosecutor's Office, as Amended, CDL-AD(2017)028, 11 December 2017, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Georgia: Opinion on the Provisions on the Prosecutorial Council in the Draft Organic Law on the Prosecutor's Office and on the Provisions on the High Council of Justice in the Existing Organic Law on General Courts, CDL-AD(2018)029, 17 December 2018, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)029-e>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Montenegro: Opinion on the Draft Amendments to the Law on the State Prosecution Service and the Draft Law on the Prosecutor's Office for Organised Crime and Corruption, CDL-AD(2021)012, 22 March 2021a, <https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)012-e>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Montenegro: Urgent Opinion on the Revised Draft Amendments to the Law on the State Prosecution Service, CDL-AD(2021)030, 6 July 2021b, <https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)030-e>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Kosovo: Opinion on the Draft Amendments to the Law on the Prosecutorial Council, CDL-AD(2021)051, 13 December 2021c, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)051-e>, accessed 29 September 2025

European Commission for Democracy through Law (Venice Commission), Compilation of Venice Opinions and Reports Concerning Prosecutors, CDL-PI(2022)023, 26 April 2022, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)023-e>, accessed 29 September 2025

South Africa, Republic of, National Prosecuting Authority Act No. 32 of 1998, as amended, <https://www.gov.za/documents/national-prosecuting-authority-act>, accessed 29 September 2025

Cases

Constitutional Court of South Africa, *Democratic Alliance v President of the Republic of South Africa and others* (263/11) [2011] ZASCA 241

Namibian Supreme Court, Ex parte Attorney General, Namibia: In re The Constitutional Relationship between the Attorney General the Prosecutor, +1995 (8) B.C.L.R. 1070

Constitutions

Albania, Constitution of Albania (1998, rev. 2016), <https://www.constituteproject.org/countries/Europe/Albania>, accessed 29 September 2025

Angola, Constitution of Angola (2010), <https://www.constituteproject.org/constitution/Angola_2010>, accessed 29 September 2025

Argentina, Constitution of Argentina (1853, reinst. 1983, rev. 1994), <https://www.constituteproject.org/constitution/Argentina_1994>, accessed 29 September 2025

Armenia, Constitution of Armenia (1995, rev. 2015), <https://www.constituteproject.org/constitution/Armenia_2015>, accessed 30 September 2025

Azerbaijan, Constitution of Azerbaijan (1995, rev. 2016), <https://www.constituteproject.org/constitution/Azerbaijan_2016>, accessed 29 September 2025

Belarus, Constitution of Belarus (1994, rev. 2004), <https://www.constituteproject.org/constitution/Belarus_2004>, accessed 29 September 2025

Belgium, Constitution of Belgium (1831, rev. 2014), <https://www.constituteproject.org/constitution/Belgium_2014>, accessed 29 September 2025

Belize, Constitution of Belize (1981, rev. 2011), <https://www.constituteproject.org/constitution/Belize_2011>, accessed 29 September 2025

Bolivia, Plurinational State of (2009), <https://www.constituteproject.org/constitution/Bolivia_2009>, accessed 29 September 2025

Brazil, Constitution of Brazil (1988, rev. 2017), <https://www.constituteproject.org/constitution/Brazil_2017>, accessed 29 September 2025

Bulgaria, Constitution of Bulgaria (1991, rev. 2015), <https://www.constituteproject.org/constitution/Bulgaria_2015>, accessed 29 September 2025

Burundi, Constitution of Burundi (2015), <https://www.constituteproject.org/constitution/Burundi_2018>, accessed 29 September 2025

Cabo Verde, Constitution of Cabo Verde (1980, rev. 1992), <https://www.constituteproject.org/constitution/Cape_Verde_1992>, accessed 29 September 2025

Chile, Constitution of Chile (1980, rev. 2021), <https://www.constituteproject.org/constitution/Chile_2021>, accessed 29 September 2025

Colombia, Constitution of Colombia (1991, rev. 2015), <https://www.constituteproject.org/constitution/Colombia_2015>, accessed 29 September 2025

France, Constitution of France (1958, rev. 2008), <https://www.constituteproject.org/constitution/France_2008>, accessed 29 September 2025

Gambia (The), Constitution of The Gambia (1996, rev. 2018), <https://www.constituteproject.org/constitution/Gambia_2018>, accessed 29 September 2025

Georgia, Constitution of Georgia (1995, rev. 2018), <https://www.constituteproject.org/constitution/Georgia_2018>, accessed 29 September 2025

Guatemala, Constitution of Guatemala (1985, rev. 1993), <https://www.constituteproject.org/constitution/Guatemala_1993>, accessed 29 September 2025

Guyana, Constitution of Guyana (1980, rev. 2016), <https://www.constituteproject.org/constitution/Guyana_2016>, accessed 30 September 2025

Hungary, Constitution of Hungary (2011, rev. 2016), <https://www.constituteproject.org/constitution/Hungary_2016>, accessed 29 September 2025

Jamaica, Constitution of Jamaica (1962, rev. 2015), <https://www.constituteproject.org/constitution/Jamaica_2015>, accessed 29 September 2025

Kenya, Constitution of Kenya (2010), <https://www.constituteproject.org/constitution/Kenya_2010>, accessed 29 September 2025

Kosovo, Constitution of Kosovo (2008, rev. 2016), <https://www.constituteproject.org/constitution/Kosovo_2016>, accessed 29 September 2025

Lao People's Democratic Republic, Constitution of Lao People's Democratic Republic (1991, rev. 2015), <https://www.constituteproject.org/constitution/Laos_2015>, accessed 29 September 2025

Maldives (The), Constitution of the Maldives (2008), <https://www.constituteproject.org/constitution/Maldives_2008>, accessed 29 September 2025

Malta, Constitution of Malta (1964, rev. 2016), <https://www.constituteproject.org/constitution/Malta_2016>, accessed 29 September 2025

Moldova, Constitution of Moldova (1994, rev. 2016), <https://www.constituteproject.org/constitution/Moldova_2016>, accessed 30 September 2025

Mongolia, Constitution of Mongolia (1992, rev. 2001), <https://www.constituteproject.org/constitution/Mongolia_2001>, accessed 29 September 2025

Montenegro, Constitution of Montenegro (2007, rev. 2013), <https://www.constituteproject.org/constitution/Montenegro_2013>, accessed 30 September 2025

Mozambique, Constitution of Mozambique (2004, rev. 2007), <https://www.constituteproject.org/countries/Africa/Mozambique>, accessed 30 September 2025

Namibia, Constitution of Namibia (1990, rev. 2014), <https://www.constituteproject.org/constitution/Namibia_2014>, accessed 29 September 2025

Nepal, Constitution of Nepal (2015, rev. 2016), <https://www.constituteproject.org/constitution/Nepal_2016>, accessed 29 September 2025

Netherlands, Kingdom of the, Constitution of the Kingdom of the Netherlands (1814, rev. 2008), <https://www.constituteproject.org/constitution/Netherlands_2008>, accessed 29 September 2025

North Macedonia, Republic of North Macedonia (1991, rev. 2011), <https://www.constituteproject.org/constitution/Macedonia_2011>, accessed 29 September 2025

Papua New Guinea, Constitution of Papua New Guinea (1975, rev. 2016), <https://www.constituteproject.org/constitution/Papua_New_Guinea_2016>, accessed 29 September 2025

Peru, Constitution of Peru (1993, rev. 2021), <https://www.constituteproject.org/constitution/Peru_2021>, accessed 29 September 2025

Philippines, Constitution of the Philippines (1987), <https://www.constituteproject.org/constitution/Philippines_1987>, accessed 29 September 2025

Poland, Constitution of Poland (1997, rev. 2009), <https://www.constituteproject.org/constitution/Poland_2009>, accessed 29 September 2025

Portugal, Constitution of Portugal (1976, rev. 2005), <https://www.constituteproject.org/constitution/Portugal_2005>, accessed 30 September 2025

Romania, Constitution of Romania (1991, rev. 2003), <https://www.constituteproject.org/constitution/Romania_2003>, accessed 29 September 2025

Russian Federation, Constitution of the Russian Federation (1993, rev. 2014), <https://www.constituteproject.org/constitution/Russia_2014>, accessed 29 September 2025

Rwanda, Constitution of Rwanda (2003, rev. 2015), <https://www.constituteproject.org/constitution/Rwanda_2015>, accessed 30 September 2025

Serbia, Constitution of Serbia (2006), <https://www.constituteproject.org/constitution/Serbia_2006>, accessed 29 September 2025

Seychelles, Constitution of Seychelles (1993, rev. 2017), <https://www.constituteproject.org/constitution/Seychelles_2017>, accessed 29 September 2025

Slovakia, Constitution of Slovakia (1992, rev. 2017), <https://www.constituteproject.org/constitution/Slovakia_2017>, accessed 29 September 2025

South Africa, Constitution of South Africa (1996, rev. 2012), <https://www.constituteproject.org/constitution/South_Africa_2012>, accessed 29 September 2025

Timor-Leste, Constitution of Timor-Leste (2002), <https://www.constituteproject.org/constitution/East_Timor_2002>, accessed 29 September 2025

Türkiye, Constitution of Türkiye (1982, rev. 2017), <https://www.constituteproject.org/constitution/Turkey_2017>, accessed 29 September 2025

United States, Constitution of the United States (1789, rev. 1992), <https://www.constituteproject.org/constitution/United_States_of_America_1992>, accessed 29 September 2025

Zimbabwe, Constitution of Zimbabwe (2013, rev. 2017), <https://www.constituteproject.org/constitution/Zimbabwe_2017>, accessed 29 September 2025

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A functioning and fair prosecution service is critical to the perceptions and reality of the justice system and judicial independence. This primer identifies and distils key issues, options and considerations based on comparative insights and international norms for the regulation of the prosecution service at the constitutional level. It particularly focuses on the status of the chief prosecutor, who is often the principal subject of constitutional regulation.

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