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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
HUMAN RIGHTS COMMISSION OF SRI LANKA

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Date. } 26.06.2026

Select Candidates of the GCE Advance Level Examination of 2024  
Zahira College, Trincomalee  
Victims

vs.

Case No: HRC/SUO-MOTU/02/2024

Amith Jayasundara  
(Former) Commissioner General of Examination  
Department of Examination  
1<sup>st</sup> Respondent

A.K.S. Indika Kumari Liyanage  
Commissioner General of Examination  
Department of Examination  
2<sup>nd</sup> Respondent

### 1. Facts of the Case

This case concerns the decision of the 1<sup>st</sup> Respondent to withhold the GCE Advanced Level Examination results of around 70 candidates of Zahira College, Trincomalee ('the candidates'). At the outset, it is clarified that the Commission decided not to publish the names and other details of the said candidates. The officials of the Department of Examination are fully aware of the details of the said candidates.

The 1<sup>st</sup> Respondent's impugned decision was on the alleged grounds that the candidates had violated an examination rule with respect to ensuring that their ears were visible during an examination held in January 2024 at the examination centre located at St Joseph College National School, Trincomalee. The rule in question required all candidates to ensure that their ears were visible to enable examination invigilators to assess whether the candidates were using any electronic device to aid them during the examination. An external examination official had allegedly reported the matter to the 1<sup>st</sup> Respondent, who subsequently decided to withhold the examination results released to other candidates on 31 May 2024.

The Trincomalee Regional Office of the Human Rights Commission of Sri Lanka received information about the incident. The said Regional Office thereafter launched a *suo motu* investigation under section 14 of the Human Rights Commission of Sri Lanka Act, No. 21 of

1996. The said Regional Office inquired into whether the decision to withhold the examination results of the said candidates violated any of their fundamental rights guaranteed under chapter three of the Sri Lankan Constitution.

The investigation conducted by the Trincomalee Regional Office revealed that each candidate in question was a Muslim girl. On 27 June 2024, twenty of the said candidates along with their parents filed complaints at the Trincomalee Regional Office alleging that the 1<sup>st</sup> Respondent violated their fundamental rights by withholding their results. The complainants stated that they had worn loose shawls during the said examination instead of their ordinary *hijab*, and that their ears were visible throughout the examination. It was also stated that the 1<sup>st</sup> Respondent directed the said candidates to attend an inquiry at the Eastern Province Zonal Education Office on 25 April 2024, which only some candidates attended.

## 2. Action taken by the Commission

### *a. Initial inquiry conducted by the Trincomalee Regional Office*

On 6 June 2024, the Trincomalee Regional Office requested a report from the 1<sup>st</sup> Respondent regarding the impugned decision. On 28 June 2024, the Trincomalee Regional Office requested the Provincial Education Office, Trincomalee, to furnish the details of the officers who performed examination invigilation and supervision duties. The Provincial Director's office provided the necessary information, and subsequently, inquiries were scheduled at the Trincomalee Regional Office.

### *b. Mediated interim settlement following discussion at the Head Office*

On 8 July 2024, the Commission held a discussion with officials of the Department of Examinations and the University Grants Commission, and some parents of the said candidates at the Commission's Head Office. The said discussion was held in terms of **section 10(b) of the Human Rights Commission of Sri Lanka Act** with a view to reach a mediated settlement with respect to the 1<sup>st</sup> Respondent's decision to withhold the examination results of the aforesaid candidates.

The said officials reported that the results were withheld on the alleged grounds that the candidates had violated an examination rule with respect to ensuring their ears were visible during the examination. The Commission was also informed that no other examination centre or school in Sri Lanka appeared to have experienced a similar interpretation of the relevant examination rule. **At the said meeting, the officials of the Department of Examinations and the University Grants Commission reported that the results of the victims had been released, and that these institutions were taking additional remedial measures to ensure that the said candidates can manually apply for re-scrutiny of their examination scripts and apply for university entrance.**

It was separately alleged by the parents of some of the said candidates that only one female invigilator served at the examination centre concerned, and that no Tamil-speaking female

invigilators had served at the centre. This statement was not contradicted by any official present at the discussion.

The Commission later learnt, i.e., *after* the discussion held on 8 July 2024, that, on 4 July 2024, the Department of Examinations had in fact sent letters to each of the abovementioned candidates, through the Principal of Zahira College, Trincomalee, stating that they had violated examination rules issued under the **Public Examinations Act, No. 25 of 1968** with respect to establishing the identity of candidates. The Commission notes that at no point during the discussion held on 8 July 2024 at its Head Office did any officer of the Department of Examinations claim that any rule with regard to establishing the identity of candidates had been allegedly violated. The officers maintained that the rule in question pertained to ensuring the candidates' ears were visible to assess whether the candidates were using any electronic device to aid them during the examination.

The Commission thereafter issued a public statement on 17 July 2024 specifying the details of the mediated interim settlement reached between the parties. It also issued the following directives to the Department of Examinations:

1. Conduct an internal inquiry into whether the invigilators present during the examination had objectively assessed the attire worn by the candidates and reached an objective conclusion that the attire violated any examination rule;
2. Review the interpretation of the relevant examination rule in order to ensure greater consistency and certainty in the application of the rule and to avoid similar situations during future examinations;
3. Review the current procedure for assignment of female invigilators and ensure the assignment of adequate numbers of female invigilators to examination centres in the future; and
4. Refrain from taking any action against any candidate who has complained to the Commission or any school official associated with Zahira College, Trincomalee, specifically with respect to the subject matter of the alleged infringement of the fundamental rights of the said candidates, until the HRCSL completes the abovementioned *suo motu* investigation.

In its report dated 30 August 2024 submitted to the Commission on 2 September 2024, the Department of Examinations claimed that an internal inquiry was completed, and that the 1<sup>st</sup> Respondent had found that the aforesaid candidates had failed to make their ears visible during the said examination. Despite eventually releasing the said examination results, the 1<sup>st</sup> Respondent concluded that the said candidates had violated an examination rule published in **Gazette Notification No. 2,137 of 16 August 2019**.

### *c. Conclusion of inquiry by the Trincomalee Regional Office*

Following the discussion held on 8 July 2024, the Trincomalee Regional Office proceeded to hold inquiries and record statements on 24 July, 25 July, 15 August, and 29 August 2024. Statements were recorded from the officers concerned, including a regional centre coordinator, supervisor, additional supervisor, assistant supervisor, and invigilators, all of whom were involved in the

invigilation or supervision of examinations held at the St Joseph College National School, Trincomalee.

According to the statements of several witnesses, there were no recorded complaints with respect to the aforesaid candidates violating any examination rule. The witnesses maintained that, during the examination, the candidates had removed their tight-fitting head covering that had concealed their ears, and had worn loose shawls over their heads, thereby enabling practical visibility of their ears. Notably, the Deputy Zonal Director of Mutur Zonal Education Office, who served as an assistant regional centre coordinator during the relevant examination, stated that he maintained a journal for the entire duration of his assignment, and at no point were any incidents reported with respect to any candidates from Zahira College, Trincomalee. One witness, i.e., the official in charge of the examination centre, recorded a statement on 15 August 2024 in which he stated that an external official, who he described as one 'Herath', who was serving as a 'Deputy Commissioner General of Examinations', had conducted a monitoring visit to the examination centre and had observed the said candidates wearing loose head coverings. This official had advised the witness to instruct the candidates to remove the head coverings during the examination. The parents of some of the candidates also alleged in their statements that the said external official had interacted with some of the candidates, informing them that they would not receive their examination results due to their attire. It was alleged that this interaction severely disturbed the candidates concerned, causing them distress during their examination. The aforesaid official in charge of the examination centre confirmed, however, that in his opinion, no examination rule was violated by the said attire.

The Commission notes that these witness statements contradict the findings of the Department of Examinations in its report dated 30 August 2024. The report suggests that an inquiry was initiated based on alleged violations of an examination rule and that an official who had visited the examination centre had reported the violations. To date, no clear information has been provided with respect to the identity of this official. It is reiterated that key witnesses have denied lodging any complaints of such violations, or recording any violations, casting doubt on the reliability of the Department's findings. The report claimed to rely on documents, such as the supervisor's journal, invigilators' reports, and official correspondence. Yet, the 1<sup>st</sup> Respondent failed to produce any such documents during the inquiry held by the Trincomalee Regional Office.

### **3. Analysis**

The 1<sup>st</sup> Respondent cooperated with the Commission's mediated settlement in releasing the examination results of the aforesaid candidates. However, the Commission observes that the Department of Examinations failed to conduct a credible internal inquiry into whether the said candidates in fact violated any examination rule and accordingly failed to fulfil a key term of the mediated settlement. In this context, the Commission decided to reach its own findings with respect to any violation of the fundamental rights of the said candidates.

#### ***a. The freedom of religion or belief***

The freedom of religion or belief has been legislatively recognised in Sri Lanka for over two centuries and remains one of the first formal legal entitlements guaranteed to its people. The 1799

***Proclamation of the British Governor***, issued three years after the British began occupying territories in Ceylon, recognised the ‘liberty of conscience and the free exercise of religious worship to all persons to inhabit and frequent the said settlements of the Island of Ceylon’. The entitlement to practice one’s religion including conducting ceremonies and processions, and erecting places of worship was further recognised under the Kandyan Convention of 1815 and the British Declaration of Sovereignty in 1818. The right to the freedom of religion or belief is now guaranteed under **articles 10 and 14(1)(e) of the Sri Lankan Constitution of 1978**.

The freedom of religion or belief has two aspects. It first entails the freedom of a person to have or adopt (and therefore change) a religion or belief. This aspect of the freedom of religion or belief is guaranteed by article 10 of the Sri Lankan Constitution, which provides: ‘Every person is entitled to freedom of thought, conscience and religion...’ This aspect may be understood as part of the ‘*forum internum*’, i.e., a person’s inner realm of thinking and believing.

The Supreme Court in ***Centre for Policy Alternatives & Others v. The Attorney General & Others*** SC (F.R.) 91, 106 and 107/2021 (at p. 11) held:

The freedom of thought, as enshrined in our fundamental rights, stands out as a cornerstone of democracy. The freedom of thought ensures that a person’s mind remains beyond scrutiny. To infringe upon the freedom of thought is to undermine the very essence of a democratic society, for it is within the realm of individual thought that the roots of self-expression, personal liberty, human dignity and the flourishing of all other fundamental rights are nurtured.

It is noted that the freedom of thought, conscience and religion is an absolute right and cannot be subject to any limitation. The Supreme Court has clarified this position in the above-mentioned case by observing (at p. 11):

According to Article 10, the State cannot prevent a person from thinking or believing in some religious ideology on the basis that such thinking or belief is irrational or extreme...Article 10 sets an absolute bar against such infringements.

It is also noted that, according to article 83 of the Constitution, article 10 cannot be repealed or amended except by a two-thirds majority in parliament and the approval of the people at a referendum. Such is the absolute status of the freedom of thought, conscience, and religion under the Sri Lankan Constitution.

The second aspect of the freedom of religion or belief is the freedom to manifest religion or belief, which is guaranteed under article 14(1)(e) of the Constitution. Article 14(1)(e) provides:

[Every citizen is entitled to] the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

The United Nations (UN) Human Rights Committee *in General Comment No 22 – Article 18 (Freedom of Thought, Conscience or Religion)*<sup>1</sup> offers an explanation of the terms ‘worship’, ‘observance’, ‘practice’, and ‘teaching’. The Committee has interpreted the scope of **article 18(2) of the International Covenant on Civil and Political Rights (ICCPR)**, to which Sri Lanka is party, and which recognises the freedom to manifest religion or belief. First, *worship* extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. Second, *observance*: include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. Third, *practice* includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers. Finally, *teaching* includes the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications. Notably, there is some overlap between these concepts, and in particular, between practice, observance, and teaching.

**Article 30 of the Convention on the Rights of the Child** recognises that children from minority communities have a special right to the freedom to manifest religion or belief. It provides:

In those States in which ethnic, religious or linguistic minorities...exist, a child belonging to such a minority...shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion...

The Commission recalls the Supreme Court’s observations in *Premalal Perera v. Weerasuriya [1985] 2 Sri.L.R. 177* (at p. 192):

A religious belief need not be logical, acceptable, consistent or comprehensible in order to be protected that unless where the claim is *so bizarre, so clearly non-religious in motivation*, it is not within the judicial function and judicial competence to inquire whether the person seeking protection has correctly perceived the commands of his particular faith (emphasis added).

Therefore, according to the Supreme Court, the precise scope of a belief in terms of what constitutes a protected form of worship, observance, practice, or teaching should not be defined by the Commission or any other adjudicative body, as such scope is defined according to how the person concerned perceives the ‘commands of their particular faith’. **Only claims that are ‘so bizarre’ and ‘so clearly non-religious in motivation’ could be excluded from the scope of the freedom of religion or belief.**

For instance, a decision by an adherent of Mahayana Buddhism not to consume meat may be based on a claim that they are complying with a perceived command found in chapter 8 of the *Lankavatara Sutra*. Accordingly, such a decision would be protected as a form of ‘observance’ of the person’s faith. Similarly, for many Muslims, the practice of cremation may be seen as *haram*

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<sup>1</sup> Human Rights Committee, *General Comment No 22 – Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 4.

according to established scholarly interpretation of Quranic principles and relevant Hadiths. Therefore, the burial of the deceased may constitute a protected 'practice' and 'observance' of persons who adhere to Islam. The Commission notes that the Supreme Court has in cases such as *Karuwalagaswewa Vidanelage Swarna Manjula et al v. Pushpakumara, Officer-in-Charge, Police Station, Kekirawa et al*, SC (F.R) No. 241/14 and *Manimandre Arachilage Suneetha Kalyani de Silva et al v. S.J.B. Suwaris, Officer-in-Charge, Police Station, Walasmulla et al*, SC (F.R) No. 119/15, 120/15, 121/15 and 122/15 concluded that 'propagation' does not ordinarily fall within the protected scope of article 14(1)(e) of the Constitution. The Commission notes that in some limited circumstances, an act of 'propagation' may be perceived as following a 'command' of a particular faith. For instance, some Christian groups including the Jehovah's Witnesses community may claim that propagation is a part of observing the commands of the so-called 'Great Commission' contained in the Holy Bible in the book of Matthew, chapter 28. In such instances, the impugned act could potentially be treated as falling within the scope of 'observance', and, therefore, fall within the scope of the freedom to manifest religion or belief, as such acts may not be considered 'bizarre' and 'clearly non-religious in motivation'.

The Commission observes that, regardless of what acts and conduct might be treated as falling within the scope of the freedom to manifest religion or belief, such freedom can be subject to limitations under the Sri Lankan Constitution. For example, even if an act of 'propagation' were, in some circumstances, to be treated as falling within the scope of the freedom to manifest religion or belief, such act may be subject to lawful restrictions.

Any limitation on the freedom to manifest religion or belief must meet the criteria set out in **article 15(7) of the Constitution**. Article 15(7) provides:

The exercise and operation of all the fundamental rights declared and recognized by [Article 14] shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security.

The term 'law' in article 15(7) should be interpreted in terms of article 170 of the Constitution, which provides:

"law" means any Act of Parliament and any law enacted by any legislature at any time prior to the commencement of the Constitution and includes an Order in Council.

This term should be distinguished from the term 'written law', which according to **article 170** means:

any law and subordinate legislation and includes statutes made by a Provincial Council, Orders], Proclamations, Rules, By-laws and Regulations made or issued by any body or person having power or authority under any law to make or issue the same.

Notably, an instrument used to directly limit a fundamental right should fall within the ambit of 'law' and not 'written law'. This principle was clearly recognised by the Supreme Court in *Thavaneethan v. Dayananda Dissanayake* [2003] 1 Sri.L.R. 74 (pp. 97-98). The Court clarified that the term 'law' found in article 15(7) of the Constitution is restrictively defined in article 170 to mean Acts of Parliament and Orders-in-Council and is only extended to include emergency regulations issued under the **Public Security Ordinance, No. 25 of 1947**. Meanwhile, the UN Human Rights Committee has explained that 'law' must be 'formulated with sufficient precision to enable an individual to regulate their conduct accordingly and it must be made accessible to the public'.<sup>2</sup>

The Supreme Court of Sri Lanka has clarified that any limitation on a fundamental right must meet the criteria of rationality, necessity and proportionality, and reasonableness. With respect to the criterion of rationality, the Supreme Court in *Joseph Perera Alias Bruten Perera v. The Attorney-General and Others* [1992] 1 Sri.L.R. 199 (at p. 217) observed that there must be a proximate or rational nexus between the restriction on a citizen's fundamental right and the object that is ought to be achieved by the restriction. With respect to the criteria of necessity and proportionality, the Supreme Court in *Sunila Abeysekera v. Ariya Rupasinghe, Competent Authority and Others* [2000] 1 Sri.L.R. 314 (at p. 375) found that this criterion 'involves a review of whether the restrictions are proportionate to the legitimate aim pursued'. It was also held that 'the sweeping nature of the restriction can make it over-broad and disproportionate' (at p. 374). In terms of the criterion of reasonableness, the Supreme Court in *Wickramabandu v. Herath and Others* [1990] 2 Sri.L.R. 348 (at p. 359) held: 'If this Court is satisfied that the restrictions are clearly unreasonable, they cannot be regarded as being within the intended scope of the power under Article 15(7)'. These standards were also recently endorsed by the Supreme Court in the *Local Authorities Elections (Special Provisions) Bill Determination*, S.C.S.D No. 01/2025-04/2025.

**Therefore, each restriction on the freedom to manifest religion or belief, must be: (1) provided by law; (2) have a rational nexus to a legitimate aim; (3) necessary and proportionate in terms of meeting that aim; and (4) reasonable.**

Additionally, the UN Human Rights Committee in *General Comment No. 27* observes that 'restrictive measures...must be appropriate to achieve their protective function' and 'must be *the least intrusive* instrument amongst those which might achieve their protective function' (emphasis added).<sup>3</sup>

The Commission now turns to the application of these principles to the facts of the present case. The aforesaid candidates are from the Muslim community and have chosen to wear a head covering commonly referred to as '*hijab*'. According to several credible witnesses who observed and supervised the candidates during the examination in question, the candidates had removed their regular *hijab* and worn loose shawls to cover their heads during the said examination. The candidates who made separate complaints to the Commission clarified that they covered their heads as part of their observance of the Islamic faith and their assertion of Muslim cultural identity.

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<sup>2</sup> Human Rights Committee, *General Comment No. 34 – Article 19 (Freedoms of opinion and expression)*, 12 September 2011, CCPR/C/GC/34, para. 24.

<sup>3</sup> Human Rights Committee, *General Comment No. 27(67) – Freedom of movement (article 12)*, CCPR/C/21/Rev.1/Add.9, 2 November 1999, paras. 14-15.

The Commission notes that some countries have banned the wearing of head coverings in schools. It nevertheless recalls that the UN Committee on the Rights of the Child, in its Concluding Observations on Austria's combined fifth and sixth periodic reports under the Convention on the Rights of the Child, recommended that Austria abolishes its law that bans young girls from wearing headscarves in schools, as it 'may lead to girls' exclusion from mainstream education'.<sup>4</sup>

The Commission is not in a position to query whether the Holy Quran in fact requires the wearing of *hijab*, but notes that the persons concerned held the belief that they were observing a command found in relevant verses in the Holy Quran and relevant Hadiths. In any event, the wearing of *hijab* is neither 'bizarre' nor of a 'clearly non-religious motivation'. **The Commission accordingly finds that the candidates' choice of attire, i.e., the wearing of a head covering in the form of a shawl during an examination, falls within the scope of religious 'observance', which is part of the freedom to manifest religion or belief guaranteed under article 14(1)(e) of the Constitution.** It is also recalled that 'the wearing of distinctive clothing or head coverings' is an established form of 'observance' according to the UN Human Rights Committee's interpretation of the scope of article 18 of the ICCPR. Moreover, the Supreme Court in *Mohamed Siyam Fathima Sabira et al v. Nawagamuwa et al*, SC (F.R.) Application No. 688/2012 took cognizance of the submissions made on behalf of the Hon. Attorney General wherein the Court was informed that the 1<sup>st</sup> Respondent, the Principal of Siriwardhana Maha Vidyalaya, Yatiyantota, had been severely warned for prohibiting the petitioner from wearing *hijab*. It was admitted to Court that the 1<sup>st</sup> Respondent in that case had acted in a manner contrary to article 14(1)(e) and article 12(2) of the Constitution. An undertaking was given to Court that a Circular dated 12 December 1980, which explicitly permits a student to wear *hijab*, would be recirculated. **The Commission notes, therefore, that Sri Lanka has a long and established history of permitting *hijab* to be worn by students. There is no doubt that such attire falls within the scope of the freedom to manifest religion or belief guaranteed by article 14(1)(e) of the Constitution.**

The next question to be considered is whether the 1<sup>st</sup> Respondent's decision to withhold the examination results of the candidates on account of their attire, and to later fail to hold a credible and effective inquiry into the basis for such a decision, amounted to a limitation on the candidates' freedom to manifest religion or belief. The Commission observes that a restriction on this freedom takes place when a legal consequence is imposed on a person as a direct result of their religious manifestation, thereby preventing the person from repeating such manifestation in a given context. **In the present case, the said candidates suffered the consequence of having their examination results withheld as a direct result of their religious manifestation, i.e., their decision to cover their heads with a shawl. Therefore, the 1<sup>st</sup> Respondent did in fact impose a limitation on the candidates' freedom to manifest religion or belief.**

The Commission is next required to consider whether the impugned limitation in this case met the permissibility test set out by the Supreme Court. First, with respect to the test of legality, it is noted that the impugned limitation was prescribed by an examination rule published in Gazette No. 2,137 of 16 August 2019. The relevant rule is published in terms of **section 20 of the Public Examinations Act**, which provides:

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<sup>4</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Austria*, 6 March 2020, CRC/C/AUT/CO/5-6, para. 37.

The Commissioner shall have the power-

- (a) to set out the conditions, rules, and restrictions to which persons who offer themselves as candidates for public examinations shall be subject;
- (b) of disciplinary control, in his absolute discretion, over examiners, invigilators, candidates and all persons engaged by him for the purpose of the conduct of public examinations at any stage;
- (c) to impose, in his absolute discretion, after such inquiry as may be made in that behalf, any restrictions or disabilities in regard to sitting for public examinations by candidates or to cancel or impound any certificates issued to any candidate, where such candidate has violated any rule, condition or restriction referred to in paragraph (a) or been convicted of an offence under this Act or any regulation made thereunder.

The Commission observes that the 1<sup>st</sup> Respondent possessed the statutory power based on an Act of Parliament to prescribe certain conditions, rules, and restrictions with respect to public examinations. The relevant examination rule found in **clause 17(IV) of the 'Rules and Instructions for Examination Candidates'** published in the aforesaid Gazette reads as follows:

Examination candidates should keep their ears openly and in a clearly visible manner so as to confirm that they are not using electronic communication instruments / devices like Bluetooth.

It is noted that this examination rule does not constitute 'law' contemplated by article 15(7) of the Constitution and cannot form the basis of a direct limitation on any fundamental right. Yet, a plain reading of the above examination rule reveals that it does not prescribe or prohibit any form of religious attire, including the covering of a candidate's head. The rule only requires that a person's ears should be clearly visible 'so as to confirm they are not using electronic communication instruments / devices'. **The rule, therefore, does not, in and of itself, necessarily constitute a direct limitation on any form of religious manifestation including the wearing of particular attire.**

Given that the rule in question does not specifically prohibit attire, the legality of the impugned limitation would depend on whether the 1<sup>st</sup> Respondent's application of his statutory powers under section 20 of the Public Examinations Act through the said examination rule was legally valid. The limitation on a person's freedom to manifest religion or belief would in such circumstances be a by-product of the application of the rule, rather than the statutory intent behind the rule. For example, if a rule required a person to remove any headdress at a security screening, the application of the rule may constitute a limitation on a person's freedom to manifest religion or belief where a particular headdress formed part of their religious observance. The rule in question does not intend to directly limit the freedom, but instead, such limitation arises as a by-product of the application of the rule on the grounds of protecting a legitimate aim, such as the protection of national security.

In the present case, the statutory intent behind section 20 of the Act and the examination rule in question appears to be the prevention of cheating and maintenance of the integrity of the examination. Such a rule would naturally protect the 'rights and freedoms of others', as permitting candidates to cheat at or gain some undue advantage at a public examination would surely infringe upon the rights of other candidates to equality before the law and the equal protection of the law guaranteed under **article 12(1) of the Constitution**. Therefore, the Commission finds that the rule,

on the face of it, can be justified as being rationally related to one of the legitimate aims listed in article 15(7) of the Constitution.

It would appear from the statements of witnesses and the report of the 1<sup>st</sup> Respondent that the 1<sup>st</sup> Respondent did not directly prohibit the candidates from wearing any particular attire. However, the Commission is of the view that the relevant examination rule permitted the 1<sup>st</sup> Respondent to assess whether a particular candidate ensured that their ears were clearly visible. Therefore, the 1<sup>st</sup> Respondent did in fact have legal authority to scrutinize the religious attire of candidates to assess whether such attire complied with the relevant examination rule. Based on such scrutiny, the 1<sup>st</sup> Respondent had the authority to impose necessary, proportionate, and reasonable restrictions on such attire. The Commission accordingly concludes that the limitation in question ought to be assessed in terms of its necessity, proportionality, and reasonableness, rather than its legality or rationality per se.

The Commission notes that the burden of proof to demonstrate the necessity, proportionality, and reasonableness of an impugned limitation lies with the state authority that imposes the limitation. In *General Comment No. 34*, the UN Human Rights Committee clarifies that the state must 'demonstrate in specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken'.<sup>5</sup>

In the present case, the candidates and their parents who made complaints to the Commission clarified that the said shawls ensured that, at all times during the examination, examination officials possessed the unimpeded ability to check whether the candidates were using any electronic devices. Moreover, the statements of relevant officials who supervised the candidates during the relevant examination confirmed that the attire that the candidates chose to wear did not prevent their ears from being clearly visible. The Department of Examinations did not offer any conclusive evidence in its report dated 30 August 2024 that the attire in question prevented the candidates' ears from being visible. The 1<sup>st</sup> Respondent, therefore, failed to discharge the burden of proof to demonstrate the necessity, proportionality, and reasonableness of the impugned limitation. i.e., he failed to demonstrate why it was necessary, proportionate, and reasonable to withhold the candidates' examination results.

The officials present at the examination centre had in fact contemplated a necessary, proportionate, and reasonable restriction on the candidates' religious manifestation. According to the statements of these officials, the candidates were requested to remove their regular *hijab*, which ordinarily concealed their ears. The candidates had then worn loose shawls over their heads in a manner that enabled their ears to be visible during the examination. This arrangement did in fact constitute a restriction on the candidates' religious manifestation, as the usual configuration of their *hijab* was restricted, and an alternative was prescribed during the examination. This arrangement is a good example of how a limitation that is necessary, proportionate, and reasonable could in fact be conceived and applied to ensure that the legitimate aim in question (i.e., the protection of the rights and freedoms of others) is met in a manner that is least restrictive of the person's freedom to manifest religion or belief. The withholding of the candidates' examination results despite this alternative arrangement clearly constituted an unnecessary, disproportionate, and unreasonable

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<sup>5</sup> Human Rights Committee, *General Comment No 34 – Article 19 (Freedoms of opinion and expression)*, 12 September 2011, CCPR/C/GC/34, para. 35.

restriction on the candidates' freedom to manifest religion or belief. In effect, such withholding meant that the candidates would not have been permitted to even wear a loose shawl that made their ears visible, thereby totally prohibiting any form of head covering. Such a total prohibition is unnecessary, disproportionate, and unreasonable *vis-à-vis* the legitimate aim contemplated by the examination rule in question, as a head covering that enabled the candidates' ears to be visible is entirely compatible with the examination rule.

It remains clear that the candidates' religious attire did not pose any threat to any legitimate aim listed in article 15(7) of the Constitution. Therefore, the 1<sup>st</sup> Respondent's application of the rule in the present case was impermissible, as it constituted an unnecessary, disproportionate, and unreasonable limitation on the candidates' freedom to manifest religion or belief.

**The Commission concludes that the impugned restriction on the candidates' religious manifestation, i.e., the withholding of their examination results on account of their attire at the said examination, amounted to an unlawful limitation on their freedom to manifest religion or belief in violation of article 15(7) of the Constitution. Accordingly, the Commission finds that the 1<sup>st</sup> Respondent has violated the candidates' fundamental right guaranteed by article 14(1)(e) of the Constitution.**

In *General Comment No. 22*, the UN Human Rights Committee opines that a limitation 'must not be applied in a manner that would vitiate the rights guaranteed in article 18' of the ICCPR.<sup>6</sup> Therefore, no limitation may be imposed on the freedom to manifest religion or belief where it results in a further limitation on the freedom of thought, conscience, or religion. **The Commission notes that the withholding of examination results on account of religious attire deprived the candidates of a basic need, i.e., a basic educational qualification, and amounted to coercion that impaired their freedom to have or to adopt a religion or belief of their choice.** Such coercion arises due to the fact that the candidates are compelled (through an unnecessary, disproportionate, and unreasonable restriction on their religious attire) to deviate from their convictions so as to avoid dire legal consequences, i.e., the denial of a basic educational qualification.

It is observed that the GCE Advance Level certification is a basic secondary educational qualification that all children in Sri Lanka are entitled to receive upon completing the relevant examination. The Commission recalls that the right to universal and equal access to education at all levels is recognised in **article 27(2)(h) of the Sri Lankan Constitution**. The denial of a basic educational qualification through the refusal to release results of examinations without a reasonable cause remains inconsistent with the obligations of the state found in this article. Moreover, **section 5(2) of the ICCPR Act, No. 56 of 2007** obliges all administrative authorities, including the Department of Examinations, to consider the best interest of the child as being of paramount importance in all matters pertaining to children. Education remains one of the most important domains relevant to the child, and there are few other domains in which the best interest of the child is more relevant. **The Commission concludes that the impugned decision of the 1<sup>st</sup> Respondent to withhold the examination results of the aforesaid candidates was contrary to**

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<sup>6</sup> Human Rights Committee, *General Comment No 22 – Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 8.

**their best interest, given that the decision severely impacted their prospects in higher education and employment.**

The close relationship between the internal (*forum internum*) and external (*forum externum*) aspects of a person's freedom of religion or belief would mean that certain unlawful restrictions on a person's religious manifestation could infringe upon the absolutely protected realm of the person's inner convictions as well. **Where the consequence of a limitation on a religious manifestation is so severe that it would deprive a person of a basic need, such as a basic educational qualification, such limitation would invariably also infringe upon the person's freedom of thought, conscience, and religion.** For a person cannot freely exercise their freedom of thought, conscience, and religion, if they face severe legal consequences for a religious observance that poses no threat to any legitimate aim. Accordingly, the Commission concludes that the impugned limitation not only violated the candidates' freedom to manifest religion or belief, but also violated their absolute and unconditional freedom of thought, conscience, and religion, guaranteed under article 10 of the Constitution.

**Given that no restriction on the fundamental right to the freedom of thought, conscience, and religion is permissible under the Constitution, the Commission concludes that the candidates' right was in fact violated by the 1<sup>st</sup> Respondent when he unlawfully restricted their freedom to manifest religion or belief in a manner that severely impacted a basic need. Accordingly, the Commission finds that the 1<sup>st</sup> Respondent has violated the candidates' fundamental right guaranteed by article 10 of the Constitution.**

***b. The rights to equality and non-discrimination***

**Article 12(1) of the Constitution** provides: 'All persons are equal before the law and are entitled to the equal protection of the law', and **article 12(2)** provides: 'No citizen shall be discriminated against on the grounds of race, religion...sex...'

Based on the foregoing analysis, the Commission is of the view that the 1<sup>st</sup> Respondent's reliance on section 20 of the Public Examinations Act together with the relevant examination rule found in clause 17(IV) of the 'Rules and Instructions for Examination Candidates' published in the Gazette Notification No. 2,137 of 16 August 2019 to withhold examination results of the candidates amounted to an arbitrary and unreasonable application of the said provision and rule.

The Supreme Court in *Ariyawansa & Others v. The People's Bank & Others* [2006] 2 Sri.L.R. 145 (at p. 152) held: 'The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.' An arbitrary and unreasonable application of a statutory provision or a rule stemming from such provision would accordingly amount to a violation of article 12(1) of the Constitution.

**Therefore, the Commission is of the view that the 1<sup>st</sup> Respondent in arbitrarily and unreasonably withholding the examination results of the candidates violated the candidates' fundamental rights to equality before the law and the equal protection of the law guaranteed under article 12(1) of the Constitution.**

Additionally, the Supreme Court in *Ajith Perera vs. Minister of Social Services & Social Welfare et al* [2019] 3 Sri.L.R. 275 (at pp. 300-301) observed:

[T]he concept of human dignity, which is the entitlement of every human being, is at the core of the fundamental rights enshrined in our Constitution. It is a fountainhead from which these fundamental rights spring forth and array themselves in the Constitution, for the protection of all the people of the country.'

In the present case, it is observed that the said candidates were singled out, treated unequally in comparison to other candidates, and subjected to stigma, purely on account of their religious identity. Moreover, they were deprived of a basic need, i.e., a basic educational qualification, purely on account of their religious identity. There is little doubt that the treatment endured by the said candidates strips them of their dignity.

**In these circumstances, the Commission also concludes that the 1<sup>st</sup> Respondent violated the candidates' inherent right to dignity, which is a constituent element of the fundamental rights guaranteed in the Constitution, including the rights to equality before the law and the equal protection of the law.**

The UN Human Rights Committee in *General Comment No. 18: Non-Discrimination* observes that '[n]on discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute[s] a basic and general principle relating to the protection of human rights.'<sup>7</sup> It is recalled that the concept of discrimination is not explicitly defined in the Sri Lankan Constitution nor in the ICCPR. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term 'racial discrimination' shall mean 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.' Moreover, article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women defines 'discrimination against women' to mean:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Meanwhile, article 2(1) of the Convention on the Rights of the Child provides:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

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<sup>7</sup> Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 10 November 1989, para. 1.

Notably, one of the key rights recognised in article 28 of the Convention on the Rights of the Child is the right to secondary education.

It is also recalled that the UN Human Rights Committee in *Miriana Hebbadj v. France*, Communication No. 2807/2016 (2018), and *Sonia Yaker v. France*, Communication No. 2747/2016 (2018) examined the French ban on the *niqāb* (a full-face veil). It concluded that, in order for a limitation to be permissible, it must be ‘non-discriminatory’ in addition to meeting the usual criteria of necessity and proportionality. The majority of the Committee in both cases found that the ban violated the authors’ freedom of religion or belief and amounted to ‘intersectional discrimination based on gender and religion, in violation of article 26 of the [ICCPR]’ (para. 8.17). Similarly, in the present case before the Commission, the impugned decision to withhold examination results purely based on the candidates’ religious attire amounted to intersectional discrimination on the basis of race, religion and sex.

On the one hand, the arbitrary and unreasonable application of a statutory provision and examination rule in a manner that targeted the candidates purely based on their attire amounted to discrimination on the grounds of race and religion, given that such attire was based on their ethnic and religious identity. The Commission notes that there is no evidence that the explicit *purpose* of such arbitrary and unreasonable application was the discrimination of the aforesaid candidates. **Yet, the effect of such application was discriminatory, as the candidates suffered a serious setback to a basic need, i.e., the obtaining of a basic educational qualification, solely on account of their attire, which otherwise did not violate the examination rule in question.**

On the other hand, the impugned decision of the 1<sup>st</sup> Respondent to withhold the results of the said candidates also amounted to discrimination on the grounds of sex, as the specific attire in question was not only linked to the candidates’ ethnic and religious identity but also their identity as Muslim girls.

**The Commission accordingly concludes that, by withholding the examination results of the candidates solely due to their choice of attire at the examination in question, the 1<sup>st</sup> Respondent violated their right to non-discrimination based on race, religion, and sex, guaranteed under article 12(2) of the Constitution.**

### **Recommendations**

The Commission reiterates that the 1<sup>st</sup> Respondent has violated the candidates’ fundamental rights to the freedom to manifest religion or belief, the freedom of thought, conscience and religion, the right to equality before the law and the equal protection of the law, and the right to non-discrimination respectively guaranteed by articles 14(1)(e), 10, 12(1), and 12(2) of the Constitution.

The Commission also observes that decisions, such as that of the 1<sup>st</sup> Respondent, with potentially far-reaching impacts on the lives of children on account of their ethnic and religious identity can contribute towards the creation of a hostile environment not only for the children concerned but for the community to which they belong. In its *Report of the Inquiry into Violent Events in*

***Digana and Environs in the District of Kandy in March 2018*** (published in September 2025), the Commission observed:

Discriminatory policies and phenomena targeting Muslim communities must be viewed as contributing towards a hostile environment that can lead to conflict. Recent examples of such policies and phenomena include unreasonable restrictions on religious manifestation, such as arbitrary restrictions on the wearing of the *hijab*...

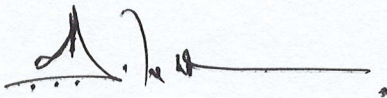
The Commission also recalls the observations of the **Commission of Inquiry to Investigate and Inquire into and Report or Take Necessary Action on the Bomb Attacks on 21<sup>st</sup> April 2019** headed by Supreme Court Justice Janak de Silva in its ***Final Report (Volume 1)*** dated 31 January 2021. The Commission of Inquiry observes that the violence and discrimination repeatedly encountered by Muslim communities has contributed towards the alienation and marginalisation of some members of these communities.

In this overarching context, it is incumbent on the 2<sup>nd</sup> Respondent and the Department of Examinations that measures be adopted to prevent similar violations of the freedom to manifest religion or belief in the future.

Accordingly, in terms of **section 15(3)(c) and (4) of the Human Rights Commission of Sri Lanka Act**, the following recommendations are made to the 2<sup>nd</sup> Respondent and the Department of Examinations:

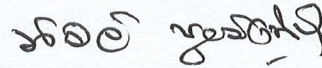
- 1. Conduct a full and impartial inquiry into how and why a recommendation was made by an external official that the aforesaid candidates had violated the examination rule contained in clause 17(IV) of the ‘Rules and Instructions for Examination Candidates’ published in the Gazette Notification No. 2,137 of 16 August 2019. Necessary disciplinary action should be taken against any such official if it is established that such official had misrepresented facts to the Department of Examinations or had acted in bad faith.**
- 2. Issue clear guidelines in the form of a circular clarifying that the examination rule contained in clause 17(IV) of the ‘Rules and Instructions for Examination Candidates’ published in the Gazette Notification No. 2,137 of 16 August 2019 should not be interpreted and applied to prevent any student from manifesting their religion or belief. Examination invigilators and supervisors should be given clear instructions that religious attire adapted to comply with any requirement to keep a candidate’s ears visible, such as the wearing of a loose shawl, should, according to the manner and form of such attire, be considered satisfactory.**

3. Review the current procedure for assignment of female invigilators, including Tamil-Speaking female invigilators, and ensure the assignment of adequate numbers of female invigilators, including Tamil-Speaking female invigilators, to examination centres in the future.



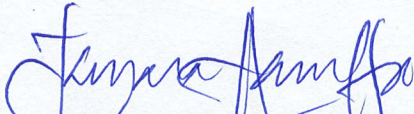
Justice L.T.B. Dehideniya,  
Chairperson,  
Human Rights Commission of Sri Lanka

Justice L.T.B. Dehideniya  
Judge of the Supreme Court (Retired)  
Chairman  
Human Rights Commission of Sri Lanka



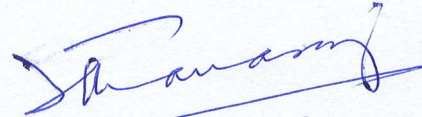
Mr. Nimal G. Punchihewa,  
Commissioner,  
Human Rights Commission of Sri Lanka

Nimal G. Punchihewa  
Senior Counsel  
Commissioner  
Human Rights Commission of Sri Lanka



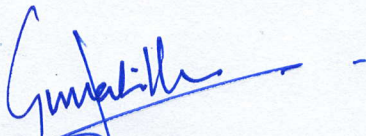
Prof. Fathima Farzana Haniffa,  
Commissioner,  
Human Rights Commission of Sri Lanka

Prof. Farzana Haniffa  
Commissioner  
Human Rights Commission of Sri Lanka



Prof. Thaiyamuthu Thanaraj,  
Commissioner,  
Human Rights Commission of Sri Lanka

Prof. T. Thanaraj  
Commissioner  
Human Rights Commissioner of Sri Lanka



Dr. Gehan Gunathilleke,  
Commissioner,  
Human Rights Commission of Sri Lanka

Dr. Gehan Gunathilleke  
Commissioner  
Human Rights Commission of Sri Lanka

- Copies : 1. Hon. Minister, Ministry of Education, Higher Education and Vocational Education
2. The Secretary, - To implement recommendations.  
Ministry of Education, Higher Education and Vocational Education