

## DECISION TO PROSECUTE AND CHARGE

S179 of the Constitution & s20(1) of NPA Act - the NPA has the power, on behalf of the state,

to institute and conduct criminal proceedings, carry out any necessary function's incidental to

instituting criminal proceedings, and/or discontinuing criminal proceedings.

### NPA Discretion to prosecute:

South Africa does not, in principle, follow a system of compulsory prosecution, and

prosecuting officials are afforded a discretion, on behalf of the Director of Public

Prosecutions, whether or not to prosecute the suspect. This discretion is limited and does

not give the NPA carte blanche in deciding to institute prosecution or not. As this conflicts with the equal protection and due process principles of the criminal justice system but also constitutes unfair discrimination in accordance to Section 9 of the Constitution - there is judicial

and institutional oversight. In exercising this discretion, prosecutors should consider all

relevant factors. Discretionary prosecution is no licence for discriminatory prosecution - all

decisions by the NPA to prosecute or not to prosecute must be taken impartially, without

fear, Favour or prejudice. - *The National society of Prevention of Cruelty to Animals Case Law*

*When deciding to prosecute, the overarching consideration is in the interest of justice for the public benefit.*

THE INTEREST OF JUSTICE TEST: A Prosecutor must weigh - (1) whether there is a prima facie case against the accused, (2) which is in the public interest to prosecute or not.

### THE PRACTICAL COMMON-LAW TEST

# Decision To Prosecute

**Yijin Wang**



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