



# General Assembly

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## Human Rights Council

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Human rights situations that require the Council's attention

### **Written statement\* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2012]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Sri Lanka: Abductors threaten the supreme court of Sri Lanka**

The Asian Legal Resource Centre (ALRC) is gravely concerned about the abduction of Ramasamay Prabhakaran, 42, who was bundled into a white van by seven men armed with assault rifles and hand guns. This was two days before a fundamental rights case filed by him was to be taken up at the Supreme Court of Sri Lanka. In a written statement to the thirteenth session of the Human Rights Council in February 2010<sup>1</sup>, we already mentioned this phenomenon of abductions perpetrated by armed men in 'white vans'.

The ALRC has documented two other cases concerning persons who were also assassinated for pursuing redress before courts for violations of their fundamental rights, allegedly by the persons against whom they were pursuing their complaints, namely Gerald Perera and Sugath Nishantha Fernando.

The violation of the rights of torture victim Perera was recognized by the Supreme Court; however, he was killed a few days before he was to give evidence before the Negambo High Court in a case filed against several police officers who were attached to the Wattala police station, under the Convention against Torture (CAT) Act No. 22 of 1993.

In another case, torture victim Sugath Nishantha Fernando, who was pursuing a fundamental rights application relating to the torture of himself and his family by 11 police officers working in the Negambo area, was also assassinated, and even up to date no credible inquiry has been carried out into this murder. Recently, the United Nations Human Rights Committee (UNHRC) had expressed their views on the torture and assassination of Sugath Nishantha Fernando, and categorically stated that Sri Lanka has failed to provide redress for the violations of his rights. (Ref. Communication No: 1862/2009. Decided on the 17 October 2011-Ref. CCPR/3/103/D1862/2009).

The ALRC is of the opinion that the abduction of Prabhakaran is a direct affront to the Supreme Court. So were the murders of Gerald Perera and Sugath Nishantha Fernando, who were victims who resorted to the courts for protection and in the search for justice. This abduction threatens all persons who wish to come before the Supreme Court and other courts to place their grievances about the violations of their rights, to seek the intervention of the judiciary for their protection and for redress. Such killings have a chilling effect on the administration of justice in Sri Lanka.

It is the duty of the judiciary itself to protect those who come before them seeking protection and justice. If victims of violations desist from seeking justice due to the reprisals for doing so, the entire administration of justice relating to human rights will hardly be of any use. In the circumstances, it is not surprising that the number of applications filed before the Supreme Court on fundamental rights have declined.

The defeat of judicial intervention is always an objective of the executive that fails to protect the rights of the citizens. The objective of the executive is to defeat judicial interventions and attempt to reduce the judiciary to administrative functions. The attack on the juridical function has taken many forms, including far reaching constitutional changes, and the intimidation of witnesses is part of this strategy. The foundation of law is the recognition of the juridical. If the recognition of the juridical is displaced by the administrative, then the very foundation of the law is undermined.

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<sup>1</sup> ASIA: Council failing to address situations of widespread forced disappearances  
[http://www.alrc.net/doc/mainfile.php/alrc\\_st2010/594](http://www.alrc.net/doc/mainfile.php/alrc_st2010/594)

The above statement may be explained by going into the meaning of “juridical” as compared to the administrative. Juridical is defined as follows: Black’s Law Dictionary, which means relating to administration of justice, or office of a judge. Regular; done in conformity to the laws of the country and the practice which is there observed; on the other hand, Merriam-Webster defines it: of or relating to the administration of justice or the office of a judge: of or relating to law or jurisprudence: legal

By way of illustration, the meaning of juridical can be explained by comparing it to the term “medical”. Doctors engage as medical professionals under their obligation to think and to make decisions relating to their work on the basis of medical science, theories, and practices. They will analyze a complaint of a patient by way of gathering information, and come to findings on the basis of medical knowledge.

In the same way, those who act within the judicial system are expected to gather information, analyze it and come to findings on the basis of legal notions, and the way the law is practiced.

As compared to this, what administrative means is the way of action of the executive. The considerations on which the executive makes their decisions and proceeds to action are based on considerations pertaining to the administrative field.

Thus, the way those who have obligations under the juridical and those who have obligations under the administrative think and act distinctly and separately. When those who are in the field of the juridical are compelled by circumstances or by other compulsions to think and act in a similar manner those who are dealing with the administrative, which means those who have obligations under the executive, then the judicial is replaced with the administrative.

Let us look into a few examples to illustrate this matter. The executive, dealing with the problem of crime, may find it more efficient to arrest and detain persons whom they perceive as creating obstacles to the manner in which the executive is trying to resolve problems. However, to those who have to act within the juridical, for example, judges, the mere considerations of what may be perceived as efficient is not the basic consideration in dealing with arrest and detention. The judges have to make their decisions on the arrest on the basis of juridical notions which involve the rights of the individuals and personal freedom. In terms of such judicial notions, arrest is permitted only in the process of investigations into a crime so as to bring the person before court, or by way of punishment after conviction. What the law understands as a crime would itself be defined and interpreted only in terms of juridical notions of what a crime is. The executive may want to define crime in terms of whatever it considers an obstacle to its actions. For example, the executive may consider a person leading demonstrations as a threat and may want to arrest and detain him. However, those who are to act within the parameters of the juridical recognize the juridical notions of the freedom to protest and the limits of that freedom is also defined in terms of juridical notions.

The executive may wish to modify the law so as to take away juridical notions and to replace them with administrative policies and considerations. If they succeed, that amounts to the displacement of the juridical and replacement with the administrative.

The independence of the judiciary can only be exercised where the sphere of the judicial is clearly understood, recognized and respected. If the juridical is displaced by the administrative, the very foundation of the independence of the judiciary is undermined to the extent of the undermining of the judicial. If the judges make decisions purely on the basis of administrative considerations, and not basing themselves on considerations based on the juridical, then their decisions too are of administrative nature, and not of juridical substance.

The transformation that has been happening in many countries, particularly in countries where the juridical notions have not been developed or where, after such development, has been displaced by the administrative, has external appearances of the judicial (such as having courts, and judges wearing the costumes of judicial officers, and even making “judgments” and orders), the functions that are being exercised are the functions of the executive, not those belonging to the juridical.

As a human rights organization committed to defending the independence of the judiciary and the rights of all citizens to find judicial redress for violations of human rights, we call upon the UN Human Rights Council to use its authority to protect the sphere of the juridical in Sri Lanka and not allow it to be submerged into the administrative.

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