
**BEDDAGE TUSHARA WICKRAMANAYAKA *and* ADRIANA
LAKSHYA WICKRAMANAYAKA CUTTER (MINOR)**

-V-

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

COMMUNICATION SUBMITTED FOR CONSIDERATION UNDER THE
FIRST OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS

Before:

**The United Nations Human Rights Committee
C/O OHCHR-UNOG**

1211 Geneva 10, Switzerland

Fax No. (41-22) 9179022

On behalf of:

**Beddage Tushara Wickramanayaka,
& Adriana Lakshya Wickramanayaka Cutter (Minor)**
'Ixora Villa', 570, Fatima Road, Kochchikade
Sri Lanka

Submitted by:

Beddage Tushara Wickramanayaka
'Ixora Villa', 570, Fatima Road, Kochchikade
Sri Lanka

Date: 18th August 2019

1. INTRODUCTORY INFORMATION

This complaint relates to two Sri Lankan citizens, a mother and a minor daughter. The gravamen of the complaint is that (1) the minor daughter was subjected to corporal punishment whilst at a private international school, that (2) Sri Lanka discriminates between government schools and other schools, whereas corporal punishment is only prohibited in government schools and there is no unequivocal prohibition of corporal punishment in schools by Law (3) that Sri Lanka has taken no steps to address such disparity, thus subjecting minors in schools other than government schools to discriminatory treatment, and (4) no effective investigations took place regarding the complaints made to local authorities regarding the corporal punishment of the girl child.

A. Information regarding the Applicants

The Applicants in this communication are Sri Lankan and British dual citizenship holders and are mother and daughter.

First Applicant

- a) Family name : **Wickramanayaka**
- b) First name(s) : **Beddage Tushara**
- c) Nationality : **Sri Lankan and British dual citizens**
- d) Date and place of birth : **21st August 1966 at Colombo, Sri Lanka**
- e) Address for correspondence on this complaint : **Ixora Villa, 570 Fatima Road, Kochchikade, Sri Lanka**

Second Applicant

- a) Family name : **Wickramanayaka Cutter**
- b) First name(s) : **Adriana Lakshya**
- c) Nationality : **Sri Lankan and British dual citizens**
- d) Date and place of birth : **23rd June 2006 at Milton Keynes, United Kingdom**
- f) Address for correspondence on this complaint : **Ixora Villa, 570 Fatima Road, Kochchikade, Sri Lanka**

B. Information on Person Submitting the Complaint

The 1st Applicant [**Dr. Beddage Tushara Wickramanayaka**] submits this complaint on behalf of herself and the 2nd Applicant her daughter [**Adriana Lakshya Wickramanayaka Cutter**]

2. STATE CONCERNED / ARTICLES VIOLATED / EXHAUSTION OF DOMESTIC REMEDIES / OTHER INTERNATIONAL PROCEDURES

A. State concerned:

1. The State Party to the *International Covenant on Civil and Political Rights* [hereinafter, '*ICCPR*' or '*the Covenant*' and the *First Optional Protocol* against which the Communication is directed is *The Democratic Socialist Republic of Sri Lanka* [hereinafter, '*Sri Lanka*' or '*the Respondent State*'].

B. The Optional Protocol against which the communication is directed

2. Sri Lanka acceded to the ICCPR on 11th June 1980 (entry into force on 11th September 1980) and the First Optional Protocol to the ICCPR on 3rd October 1997 (entry into force on or around 3 January 1998).
3. This communication is submitted for consideration under the *First Optional Protocol* to the *International Covenant on Civil and Political Rights*.

C. Article(s) of the ICCPR Allegedly Violated:

4. The 2nd Applicant of this communication, [the daughter of the 1st Applicant] was a victim of corporal punishment in her school *Gateway College, Negombo, Sri Lanka* which is referred to and identified as an *international school* [hereinafter sometimes referred to as '*the international school*' or '*the school*']. At the time of the incidents of the alleged corporal punishment (on or around 12th January 2018), the 2nd Applicant was 11 years old and therefore, a minor.
5. The Applicants allege the violation of the following Articles *inter alia*, of the ICCPR;
 - a) Violation of *Article 7* of the ICCPR by way of the infliction of corporal punishment, read with *Article 2* which requires the State party to take proactive measures to respect and ensure the rights recognised by the Covenant;
 - b) Violation of *Article 9* of the ICCPR as everyone has the right to liberty and security of person;
 - c) Violation of *Article 2* of the ICCPR for failure to adopt legislative measures against *corporal punishment* in 'international schools' or private schools;
 - d) Violation of *Article 24* of the ICCPR for the failure of the State party to take "*such measures of protection as are required by his status as a minor*"
 - e) Violation of *Article 26* of the ICCPR for the failure of the State party to provide equal protection of the Law inasmuch as, any State regulation regarding corporal punishment is solely limited to Government Schools;
 - f) In particular, in addition to the substantive violations there was a failure on the part of the State to investigate properly the violations committed against the victim, prosecute

those responsible and thereby provide an effective remedy for the Applicants.

D. Exhaustion Of Domestic Remedies/Application To Other International Procedures:

6. The Applicants by way of a Fundamental Rights application bearing number SC(FR) 241/2018 sought to challenge the corporal punishment inflicted on the Applicant Minor and the lack of statutory mechanisms prohibiting corporal punishment and cruel, inhuman and degrading treatment of children in all schools including the said international schools.

A copy of the petition dated 30th July 2018 filed in the Supreme Court of the Democratic Socialist Republic of Sri Lanka bearing SC(FR) 241/2018 is annexed to this complaint and marked as annexure 1 Such petition contains several annexures and only the relevant annexures have been annexed, namely [P3, P11, P13, P17, P18, P21 and P22].

The Applicants respectfully reserve their rights to submit all the annexures if such becomes necessary.

7. However, the Supreme Court did not grant ***Leave to Proceed***, thus the application was dismissed on 22nd March 2019. No reasons were stated for the refusal to grant *Leave to Proceed*. Such *Leave to Proceed* is the first, *prima facie* stage in any fundamental rights application. This means that the Supreme Court was of the view that there was no *prima facie* case disclosed in the facts placed before the Court to warrant adjudication.

A copy of the Supreme Court Minutes pertaining to SC(FR) 241/2018 are flagged as annexure 2.

8. By virtue of *Article 126* of the Constitution (Sri Lanka), the Supreme Court is the sole and final forum at which a fundamental rights violation can be agitated. By virtue of *Article 126(2)*, fundamental rights applications “(...) **may be proceeded with only with leave to proceed first had and obtained from the Supreme Court**” By denying *Leave to Proceed*, the Applicants have been denied redress and have exhausted all domestic remedies available to them to canvass their fundamental rights.
9. Thus the Applicants have been denied an opportunity to present their complaints and have them considered in detail by Court, and thereby have exhausted all domestic remedies of a public law nature, as *only* the Supreme Court is empowered to hear and determine fundamental rights violations.

E. Admissibility / Ratione Temporis

10. The violations complained of relate to the corporal punishment the 2nd Applicant was subjected to at the said *Gateway College [International School]* and the failure of the State (Sri Lanka) to formulate and implement a national child protection policy which would prohibit corporal punishment and cruel, inhuman and degrading treatment of children in such schools.
11. Sri Lanka acceded to the ICCPR on 11th June 1980 (entry into force on 11th September 1980), and subsequently the Sri Lankan Parliament enacted the *International Covenant on*

*Civil and Political Rights Act No. 56 of 2007*¹ Certified on 16th November, 2007, to give effect to those civil and political rights to in the ICCPR, for which no adequate legislative recognition has yet been granted. Such Act specifically provides that every child has the right to be protected from abuse or degradation [*vide* section 5(1)(c)]

A copy of such Act as found on the official Minister of Justice website is annexed and flagged as 3

12. Therefore the Committee is **not precluded** from adjudicating on the current complaint, as there is no legal/rational basis rendering this communication inadmissible *ratione temporis*.

F. Other international procedures

13. This matter has not been submitted to any other international forum for investigation or settlement. However, the Applicants are taking steps to notify the *UN Special Representative of the Secretary General on Violence Against Children* of the incidents that took place as set out in this communication.

4. FACTS OF THE COMPLAINT

14. The Applicants are dual citizenship holders, holding citizenship both in Sri Lanka and the United Kingdom. The 1st Applicant is a Medical Doctor by profession, a member of the Royal College of Physicians (MRCP), the Royal College of General Practitioners (MRCGP) and a registered medical practitioner in Sri Lanka. The 1st Applicant's father was the former Prime Minister of Sri Lanka, the late Mr. Ratnasiri Wickramanayaka. Upon the Applicants returning to Sri Lanka in May 2010 the 2nd Applicant along with her older brother were admitted to *Gateway College, Negombo*. [i.e., the International School].

A. Infliction of Corporal Punishment on the 2nd Applicant

15. On or around 12th January 2018, the 2nd Applicant, who was eleven (11) years old at the time, had forgotten to take her English reading book to school [a copy of the birth certificate of the 2nd Applicant is already marked **P3** in the annexure flagged as 1] When the English teacher, *Jude Kumara* became aware that eight (08) other students have also failed to bring the said book, such students and the 2nd Applicant were forced to kneel in the middle of the class for approximately 5 minutes. Thereafter, the said teacher pulled the ear of the 2nd Applicant very hard as a punishment for forgetting to bring the English book. This punishment caused severe pain to the 2nd Applicant both physically and emotionally, humiliating her in front of her classmates and peers. The same punishment was inflicted on the other students as well. Having returned home after school on the same day (i.e. 12th January 2018) the child [the 2nd Applicant] complained to her mother [the 1st Applicant] of the incident of punishment, and was clearly distressed by the actions purportedly carried out in the guise of discipline, in clear violation of the minor's right to respect for human dignity and physical integrity. Such incident clearly discouraged the 2nd Applicant from

¹ Available [online] at <https://www.lawnet.gov.lk/wp-content/uploads/2016/12/INTERNATIONAL-COVENANT-ON-CIVIL-AND-POLITICAL-RIGHTS-ICCPR-ACT-NO-56-OF-2007.pdf> accessed on 21st June 2019

attending classes and she was reluctant to attend English classes being terrified of the teacher in question [*Jude Kumara*].

16. Thereafter, the 1st Applicant, being the guardian of her child, in the interests of upholding and defending her child's rights submitted a written complaint to the Principal of the school *Devika Alldis* against the corporal punishment meted out to her daughter by the English teacher [a copy of such complaint is marked **P13** with the annexure already flagged as **1**]. A meeting was held pursuant to such complaint on 19th January 2018 with the said English teacher present and to the 1st Applicant's utter shock and dismay the said teacher justified the infliction of corporal punishment and even stated [irrelevantly] that he inflicts the same on his own children. The Principal and the Chairman of the school *Harsha Alles* failed to take any meaningful action against the infliction of corporal punishment although a book titled '*The Right Start*' containing the guidelines and instructions for teachers issued by the school clearly states that **corporal punishment is prohibited in the school**. Further, the *Parent – Teacher Coordination and Student Record Book* also states that the only permissible forms of discipline would be such as suspension, detention etc., Such too, omits any reference to corporal punishment. [A copy such *Parent –Teacher Coordination and Student Record Book* is already marked **P11** in annexure flagged **1**].

A copy of cover page and relevant pages of such book is annexed herewith flagged as 4.

17. Having received no redress from the Principal, on 19th January 2018 the 1st Applicant made a formal complaint at the *Seeduwa Police Station* against the corporal punishment inflicted by the English teacher on her daughter.
18. The 2nd Applicant was referred by the *Seeduwa Police*, to the *Negombo Judicial Medical Officer* for examination, who then referred the said Applicant to a psychiatrist for further examination. Reports of such examination have not been issued to the Applicants.
19. The *Seeduwa Police* held an inquiry on 23rd January 2018 with the Principal and the English teacher present and the said teacher admitted the infliction of corporal punishment on the 2nd Applicant, and both the teacher and Principal informed the 1st Applicant that the said teacher has resigned from the school. In any event an undertaking was given by the school authorities not to harass the 2nd Applicant in the school. In the information reported to the Magistrates Court the police have noted that the said teacher admitted to the infliction of corporal punishment.
20. However, on 24th January 2018, the Principal had held a meeting with the parents of the other eight (08) children who were subject to corporal punishment, and persuaded them to wrongfully make complaints at the police against the 1st Applicant, stating that they are in support of any disciplinary measures taken by the school. Accordingly, such complaints had in fact been made. Such was clearly an attempt of garnering social approval for corporal punishment, and belittling the Applicants' grievance, in disregard to the human dignity of the girl child. In any event, local public opinion will have no incidence on the interpretation of the concept of torture or degrading punishment under the ICCPR, *especially* as such public opinion that such punishment is effective, is precisely because of the element of degradation

which such punishment involves. Further, such a **punishment does not lose its degrading character even if it is believed to be an effective deterrent.**

21. The Principal also divulged the identities of the Applicants to other parents and teachers at the said International School, and purported to inform those parents that the school lost a good teacher because of the complaints of the Applicants. Thereafter (i.e. on 24th January 2018) the students who were subject to corporal punishment had been summoned by the Principal and compelled to write letters denying the infliction of corporal punishment on them. Due to her classmates being afraid of the Principal who had surreptitiously and maliciously compelled such wrongful complaints, the 2nd Applicant was isolated in her class, and her classmates were afraid to even speak with her, as the Principal may in turn punish them. The aforesaid actions of the school resulted in the 2nd Applicant further being subjected severe emotional distress as she was being rejected by both teachers and students, including her classmates. Other children did not associate the 2nd Applicant fearing the Principal.
22. Although another complaint was lodged by the Applicants at the *Seeduwa Police Station* on 24th January 2018 against the **systematic harassment** meted out to the 2nd Applicant in school, no action was taken in regard to such complaint.
23. Thereafter, the 2nd Applicant refused to attend school and thus was absent from school between 25th January 2018 and 29th January 2018. With the goal of education being the child's development, the failure to respect her human dignity and fundamental rights, has severely adversely affected her education. Such is exacerbated by the lack of respect shown to the child's dignity and physical wellbeing by the educational institution and its teachers, and the attempts to garner social approval for the punishment imposed, whilst belittling her grievance.
24. The 1st Applicant thereafter made a complaint to the *National Child Protection Authority* [hereinafter '*NCPA*'] on 25th January 2018 [a copy of such complaint is already marked **P17** with the annexure flagged as **1**]. The *NCPA* referred the 2nd Applicant to the Colombo Judicial Medical Officer *Dr. Ajith Tennakoon* who further referred the child to one *Dr. Sudarshi Seneviratne* a Consultant Child and Adolescent Psychiatrist. The findings of *Dr. Ajith Tennakoon* in the Medico-Legal Report dated 26th January 2018 are as follows [a copy of such Medico-Legal Report is already marked **P18** with the annexure flagged as **1**];
 - a) That the 2nd Applicant is "psychologically disturbed";
 - b) According to the view of the Consultant Child and Adolescent Psychiatrist the 2nd Applicant shows features of adjustment disorder; and
 - c) That the child gives a history of psychological abuse in the school and shows adjustment disorder due to the said abuse.
 - d) In fact, the child's account of what happened clearly discloses the trauma suffered by her

"I forgot to bring my English book on 12/01/2018. There were 9-10 students. We were asked kneel down by teacher. He pulled by our ears. We went to police to complain. Then something has happened. Next day madam asked others not to talk to me. That teacher has left the school. Madam says the school lost a good teacher because we went to police. Other students did not talk to me. They were rude. In interval all students would go out. They started bullying me. I feel sad and lonely. Don't feel like going to school again. I can't sleep. Take long time to fall sleep"

25. The Applicants are aware that on 29th January 2018, the then Chairperson of the *NCPA* in fact visited the school to further the investigations in to the said incident of corporal punishment inflicted on the 2nd Applicant.
26. Thereafter the *NCPA* reported facts to the *Magistrate's Court* of *Negombo* in Case no. L60041/18 in regards to the complaint of the Applicants.
27. On 8th February 2018, to the Applicants' utter surprise and dismay the Officer-in-Charge (OiC) of the *Seeduwa Police Station* informed the 1st Applicant that investigations will not be carried out in relation to the complaint made and therefore, not to proceed with such complaint.
28. Thereafter, in or around April 2018, the Applicants became aware that the then Chairperson of the *NCPA* [referred to in paragraph 23 of the petition dated 30th July 2018 in annex 1 above] had ceased to hold office. The new Chairman of the *NCPA*, *Mr. H. M. Abeyrathne* along with the Officer in Charge [hereinafter *OiC*] of the *Special Police Investigations Unit* of the *NCPA* and other officers of the *NCPA* thereafter failed to diligently conduct the necessary investigations and prosecute. Such is morefully enumerated below.
29. The said OiC, failed to collect the CCTV footage from the Principal's office and although on or around 2nd April 2018 the 1st Applicant's phone was taken by the said OiC to be sent to the *Government Analyst Department* in order to recover the text messages and call recordings pertaining to the incident, after much probing the 1st Applicant was made aware that such phone had not been so sent. The Applicants are unaware as to the progress in this regard.
30. Due to such failures of the *NCPA*, the case before the *Magistrate's Court* of *Negombo* has been pending, and is being delayed.
31. Furthermore, 1st Applicant brought to the attention of the Learned Magistrate of *Negombo* that the 2nd Applicant continued to suffer harassment in the school by both teachers and other students causing severe mental and physical pain.
32. Moreover the matter was brought to the attention of the *Ministry of Education* and the *Minister* and *Secretary* thereof, however the Applicants were informed that the *Ministry of Education* has no control over 'international schools' as such institutions were incorporated as private companies. [A copy of the Complainants' letter is marked **P21** in flag 1 above]

B. Statutory mechanisms against the infliction of corporal punishment

33. The Applicants are aware that the Ministry Circular Nos. 17/2005² and 12/2016 in fact prohibits the infliction of corporal punishment in *government schools*. However, Ministry purports to take the position that, such Circulars have no application to private educational institutions or 'international schools' in this instance. [A copy of such circular 12/2016 marked as P22 in annexure flagged as 1]. Even as far back as 2005, the *Ministry of Education* had considered *Article 28(2)* of the *UN Convention on the Rights of the Child (1989)* and set out that there should be no physical punishments inflicted on students.

For convenience, a copy of Circular No. 17/2005 available on the Ministry of Education website is annexed flagged as annexure 5.

34. According to s. 25 of the *Assisted Schools and Training Colleges (Special Provisions) Act No. 8 of 1961* the establishment and operation of international schools and/or private schools are prohibited. Therefore, there is a large number of international schools *incorporated* as 'companies' with the objective of providing education. However, such schools are unregulated by the said Circular against corporal punishment.
35. The *Ministry of Child Development and Women's Affairs* in 2013 drafted a *National Child Protection Policy*³. However, such policy never passed the drafting stages.
36. Therefore, the Applicants state that currently there is no regulation regarding banning corporal punishment in private schools. Such has artificially created a different class of citizens *vis-à-vis* those in private school where corporal punishment is not regulated, and those in government schools where corporal punishment is prohibited.

C. Sri Lanka's steady retreat from its commitments to the elimination of Corporal Punishment

37. The Sri Lankan Supreme Court has previously found that certain disciplinary action such as corporal punishment, violates fundamental rights. In the case of *Douglas Bandara v Wickremasinghe*⁴, a 17-year-old schoolboy was assaulted during school hours by a deputy principal [Mr Wickremasinghe], and Court held that;

" This court must by granting appropriate relief reassure the Petitioner that the humiliation inflicted on him has been removed and his dignity is restored. That would in some way guarantee his future mental health which is vital to his advancement in life".

² Available [online] at <http://www.moe.gov.lk/english/images/stories/circulars/2005-17s.pdf> accessed on 21st June 2019

³ Available [online] at <http://www.childprotection.gov.lk/documents/National%20Child%20Protection%20Policy%20-%20final%20-%202013.10.4.pdf> accessed on 17th August 2019

⁴ A copy of the judgment in *Douglas Bandara v Wickremasinghe* [1995] 2 SLR 168 is available [online] at the official *Ministry of Justice* website, at <https://www.lawnet.gov.lk/1995/12/31/bandara-v-wickramasinghe/> accessed on 21st June 2019

A copy of the judgment as available online and downloaded and printed is annexed herewith for convenience and flagged as 6

38. In such light, the Applicants are aware of a study undertaken by the State (of Sri Lanka) titled, "*A Study on Child Disciplinary Methods Practiced in Schools in Sri Lanka*" commissioned by the NCPA⁵ which clearly indicates that there is a high prevalence of physical abuse and psychological aggression in schools. [vide page 29-31 of the study]. In fact, the executive summary of the report reads as follows;

"(...) The study results indicated high rates of corporal punishment of students in schools in Sri Lanka. The use of psychological aggression too was high. Worryingly, so was physical abuse, a criminal offence. Though students and teachers also reported high use of (positive) discipline, it appears that it is done in conjunction with punishment, thus losing its potential for positive impact on the students. Most teachers and principals believe in the efficacy of corporal punishment. Some evidence suggests that this is due to reasons such as their own experience of it in childhood, because senior teachers use it, and because they do not know of any other strategies to correct misbehaviours. In fact, a majority of teachers had not got any formal training in classroom management, including the use of (positive) disciplining"

A copy of the executive summary and relevant pages of the report are annexed for convenience and flagged as 7

39. However, in the *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Sri Lanka CRC/C/LKA/CO/5-6*⁶ deep concerns have been raised in relation to the high numbers of abuse and violence children are being subjected to, *inter alia*, in schools and that corporal punishment remains legal in schools as well.

A copy of the relevant pages of the observations are annexed for convenience and flagged as 8.

40. The Applicants state that *Sri Lanka's National Action Plan for The Protection and Promotion of Human Rights 2011-2016*, clearly contained a commitment to eradicating corporal punishment in schools [vide page 111 at 7.5]. However, such commitments have disappeared in *Sri Lanka's National Action Plan for The Protection and Promotion of Human Rights 2017-2021* and are completely contrary to the State's own research into this area.

A copy of the relevant pages of Sri Lanka's National Action Plan for The Protection and Promotion of Human Rights 2011-2016 is attached flagged as 9 A copy of Sri Lanka's National Action Plan for The Protection and Promotion of Human Rights 2017-2021 is available online at the Hon.

⁵ Available [online] on the official website of the NCPA www.childprotection.gov.lk/ accessed on 21st June 2019

⁶ Available [online] at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsielGx7SihWhGe2DDQs2oa3sf3DVocPZ6t2fN0WRVx92GNJlQbMTGN7krzrvJ20SQ1Q8YUgf0XjXVWL1YL2umcQXoXRlpHnUUEfC5wKuCoHO> accessed on 05th August 2019

*Prime Minister's official website⁷ and the relevant pages on the "Rights of the Child" i.e., pages 185-201 are attached herewith flagged **10** for convenience.*

41. Thus it appears to the Applicants, that *Sri Lanka* is reneging on its commitments to addressing corporal punishment within the State, and thereby continuously violating their rights under *Article 24* and *Article 26* of the *ICCPR*.

5. APPLICATION OF THE LAW TO THE FACTS

A. Applicants' Right to Freedom from Torture or cruel, inhuman or degrading treatment or punishment (Article 7)

42. **Article 7** of the *ICCPR* states prohibits *inter alia*, degrading punishment
43. On 12th January 2018, the 2nd Applicant was subjected to corporal punishment by the English teacher of her school by making her and other students (a) kneel in the middle of the class and (b) pulling on her ear hard (and other students) in front of her peers. Such actions caused humiliation in her own eyes and in the eyes of her classmates/peers. Thus physical violence was inflicted on a minor, by a person in control. Further, she was treated as an object in the power of the school authorities, and such additionally caused an assault on her dignity and physical integrity, having **serious adverse psychological effects** as can be seen by the doctor's reports marked **P18** as referred to in paragraph **24** above. This was an institutionalised infliction of violence, outside the disclosed disciplinary rules in force at the school [such rules borne out by **P11**] and without any (adequate) consent of the mother [the 2nd Applicant] amounting to a violation of *Article 7* from which there can be no derogation whatsoever.
44. Upon the 2nd Applicant's mother making complaints to the school, the police as well as the *NCPA* the said Applicant was subject to further harassment by teachers (and on the instigation of such teachers, by students as well). Due to fear of the Principal her own classmates stopped their associations with her. These actions caused severe mental stress/trauma to the said Applicant.
45. According to **General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)**⁸ the prohibition of torture extends to the infliction of corporal punishment.

*Annexed are the relevant pages, cover page and page 139 marked as **11***

46. In fact in *G. Osbourne v. Jamaica*⁹ it was held that;

⁷ available [online] at http://www.pmooffice.gov.lk/download/press/D00000000063_EN.pdf accessed on 21st June 2019

⁸ page 139 para 5

⁹ Communication No. 759/1997, U.N. Doc. CCPR/C/68/D/759/1997 (2000) *vide* 9.1 available [online] at <http://hrlibrary.umn.edu/undocs/session68/view759.htm> accessed on 21st June 2019

“irrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the Committee that corporal punishment constitutes cruel, inhuman and degrading treatment or punishment”

A copy of the communication as available online is annexed herewith and flagged as 12

47. *Article 7* also extends not only acts causing physical pain, but also to acts causing mental suffering. In fact, it is the Applicants' position that *any* punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light, amounts to corporal punishment within the purview of Article 7. Such would also include punishments, which would belittle, humiliate, denigrate, threaten, scare or ridicule a child. In this complaint the facts clearly fall within this definition.
48. The *Medico-Legal Report* dated 26th January 2018 issued by the *Judicial Medical Officer* of Colombo clearly indicates that the 2nd Applicant was mentally traumatised due to the abuse suffered at the school. Such document has been marked as **P18** in **Flag 1**. Such indicates that the 2nd Applicant (minor) has suffered direct and indirect harm. Such has further given rise to certain anti-social behaviour in that, the minor refused to attend school. This in turn is damaging to her education.
49. The State authorities investigating into the incident of corporal punishment have failed to act diligently in doing so. The *Ministry of Education* took up the position that the prohibition on corporal punishment is of no application to international schools. The Supreme Court of Sri Lanka too dismissed the Applicants' application without granting Leave to Proceed and failed to record any reasons for doing so, therefore, the Applicants are unaware as to on what basis their application was rejected.
50. In *Higginson v. Belarus/Jamaica (792/98)*¹⁰ the Human Rights Committee held;

“irrespective of the nature of the crime that is to be punished or the permissibility of corporal punishment under domestic law, it is the consistent opinion of the Committee that corporal punishment constitutes cruel, inhuman or degrading treatment contrary to Article 7.”

Annexed herewith a copy of the said communication available online and downloaded and flagged as 13

51. Therefore, irrespective of the absence of laws proscribing corporal punishment in 'international schools' such as the school in question, following the jurisprudence laid down in *Higginson* it is clear that the corporal punishment inflicted by the school would constitute a violation of *Article 7*.

¹⁰ Communication No. 792/1998, U.N. Doc. CCPR/C/74/D/792/1998 (2002). *vide* 4.6 available [online] at <http://hrlibrary.umn.edu/undocs/792-1998.html> accessed on 21st June 2019

52. Furthermore, in the *Concluding Observations on the Russian Federation, (2003) UN doc. CCPR/CO/79/RUS, § 13*, the Committee while acknowledging that abuse and violations were caused by non-State actors also stated that such does not relieve the State from upholding its obligations under the ICCPR.

Annexed herewith a copy of the said observations flagged as 14.

53. Moreover, in the same *Concluding Observations on the Russian Federation*, the Committee expressed their concern over the Federal laws which exempted law enforcement and military personnel from liability for harm caused during counter terrorism operations. Likewise, concern should be drawn to the lack of express provisions prohibiting schools outside the scope of State or State approved schools, such as the said 'international schools' from inflicting corporal punishment on students.
54. *Article 4(2)* of the ICCPR states that *Article 7* is non-derogable, therefore, the fact that the said school is not a State school or a State approved school cannot be a fetter to a finding that the Applicants' rights under *Article 7* has been violated.
55. Thus, it is respectfully submitted that, similar to what was held in *Osbourne v Jamaica* [above], Sri Lanka should ensure that similar violations do not occur in the future.¹¹

International Norms

56. International norms as are reflected in UN Committee on the Rights of the Child, General Comment 8, para. 26¹² are that

"interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity."

A copy of the said UN Committee on the Rights of the Child, General Comment 8 is annexed herewith flagged as 15

57. *The Convention on the Rights of the Child (CRC)*, includes the fundamental recognition of a child's right to be free from any form of physical or mental violence, and the special capacity of children to learn from their mistakes and rehabilitate themselves, and the actions complained of by the Applicants are contrary to such fundamental recognition. In fact *Article 19* thereof states that;

"Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from *all forms of physical or*

¹¹ para 11

¹² UN Committee on the Rights of the Child (CRC), General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia), 2 March 2007, CRC/C/GC/8, available at: <https://www.refworld.org/docid/460bc7772.html> [accessed 11th July 2019]

mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"

58. The Applicants state that Sri Lanka signed the Convention on the Rights of the Child on 26th January 1990 and ratified such on 12th July 1991. In fact, the *Committee on the Rights of the Child* in *General Comment No. 10*¹³ stated that even in a juvenile justice system,

"A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC (see paragraphs 5-14 above). The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment"¹⁴

and "Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned"¹⁵

A copy of the said UN Committee on the Rights of the Child, General Comment 10 is annexed herewith flagged as 16

59. The Applicants state that such CRC requires that the best interests of the child shall be a primary consideration [*vide Article 3(1)*]. Therefore a child has the (1) *right* that her best interests will be a primary consideration for any decision maker. Further a child is entitled have (2) any legal provision etc., open to interpretation, interpreted in a manner which most effectively serves the best interests of the child, and (3) the decision to be taken must be assessed and the impact on the child duly evaluated.

60. In a case considered under the *Convention Against Torture, Dzemajl et al v Yugoslavia (CAT 161/00)*¹⁶ the majority of the CAT Committee found that State Parties can commit breaches by failing to act as well as by committing certain acts. Thus, Sri Lanka has failed to act in a manner that prevents cruel and inhuman treatment being inflicted on children.

A copy of such as available online is annexed herewith flagged as 17

61. In many occasions there have been recommendations made to abolish corporal punishment. For example, the *UN Committee Against Torture [CAT]*, recommended to *Namibia* that there

¹³ UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, available [online] at: <https://www.refworld.org/docid/4670fca12.html> [accessed 11th July 2019]

¹⁴ *vide* para 71

¹⁵ *ibid* para 89

¹⁶ Available [online] at <http://hrlibrary.umn.edu/cat/decisions/161-2000.html> accessed on 11th July 2019

should be “the prompt abolition of corporal punishment”¹⁷. Similarly The HRC, Concluding Observations on *Zambia*¹⁸ said that the State should “prohibit all forms of violence against children wherever it occurs, including corporal punishment in the schools”. Even in relation to *Saudi Arabia* reservations were expressed by CAT regarding “The sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention”¹⁹.

Annexed herewith are the cover page and para 227-252 UN Committee Against Torture (CAT), Report of the UN Committee against Torture: . 10/09/97, 10 September 1997, Supplement No. 44 (A/52/44) flagged as 18

Annexed herewith are the cover page and page 7 UN Doc. CCPR/C/ZMB/CO/3, 2007 flagged as 19

Annexed herewith are the cover page and page 3 UN Committee Against Torture (CAT), UN Committee against Torture: Conclusions and Recommendations: Saudi Arabia, 12 June 2002, CAT/C/CR/28/5 flagged as 20

B. Right to liberty and security of person (Article 9)

62. The guarantees in *Article 9* overlap and interact with other guarantees such as for example *Article 7* above, and *Article 24* below. Such should always be in the best interests of the child, and the State is under an obligation to respect and secure all such rights [*vide Article 2*]

C. Failure to take measures of protection for minors. (Article 24)

63. The Applicants state that under *Article 24* of the ICCPR, all minors have the right to special measures of protection because of their status as a minor. The 2nd Applicant is under the age of majority as set out in Sri Lanka, [i.e., 18 years] and is entitled to special measures of protection, and greater protection than adults.
64. However, the State Party has *only* provided protection from corporal punishment to government schools [*vide* Circular numbers 17/2005 and 12/2016 marked **P22** flagged with annexure 1 and flag marked 5] and failed to specifically provide for similar protection for minors in other schools. Such a violation of *Article 24* of the ICCPR is established

¹⁷ *vide* p.37 para 250 UN Committee Against Torture (CAT), *Report of the UN Committee against Torture* : . 10/09/97, 10 September 1997, Supplement No. 44 (A/52/44), available [online] at: <https://www.refworld.org/docid/453776a62.html> [accessed 11th July 2019]

¹⁸ UN Doc. CCPR/C/ZMB/CO/3, 2007, §22 available [online] at <https://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.ZMB.CO.3.CRP.1.pdf> accessed on 11th July 2019

¹⁹ *vide* para 4(b) UN Committee Against Torture (CAT), *UN Committee against Torture: Conclusions and Recommendations: Saudi Arabia*, 12 June 2002, CAT/C/CR/28/5, available [online] at: <https://www.refworld.org/docid/3de279334.html> [accessed 11th July 2019]

especially in instances as set out herein where the child has been found to have suffered trauma [vide doctors' reports marked as **P18** in annexure flagged 1]

65. The Applicants respectfully draw attention to the dissent of Mr. Bertil Wennergren in *Drbal v The Czech Republic*²⁰ where it was stated;

(...) might jeopardize a healthy, sound and safe development of the child.
(...) By virtue of all this, she suffers mentally. (...). The shortcomings work, in my opinion, to the detriment of the best interests of the child."

[emphasis added]

*Annexed herewith a copy of the said communication flagged as **21**.*

66. In fact, the State's commitment to eradicating corporal punishment in schools in the *Sri Lanka's National Action Plan for The Protection and Promotion of Human Rights 2017-2021* [flagged as **10**] is no longer to be seen.

C. Non-Discrimination and Equality (Article 26)

67. The Applicants state that to the extent that the ICCPR prohibits corporal punishment through *Article 7* and *Article 9*, such must be upheld in a manner which does not discriminate. The Applicants state that corporal punishment violates the right to equal protection two fold. Firstly, by only protecting those students in government schools by Circular No. 12/2016 Marked **P22**, whilst providing no protection for those in other schools, and secondly by allowing children to be assaulted in the name of discipline whilst protecting adults from such same conduct. Applicants state that States should in fact, provide for additional protection for children due to their vulnerability, and in fact *Article 12(4)* of the Constitution of Sri Lanka provides that "Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action for the advancement of women children or disabled children". Yet corporal punishment leaves children deprived of the very protections assured to adults, and the State has taken no action whatsoever to remedy such situation. This is in violation of *Sri Lanka's* constitutional provisions and also *Article 24* and *Article 26* of the *ICCPR*.
68. There is no objective or reasonable criteria, differentiating between government schools, for which Circular numbers 17/2005 and 12/2016 [marked **P22** flagged with annexure **1** and flag **5**] apply, thus prohibiting corporal punishment, *vis-à-vis* other schools like the international school attended by the 2nd Applicant. This has created an artificial class or group of minors receiving education outside of government schools who are not protected by those Circulars, and minors *in* government schools who *are* protected. Such two groups are not distinguishable and there is no relevant distinction between the two. Such differentiation is not reasonable and on the face of it there is no objective to be achieved by such differentiation. Therefore, differentiation in Sri Lanka, between government schools

²⁰ *Drbal v. The Czech Republic*, Communication No. 498/1992, U.N. Doc. CCPR/C/51/D/498/1992 (1994) available [online] at <http://hrlibrary.umn.edu/undocs/html/dec498.htm> accessed on 21st June 2019

and other schools, in the teeth of the Constitution of Sri Lanka [*vide Article 12(1)*] which provides that “all persons are equal before the law and are entitled to the equal protection of the law”, amounts to a violation of *Article 26* of the ICCPR which is a free standing guarantee of non-discrimination in relation to all rights, which prohibits discrimination in law or in fact.

69. Since 2005 in Sri Lanka, with the *Corporal Punishment Repeal Act of 23 of 2005*²¹, corporal punishment has been unlawful as a sentence for crime. This coincides with the Circular 17/2005 flagged as **5** above. However, the State has taken no steps to ensure the equal application of such Circulars 17/2005 and 12/2016 to all educational institutions.

D. Sri Lanka’s International Obligations

70. In any event, the Applicants state that Sri Lanka was under a duty to uphold its international obligations, which it has failed to do. This is especially so, as the Supreme Court of Sri Lanka, in *Weerawansa v The Attorney General*²² [in relation to liberty of citizens] held that the State must afford citizens the benefit of safeguards which international law recognises.

*A copy of the said judgment in Weerawansa v The Attorney General as available online is attached herewith flagged as **22***

6. RELIEF’S SOUGHT

71. The Applicant hereby requests that the Committee

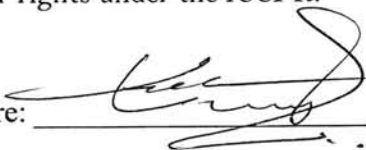
- a)** Declare that a violation of the Applicants’ rights, under articles 2, 7, 9, 24 and 26 of the Covenant; and declare specifically that:
- i)** The infliction of corporal punishment on the minor 2nd Applicant is violative of *Article 7* and *Article 9* of the ICCPR [as read with *Article 2*] and amounts to cruel, inhuman or degrading treatment or punishment;
 - ii)** The infliction of corporal punishment and subsequent sequence of events was carried out in a manner contrary to the best interest of the child, and in clear violation of the minor’s right to respect for human dignity and physical integrity and was violative of *Article 7* and *Article 9* of the ICCPR [as read with *Article 2*];
 - iii)** The failure of the State Party (Sri Lanka) to extend the protection provided against corporal punishment in government schools to other schools, subjects those in schools other than government schools to discrimination and is in violation of *Article 24* and *Article 26* of the ICCPR [as read with *Article 2*];

²¹ Available [online] at [https://srilankalaw.lk/YearWisePdf/2005/CORPORAL_PUNISHMENT_\(REPEAL\)_ACT_No._23_OF_2005.pdf](https://srilankalaw.lk/YearWisePdf/2005/CORPORAL_PUNISHMENT_(REPEAL)_ACT_No._23_OF_2005.pdf) accessed on 11 June 2019

²² [2000] 1 Sri LR 387 at 409 available [online] at the official *Ministry of Justice* website at <https://www.lawnet.gov.lk/2000/12/31/weerawansa-v-the-attorney-general-and-others/> accessed on 11 June 2019

- b)* Declare that the provisions of the delegated legislation in failing to provide protection to minors regarding corporal punishment is incompatible with the *ICCPR* and should be amended to comply with the protections contained in the *ICCPR*;
- c)* Request that the State Party (Sri Lanka) take all legislative and others measures as may be necessary to give effect to the Covenant and provide protection to minors with regard to corporal punishment;
- d)* Request that the State Party (Sri Lanka) award compensation to the Applicants for the violation of their rights under the *ICCPR*.

Applicant's Signature: _____



CHECKLIST OF SUPPORTING DOCUMENTATION

The Applicants have applied for certified copies of the documents submitted to the Supreme Court as referred to above, and respectfully reserve their right on receiving such certified copies, to submit sworn English translations of the same, along with sworn English translations of the document flagged as 5 i.e., Circular pertaining to discipline.

1. *Petition and relevant documents of SC (FR) 241/2018 i.e., P3 [birth certificate of minor], P11 [student record book], P13 [complaint submitted to School re: corporal punishment], P17 [complaint to National Child Protection Authority] P18 [Medical Report] P21 [Letter to Minister of Education], and P22 Ministry of Education Circular No. 12/2016 Sinhala version – to be translated and submitted]*
2. *Supreme Court Minutes pertaining to SC(FR) 241/2018*
3. *International Covenant on Civil and Political Rights Act No. 56 of 2007 (Sri Lanka)*
4. *Relevant pages of the book titled 'The Right Start'*
5. *Ministry of Education Circular No. 17/2005*
6. *Judgment in Douglas Bandara v Wickremasinghe [1995] 2 SLR 168*
7. *Relevant pages of "A Study on Child Disciplinary Methods Practiced in Schools in Sri Lanka" commissioned by the NCPA*
8. *Concluding observations on the combined fifth and sixth periodic reports of Sri Lanka CRC/C/LKA/CO/5-6*
9. *Relevant pages of Sri Lanka's National Action Plan for The Protection and Promotion of Human Rights 2011-2016*
10. *Relevant pages of National Action Plan for The Protection and Promotion of Human Rights 2017-2021*
11. *Relevant pages of General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*

12. *Communication in G. Osbourne v. Jamaica*
13. *Communication in Higginson v. Belarus/Jamaica* (792/98)
14. *Concluding Observations on the Russian Federation*, (2003) *UN doc. CCPR/CO/79/RUS*, § 13
15. *UN Committee on the Rights of the Child, General Comment 8*
16. *UN Committee on the Rights of the Child, General Comment 10*
17. *Judgment in Dzemail et al v Yugoslavia* (CAT 161/00)
18. *UN Committee Against Torture (CAT), Report of the UN Committee against Torture: 10/09/97, 10 September 1997, Supplement No. 44 (A/52/44)*
19. *UN Doc. CCPR/C/ZMB/CO/3*, 2007
20. *UN Committee Against Torture (CAT), UN Committee against Torture: Conclusions and Recommendations: Saudi Arabia, 12 June 2002, CAT/C/CR/28/5*
21. *Communication in Drbal v The Czech Republic*
22. *Judgment in Weerawansa v The Attorney General* [2000] 1 Sri LR 387