



## Calls for a Public Prosecutor's Office - The Urgent need for reforms

**19<sup>th</sup> February 2025**

In early February 2025, [media reported](#) of the Attorney General's intention to discharge three suspects in case number B 92/2009. The case was linked to the murder of senior editor Lasantha Wickrematunge, and the decision to discharge the suspects led to criticisms from sections of society. This resulted in President Anura Kumara Dissanayake meeting with the Attorney General where it was [reported](#) that the Attorney General maintained his position that there was a lack of evidence for a prosecution. Since then, it is [reported](#) that the CID has produced more evidence, and the discharge of the suspects has been temporarily [suspended](#). These incidents drew into sharp focus the need to ensure the independence of prosecutorial decisions, in order to ensure that relevant decisions can be made independent of any political considerations and in the interest of justice.

The Centre for Policy Alternatives (CPA) has [continuously called for](#) the independent prosecution of all emblematic cases, many of which have seen little to no progress despite the promise to pursue accountability. The assassination of Lasantha Wickrematunge is one such case. In a context of political influence and interference with the investigations and prosecutions of emblematic cases, CPA has consistently advocated for [the setting up of an independent public prosecutor's](#) office in Sri Lanka.

Considering the setbacks with pursuing justice, the proposed office must be insulated from political interference, and have the required expertise and resources to prosecute cases that may otherwise be prone to political interference. Despite the need to reform the present justice sector, successive governments have been unable or unwilling to introduce the required reforms to implement a structure that ensures independence and accountability. CPA notes the commitment by then candidate Dissanayake to introduce a '*Directorate of Public Prosecution (DPP) as a mechanism to eliminate delays within the judicial system and establishing a main DPP office and sub offices in the provinces which will remain independent of the Attorney General's Department to conduct cases on behalf of the government*' in his election [manifesto](#).

Most recently, the Minister for Justice and National Integration has [taken steps](#) to appoint an expert committee as an initial step in establishing an independent prosecutor's office. CPA notes such a process must be inclusive and must involve the participation of those who have called for justice sector reforms, including victims, lawyers, academics, civil society and others. Such a process facilitates a greater discussion on key issues, engages relevant stakeholders and garners trust in the fact that the present government is genuinely interested in initiating reforms in a transparent and accountable manner. Further, such a step will instil confidence among the public that reforms are meant to strengthen the rule of law and democracy in Sri Lanka and not merely as a token gesture to appease sections of society.

Against such a background, CPA has prepared this Q&A surrounding the need for a Public Prosecutor's Office. This Q&A is not meant to be exhaustive, but is meant to be a resource that can be used to constructively engage with the existing discourse around the Public Prosecutor's Office.

## **1. What is the office of the Attorney General at present?**

The Attorney General of Sri Lanka is the Chief Law Officer of the State. The Attorney General is accorded a unique constitutional position with regards to his duties, privileges and responsibilities, which are defined in the Constitution, Acts of Parliament, as well as, through convention.

The Attorney General is appointed in terms of Article 41C of the Constitution, in a similar manner that the Judges of the Supreme Court and Court of Appeal are appointed, i.e. nominated by the President, but with the approval of the Constitutional Council. The removal of the Attorney General has to be done in terms of the Removal of Officers (Procedure) [Act](#) No. 5 of 2002, which provides for a process involving both approval from Parliament and a report from a Commission of Inquiry.

Recently, it has been [reported](#) that the Attorney General's department is overworked and understaffed. Case delays are one of the greatest challenges facing Sri Lanka's justice system, and an overwhelmed Attorney General's office is a serious challenge in expediting the system.

## 2. What are the multiple roles played by the Attorney General at present?

The Attorney General plays several key roles in our legal system.

Firstly, the Attorney General is the **chief prosecutor**. This means that he has a wide discretion in initiating, maintaining and withdrawing prosecutions. Even in cases where it is a representative of the State that has committed an offence, it is up to the Attorney General to use his discretion in deciding whether to prosecute an offence. The Courts however [have recognized](#) that this is a power held in the Public Trust, and as such, if the discretion to or not to file an indictment is done in the violation of a Fundamental Right, such action or inaction could be challenged by way of a Fundamental Rights Application.

Secondly, the Attorney General is constitutionally mandated to perform certain roles in relation to the **process of legislative drafting and the passage of Bills**. This role starts early on in the legislative process, even before a Bill is published in the Gazette, the Attorney General will review the Bill for Constitutionality. Later, if a member of the public challenges the Constitutionality of a Bill in the Supreme Court, then the Attorney General has the right to be heard in such proceedings, and it has long been the practice of the Attorney General to take the same stance as the Executive, by and large, defending the Bill.

Thirdly, the Attorney General acts as the **legal advisor to the Government**. At present, the Attorney General's Department tender's legal advice, either upon advice being sought or on its own initiative to the Central Government, Provincial Councils, Government Departments, Statutory Boards and such other semi-government institutions with regard to civil and criminal matters including constitutional and commercial jurisdictions. In carrying out this role, the Attorney General not only appears on behalf of the State in judicial and quasi-judicial forums locally, but also represents the State globally before international bodies or organizations. Often delegations representing Sri Lanka before various human rights bodies or economic forums include representatives from the Attorney General department. The Attorney General is also called upon to advise the legislature and the Executive on a variety of different legal and constitutional issues.

### 3. When does a conflict of interest arise when carrying out these roles?

The roles played by the Attorney General in his capacity as advisor to the government, role of public prosecutor and role of advisor to state officers have come under criticism for lacking independence, largely arising out of a conflict of interest.

Rule 44(1)(b) of the Supreme Court Rules, 1990 require that the Attorney General is made a Respondent in any Fundamental Rights Application, and often the Attorney - General will appear on behalf of various State actors including the President, Cabinet Ministers and secretaries, members of Commissions, members of various authorities and even police officers. This creates a conflict of interest when the same officers who are required to defend these State actors in one capacity, are also required to hold them accountable in other capacities. For instance, when a police or public officer, defended (even at the leave to proceed stage) by the Attorney General, has been found to have violated the freedom from torture in the fundamental rights jurisdiction, [it is unrealistic](#) to expect the same office of the Attorney General to prosecute that officer for criminal liability.

The Special Rapporteur on the Independence of Judges and Lawyers, Monica Pinto, on her mission to Sri Lanka in 2016 studied the role of the Attorney General's Department in her Preliminary [Observations and Recommendations](#). She expressed her concern over the dual role played by the Attorney General as the chief legal adviser to the Government and the head public prosecutor. Commenting on the role of the Attorney General she noted that the Attorney General acting as a representative of the State creates the impression that the Attorney General represents the Government's interests foremost and not the public interests. This in turn undermines the independence and credibility of the prosecution, particularly in politically sensitive cases.

### 4. How do these conflicting roles impact the different functions of the Attorney General?

The Attorney General cannot impart all his or her duties in an impartial, independent, and efficient manner due to the conflict and incoherence between and among such duties. The real and/or perceived bias created by the conflicting duties and roles of the Attorney General undermines the independence and credibility of public prosecution in Sri Lanka. Significantly, this also impedes justice through alleged political interference and influence on which cases are prosecuted and which are not. This is further complicated by the lack of checks and balances on the Attorney General's discretions and powers.

Additionally, this perceived bias/ conflict of interest, undermines the functions of the Attorney General's Department and its prosecutorial decisions. Thereby even in situations where (based on the available evidence) the correct prosecutorial decision might have been made, the lack of insulation from the political actors of the State, undermines the credibility of these decisions.

## **5. What are the key principles for an effective Public Prosecutor's Office?**

A Public Prosecutor's Office plays a crucial role in ensuring the fair and effective prosecution of key cases. An effective Public Prosecutor's Office would be independent of the political branches of government and objective, which ensures that prosecutorial decisions are insulated from political or external influences. Further, an independent prosecutor's office can centralize and coordinate prosecutorial decisions, improving the efficiency of the legal process, particularly in high-profile and sensitive cases. An independent public prosecutor is also a key mechanism for holding the government accountable, including by bringing key cases against public officers or institutions.

In the design of a public prosecution system, Sri Lanka's unique context must be taken into account in order for the necessary checks and balances to be put in place. There are however some integral principles which must in place for a Public Prosecutor's Office to be independent and effective. They are as follows:

### Impartiality and insulation from influence

Public prosecution should be non-partisan and insulated from any political bias. This would enable the officers of the law to enforce the law in application to all peoples, institutions, and corporations equally. Considerations to ensure impartiality include recruitment practices and regulations, such as legislated tenure of employment which is one example of protecting judiciaries from influence and fear of external influences.

### Independence in structure and function

Any office of the department of prosecution should stand independently from other arms of government. This is to reaffirm the separation of powers within democratic governance which lends to accountability of government action, checks and balances of decision-makers, and transparency of the justice system.

Prosecutorial decisions are complicated and require balancing multiple competing considerations and rights. As such the officers engaging in such a function should be insulated from political pressure and also fear of political retribution in the future.

#### Trust building with the public

A public prosecution is a society's principal means of pursuing punishment of criminal behaviour and is key in instilling the trust of the general public within the justice administration of the government. It's important whatever form the prosecution body takes, it first and foremost serves public interests and is proactive in increasing accessibility and transparency of the justice system.

#### Sufficient resourcing and training

An office of public prosecution requires independent financial resourcing, wide and comprehensive recruitment processes, and the logistical ability to provide investigation services as well as legal and administrative capacities. Further, there must be capacity to train and up-skill members of this office, to maintain independence in resourcing and ensure efficient and fair prosecution.

#### Accountability

The office has to be accountable to Parliament, particularly on how it utilises the resources provided and how it performs its functions. Parliament needs to consider how the existing committee system can be utilised in a manner to act as an effective oversight on independent institution. Any such committee (which is involved with oversight) should not be partisan and needs to have equal representation of government as well as opposition Members of Parliament.

### **6. What are some of the structural features recommended for an independent Public Prosecutor's Office?**

CPA notes that the setting up of a Public Prosecutor's Office must be done by a law passed by Parliament, and to ensure the law is genuinely designed to achieve its purpose with the necessary checks and balances in place, a wide range of stakeholders who have experience with the criminal justice. CPA has [previously](#) made recommendations for the legal and structural framework of a possible independent Public Prosecutor's Office. These recommendations include the following;

- a. The Public Prosecutor's Office should consist of the Director and the members of the staff of the Office.

- b. The Director of the Office should be appointed by the President, through a transparent procedure subject to the approval of the Constitutional Council. A transparent process needs to be adopted by the Constitutional Council in vetting all such appointments, this should be provided for by the rules of the Constitutional Council.
- c. It is recommended that the Director shall be a legal practitioner with at least 20 years of experience and has previous experience in prosecutions.
- d. It is recommended that the period of office of the Director shall not exceed 5 years, but he/she will be eligible for re-appointment.
- e. In making recruitments to the Office, due regard must be paid to ensure that the composition of the Office reflects the pluralistic nature of Sri Lankan society including gender. Of critical importance is to ensure the office is staffed in a manner that allows it to function in all judicial divisions in Sri Lanka, with special emphasis placed to the language used in such Courts. The members of the Office shall be persons of integrity and possess experience and qualifications relevant to the carrying out of the functions of the Office.
- f. In order to ensure that there is no conflict of interests, the Director and the members of the staff of the Office who are legal practitioners must not engage in practice as a legal practitioner outside the duties of his or her office or engage in paid employment outside the duties of his or her office.

## **7. Have similar models been successful elsewhere in the world?**

Public prosecution performs a crucial role in democratic societies around the world, and multiple positive elements from comparative contexts such as Australia, the United Kingdom, Japan, Hong Kong, Slovenia, and Denmark can be considered. A detailed analysis of these models will follow this brief note.

CPA has written more extensively on the issue, and a more detailed discussion on these matters can be found in the report titled [‘Rethinking the Attorney Generals Department in Sri Lanka: Ideas for Reform’](#), published by the Centre for Policy Alternatives in November 2020.