INTERNATIONAL JOURNAL OF JUDICIAL LAW

Appointment of the Director of Public Prosecutions of Uganda

Timothy Amerit
Timothy Amerit, Prosecutor, Office of the Director of Public Prosecutions, P.O. Box 1550, Kampala, Uganda

* Corresponding Author: **Timothy Amerit**

Article Info

ISSN (online): 2583-6536
Volume: 05
Issue: 06
Received: 14-09-2026
Accepted: 12-10-2026
Published: 10-11-2026
Page No: 63-80

Abstract
Uganda's constitutional promise of prosecutorial independence depends on how the Director of Public Prosecutions enters office. This article examines whether the appointment process under article 120(1) provides meaningful safeguards of merit, integrity and public accountability. Through doctrinal and comparative analysis, it evaluates the Constitution's preamble and national objectives, legislation, parliamentary rules and judicial decisions, drawing on recruitment practice in England and Wales and Indian and South African jurisprudence. The analysis finds that distributing responsibility among the Public Service Commission, President and Parliament does not itself establish independent assessment or effective scrutiny. Broad exceptions to advertisement, limited visibility of presidential influence and closed parliamentary hearings weaken the public's ability to evaluate selection. Its critique of *Legal Brains Trust* distinguishes the legitimate protection of private information from the inadequately justified exclusion of public scrutiny, while acknowledging the judgment's recognition of access to records. The article argues that transparent recruitment must expose institutional reasoning and permit correction before appointment becomes settled. It proposes advertised competition, disclosed criteria, recorded recommendations, proportionate confidentiality and reasoned parliamentary approval. These reforms would preserve constitutional responsibilities while connecting appointment legitimacy to demonstrable competence and integrity, strengthening the conditions under which prosecutorial independence can remain accountable to the public.

DOI: https://doi.org/10.54660/IJJL.2026.5.6.63-80

Keywords: Director of Public Prosecutions, public appointments, prosecutorial independence, Public Service Commission, parliamentary scrutiny, comparative constitutional law

1. The Appointment Is Part of The Independence Guarantee

A prosecutor can be constitutionally independent and still enter office through a process that leaves the public uncertain about the source of the appointment. That uncertainty matters. The Director of Public Prosecutions may have to authorise proceedings against politically influential persons, resist a prosecution that powerful officials demand, or discontinue a case whose continuation would be popular but unjust. Article 120 requires regard to the public interest, the administration of justice and the prevention of abuse, while protecting the exercise of prosecutorial functions from external direction or control. [1] Those duties call for more than technical eligibility. They require judgment capable of surviving disagreement with the very institutions that participated in the appointment.

Recruitment therefore belongs within the constitutional account of prosecutorial independence. Security after appointment cannot fully repair a selection process that screens out independence at the beginning. Nor should public confidence depend on

1 Constitution of the Republic of Uganda 1995, art 120(3), (5)–(6).

the appointed person repeatedly proving that an opaque process did not conceal an obligation of loyalty. A defensible process gives the office-holder something of immediate practical value: a publicly intelligible basis for saying that the office was earned through professional assessment and carries no debt to a sponsor.

The difficulty in Uganda is not the absence of constitutional checks. Article 120(1) assigns the appointment to the President, acting on the recommendation of the Public Service Commission (PSC), with Parliament's approval. [2] The difficulty is determining what work each institution actually performs. Three institutions may bring three independent judgments to bear. They may also consider the same predetermined person successively, each treating an earlier institution's involvement as sufficient reassurance. The difference cannot be resolved by counting signatures.

This analysis advances a narrower and more demanding proposition than the claim that every appointment made without advertisement is unlawful. The existing legal framework allows exceptions to advertisement, and the East African Court of Justice has rejected a challenge to the 2020 DPP appointment. Those legal conclusions must be respected. The institutional question remains whether a lawful procedure makes merit demonstrable, influence traceable and scrutiny capable of changing the outcome. Legality establishes the boundary of permissible action. It does not exhaust the standards by which constitutional arrangements should be evaluated.

The inquiry is doctrinal and comparative, with parliamentary rules identified by the edition applicable to the discussion. It reads the Constitution alongside the applicable statutory and parliamentary texts, appointment judgments and the published arrangements used in England and Wales. It does not claim an empirical audit of all Ugandan DPP appointments or evidence of undisclosed bargains. Its criticism concerns the vulnerabilities disclosed by the rules and the decided cases, informed where relevant by historical scholarship. Where reform is proposed, the proposal is distinguished from a requirement already imposed by law.

1.1. Public office belongs to the people before it belongs to an appointee

The Constitution's preamble recalls political and constitutional instability and the struggle against tyranny, then grounds the constitutional settlement in popular sovereignty and democratic government. [3] This history matters to interpretation without becoming an invitation to decide cases by historical sentiment. The appointment provisions belong to a constitutional attempt to make power answerable after experiences of arbitrary rule. A reading that gives full weight to official authority but little weight to public scrutiny sits uneasily with that purpose.

Article 1 locates power in the people, while article 8A requires government to proceed on the principles of national interest and common good expressed in the national objectives. Objective I(i) directs state organs to use those objectives when interpreting and applying the Constitution and other law. Objective II adds active citizen participation, access to leadership and broad representation of the country's social diversity. [4] These provisions do not themselves prescribe an interview format or a scoring system. They do establish that appointment is an exercise of entrusted public authority whose procedure must be capable of justification to the people affected by it.

Objective XXVI is unusually direct: public offices are held in trust for the people, and those exercising leadership must answer to them. [5] Its significance is lost if accountability is understood only as one official reporting to another. Institutional reporting is necessary, but the constitutional beneficiary remains the public. The PSC should answer for the professional basis of its recommendation, the President for the appointing choice and Parliament for the quality of its scrutiny. Responsibility should not disappear as the file passes from one institution to the next.

Public trust in this sense is more demanding than public approval. A nominee may attract enthusiastic support and still have been selected through an indefensible process. An independent prosecutor may, conversely, lose popularity by refusing an unlawful prosecution. Recruitment should establish reasons for confidence that survive both situations. Its legitimacy depends on lawful authority exercised through fair and intelligible judgment, rather than the immediate popularity of the person selected.

The constitutional objectives also resist an impoverished account of merit. Objective VI requires gender balance and fair representation of marginalised groups on constitutional and other bodies; Objective VIII requires resources sufficient to make institutional checks effective. [6] A credible process must therefore consider who can realistically enter the field and whether the assessing institutions can perform their work. Neither concern permits dispensing with competence. Both challenge an assumption that the candidates already familiar to senior officials exhaust the available talent.

This constitutional foundation sharpens the question posed by article 120(1). It is insufficient to ask whether the designated institutions participated. The inquiry must also ask whether their participation discharged the public responsibility for which the Constitution involved them. That distinction provides the standard for examining recruitment practice and the judgments that have sustained it.

2. What article 120 distributes and what it leaves unresolved

Article 120(1) divides responsibility without specifying a complete recruitment procedure. The PSC recommends; the President appoints; Parliament approves. The words do not make the President a mere witness to an appointment completed elsewhere. Equally, they do not authorise the President to treat professional recommendation or parliamentary approval as dispensable formalities. Each is a constitutional condition, and each must retain a function that the others cannot absorb.

The PSC's contribution should be the professional justification for the selection. The President makes the constitutionally designated appointing decision and bears responsibility for that choice. Parliament provides

2 Constitution of the Republic of Uganda 1995, art 120(1).
3 Constitution of the Republic of Uganda 1995, preamble.
4 Constitution of the Republic of Uganda 1995, arts 1 and 8A; National Objectives and Directive Principles of State Policy (National Objectives), objectives I(i) and II(i), (ii), (iv).
5 Constitution of the Republic of Uganda 1995, National Objectives, objective XXVI(i)–(iii).
6 Constitution of the Republic of Uganda 1995, National Objectives, objectives VI and VIII.

representative scrutiny of the proposed appointment. This division is coherent only if an unfavourable assessment can have consequences. A recommendation that cannot realistically reject an executive preference, or an approval process that cannot examine the relevant defects, offers little restraint despite impeccable observance of the formal sequence.

Eligibility must be separated from suitability. Article 120(2) requires the DPP to possess the qualifications for appointment as a High Court judge. Article 143 specifies the relevant judicial and professional routes, including the prescribed period of legal practice and the treatment of qualifying public service. [7] These provisions determine who may lawfully be considered. They do not identify which eligible person is best equipped to lead a national prosecution service. Length of practice does not answer questions about organisational leadership, disclosure obligations, treatment of vulnerable witnesses, resistance to improper pressure or the ability to correct a prosecution that should never have begun.

The constitutional threshold is consequently a floor for selection. Treating it as the entire inquiry would make the evaluation of a DPP resemble the verification of a professional certificate. An advocate may be legally eligible and yet have no convincing record of managing an institution, supervising complex criminal litigation or defending fair process under pressure. Conversely, relevant excellence may be found outside the familiar circle of senior officials. Recruitment must have a means of discovering it.

There is also a distinction between an individual's entitlement to compete and an entitlement to be appointed. Equal access to public service does not give every qualified lawyer a claim to the office. The international standard is directed towards access on equal terms and criteria that can be defended as objective and reasonable. [8] It leaves room for different appointment systems. That flexibility does not make exclusion self-justifying. Where a public institution closes the field, the burden of explaining why that restriction serves the office should be taken seriously, even if a particular court has not converted it into a universal legal duty to advertise.

The United Nations Guidelines on the Role of Prosecutors connect selection with integrity, ability and safeguards against partiality and discrimination. [9] Their significance lies in the relationship between the method and the function. A chief prosecutor is not recruited to advance the electoral interests of the government. The office exists within a constitutional order in which lawful restraint may require disappointing government, complainants and public opinion alike. A selection process that rewards anticipated compliance would therefore defeat the purpose of the appointment even where the successful candidate satisfies every formal qualification.

3. The lesson from England and Wales is disciplined political choice

England and Wales is useful because its model does not depend on pretending that the executive disappears. Under the Prosecution of Offences Act 1985, the Attorney General appoints the DPP. The statutory professional qualification is distinct from the wider competencies used in recruitment, and the DPP's functions are exercised under the Attorney General's superintendence. [10] Uganda should therefore resist importing a romantic account in which an entirely apolitical commission selects the prosecutor and the executive simply signs the result.

The more instructive feature is the procedure surrounding executive choice. In May 2023, the Attorney General's Office publicly launched the competition to succeed Max Hill. It identified legal judgment, leadership of a large organisation and the ability to improve the criminal justice system through collaboration as central requirements. The announcement gave a closing date and directed prospective applicants to a recruitment firm. [11] The vacancy was available to be contested. An individual did not have to be privately discovered by an official before becoming a possible candidate.

The recruitment firm is an important detail. Professional search and open competition are compatible. A search consultant may identify strong candidates and encourage them to apply while others enter through the published process. The defensible objection to headhunting is therefore not that capable people should never be approached. It is that private identification should not ordinarily determine the entire field, the assessment and the outcome. A search may enlarge opportunity; a closed selection may ration it.

The Constitutional Reform and Governance Act 2010 establishes selection on merit through fair and open competition for the appointments within section 10, subject to the statutory exceptions. The Commission's Recruitment Principles explain the standards and the allocation of responsibility. [12] This is not an exceptionless proposition that every movement within the civil service must be publicly advertised. Its value lies in making the ordinary rule identifiable and placing departures within a regulatory framework.

The principles are particularly revealing at the senior level. The ordinary rules for a single vacancy envisage a merit order and an offer to the first-ranked candidate. The arrangements applicable to Permanent Secretary appointments, however, distinguish the panel's assessment of appointability from the final selection. The First Civil Service Commissioner chairs the process; the panel determines which candidates meet the published criteria and would perform the role well; the appointing authority chooses within that assessed field. Footnote 8 expressly applies the relevant ministerial

7 Constitution of the Republic of Uganda 1995, arts 120(2) and 143(1)(e), (2).

8 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 25(c); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 13(2); UN Human Rights Committee, 'General Comment No 25' (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7, para 23.

9 UN, *Guidelines on the Role of Prosecutors* (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990) paras 1–2.

10 Prosecution of Offences Act 1985, ss 2(1)–(2) and 3(1).

11 Attorney General's Office, 'Campaign to Find New Director of Public Prosecutions Is Launched' (17 May 2023), paragraphs announcing the competition, selection requirements and application deadline <https://www.gov.uk/government/news/campaign-to-find-new-director-of-public-prosecutions-is-launched> accessed 22 October 2026.

12 Constitutional Reform and Governance Act 2010, ss 10–13; Civil Service Commission, *Recruitment Principles* (April 2018) paras 3–6 <https://civilservicecommission.independent.gov.uk/document/02a-recruitment-principles-april-2018-final/> accessed 22 October 2026.

substitution to the DPP: the Attorney General receives the report and makes the final selection. [13]

That qualification changes the comparative argument. The English and Welsh safeguard is not an automatic entitlement of the highest-scoring applicant to appointment. It is that political choice must operate through an independently assessed field and remain connected to published criteria. The principles also regulate meetings with appointable candidates: where the final decision-maker meets them before selecting, all must be met and a Commissioner or nominee must be present. Such provisions address a mundane but consequential source of unfairness, the private conversation available to one candidate but not to another.

The September 2023 parliamentary announcement of Stephen Parkinson's selection recorded oversight by the First Civil Service Commissioner. [14] An announcement to Parliament should not be confused with Uganda's constitutional requirement of parliamentary approval. The two systems distribute political accountability differently. Uganda can borrow the discipline of recruitment without abandoning its additional legislative check.

Nor does the English and Welsh arrangement prove that ministerial influence has become harmless. Published criteria may be framed around a favoured profile. A broad finding that several candidates are appointable can leave substantial discretion at the final stage. Organisational compatibility may become a respectable expression for personal amenability unless the panel insists on evidence. These are reasons to examine the criteria, the assessment record and the explanation for the choice. They are not reasons to dispense with competition.

The transferable principle is that executive involvement should leave an institutional record. The decisive questions become whether the field was fairly constituted, whether the assessment was independent, and whether the final choice can be justified by the announced requirements. Uganda already possesses the constitutional actors needed to distribute these tasks. What it lacks in the framework examined here is a sufficiently demanding and publicly ascertainable account of how those actors must perform them.

4. The PSC can restrain patronage only if its own judgment is protected

4.1. Appointment and tenure of commissioners

Article 165 establishes a Commission comprising a chairperson, a deputy chairperson and seven other members appointed by the President with Parliament's approval. Members must possess high moral character and proven integrity. A person holding parliamentary, local council, political party executive or public office must relinquish that position on appointment. Members ordinarily serve four-year terms and may be reappointed; their emoluments are prescribed by Parliament and charged on the Consolidated Fund. [15]

These are substantive safeguards. Disqualification from specified offices reduces certain immediate conflicts, and protection of remuneration limits one route of pressure. The analysis would be weakened by describing the PSC as legally indistinguishable from a presidential department. Article 166(2) protects it from direction or control in performing its functions, while requiring it to take account of government policy relating to the public service. [16] A general policy about staffing standards is different from an instruction to recommend a named person. The policy qualification should not be allowed to erase the independence declared in the same provision.

Nevertheless, the arrangement contains a recurring dependence. The President and Parliament participate in selecting the commissioners who will subsequently assess the President's prospective appointee. Reappointment returns commissioners to those political institutions. This does not prove submissiveness: the origin of an appointment cannot establish how an appointee will behave. It does identify a pressure that constitutional design must address. A commissioner nearing the end of a renewable term may have a personal interest in avoiding a confrontation that the public interest requires.

The appropriate question is therefore whether commissioners can disagree safely and explain their disagreement effectively. The regulations recognise a member's entitlement to record dissent and reasons. [17] That is valuable, but a dissent which remains inaccessible to every external scrutiny mechanism may preserve evidence without producing accountability. Parliament should be able to determine whether a recommendation was unanimous, what material disagreement concerned, and how the majority answered it, subject to legitimate protection of personal information.

4.2. Removal is constrained but the constraints need examination

Removal is not at presidential pleasure. Article 165(8) specifies inability arising from infirmity, misbehaviour or misconduct, and incompetence. Section 4 of the Public Service Commission Act 2008 adds a tribunal process: a removal question is referred to a presidentially appointed tribunal, whose recommendation is required before removal on the specified grounds. Appointment of the tribunal also triggers suspension, which ends if the tribunal advises against removal. [18]

An accurate critique must acknowledge that protection before examining its limits. The President cannot lawfully convert disagreement over a candidate into an unrestricted dismissal power. Yet the combination of presidential initiation, selection of the tribunal and suspension while the process runs deserves attention. An ultimately unsuccessful removal process could still disrupt the Commission at a decisive moment. The vulnerability is particularly acute if the alleged incompetence consists, in substance, of refusing to endorse a preferred candidate.

13 Civil Service Commission, *Recruitment Principles* (n 12) paras 31–32, 44–47 and fn 8. The special senior appointment provisions must be read alongside the ordinary provisions on merit order.

14 HC Deb 14 September 2023, HCWS1022 (written statement, 'Appointment of Director of Public Prosecutions').

15 Constitution of the Republic of Uganda 1995, art 165(1)–(6); Public Service Commission Act 2008 (Act 11 of 2008), s 3. References to this Act use the section numbering of the enacted text.

16 Constitution of the Republic of Uganda 1995, art 166(2); Public Service Commission Act 2008, s 9.

17 Public Service Commission Regulations 2009, SI 1/2009, reg 9.

18 Constitution of the Republic of Uganda 1995, art 165(8); Public Service Commission Act 2008, s 4(2)–(6).

Reform should address the integrity of the removal process rather than merely add another declaration of independence. Published grounds for initiating proceedings, impartial tribunal membership, a meaningful opportunity to answer the case and timely resolution would make the protection usable. A commissioner should not have to choose between professional honesty and a prolonged, career-damaging uncertainty. Equally, tenure protection must not become immunity for corruption or serious failure. The purpose is to distinguish misconduct from unwelcome independence.

4.3. To whom is the PSC answerable

The constitutional reporting obligation is to Parliament. Article 166(3) requires an annual report; section 10 of the Act requires its transmission through the Speaker, with a copy to the President. [19] Receipt of that copy does not make the President the Commission's superior in individual selection decisions. Nor does reporting to Parliament authorise a parliamentary majority to dictate the recommended candidate. Accountability concerns the justification of how the Commission used its powers; it need not become control over the outcome.

An annual report is nevertheless a weak instrument if it records only vacancies filled, meetings held and aggregate recruitment numbers. A consequential appointment calls for an account of the chosen recruitment method, the criteria applied, the handling of conflicts and the reasons for any departure from the ordinary procedure. Such information enables Parliament to question the exercise of judgment. A numerical account of activity cannot reveal whether an appointment began with a genuine vacancy or with a person awaiting institutional endorsement.

The Act complicates external scrutiny. Section 19 protects specified communications, including communications involving the Commission and the President, from production in legal proceedings without the written consent of the chairperson or deputy chairperson, expressly subject to the Constitution. Section 23 criminalises certain unauthorised disclosures. [20] Neither provision should be inaccurately described as a universal prohibition on publishing every recruitment fact. Their significance is more specific: the material needed to test independence may fall within protected communications, while officials have strong reasons not to disclose it without authority.

That combination creates a problem of access to proof. If an applicant must establish improper influence but cannot obtain the recommendation, relevant correspondence or assessment record, a finding that influence has not been proved may say little about whether the system can expose it. The answer is not indiscriminate release of every reference. It is a lawful distinction between private candidate information, deliberative material requiring protection, and the procedural facts necessary to establish that public power was exercised independently. The constitutional qualification in section 19 must remain operative.

4.4. Discretion over recruitment method is the critical opening

Regulation 17 requires attention to efficiency and, for serving officers, qualifications, experience, performance and merit before seniority. It also permits the Commission, within the specified recruitment framework, to dispense with advertisement or restrict its circulation. Regulation 18 allows consultation and the use of a selection board, including persons outside the Commission. [21] Uganda therefore has both a legal opening for closed recruitment and an existing means of obtaining specialist assessment.

The difficulty is the breadth of the exception. The power to dispense with advertisement does not itself explain why a particular vacancy should be closed. Sensitivity, urgency and the importance of continuity may be relevant, but they require substantiation. Almost every appointment to a senior constitutional office can be described as sensitive. If sensitivity alone justifies exclusion of competition, the offices with the greatest public consequences receive the least contestable recruitment.

There is a further inconsistency. A Commission may insist on comparative assessment when filling an ordinary professional vacancy yet identify the chief prosecutor through a process that never tests the available field. The absurdity is institutional: the demand for evidence becomes weaker as the office becomes more powerful. The criticism is not that an identified candidate cannot be excellent. It is that excellence cannot be established comparatively by deciding in advance that no comparison is necessary.

4.5. Domestic administrative standards already demand an explanation

The 2021 Public Service Standing Orders provide a useful internal measure of recruitment practice. They require appointments to follow written law and direct responsible officers to the relevant service commission regulations. Their Code of Conduct and Ethics associates impartiality with merit, integrity with openness, and transparency with readiness to give reasons. [22] These are standards adopted within Uganda's public administration. Openness cannot plausibly be dismissed as an external preference with no connection to its own institutional commitments.

Their legal role must nevertheless be kept precise. The Standing Orders commenced on 1 November 2021 and cannot retrospectively govern an appointment made in 2020. They also cannot displace article 120's allocation of authority or manufacture a restriction absent from the applicable legislation. Their importance here is to expose the distance between an administrative commitment to reasoned, impartial decision-making and a practice that leaves the comparative basis of selection inaccessible. A discretion to dispense with advertisement does not answer whether its exercise reflects the values the public service professes.

Mamdani's *Slow Poison* places the stakes of access in a wider historical setting. His account links the organisation of

19 Constitution of the Republic of Uganda 1995, art 166(3); Public Service Commission Act 2008, s 10.

20 Public Service Commission Act 2008, ss 19 and 23. Section 19 concerns production and disclosure in legal proceedings and is expressly subject to the Constitution.

21 Public Service Commission Regulations 2009, regs 17–18.

22 Ministry of Public Service, *The Uganda Public Service Standing Orders* (2021 edn) xiii, 6, 8–9 and 310: A-b(1), A-c(2), (11), and Appendix F-5, pt 3. The commencement date is stated at xiii; the Code's principles at 310 include accountability, impartiality, integrity and transparency.

political belonging with access to administrative and political office, and examines how formal parliamentary opposition can encounter concentrated presidential influence. [23] This is a historical interpretation, not evidence that a particular DPP appointment resulted from patronage. Its analytical value is to direct attention to how institutions distribute opportunity, rather than assume that the existence of several institutions necessarily distributes effective power.

Applied to recruitment, that perspective raises a question about the field of candidates. A private search may repeatedly discover people whose careers already make them visible to the executive, while excluding capable lawyers whose professional standing was built elsewhere. A formally neutral assessment then begins after a consequential choice has already been made about who counts as a candidate. The remedy is not to presume that every insider lacks independence. It is to make professional visibility less dependent on proximity to appointing officials, through accessible notice, credible outreach and assessment that recognises relevant experience across the legal profession.

5. The President appoints but must preserve an independent recommendation

The President is an active constitutional participant. Article 120(1) does not require presidential indifference to the identity of the DPP, and it would be artificial to expect government to have no view about the leadership of a major public institution. The issue is when that view is expressed, how it is recorded, and whether the PSC remains free to reject it.

The record in *Legal Brains Trust v Attorney General of the Republic of Uganda* [24] permits a closer examination of presidential involvement. In setting out the respondent's account of the 2020 appointment, the EACJ recorded that the PSC had sought the President's opinion on the candidate and that the President had provided it. Later, the Court accepted that the PSC had evaluated and recommended the candidate before the formal presidential nomination, and treated the sequence as inconsistent with unilateral presidential appointment.

Both propositions can be true. A recommendation may precede the formal nomination while the President has already influenced the identity of the person under consideration. The distinction is between the legal sequence of instruments and the causal sequence of selection. Proof of the former does not, without more, establish the independence of the latter. Equally, prior consultation does not by itself prove unlawful direction. The missing inquiry concerns the quality of the PSC's freedom: could it reject the suggested candidate, identify alternatives and explain a different recommendation without adverse consequences?

This is where a recorded, open process becomes more useful than assertions about personal virtue. If presidential suggestions enter a disclosed procedure governed by previously settled criteria, their relevance can be tested. If a suggested name is privately treated as the starting point and the eventual recommendation is the first visible document, outsiders cannot tell whether the Commission assessed a choice or merely regularised one. A public process protects the President as well as the candidate by separating permissible consultation from concealed instruction.

The PSC Act itself distinguishes improper influence from legitimate participation. Section 22 prohibits attempts to influence the Commission outside the proper performance of official duties, while preserving bona fide references and information properly sought. Regulation 21 requires irregular representations to be ignored. [25] It would therefore be wrong to label every presidential communication unlawful. The stronger argument is that the system must preserve the evidence needed to determine on which side of that distinction a communication falls.

5.1. Presidential assessment must confront adverse evidence

The South African Constitutional Court's judgment in *Democratic Alliance v President of the Republic of South Africa* [26] requires a more demanding examination of appointment rationality. The case concerned the appointment of Menzi Simelane as National Director of Public Prosecutions. The statutory requirement of a fit and proper person was treated as an objective requirement, rather than a quality established simply because the President professed satisfaction. The Court also insisted that rationality concerned the process through which the decision was made, not merely an explanation attached to its result.

The adverse material came from the Ginwala inquiry into the fitness of the previous National Director, Vusi Pikoli. The inquiry had criticised Simelane's evidence and the basis of allegations he had advanced against Pikoli. The Minister advised the President that those matters need not prevent the appointment. The Constitutional Court held that their relevance to honesty and conscientiousness required further investigation. [27] The fact that the inquiry had principally concerned another official did not make Simelane's conduct before it irrelevant.

The judgment's force lies in that connection between evidence and the office's purpose. Personal knowledge and a favourable curriculum vitae could not answer concerns arising from the candidate's conduct in a formal inquiry. An appointment process that examines professional achievements while declining to examine credible evidence about honesty has selected its conclusion before completing its assessment.

This reasoning is valuable for Uganda, but it must not be overstated. The Court did not hold that Simelane had conclusively been proved unfit, nor did it substitute its preferred candidate. It expressly left open the possibility that a proper inquiry and satisfactory explanation could support an appointment. [28] That qualification protects the distinction between scrutinising allegations and treating allegations as findings. Politically motivated complaints are possible, especially where the office may threaten powerful interests.

23 Mahmood Mamdani, *Slow Poison: Idi Amin, Yoweri Museveni, and the Making of the Ugandan State* (Belknap Press of Harvard University Press 2025) 195–96, 238–41.

24 *Legal Brains Trust v Attorney General of the Republic of Uganda* (Reference 15 of 2020) [2025] EACJ 15 (First Instance Division, 27 November 2025) paras 12(c)–(e), 43–45 and 81.

25 Public Service Commission Act 2008, s 22; Public Service Commission Regulations 2009, reg 21.

26 *Democratic Alliance v President of the Republic of South Africa* [2012] ZACC 24, 2013 (1) SA 248 (CC) [20]–[26], [29]–[37].

27 *Democratic Alliance* (n 26) [47]–[52], [85]–[89].

28 *Democratic Alliance* (n 26) [90]–[93].

A credible process must investigate material concerns and hear the candidate, not confer a veto on whoever makes the most damaging accusation.

The constitutional consequence is exacting without being institutionally extravagant. Courts need not become recruitment panels to require an appointing authority to confront evidence relevant to the statutory purpose. For Uganda, the persuasive lesson is that a professional recommendation cannot be reduced to a favourable biography, and presidential confidence cannot repair an assessment that omits serious relevant concerns. The South African statutory test and Uganda's constitutional provisions differ; the principle of reasoned attention to the demands of the office is the defensible point of comparison.

5.2. Institutional integrity exceeds the candidate's paper qualifications

In *Centre for PIL v Union of India*, [29] the Supreme Court examined the appointment of PJ Thomas as Central Vigilance Commissioner and focused on the integrity of the institution as well as the individual. Relevant material concerning the pending Palmolein prosecution and departmental recommendations for disciplinary proceedings had not been adequately addressed by the high-powered selection committee. The Court's inquiry was directed to the legality of the recommendation and the material considered, rather than an appellate reassessment of comparative merit.

The judgment exposes a weakness in collective appointment processes. A committee may consist of eminent or powerful members and still fail to perform the inquiry that gives its recommendation value. Institutional prestige does not substitute for engagement with the record. Nor does a majority vote answer an objection merely because the minority has been outvoted. The judgment's directions concerning reasons, relevant records and a rational selection procedure are important precisely because they make disagreement examinable. [30]

For Uganda, this suggests that the PSC, President and Parliament should not rely on one another's involvement to avoid responsibility for unresolved evidence. Each may reasonably rely on work competently performed elsewhere. None should treat a prior approval as a conclusive answer to a specific, material defect. The integrity of the prosecution service is damaged when the response to a serious question is that another institution has already signed.

The President's role should accordingly be neither ceremonial nor unconstrained. A recommendation should reach the President with a reasoned assessment. If further inquiry is needed, the matter should be returned with recorded reasons. A presidential preference should not authorise the substitution of an unassessed person. That approach preserves the appointment power while giving practical meaning to the constitutional requirement that it be exercised on the PSC's recommendation.

5.3. Kasango shows why institutional approval cannot settle constitutional compatibility

Bob Kasango v Attorney General and Another [31] prevents confidence in the tripartite process from becoming an assumption of constitutional correctness. The Court held that Justice Mike Chibita's appointment as DPP while retaining judicial office contravened the separation of powers and the relevant constitutional protections. It nevertheless preserved the earlier prosecutorial acts within the office's mandate. The decision concerned compatibility of offices, not a requirement to advertise, but it demonstrates that an appointment can pass through the designated institutions and still contain a constitutional defect.

The judgment's structural concern deserves to be taken seriously. A prosecutor appearing before judges with whom that prosecutor retains institutional membership presents a question about the independence and apparent impartiality of adjudication. Proof that a particular judge actually yielded to influence would be important in an individual fair-trial claim, but cannot be the only means of examining the appointment arrangement. Structural safeguards exist partly because pressure and institutional allegiance may be difficult to prove after they have affected a decision.

That reasoning should not, however, be adopted without examining its method. Kakuru JCC carried over the analysis concerning a judge appointed Inspector General of Government, including reliance on article 223(4). That provision expressly concerns the IGG and Deputy IGG; article 120 does not reproduce its prohibition on holding another office of emolument. [32] An analogy based on incompatible functions may be persuasive, but the different texts require an explanation. The strongest justification for the result rests on the constitutional separation of prosecuting and adjudicating functions, not on treating an express restriction applicable to one office as though it appears in another.

The remedy raises an equally important question. Preserving earlier acts prevented a defect in the office-holder's appointment from automatically undoing prosecutions undertaken through a national institution. Kiryabwire JCC separately developed the reasoning for prospective annulment. Yet the lead judgment also announced that future appointments and acts in comparable circumstances would be invalid. [33] The warning strengthens the incentive to comply, but its breadth creates uncertainty for accused persons, complainants and prosecutors who may have had no control over the appointment. A remedy should distinguish the defective appointment from the validity and fairness of particular proceedings, rather than leave institutional collapse as the principal enforcement mechanism.

For recruitment, the implication is practical. Parliament and the PSC should obtain a reasoned determination of any incompatibility before approving the nominee. A respected professional title is not an answer to a legal obstacle.

29 *Centre for PIL v Union of India* (2011) 4 SCC 1, paras 3, 30 and 33.
30 *Centre for PIL* (n 29) para 55.
31 *Bob Kasango v Attorney General and Another* (Constitutional Petition 16 of 2016) [2021] UGCC 2 (18 March 2021) 13–18 (Kakuru JCC). The subsequent EACJ judgment recorded an appeal as pending: *Legal Brains Trust* (n 24) paras 39 and 53. No subsequent domestic appellate disposition has been verified for this article.
32 *Kasango* (n 31) 14–16 (Kakuru JCC); Constitution of the Republic of Uganda 1995, arts 120, 128–29 and 223(4).
33 *Kasango* (n 31) 17–19 (Kakuru JCC), 4–7 (Kiryabwire JCC). Pinpoints follow the separate judgments' printed pagination.

Nor should an accused person have to expose an appointment defect years later before the institutions confront it. The case supports more searching scrutiny at entry even though it does not decide the separate question of public hearings.

6. Parliament must do more than verify that a nominee may hold office

6.1. The present rules contain both safeguards and restrictions

Parliamentary approval has a plausible constitutional purpose. An executive appointment to an independent office should encounter an institution capable of demanding reasons, exposing omissions and withholding consent. Whether Uganda's procedure fulfils that purpose depends on the content of scrutiny, not simply on the existence of an Appointments Committee.

The 2025 Rules of Procedure place the Speaker at the head of that committee and deny the presiding person an original or casting vote. [34] The committee approves appointments on behalf of Parliament. Its proceedings are closed; its decisions are made by open vote, ordinarily through a simple majority of members present and voting, with a tie counting against approval. An open vote inside a closed meeting is not an open hearing. It tells participants how members voted; it does not, by itself, let citizens examine the questions, evidence or reasoning.

There are protections that a serious critique should preserve. The nominee must be given an opportunity to answer adverse statements and receive the necessary documents. The Speaker communicates the nominees' names and the committee's sitting date to the House. The committee may summon a nominee, and Parliament's constitutional committee powers include obtaining evidence and documents. [35] These features can support informed scrutiny. Their presence does not establish how rigorously they have been used in a particular appointment.

The most consequential restriction appears in rule 175(1). Approval may not be withheld unless the committee is satisfied, on evidence, that the nominee lacks the qualifications prescribed by law. [36] For the DPP, that wording raises an uncomfortable question. If the candidate meets the High Court qualification incorporated by article 120(2), what room remains to refuse approval because the process failed to test comparative merit, because leadership competence is unconvincing, or because substantial concerns about independence remain unresolved?

There may be arguments for reading qualifications in the light of the whole Constitution and the demands of the office. It would nevertheless be unsafe to describe the present rule as conferring an unrestricted suitability veto. Its wording channels attention towards disqualification. Article 120 speaks of approval, which suggests an evaluative responsibility; rule 175 risks narrowing that responsibility to an inquiry into legal eligibility. The tension deserves direct examination rather than being concealed by general claims that Parliament thoroughly vets nominees.

Article 94 subjects Parliament's rule-making authority to the Constitution. [37] The doctrinal question is whether a procedural rule may so constrain the grounds of refusal that a substantive constitutional check loses much of its purpose. No conclusion that rule 175 has already been invalidated follows from this analysis. The reform argument is that Parliament should expressly clarify a lawful power to examine fitness, integrity and the adequacy of the recruitment process, with defined standards and reasons. Otherwise an advertised competition may become more demanding than the constitutional approval that follows it.

6.2. Delegation is lawful but delegation does not establish effectiveness

In *Mugarura v Attorney General*, [38] the Constitutional Court rejected a challenge arising from the reappointment of Electoral Commission members. It accepted Parliament's use of the Appointments Committee to exercise approval on its behalf, relying on the constitutional provisions concerning committees and parliamentary procedure. The absence of a requirement for a further plenary vote was central to the Court's treatment of the delegated mechanism.

That conclusion answers who may act for Parliament. It does not answer whether the committee's examination is sufficiently exacting. Delegation may improve scrutiny by concentrating expertise and permitting sustained questioning. It may also concentrate a politically convenient decision in a small forum whose reasoning is difficult to examine. The constitutional legality of delegation cannot settle which of those possibilities has materialised.

The same case is revealing on proof of integrity. The Court rejected a challenge that did not supply adequate particulars of the nominees' alleged deficiencies, and it treated their professional records and experience as significant. [39] That insistence on particulars is justified. Appointment litigation should not damage reputations through unsubstantiated assertions. The difficulty arises if failure by an outsider to prove unfitness is treated as equivalent to proof that the selecting institutions conducted a sufficiently searching inquiry. Those are different propositions, supported by different evidence.

A claimant's inability to establish that an appointee lacks integrity may be decisive in litigation without demonstrating that the appointing authority positively tested integrity. The point is especially important where the assessment record is inaccessible. Judicial rejection of an inadequately proved allegation should not become an institutional substitute for vetting. The appointing bodies must perform their own inquiry before an outsider has reason, or sufficient information, to challenge the appointment.

6.3. Approval must remain answerable beyond the committee

The procedure also limits the ordinary opportunity for the House to revisit an approval. Rule 176 requires a report of an approved appointment but excludes debate on that report.

34 Rules of Procedure of the Parliament of Uganda 2025, SI 43/2025, rr 170–174. Rule 171(2) requires closed proceedings; rr 174(3)–(5) govern voting.
35 Rules of Procedure of the Parliament of Uganda 2025, r 174(2), (7)–(8); Constitution of the Republic of Uganda 1995, art 90(3)–(4).
36 Rules of Procedure of the Parliament of Uganda 2025, r 175(1); Constitution of the Republic of Uganda 1995, art 120(2).
37 Constitution of the Republic of Uganda 1995, arts 2 and 94(1).
38 *Mugarura v Attorney General* (Constitutional Petition 23 of 2009) [2015] UGCC 5 (29 September 2015), 'Issue No 3' (PDF pp 14–16) <https://sheriahub.com/cases/ug/caselaw/mugarura-v-attorney-general-constitutional-petition-23-of-2009-2015-ugcc-5-29-september-2015.pdf> accessed 22 October 2026. PDF locators identify the reproduced judgment's pagination.
39 *Mugarura* (n 38), 'Issue No 2' (PDF pp 10–13).

Rule 178, however, permits the President to appeal a rejection to the House and allows at least one-third of the committee to refer a particular nomination for a decision of the House. [40] The second route is important and should not be omitted. It gives a substantial minority a means of seeking wider parliamentary determination.

Even with that safeguard, routine approval is less exposed to plenary contest than a rejection challenged by the President. The arrangement gives the executive an express means of contesting an adverse outcome while leaving the ordinary favourable outcome without debate. A credible system should not make public explanation most necessary when Parliament disagrees with the executive and least necessary when it agrees.

Party organisation introduces another pressure. The rules allocate committee membership through party representation and whips, and permit parties to withdraw or relocate members. [41] Political representation is legitimate; an appointments committee need not become a body of non-political experts. Yet a member's institutional ability to scrutinise a presidential nominee may be weakened if an unwelcome position carries a credible risk of removal from the committee. A hearing can be procedurally orderly while the incentives favour assent.

The answer is not to assume that every governing-party member is incapable of independent judgment. It is to make the exercise of that judgment visible and consequential. Recorded reasons, published voting outcomes, minority explanations and reviewable treatment of conflicts would allow the public to distinguish considered approval from partisan accommodation. Electoral accountability alone is a distant and imprecise response to a particular appointment; voters need information about what their representatives actually did.

7. Legal Brains Trust and the constitutional cost of closed approval

7.1. The decision must be criticised on its actual grounds

Legal Brains Trust (LBT) Limited and 2 Others v Attorney General [42] concerned the rule requiring the Appointments Committee to conduct closed proceedings. The petition began under the 2012 Rules and was determined against rule 165(2) of the 2021 Rules. Mulyagonja JCC delivered the lead judgment, with which all four other members of the Court agreed. The petition failed, but its failure cannot accurately be described as a judicial declaration that every aspect of appointments is secret. The Court upheld closed hearings while recognising access to records through the Access to Information Act and the presentation of committee reports to the House. That distinction is indispensable to a fair critique.

The petitioners' central objection was to compulsory closure without an assessment of whether publicity would prejudice a protected interest. Their pleaded case allowed restrictions for security, sovereignty and privacy where justified; it did not require every intimate detail to be broadcast. [43] Some of their later submissions took a more sweeping position about what public officials should tolerate. The Court was entitled to reject the suggestion that seeking office forfeits privacy. It still had to answer the narrower challenge to a rule which closes the entire proceeding before anyone identifies what requires protection.

Two questions consequently needed separate answers. Could the petitioners obtain an order releasing an undifferentiated archive without first using the statutory access procedure? And could Parliament constitutionally require every hearing to be closed, including those parts that raise no substantial privacy concern? Failure on the first question does not necessarily resolve the second. The judgment is most persuasive when addressing the particular disclosure remedy and least persuasive when treating alternative access as sufficient justification for comprehensive closure.

The Court did, moreover, accept jurisdiction to examine the rule under article 137, notwithstanding the Attorney General's preliminary objection. [44] Parliamentary procedure was therefore not treated as beyond constitutional review. That is a valuable premise. The difficulty lies in the intensity of the review that followed: the Court recognised its authority to test the rule, but repeatedly relied on institutional arrangements whose effectiveness the petition sought to question.

7.2. National objectives cannot become redundant when legislation exists

The treatment of article 8A is particularly restrictive. Mulyagonja JCC acknowledged that the national objectives could be justiciable, yet reasoned that recourse to them was unnecessary where legislation already gave effect to their concerns or the Constitution contained adequate substantive provisions. Objective I(i) was treated principally as assistance where the law lacked a material particular. [45] This reduces a continuing interpretive obligation to a device for filling gaps.

The text supports a different approach. Objective I(i) directs all state organs to use the objectives when applying and interpreting the Constitution or other law. It contains no condition that a gap must first be found. Article 8A(2), which requires implementing legislation, cannot make the principles disappear once Parliament legislates. If enactment alone displaced the constitutional standard, legislation intended to give effect to accountability would become the reason accountability could no longer guide its interpretation. The hierarchy would be reversed.

This argument does not require every objective to create an independently enforceable cause of action. The narrower point is sufficient. When interpreting express rights of participation and access to information, a court should consider the constitutional instructions that public offices are held in trust and office-holders answer to the people. Those instructions help determine the purpose and permissible limits of the rights already before the Court. They need not

40 Rules of Procedure of the Parliament of Uganda 2025, rr 176 and 178(1)–(2).

41 Rules of Procedure of the Parliament of Uganda 2025, rr 167(2)–(5) and 168. Rule 168 provides for standing committees of between twenty and forty members.

42 *Legal Brains Trust (LBT) Limited and 2 Others v Attorney General* (Constitutional Petition 23 of 2015) [2023] UGCC 102 (12 September 2023) 1–3, 24 and 61–62 (Mulyagonja JCC); Buteera DCJ, concurring judgment. Unless otherwise indicated, subsequent page references to this case are to Mulyagonja JCC's numbered lead judgment.

43 *Legal Brains Trust* [2023] UGCC 102 (n 42) 2–3, 23–24 and 54.

44 *Legal Brains Trust* [2023] UGCC 102 (n 42) 13–14.

45 *Legal Brains Trust* [2023] UGCC 102 (n 42) 26–28; Constitution of the Republic of Uganda 1995, art 8A and National Objectives, objective I(i).

compete with those rights for a place in the analysis.

There is an unresolved tension within the judgment itself. Having limited the need to invoke the objectives, the Court later turned to Objective II to interpret Parliament's duty under article 79(3). It emphasised representative institutions and treated elected membership as an answer to the complaint of exclusion. [46] The objectives were thus available when they supported the existing arrangement, but their demands for active participation and public answerability did not receive equivalent attention. A harmonious reading should ask how representation and scrutiny sustain each other, rather than allow one constitutional value to exhaust the other.

7.3. Prior professional assessment does not make parliamentary scrutiny redundant

The judgment's discussion of judicial appointments exposes a more fundamental difficulty. The Court relied on the Judicial Service Commission's assessment of qualifications and suitability and concluded that opening the committee's proceedings would make no difference to that assessment. It went so far as to reason that there would be nothing for the press to publish in the approval process. [47] That conclusion gives earlier vetting an authority which the constitutional requirement of subsequent approval does not warrant.

Professional assessment can properly narrow Parliament's inquiry. Members need not repeat every verification performed by a competent commission. Yet approval remains useful precisely because a later institution may identify an omission, test an explanation, or examine information that became available after the recommendation. If the first assessment is conclusive, the constitutional decision to require approval becomes difficult to explain. If approval can change the outcome, the public has a legitimate interest in understanding how that power was exercised.

The point applies with particular force to the DPP. The PSC's recommendation and Parliament's approval are separately required by article 120(1). Neither institution can fulfil its responsibility merely by invoking the other. Nor does publication of the legal qualifications reveal whether the candidate satisfies them, how integrity was examined, or why a particular professional record was considered persuasive. An accessible rule and an accountable application of that rule are different achievements.

The judgment's reliance on the absence of previous rejection of judicial nominees is also inconclusive. A record of approval may reflect excellent screening. It may reflect a committee reluctant to disturb recommendations. Without examining its work, either explanation remains possible. The analysis should have treated the record as a question about institutional performance, rather than reassurance that public examination would add nothing.

7.4. The public seeks an account of the committee as well as the nominee

A revealing passage concerns electoral accountability. The petitioners argued that access would enable voters to assess the role played by their parliamentary representatives in appointments. The judgment responded substantially by discussing whether the conduct of an MP appointed as a minister could be assessed before taking ministerial office, and whether later ministerial performance would influence voters. [48] That response does not fully meet the complaint.

The conduct requiring examination was also the conduct of committee members. A voter might reasonably ask whether a representative investigated a documented conflict, challenged an evasive answer, or approved a nominee after receiving contrary evidence. These questions concern an act already performed in Parliament. They do not depend on predicting the nominee's future performance as a minister. Closing the hearing affects the public's ability to evaluate the scrutiniser as well as the person scrutinised.

The distinction changes the privacy balance. A nominee may have a strong claim to protect an intimate medical fact. The committee has a much weaker claim to conceal whether it asked relevant questions or addressed an obvious inconsistency. Treating the entire proceeding as information about the nominee obscures the public institution whose conduct is also recorded. Accountability under Objective XXVI would be impoverished if the representative could invoke the represented person's privacy to conceal the quality of public scrutiny.

The Court did identify genuine opportunities for participation: announcement of nominees, submissions or petitions, and earlier interventions concerning the composition of the JSC and judicial appointments. [49] Those examples prevent an assertion that citizens have no avenue of influence. They do not show that the avenues are equally accessible, that objections are consistently investigated, or that reasons for rejecting them become available. Evidence that some organised groups obtained attention cannot establish the adequacy of the procedure for every citizen.

Participation also has a temporal dimension. A submission can inform an appointment only if it arrives while the decision remains open. A report after approval may explain what happened, but cannot itself restore a lost opportunity to test a decisive assertion. Representative authority remains intact when citizens provide relevant evidence and observe how it is handled. The committee still decides; the public acquires a means of judging whether it decided responsibly.

7.5. The privacy analysis identifies a legitimate concern but leaves necessity unproved

The judgment recognises serious risks from circulating personal information, including reputational injury, harassment and misleading commentary. It applies the familiar requirements of a sufficiently important objective, rational connection and impairment no greater than necessary. [50] Protection of privacy readily satisfies the first requirement. Keeping sensitive evidence confidential may satisfy the second. Neither establishes that every question and answer must be withheld from contemporaneous public scrutiny.

The decisive inquiry should have concerned less restrictive arrangements. Parliament could hear professional questions publicly, receive medical evidence privately, redact identifiers, protect witnesses, and publish findings that distinguish established facts from rejected allegations. It could adjourn before disclosing contested material and give

46 *Legal Brains Trust* [2023] UGCC 102 (n 42) 40–44.
47 *Legal Brains Trust* [2023] UGCC 102 (n 42) 29–32.
48 *Legal Brains Trust* [2023] UGCC 102 (n 42) 26 and 33–34, particularly the affidavit reproduced at 33 and the response at 33–34.
49 *Legal Brains Trust* [2023] UGCC 102 (n 42) 44–47.
50 *Legal Brains Trust* [2023] UGCC 102 (n 42) 51–60; Constitution of the Republic of Uganda 1995, arts 27, 41 and 43.

the nominee a meaningful opportunity to respond. These are ordinary procedural choices, not demands for a constitutionally unregulated spectacle. The judgment did not show why such arrangements would fail to protect the interests it identified.

Its discussion of embarrassment and hostile commentary also needs discrimination. False allegations and intimate disclosures may cause an injury the law should prevent. Accurate exposure of a material conflict may damage a candidate's prospects for a constitutionally proper reason. A recruitment system cannot protect integrity if the possibility of justified criticism is treated as a reason to prevent examination. The relevant distinction concerns the nature and relevance of the information, not whether publication is comfortable for its subject.

The Court drew support from *United States Department of Justice v Reporters Committee for Freedom of the Press*. [51] That decision protected a private person's compiled criminal history under a particular statutory exemption. Its reasoning distinguished information about private citizens from information that reveals how a public agency performs its duties. A parliamentary vetting record falls much closer to the latter inquiry than the analogy in *Legal Brains Trust* acknowledges.

The American judgment therefore cannot carry a general proposition that an appointments hearing should be closed because it contains personal data. The committee's assessment of professional qualifications, its treatment of conflicts and its reasons for approval concern official conduct. Some underlying personal material may properly remain protected, but that requires separating it from the public decision. The analogy should have sharpened that separation. Instead, it helped sustain a rule that does not make it.

7.6. Access to records is a significant holding but an incomplete answer

The judgment's most useful contribution to transparency should be preserved. It treated Parliament as subject to the Access to Information Act, noted the requirement to table committee minutes with reports, and recognised statutory access to records despite the closed hearing. [52] Officials cannot fairly invoke the decision as authority for an unrestricted refusal to disclose appointments material. Its defence of closure rests partly on the availability of subsequent access.

That reasoning nevertheless leaves practical questions unanswered. A report of an approval may be brief, and minutes may not reproduce the questions or evidential exchanges. The existence of a statutory request procedure says little about the time, expense and resistance an applicant may encounter. The Court had no established refusal before it, which weakened the claim for an immediate disclosure order. It also had no demonstrated record of timely access establishing that the alternative protected every interest lost through closure.

The better conclusion is therefore limited. Absence of a prior request justified caution about ordering wholesale release of transcripts and recordings. It did not establish that delayed documentary access is constitutionally equivalent to observing the non-confidential parts of a hearing. Access after appointment serves explanation and review; access before approval may also expose a mistake while correction remains straightforward. A proportionality analysis should account for that difference.

The petitioners' request for all the relevant transcripts and recordings was itself vulnerable because it did not adequately differentiate protected material. The Court found the disclosure remedy premature in the absence of exhausted statutory procedures. [53] That is a substantial answer to the relief sought. A stronger challenge would identify the public material requested, proposed redactions, the reason for urgency and any refusal or delay. But procedural weakness in a particular demand should not settle whether an unconditional closure rule is the best or necessary means of protecting privacy.

The resulting critique is exact. *Legal Brains Trust* correctly preserves privacy, recognises parliamentary representation and leaves a route to records. Its weakness is the inference that these features justify a default of complete closure without a more demanding inquiry into necessity. The constitutional alternative would preserve confidential evidence while requiring public institutions to explain why particular information, or a particular part of a hearing, cannot be exposed to scrutiny.

8. Comparative decisions that place greater demands on the appointing institution

8.1. Appointment correspondence is not immune merely because it is confidential

S P Gupta v Union of India [54] offers a particularly clear contrary proposition on institutional secrecy. In litigation concerning judicial non-appointment and transfer, the Supreme Court of India rejected a claim that the relevant correspondence belonged to an automatically protected class. Bhagwati J's reasoning required the public interest in withholding material to be weighed against the harm that withholding it would cause to the administration of justice. The need for candour among senior constitutional officials did not, by itself, establish immunity from disclosure.

The contrast with the Ugandan reasoning is substantial but specific. *S P Gupta* concerned disclosure for judicial proceedings, not admission to a parliamentary hearing. It is therefore no authority for broadcasting every stage of recruitment. It does reject the premise that the constitutional importance of a decision and the sensitivity of the participants' discussions necessarily strengthen the case for secrecy. Those features may instead increase the need for an examinable record, particularly where that record contains the evidence from which effective consultation can be assessed.

The evidential point is decisive for appointment litigation. A public authority should not be able to defend its process through an affidavit asserting proper consultation while

51 *United States Department of Justice v Reporters Committee for Freedom of the Press* 489 US 749 (1989) 771–75, 780; considered in *Legal Brains Trust* [2023] UGCC 102 (n 42) 58–59.

52 *Legal Brains Trust* [2023] UGCC 102 (n 42) 35–39 and 48; Access to Information Act 2005, ss 5–6 and 20. The judgment discusses the 2021 Rules, including rr 170, 219, 226 and 227.

53 *Legal Brains Trust* [2023] UGCC 102 (n 42) 60–62; Access to Information Act 2005, ss 37–38.

54 *S P Gupta v Union of India* 1981 Supp SCC 87, paras 80–85 (Bhagwati J). The discussion concerns disclosure of the relevant appointment and transfer correspondence in litigation, not an entitlement to attend all selection deliberations.

withholding the material needed to test the assertion. Otherwise the claimant bears a burden whose discharge the respondent controls. Applied to Uganda, the argument is for protected access where necessary to examine the PSC's assessment and the executive's involvement, with confidentiality claims decided on their actual grounds. It does not transfer appointment power to the court.

There is also a demanding view of professional responsibility behind the rejection of the candour argument. Senior officials should give honest advice because their office requires it, even where that advice may later be examined. This does not eliminate legitimate protection for informants or private information. It resists a more troubling proposition: that constitutional officials can perform their duties conscientiously only when the reasons for their conduct are beyond scrutiny. The reliance here is on the decision's treatment of disclosure, rather than its separate allocation of influence over judicial appointments.

8.2. India requires a contextual decision about disclosure

Central Public Information Officer Supreme Court of India v Subhash Chandra Agarwal [55] provides a substantial counterpoint to the privacy reasoning in the Ugandan case. The litigation concerned, among other matters, records relating to judicial appointments. Khanna J's principal judgment rejected a categorical answer: the information, competing interests and possible harm required assessment, with a distinction between underlying inputs and the resulting appointment decision. The appointments requests were remitted for reconsideration after notice to affected third parties, rather than ordered into unrestricted publication.

This is not a decision requiring televised parliamentary confirmation. Nor is it wholly opposed to *Legal Brains Trust*, which itself recognises statutory access. The disagreement concerns the work required of the decision-maker. In the Indian approach, confidentiality initiates an inquiry into the particular information and the competing public interest. In the Ugandan judgment, the possibility of sensitive information helps justify closing every hearing, while later access carries much of the burden of preserving openness. The former approach makes differentiation central to the legal method.

Chandrachud J's separate concurrence presses the institutional argument further. It calls for the substantive standards governing judicial appointments to be defined and placed in the public domain, connecting knowledge of those standards with consistency and public confidence. [56] This is a separately reasoned concurrence, not an unrestricted disclosure order by the whole Court. Its relevance to Uganda is nonetheless direct. Citizens cannot assess a conclusion of merit if they know neither what counted as merit nor whether the announced considerations governed the choice.

That proposition also corrects an assumption in the Ugandan judgment's reliance on published legal qualifications. Eligibility provisions identify who may hold office. Selection standards explain what the institution looks for among eligible people. The public should be able to distinguish the two. Publication of article 120(2) cannot substitute for an explanation of how the PSC assessed prosecutorial judgment or leadership, just as disclosure of a judicial experience threshold cannot explain why one qualified lawyer was preferred to another.

The Indian reasoning remains open to criticism. A requirement to balance interests can become another source of delay if the official gives formulaic reasons or the applicant must repeatedly appeal. Public-interest language is capable of protecting institutional discomfort as well as legitimate privacy. Uganda should therefore borrow the obligation to differentiate and explain, together with effective review and timetables. Merely replacing a closed rule with an unexplained discretion to disclose would leave much of the original difficulty intact.

8.3. Open recruitment is a substantive safeguard in Renu

Renu v District and Sessions Judge Tis Hazari [57] takes a more directly contrary position to the acceptance of closed recruitment examined later in this article. Addressing recruitment of court staff, the Supreme Court of India grounded opportunity in constitutional equality and required public advertisement, specified criteria and assessment of eligibility and suitability. Its directions preserved legally recognised exceptions. The Court's concern extended to the process by which candidates entered consideration, rather than ending with the qualifications of those already selected.

The case concerns court employment under India's articles 14 and 16, not Uganda's tripartite appointment of a constitutional office-holder. It cannot establish that regulation 17 is invalid or that every DPP appointment must already be advertised as a matter of Ugandan law. The sharper comparative point is methodological: an excluded opportunity can itself demand an answer. A challenger need not first establish that the eventual appointee is professionally incompetent before the structure of access becomes constitutionally important.

This approach exposes the weakness of defending headhunting solely by pointing to an excellent appointee. Excellence may justify the individual choice among candidates considered. It does not explain the exclusion of others from consideration. A process can select an able person and still distribute opportunity unfairly. Recruitment reform must address both questions, since public trust depends on the institution's reasons for constituting the field as well as its reasons for selecting within it.

There is a further implication for Uganda's PSC. Institutional autonomy should protect professional assessment from interference, but it should not permit the assessor to define accountability out of existence. An independent commission has a stronger claim to deference when it applies disclosed standards, compares relevant evidence and explains an exception. Deference based simply on the commission's constitutional status would leave the public dependent on the very institutional virtue the process is meant to test.

8.4. A reviewing court needs the material from which the decision was made

The South African Constitutional Court's decision in *Helen*

55 *Central Public Information Officer Supreme Court of India v Subhash Chandra Agarwal* (Civil Appeals 10044, 10045 and 2683 of 2010, Supreme Court of India, 13 November 2019) paras 78–80, 88–90 (Khanna J) <https://api.sci.gov.in/supremecourt/2009/36624/36624_2009_1_1502_18247_Judgement_13-Nov-2019.pdf> accessed 22 October 2026. Pinpoints use the separately numbered judgments in the Court's published text.

56 *Subhash Chandra Agarwal* (n 55) para 117, 111–13 (Chandrachud J). The page references identify the discussion continuing within the final numbered paragraph of his concurrence.

57 *Renu v District and Sessions Judge Tis Hazari* (2014) 14 SCC 50, paras 4, 9–16, 20, 31 and 35.

Suzman Foundation v Judicial Service Commission [58] addresses another form of openness. The majority required the relevant deliberative record to be produced in judicial review under rule 53, rejecting automatic exclusion merely because the material recorded confidential deliberations. Its concern was the reviewing court's ability to examine the decision on an adequate record.

The judgment distinguished litigation access from general public disclosure and recognised protective arrangements. [59] It therefore supports neither indiscriminate publication nor an assumption that committee deliberations must be broadcast. Its practical importance is that confidentiality cannot be allowed to deprive review of the material needed to establish whether scrutiny occurred. A reasoned public report and protected judicial access to fuller records can serve different constitutional purposes.

For Uganda, the cases together identify several questions that should not be collapsed into a single demand for transparency. Was there a fair opportunity to compete? Were the actual selection standards disclosed? Can citizens examine the non-confidential hearing and the explanation for approval? Can a court obtain the record necessary for review? Different information and safeguards answer each question. No foreign decision considered here establishes an identical constitutional duty to broadcast Uganda's committee hearings. Their contrary force lies in requiring a more particular justification for exclusion than institutional status, professional screening or an undifferentiated appeal to privacy.

9. The EACJ and the distance between lawful process and justified confidence

The EACJ's decision in *Legal Brains Trust* [60] deserves sustained attention because it concerns the DPP appointment itself, rather than a merely analogous office. The Court rejected the challenge to Jane Frances Abodo's appointment and accepted the process as consistent with Uganda's Treaty obligations. An argument for reform must begin there. It cannot present an unsuccessful challenge as a judicial condemnation of headhunting or suggest that the Court ordered public recruitment.

9.1. The Court's institutional restraint was defensible

The Court located its task within the interpretation and application of the East African Community Treaty. It declined to act as a general appellate court over Uganda's constitutional arrangements and assessed whether the appointment breached the Treaty's governance requirements. [61] That distinction matters. Treaty provisions on democracy, accountability and the rule of law do not necessarily prescribe a single recruitment procedure for every public office in every Partner State.

A court should also be cautious about converting a preferable administrative practice into a legal obligation without a sufficient textual foundation. The existence of PSC discretion under regulation 17, the recorded recommendation and parliamentary approval gave the respondent a substantial answer to a claim that the appointment was simply presidential fiat. The judgment was entitled to examine the evidence rather than assume that a closed process must have produced an unsuitable appointee.

The criticism lies in the further inference drawn from those premises. The presence of each constitutional actor establishes participation. It does not, without examination of what each actor did, establish independent scrutiny. A commission can be involved without comparing candidates. A committee can approve without investigating the basis of the recommendation. Constitutional form has evidential value, but it cannot be made conclusive of institutional substance.

9.2. The later treatment of Kasango requires a separate constitutional inquiry

The EACJ also accepted leave from judicial duties and relied on section 20 of the Administration of the Judiciary Act 2020 in rejecting the incompatibility argument. It described the legislation as retrospectively legitimising the transition and noted that the Kasango litigation was under appeal. [62] Its practical premise is understandable: a person on leave does not simultaneously adjudicate cases. That answers the question of concurrent performance more readily than the question of continuing institutional status.

The conclusion nevertheless requires two distinct explanations. First, a later statute must have a proper basis for governing an earlier appointment. Secondly, the arrangement must be compatible with the Constitution, which ordinary legislation cannot amend indirectly. Section 20 establishes a conditional leave framework; it should not be treated as a general constitutional exemption merely because it facilitates service elsewhere. [63] Nor does article 120(2), which defines professional eligibility, resolve the separate issue of incompatible offices. Being qualified to become a judge and being entitled to retain judicial office while prosecuting are different questions.

This research study does not treat the EACJ judgment as a domestic appellate reversal of Kasango, or assume that the latter decision finally resolves every later statutory arrangement. The cases proceed under different jurisdictions and address different appointments. Their tension shows why a recruitment record should contain the legal basis of a proposed transition, the conditions attached to leave and an assessment of compatibility. Such questions should be confronted before appointment, rather than answered later by an appeal to administrative convenience.

9.3. Equality becomes difficult to vindicate when opportunity is never announced

On equal access, the Court relied on the PSC's discretion, the respondent's affidavit and the stated sensitivity and urgency of the vacancy. It found that the applicant had not produced

58 *Helen Suzman Foundation v Judicial Service Commission* [2018] ZACC 8, 2018 (4) SA 1 (CC) [17]–[27], [35]–[42], [83].
59 *Helen Suzman Foundation* (n 58) [43]–[55], [64]–[70].
60 *Legal Brains Trust* [2025] EACJ 15 (n 24) paras 91–96.
61 *Legal Brains Trust* [2025] EACJ 15 (n 24) paras 39–45; Treaty for the Establishment of the East African Community (signed 30 November 1999, entered into force 7 July 2000), arts 6(d), 7(2) and 27(1).
62 *Legal Brains Trust* [2025] EACJ 15 (n 24) paras 46–53 and 88–90. The reference to the pending appeal describes the position recorded by the EACJ in November 2025.
63 Administration of the Judiciary Act 2020 (Act 8 of 2020), s 20; Constitution of the Republic of Uganda 1995, arts 2, 120(2) and 128. Section 20 regulates leave for service outside the Judiciary; its statutory operation remains subject to the Constitution.

evidence from excluded candidates or persons denied an opportunity to apply. [64] The litigation burden was therefore central to the result.

The difficulty is that a closed process can prevent the very event from which evidence of exclusion would normally arise. A lawyer who never knows that a vacancy is open for consideration cannot apply, receive a refusal or challenge a stated reason for exclusion. Requiring evidence of rejected applications may therefore miss the particular injury alleged: the absence of an intelligible opportunity to enter the field. The absence of a rejected applicant is compatible with equal opportunity, but also with a process in which no public opportunity existed.

That does not mean the claimant should succeed without proving a Treaty breach. It means the inquiry needs to distinguish individual rejection from the design of access. Procedural evidence can matter: how candidates were identified, whether a wider field was considered, whether the exception had recorded reasons and whether the institution examined alternatives. These questions test the method without asking the Court to assume corruption or select a different DPP.

The Court also associated flexibility with the sensitivity of the office and the urgency of filling the vacancy amid case backlogs. [65] Those are legitimate concerns, but their explanatory power is incomplete. A powerful office may require greater care in selecting its holder precisely because it is sensitive. Backlogs establish a need for leadership; they do not establish that an advertised process would necessarily be intolerably slow. A convincing exception should explain the practical alternatives considered and why a less exclusionary procedure could not meet the need.

The judgment's use of the *Bato Star Fishing* analogy is similarly open to question. It drew support from judicial respect for administrative flexibility in a different regulatory setting. [66] Such respect can be appropriate without answering the appointment problem. The allocation of a regulated resource and the selection of a constitutionally independent prosecutor present different risks, affected interests and institutional purposes. Deference must be connected to the reason expertise is being respected; it cannot supply a general answer to demands for an accountable selection process.

9.4. Transparency is not established merely because published rules were followed

The Court distinguished procedural integrity from an absolute demand for openness and treated representative oversight as sufficient in the circumstances. It also emphasised the absence of evidence that secrecy had concealed corruption or bad faith, and the context of continuity during the COVID-19 period. [67]

The first distinction is sound. Transparency does not require unlimited disclosure. The difficulty is making proven concealed wrongdoing the practical precondition for questioning concealment. Information may be needed to determine whether scrutiny was adequate before anyone can responsibly allege corruption. Transparency has a preventive and explanatory purpose, not merely an evidential role after misconduct has already been independently established.

Nor is compliance with a published rule equivalent to visibility of the conduct governed by that rule. The public may know that a committee sits privately and decides by majority without knowing whether members considered the PSC's reasons, investigated a conflict or asked anything beyond questions of qualification. Publication of the procedure makes the rule accessible. It does not make the application of the rule intelligible.

The reliance on representation likewise deserves a narrower conclusion. Parliamentary participation can satisfy a constitutional allocation of authority without making public submissions or a reasoned report unnecessary. The alternatives are not confined to private representative decision and direct public veto. A committee can retain the decision while opening the evidence-gathering process and explaining its conclusions. That middle course preserves representative government and strengthens the information on which it operates.

Emergency conditions also require care. Urgency may justify modified timetables or temporary restrictions. It should not automatically settle how a long-term appointment is made. An emergency explanation is strongest when it identifies the obstacle, the adaptations considered and the limit of the departure. Otherwise a temporary crisis determines the route to a substantive appointment through a procedure whose exceptional features escape separate justification.

The Court's subsequent decision in *Male H Mabirizi K Kiwanuka v Attorney General of the Republic of Uganda* [68] continued the restrained approach to closed parliamentary vetting in the context of judicial appointments. The persistence of that approach reinforces the need to distinguish the reform proposal from the existing judicial position. It also exposes the limits of relying on litigation alone. A reference lodged in 2020 and decided years later may clarify institutional boundaries after an appointment has substantially run its course. Timely information and scrutiny before appointment are therefore essential even where judicial review remains available.

The significance of *Legal Brains Trust* is ultimately double. It confirms that the demonstrated process survived the Treaty challenge. It also identifies where reform is needed if accountability is to require more than a claimant's eventual ability to prove hidden wrongdoing. The judgment establishes the legal starting point for institutional criticism; it does not foreclose that criticism.

10. Merit must be demonstrated without becoming a convenient label

Open competition improves the possibility of comparison, but it does not define merit. An advertisement can be drafted to fit one person. A scoring matrix can reward titles while overlooking judgment. An interview can favour polished

64 *Legal Brains Trust* [2025] EACJ 15 (n 24) paras 54–59.

65 *Legal Brains Trust* [2025] EACJ 15 (n 24) paras 57–60. Regulation 17(3) itself confers discretion concerning advertisement; the sensitivity and urgency justification is supplied in the evidence and reasoning, not an express statutory formula in that regulation.

66 *Legal Brains Trust* [2025] EACJ 15 (n 24) para 60, discussing *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism*. The comparison is examined here as part of the EACJ's reasoning, rather than as an independent holding that a prosecutor may be selected without competition.

67 *Legal Brains Trust* [2025] EACJ 15 (n 24) paras 62–74.

68 *Male H Mabirizi K Kiwanuka v Attorney General of the Republic of Uganda* (Reference 29 of 2020, EACJ First Instance Division, 31 March 2026) paras 28–36 and 55–61.

performance over the capacity to manage an institution fairly. Reform that stops at publication of the vacancy risks giving a predetermined decision a more respectable appearance.

Handsley and Lynch's analysis of Australian judicial appointments is useful here. They question the transparency achieved by broad selection criteria and examine the failure to acknowledge all the considerations actually influencing selection. [69] The implication for Uganda is that criteria must disclose the real basis of assessment. A process cannot credibly announce that appointment turns on professional merit while decisive considerations remain unstated.

For a DPP, merit should be tied to the constitutional work of the office. The relevant evidence includes legal reasoning, prosecutorial judgment, management of staff and resources, treatment of disclosure obligations, willingness to correct error, and an ability to explain difficult decisions without compromising proceedings. Independence should be tested through concrete examples of professional conduct and structured problems, rather than a candidate's promise to be independent.

A useful assessment might ask how a candidate would respond when a politically prominent complainant demands immediate prosecution on weak evidence; when a subordinate suppresses material favourable to the defence; or when declining a prosecution would provoke public anger. The purpose would not be to extract promises about identifiable cases. It would be to examine the candidate's reasoning, understanding of institutional duties and ability to distinguish legitimate accountability from improper direction.

Conviction rates would be a particularly poor substitute for that inquiry. A prosecutor may improve a crude success rate by pursuing only easy cases, overcharging defendants into pleas or refusing to reconsider weak prosecutions. A lawful acquittal, a justified discontinuance or an early decision not to prosecute may reflect professional competence. Selection criteria should therefore reward sound judgment and fair administration, rather than an appetite to obtain convictions at any cost.

Integrity also needs evidence appropriate to its meaning. Absence of a criminal conviction is relevant but not conclusive. References should be tested, conflicts disclosed and credible adverse findings examined. At the same time, a complaint is not proof and unpopular professional work is not a defect. Representing a disliked client, challenging government or losing a difficult case should not become covert grounds of exclusion. Otherwise an integrity inquiry becomes a means of selecting the least controversial candidate rather than the most dependable one.

The eligible field should remain genuinely broad. Article 120(2) requires qualification for judicial appointment; it does not require that the candidate already be a judge. [70] Recruitment should therefore avoid quietly converting a constitutional qualification into a preferred institutional biography. Relevant ability may be found among career prosecutors, advocates and other legally qualified professionals. Each must satisfy the same statutory threshold and the competencies published for the office.

Public trust should be understood in equally disciplined terms. Popularity is an unstable measure for an office that must sometimes resist public demands. The aim is justified confidence: citizens should be able to see why the appointment was defensible, including where they would have preferred another candidate. Transparency can reveal disagreement and initially reduce confidence in a particular selection. That is not necessarily a failure. A process that exposes a genuine problem is doing more constitutional work than one that preserves reassurance by withholding the relevant facts.

11. A Ugandan model that gives each constitutional actor real work

11.1. Make competition ordinary and exceptions accountable

Uganda does not need to abolish article 120(1) to improve recruitment. The first step is a DPP-specific procedure, established through appropriate legislation and regulations, that makes public advertisement and fair competition the ordinary route. The PSC's existing authority to regulate its work and use expert assistance provides an institutional foundation, although the breadth of the present advertisement exception should be addressed expressly. [71]

The procedure should begin with a vacancy notice, a realistic application period, a statement of the constitutional qualifications and published competencies. Outreach through professional bodies and specialist recruiters should be encouraged where it broadens the field. Those approached should enter the same assessment process as other applicants. The record should identify how candidates entered the competition, without unnecessarily exposing unsuccessful applicants to publicity.

A departure from advertisement should require reasons recorded before the appointment is made. The reasons should identify the obstacle to competition, explain why ordinary or expedited competition would not meet the need, and describe the alternative method used to test suitability. Sensitivity should not be sufficient merely because the office is important. Urgency should be supported by dates, operational facts and consideration of lawful interim arrangements. Repeated use of an exception should trigger scrutiny of succession planning rather than establish a new custom of closed recruitment.

Published criteria should remain stable during the competition. Material changes should be explained and, where they alter who could realistically compete, accompanied by an extension or reopening. The procedure should allow the PSC to conclude that no candidate is suitable. A public competition becomes theatre if its only permitted result is the appointment of someone already in the room.

11.2. Equip the PSC to assess and to refuse

The PSC should retain constitutional responsibility for the recommendation, supported by a specialist advisory panel with criminal justice, organisational leadership and public administration expertise. Regulation 18 already permits

69 Elizabeth Handsley and Andrew Lynch, 'Facing up to Diversity? Transparency and the Reform of Commonwealth Judicial Appointments 2008–13' (2015) 37 Syd LR 187, 201–02, 213–15.

70 Constitution of the Republic of Uganda 1995, arts 120(2) and 143(1)(e), (2).

71 Constitution of the Republic of Uganda 1995, art 166(4); Public Service Commission Act 2008, s 27; Public Service Commission Regulations 2009, regs 17–18.

external assistance. [72] The advisory role must not become a private transfer of the Commission's constitutional judgment. Panel membership, interests and the method of assessment should be recorded, and conflicts should lead to recusal where required.

Assessment should combine verified professional records, structured interviews, practical legal and management problems, and properly tested references. A serious integrity concern should be put to the candidate with sufficient particulars for a meaningful response. The record should distinguish established facts, contested allegations and matters found irrelevant. This protects the institution from unsuitable appointments and protects the candidate from suspicion presented as evidence.

The PSC's recommendation should identify the preferred candidate and explain how the person meets the office's requirements, how relevant concerns were resolved and why the assessment supports the recommendation. It should record material disagreement. A public version can omit personal or sensitive details while explaining the recruitment method and the principal reasons. Parliament and a reviewing court should have lawful access to fuller material where their functions require it.

The Commission itself should receive resources for professional assessment and timely legal advice. A requirement to conduct rigorous recruitment without staff, information or a workable timetable invites dependence on whichever institution controls those resources. Independence has administrative conditions. A constitutionally protected signature is of limited value if the analysis behind it is produced elsewhere and accepted without examination.

11.3. Give presidential involvement an identifiable place

Presidential input should concern the demands of the office and be recorded at an appropriate stage. Suggestions about particular candidates should neither be prohibited automatically nor allowed to operate as unrecorded instructions. The candidate should undergo the same assessment, and the PSC should remain free to recommend otherwise.

Where the President does not accept a recommendation, recorded reasons should identify the concern and return the matter for proper consideration. The process should not permit an unassessed substitute to be inserted at the end. Nor should repeated returns become a means of wearing down the Commission until it recommends the desired person. A DPP-specific framework should regulate reconsideration, require reasons and expose delay to scrutiny, while respecting the appointment power conferred by article 120.

The model should not import the English and Welsh appointable-pool arrangement by assumption. Uganda must decide, through its own lawful framework, how much choice a PSC recommendation should leave and how that choice is justified. The minimum requirement is clear: a person whom the PSC has not properly assessed and recommended cannot acquire the constitutional recommendation merely through presidential preference.

11.4. Convert parliamentary vetting into an examination the public can assess

Parliament should receive the assessment record before the hearing, with adequate time to examine it. Public notice should invite relevant submissions within a defined period. The secretariat should screen submissions for relevance, seek corroboration where appropriate and disclose adverse material to the nominee. Public participation should improve the evidence, not become a contest in accusation.

The ordinary hearing should be public. Closure should apply to identified portions where a stated privacy, safety or other lawful interest requires it, with reasons and proportionate redactions. Committee deliberation need not be broadcast merely because the evidential hearing is open. What matters is that citizens can assess the nominee's answers and later understand the committee's decision.

Rules 171, 175 and 176 require particular attention. Blanket closure should give way to justified, limited confidentiality. The approval standard should be clarified so that constitutional approval addresses substantive fitness and the legality of the recruitment process, rather than merely the absence of a disqualifying credential defect. The scope of that reform must be justified against article 120 and constitutional supremacy; it should not be smuggled in as an administrative reinterpretation of an unchanged rule. [73]

The committee should publish a reasoned report, the voting outcome and any minority reasons, subject to necessary protection of information. The ordinary report should be capable of parliamentary examination, while the existing one-third referral mechanism should remain available. These measures would make representatives answerable for the quality of their assessment. They would also discourage an executive from nominating a candidate whose selection cannot withstand explanation.

Timeliness remains important. The current rules require a decision within fifteen working days and communication where inadequate information or another reason prevents a decision. [74] Reform should preserve a workable timetable while allowing genuine defects to be investigated. An expiry date should not silently turn missing information into approval. Nor should prolonged uncertainty be used to pressure the nominee or obstruct the office. Deadlines should require accountable action, with reasons for delay and recourse where the process is unlawfully stalled.

11.5. Make review possible before the remedy becomes largely symbolic

Mamdani's account of scandals disclosed without effective consequences also cautions against treating exposure as a complete remedy. [75] A public hearing can become ceremonial if committee members cannot pursue evidence or refuse an inadequately justified nomination. Publishing documents achieves little if nobody must answer what they reveal. The proposed framework therefore connects openness with powers to investigate, return an incomplete recommendation, explain approval and obtain timely review. Transparency should make institutional responsibility

72 Public Service Commission Regulations 2009, reg 18.

73 Constitution of the Republic of Uganda 1995, arts 2, 94(1) and 120(1); Rules of Procedure of the Parliament of Uganda 2025, rr 171(2), 175(1) and 176.

74 Rules of Procedure of the Parliament of Uganda 2025, r 175(2)–(3).

75 Mamdani (n 23) 241.

enforceable; it cannot perform that responsibility on the institution's behalf.

The final requirement is a retained and accessible record. Applications, assessment criteria, relevant correspondence, conflicts, reasons and responses to adverse material should be preserved. The law should define public access, access by affected candidates, parliamentary access and protected access in litigation. Those are different forms of disclosure with different safeguards.

An effective complaint mechanism should be able to address procedural unfairness while recruitment is still under way. It should not become a second selection panel or an automatic means of stopping every appointment. Judicial review should remain directed to constitutional compliance, relevant evidence, rationality, bias and fair process within the applicable jurisdiction. Where an appointment is set aside, a fresh lawful process will ordinarily better preserve the allocation of powers than judicial selection of a replacement.

Some reforms require changes beyond recruitment practice. Replacing renewable PSC terms with non-renewable terms would engage article 165(5). Importing a fixed five-year DPP tenure without examining article 120(7), which accords the DPP the same terms and conditions as a High Court judge, would be constitutionally careless. [76] Removing a constitutional actor from the appointment process would likewise require constitutional change. The more immediate reforms, competition, criteria, records, specialist assistance, justified confidentiality and reasoned scrutiny, should be designed around the existing distribution of responsibility, with the necessary statutory and procedural amendments.

12. Conclusion

Uganda's constitutional arrangement is neither an unrestricted presidential appointment power nor a guarantee that appointment will be independent in practice. It is a distribution of responsibilities whose effectiveness depends on the quality of their exercise. The PSC must reach a professional judgment it is free to withhold. The President must make an appointing decision that remains within that recommendation and can be defended by reasons. Parliament must examine the candidate and the process with enough information and authority for approval to mean something.

The strongest objection to closed headhunting is not that it necessarily appoints an unqualified person. It is that it asks the public to accept a conclusion of merit while withholding the comparison and explanation that could make the conclusion credible. When the importance of the office becomes the reason for relaxing scrutiny, the appointment system reverses the demands of constitutional responsibility.

England and Wales offers a useful discipline rather than a complete institutional template. Political choice survives, but an advertised competition, independent assessment and a recorded process constrain its exercise. Uganda can adopt those safeguards while preserving the additional role assigned to Parliament. Neither the domestic nor the regional Legal Brains Trust decision requires Uganda to preserve the present limits of scrutiny. The domestic judgment's own recognition of access to records should be used, while its treatment of blanket closure should be reconsidered against the constitutional requirements of public trust and proportionate limitation.

A DPP should enter office able to exercise lawful judgment without either dependence on an appointing patron or the burden of an unanswerable public suspicion. No recruitment system can guarantee courage or integrity throughout a term. A defensible system can, however, test those qualities, expose the reasons for the choice and ensure that professional independence is an advantage in obtaining office. That is the standard against which article 120(1) should be made to work.

Table of authorities

Cases

Bob Kasango v Attorney General and Another (Constitutional Petition 16 of 2016) [2021] UGCC 2 (18 March 2021)

Central Public Information Officer Supreme Court of India v Subhash Chandra Agarwal (Civil Appeals 10044, 10045 and 2683 of 2010, Supreme Court of India, 13 November 2019)

Centre for PIL v Union of India (2011) 4 SCC 1

Democratic Alliance v President of the Republic of South Africa [2012] ZACC 24, 2013 (1) SA 248 (CC)

Helen Suzman Foundation v Judicial Service Commission [2018] ZACC 8, 2018 (4) SA 1 (CC)

Legal Brains Trust v Attorney General of the Republic of Uganda (Reference 15 of 2020) [2025] EACJ 15 (First Instance Division, 27 November 2025)

Legal Brains Trust (LBT) Limited and 2 Others v Attorney General (Constitutional Petition 23 of 2015) [2023] UGCC 102 (12 September 2023)

Male H Mabirizi K Kiwanuka v Attorney General of the Republic of Uganda (Reference 29 of 2020, EACJ First Instance Division, 31 March 2026)

Mugarura v Attorney General (Constitutional Petition 23 of 2009) [2015] UGCC 5 (29 September 2015)

Renu v District and Sessions Judge Tis Hazari (2014) 14 SCC 50

S P Gupta v Union of India 1981 Supp SCC 87

United States Department of Justice v Reporters Committee for Freedom of the Press 489 US 749 (1989)

Legislation and Instruments

Access to Information Act 2005 (Uganda)

Administration of the Judiciary Act 2020 (Uganda), Act 8 of 2020

African Charter on Human and Peoples' Rights (1981)

Constitution of the Republic of Uganda 1995

Constitutional Reform and Governance Act 2010

International Covenant on Civil and Political Rights (1966)

Prosecution of Offences Act 1985

Public Service Commission Act 2008 (Uganda), Act 11 of 2008

Public Service Commission Regulations 2009 (Uganda), SI 1/2009

Rules of Procedure of the Parliament of Uganda 2021, SI 30/2021

Rules of Procedure of the Parliament of Uganda 2025, SI 43/2025

Treaty for the Establishment of the East African Community (1999)

UN, *Guidelines on the Role of Prosecutors* (1990)

UN Human Rights Committee, 'General Comment No 25' (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7

76 Constitution of the Republic of Uganda 1995, arts 120(7) and 165(5).

Bibliography and Official Recruitment Materials

Attorney General's Office, 'Campaign to Find New Director of Public Prosecutions Is Launched' (17 May 2023) <https://www.gov.uk/government/news/campaign-to-find-new-director-of-public-prosecutions-is-launched> accessed 22 October 2026

Civil Service Commission, *Recruitment Principles* (April 2018) <https://civilservicecommission.independent.gov.uk/document/02a-recruitment-principles-april-2018-final/> accessed 22 October 2026

Handsley E and Lynch A, 'Facing up to Diversity? Transparency and the Reform of Commonwealth Judicial Appointments 2008–13' (2015) 37 Syd LR 187

HC Deb 14 September 2023, HCWS1022 (written statement, 'Appointment of Director of Public Prosecutions')

Mamdani M, *Slow Poison: Idi Amin, Yoweri Museveni, and the Making of the Ugandan State* (Belknap Press of Harvard University Press 2025)

Ministry of Public Service, *The Uganda Public Service Standing Orders* (2021 edn)

How to Cite This Article

Amerit T. Appointment of the Director of Public Prosecutions of Uganda. International Journal of Judicial Law. 2026;5(6):63-80. doi:10.54660/IJJL.2026.5.6.63-80.

Creative Commons (CC) License

This is an open access journal, and articles are distributed under the terms of the Creative Commons Attribution Non Commercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0) License, which allows others to remix, tweak, and build upon the work non-commercially, as long as appropriate credit is given and the new creations are licensed under the identical terms.