



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2978/2017\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Navya Sherifdeen
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sri Lanka
<i>Date of communication:</i>	26 January 2017 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 19 May 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	19 October 2021
<i>Subject matter:</i>	Discrimination in access to public school based on perceived ethnicity and religion
<i>Procedural issue:</i>	Non-substantiation
<i>Substantive issues:</i>	Discrimination on the grounds of ethnic origin and religion; access to court
<i>Articles of the Covenant:</i>	2 (3), 14, 16, 17, 18, 25 and 26
<i>Articles of the Optional Protocol:</i>	2 and 3

1. The present communication was submitted by Navya Sherifdeen, a citizen of Sri Lanka, born on 30 July 2009, who is represented by her father, Jehangir Sherifdeen. The author alleges that by rejecting her application to attend a publicly funded school on discriminatory grounds, the State party has violated her rights under articles 2, 14, 16, 17, 18, 25 and 26 of the Covenant. The author is not represented by counsel.

#### Facts as submitted by the author

2.1 On 19 June 2014, the author's mother submitted an application for admission of the author to Visakha Vidyalaya, a government national school. According to the government circular, which regulated the admissions process, the author was eligible for admission to the

\* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

\*\* The following members of the Committee participated in the examination of the present communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

\*\*\* An individual opinion by Committee member Gentian Zyberi (partially dissenting) is annexed to the present Views.



school based on her place of residence. It should therefore have been mandatory to call her for an interview. Having not heard back regarding the interview process, the author's father managed to arrange a meeting with the Deputy Principal of the school in order to discuss the rejection of the application. She stated that the author had not been called for an interview because the documents submitted with her application were not in order. After having examined the application file together with the author's father, the Deputy Principal agreed that the documents were in order and that a mistake had been made. She promised to discuss the matter with the Principal of the school.

2.2 On 26 September 2014, the author's father lodged a complaint with the Human Rights Commission of Sri Lanka. On 4 November 2014, he filed an appeal with the school Appeals and Objection Board against the rejection of his daughter's application. In his appeal, he noted that children who had received lower marks than his daughter had been admitted to the school.

2.3 On 25 November 2014, the Human Rights Commission summoned the parties in the case before it to an inquiry. During this inquiry, the Principal of the school stated that the only reason she had not considered the author's application and had not called her for an interview was that, as the author's paternal grandfather was Ceylon Malay, the author and her father were therefore Ceylon Malay and bore a Muslim name.<sup>1</sup> The Principal had brought the author's application to the school to the inquiry. A remark indicating "Muslim" had been written on the first page of the application. A senior teacher accompanying the Principal to the meeting stated that this was a standard procedure and that if a Christian child had applied for admission to the school the word "Christian" would have been written on the application and the child would have been eliminated from the selection process. The Principal stated that only applicants with Sinhala Buddhist names were selected and also stated that the Minister of Education and the Secretary of Education had asked her to maintain her decision and not admit the author to the school. She added that she knew the family were Buddhists but had a problem with their surname, stating that if they were to change their surname she might reconsider her decision.<sup>2</sup> On 3 December 2014, the Human Rights Commission found that the school had violated domestic law and ordered it to admit the author. The Principal did not comply with the order. She also removed the author's appeal from before the Appeals and Objection Board so that it would not be considered.

2.4 On 2 January 2015, the author's father filed a complaint before the Supreme Court in which he claimed that his daughter's rights had been breached. The author states that a Deputy Solicitor General represented the school in the case before the Supreme Court and had intentionally delayed the proceedings before the Court for 20 months.

2.5 On 12 January 2015, the Human Rights Commission of Sri Lanka summoned the Principal of the school for a second inquiry. The representative of the Secretary of Education also participated in the meeting. The Principal informed the Commission that she had no intention of admitting the author to the school.

2.6 On 21 January 2015, the author's father was threatened by men unknown to him. He claimed that they looked and behaved like military personnel. Those men threatened him and his family with physical harm, stating that he should withdraw his complaint before the Human Rights Commission. The author's father notes that the Principal of the school is a colonel in the army of Sri Lanka and thus would have had the resources and the men needed to actually harm the family. The author's father made a complaint to the police about the incident but he did not receive information on any investigative action taken. On 26 February 2015, the author's mother received two calls on her mobile telephone from an unknown

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<sup>1</sup> A transcript of the inquiry according to which a teacher at the school stated that applications from children who are not Sinhala Buddhist are removed from the application process is enclosed with the submission.

<sup>2</sup> It is noted in the decision of the Human Rights Commission that the Principal stated that the school is a Sinhala Buddhist school which traditionally admits only Sinhala Buddhist children, with only 0.5 per cent of those attending being of another religion, in accordance with admission limits. The Principal also stated that as the author's grandfather was Sri Lankan Malay, the author was considered to be Sri Lankan Malay by heritage and was thus rejected.

person who threatened her and demanded that her family withdraw the complaint before the Supreme Court, indicating that, otherwise, the family would be killed.

2.7 On 11 July 2016, the Supreme Court dismissed the author's complaint. In its reasoning, the Supreme Court found that the author's arguments about her not having been selected owing to her Muslim name had not been sufficiently substantiated and that her application had been rejected because her marks had not been high enough. The author states that at that point seven Supreme Court judges had already been involved in the case owing to the delay in the proceedings. All of them had expressed views in the family's favour. In July, however, the case was examined by a bench of judges who were biased and had expressed views in favour of the school. She submits that the judges relied only on documents that had been obtained after the school admission process had been finalized and could not have been taken into account when the contested decision was made. The author argues that the evidence submitted by her family was not taken into account and that the Supreme Court disregarded her arguments about rejection of her application based on discrimination.

### **Complaint**

3.1 The author claims that she was not admitted to the school owing to her perceived ethnicity and religious affiliation. She notes that the school is prestigious and that alumni of the school work as judges in the courts of Sri Lanka and in government offices. She claims that, although the school is public, priority is given to Sinhala Buddhist children, who make up 99 per cent of the student body. The author notes that, while her family is Buddhist, they are perceived as being of the Muslim faith owing to their last name. She claims that her application to the school was rejected only because of her surname.

3.2 The author invokes articles 2, 14, 16, 17, 18, 25 and 26 of the Covenant. She claims that her right to equal protection before the law has been violated and that she was discriminated against in violation of the Constitution of Sri Lanka, which prohibits discrimination on the basis of race, religion, language, caste, sex, political opinion, place of birth or any other such grounds. That her name created the perception that she was not Sinhala Buddhist was the only reason that she was denied admission to a national school, despite qualifying for admission under domestic regulations. She claims that the judgment of the Supreme Court was arbitrary and constituted a denial of justice, as irrelevant factors were considered by the Court, while relevant factors were intentionally disregarded.

### **Lack of cooperation by the State party**

4. The Committee notes that the State party failed to submit its observations on admissibility and the merits of the present communication. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the merits of the author's claims. The Committee recalls that it is implicit under article 4 (2) of the Optional Protocol that States parties have a duty to examine in good faith all allegations brought against them and to make available to the Committee all the information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations to the extent that they have been properly substantiated.

### **Issues and proceedings before the Committee**

#### *Considerations of admissibility*

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the case is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee takes note of the author's claim that she has exhausted all effective domestic remedies available to her. Although the State party did not submit any information in that regard, the Committee considers that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

5.4 With regard to the author's claim under article 2 of the Covenant, the Committee recalls its jurisprudence to the effect that the provisions of article 2 of the Covenant set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol. Consequently, the Committee declares this part of the communication to be inadmissible under article 3 of the Optional Protocol.

5.5 The Committee notes the author's claims under articles 16, 17, 18 and 25 of the Covenant. The Committee observes that the author did not provide any explanations as to how these rights have been violated by the State party. The Committee consequently considers that the author has not sufficiently substantiated her claims for purposes of admissibility and that this part of the communication must therefore be declared inadmissible in accordance with article 2 of the Optional Protocol.

5.6 The Committee notes the author's claims that the proceedings before the Supreme Court were arbitrary and constituted a denial of justice in violation of article 14 of the Covenant. In this regard, the Committee observes that the author's allegations are quite succinct and relate primarily to the evaluation of facts and evidence by the Supreme Court. In this respect, the Committee recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. The Committee will exercise its powers of review only if it has been ascertained that the evaluation or interpretation was clearly arbitrary or amounted to a denial of justice. The Committee notes that in the present case, the information contained on file does not permit it to conclude that the court proceedings in the author's case have suffered from such defects. In these circumstances, the Committee finds that the author has failed to substantiate sufficiently her claim under article 14 of the Covenant, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

5.7 The Committee finds that the author has provided sufficient information in support of her claim under article 26 of the Covenant. The Committee therefore declares the communication admissible in this part and proceeds with its consideration of the merits.

#### *Consideration of the merits*

6.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol. The Committee notes that, in failing to respond to a communication, or responding incompletely, a State that is the object of a communication puts itself at a disadvantage because the Committee is then compelled to consider the communication in the absence of full information relating to the communication. In the absence of any explanations from the State party in respect of the merits, due weight must be given to the author's allegations<sup>3</sup> to the extent that they have been sufficiently substantiated (see para. 4 above).

6.2 The Committee notes the author's claim that, by refusing her admission to Visakha Vidyalaya school, a government national school, owing to her perceived ethnicity and religious affiliation, the State party has violated article 26 of the Covenant. According to the government circular under which the admissions process was regulated, the author was eligible for admission to the school based on her place of residence. The Supreme Court found the author's arguments about her not having been selected to have been insufficiently substantiated and concluded, in July 2016, that the author's application had been rejected because her marks were not high enough for admission. The author claims in this respect that other children who had received lower marks than hers were admitted to the school. The Committee, however, cannot overlook the fact that, as follows from the documents provided, the author's perceived ethnicity and religious affiliation indeed played an important role in her not being admitted to the school. The Committee observes that the Principal of the Visakha Vidyalaya school explicitly confirmed in the proceedings before the Human Rights Commission that the author's application had been refused solely on the basis of her family name, a Muslim name, and her paternal grandfather's perceived Ceylon Malay ethnicity. The

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<sup>3</sup> See, for example, *Sannikov v. Belarus* (CCPR/C/122/D/2212/2012), para. 4.

Principal stated that the school is a Sinhala Buddhist school which traditionally admits only Sinhala Buddhist children and that only 0.5 per cent of those attending were of another religion, in accordance with admission limits. The Human Rights Commission of Sri Lanka came to the conclusion that the school had violated domestic laws, which regulated the admissions process, by focusing on establishing the presumed religious beliefs and ethnicity of the author's ancestors. The Committee considers that even assuming that there were several grounds which contributed to an overall assessment of the author's enrolment in the school and ultimately to her elimination from the application process, the illegitimacy of one of the grounds had the effect of contaminating the entire decision.<sup>4</sup> In the absence of the State party's explanations, the Committee consequently finds that the facts in the present case disclose a violation of article 26 of the Covenant.

7. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 26 of the Covenant.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. It is required to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide the author with adequate compensation and ensure that her application for admission to a public school is considered in full accordance with the requirements of the Covenant. The State party is also under an obligation to take all steps necessary to prevent similar violations occurring in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in the State party.

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<sup>4</sup> The "contamination approach" is also present in the jurisprudence of the European Court of Human Rights (see *E.B. v. France*, Application No. 43546/02, Judgment, 22 January 2008, para. 80; and *Aleksandr Aleksandrov v. Russia*, Application No. 14431/06, Judgment, 27 March 2018, para. 26). See also the Committee's general comment No. 18 (1989) on non-discrimination, paragraph 7, where the Committee states that it believes that the term discrimination "should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".

## Annex

### Individual opinion of Committee member Gentian Zyberi (partially dissenting)

1. I am in agreement with the Committee's view finding a violation of article 26 of the Covenant. However, in my view, the facts of the case disclose a violation also of article 24 (1) of the Covenant, given that the author is a child who has been denied in a discriminatory manner, based on her perceived religion and ethnicity, the necessary measures of protection of her right to education.

2. Such a violation, even if not explicitly claimed by the author, could have been discussed by the Committee. While I am not arguing for a broad acceptance of the principle of *jura novit curia*,<sup>1</sup> especially when an author is represented by counsel, that is not the case here and the communication clearly raises issues under article 24.<sup>2</sup> This is attested by the discriminatory treatment of the author, her age and the need to consider the best interests of the child.

3. That her Muslim name created a perception of her not being Sinhala Buddhist was the only reason she was denied admission to a national school, despite qualifying for it under the domestic regulations (para. 3.2). In 2014, the Commission on Human Rights of Sri Lanka found that the school had violated domestic law and ordered it to admit the author (para. 2.3). However, the Principal not only did not comply with the order but also removed the author's appeal before the Appeals and Objection Board so that it would not be considered (*ibid.*).

4. A number of international human rights conventions establish the right to education.<sup>3</sup> Article 24 (1) of the Covenant provides that "[e]very child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State". These measures of protection include access to education without discrimination and the Committee has considered problems of education within the framework of article 24 in its concluding observations.<sup>4</sup> The term "discrimination" in the context of the right to education should be construed similarly to the term as defined under article 1 of the Convention against Discrimination in Education, where it is understood "to include any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular of depriving any person or group of persons of access to education of any type or at any level".<sup>5</sup> The right to education in this context can also be interpreted in the light of article 28 (1) of the Convention on the Rights of the Child,<sup>6</sup> which in a similar manner provides that "States parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity" shall undertake particular actions. Importantly, the right to education is included in the Constitution of Sri Lanka, whose article 27 (2) (h) provides that the objectives of the State

<sup>1</sup> A position that is endorsed by the European Court on Human Rights (see, for example, *Scoppola v. Italy* (No. 2), Application No. 10249/03, Judgment, 17 September 2009, para. 54).

<sup>2</sup> For a similar position, see, for example, *Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012), para. 3.2; and *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), annex, para. 1, and appendix. See also William A. Schabas, *Nowak's CCPR Commentary*, 3rd revised ed. (Kehl, Germany, N.P. Engel, 2019), pp. 1056–1057, especially para. 37.

<sup>3</sup> A/HRC/23/35, para. 15.

<sup>4</sup> Schabas, *Nowak's CCPR Commentary*, pp. 682–683, especially para. 32.

<sup>5</sup> Sri Lanka is a party to this treaty. For more information, see <https://en.unesco.org/themes/right-to-education/convention-against-discrimination>.

<sup>6</sup> Sri Lanka is a party to this convention. For more information, see <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> and the United Nations treaties database, at <https://treaties.un.org/pages/ParticipationStatus.aspx>.

include “the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels”.<sup>7</sup>

5. In its general comment No. 17 (1989) on the rights of the child to rest, leisure, play, recreational activities, cultural life and the arts, the Human Rights Committee found that: “In the cultural field, every possible measure should be taken to foster the development of [children’s] personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression” (para. 3). In its general comment No. 13 (1999) on the right to education, the Committee on Economic, Social and Cultural Rights stressed that education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (paras. 6 (b) and 31–37). The Special Rapporteur on Education has addressed the importance of equity and inclusion in education by asserting that “prohibition against discrimination aims at addressing, in law and in practice, the barriers which exclude some students from accessing education or which impair their success once they are in schools”.<sup>8</sup> The Special Rapporteur on Education has pointed out that “the fair and equal right of access to education has been widely adjudicated”.<sup>9</sup> The facts of the case demonstrate that the domestic authorities did not comply with their obligations under article 24 of the Covenant.

6. Read in conjunction, articles 26 and 24 of the Covenant oblige States parties to go beyond the simple prohibition of discrimination and to ensure that the principle of equality of educational opportunities is turned into reality. In this case, the Committee should have found a violation of article 24 (1) alongside the violation of article 26.

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<sup>7</sup> For more information, see <https://www.parliament.lk/files/pdf/constitution.pdf>; and <https://constitutionnet.org/country/constitutional-history-sri-lanka>.

<sup>8</sup> A/72/496, para. 19.

<sup>9</sup> A/HRC/23/35, para. 45.