

IN THE SUPREME COURT OF
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

*In the matter of an application under and in terms
of Articles 17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

1. Transparency International Sri Lanka
No.366, Nawala Road
Nawala, Rajagiriya
2. Fulasthi R. K. Hewamanna
No.366, Nawala Road
Nawala, Rajagiriya

PETITIONERS

Supreme Court [Fundamental Rights]
Application No. 221 /2024

Vs.

1. Minister of Public Administration, Home
Affairs, Provincial Councils and Local
Government
Ministry of Public Administration, Home
Affairs, Provincial Councils and Local
Government
Independence Square
Colombo 1
2. Minister of Ports, Shipping and Aviation
Ministry of Ports, Shipping and Aviation
No.19, Chaithya Road, Colombo 1
3. Minister of Wildlife & Forest Resources
Conservation
Ministry of Wildlife & Forest Resources
Conservation
No.1090
Sri Jayawardhanapura Road, Rajagiriya
4. Minister of Fisheries
Ministry of Fisheries
New Secretariat
Maligawatte Road
Colombo 10
5. Minister of Education
Ministry of Education
"Isurupaya"
Battaramulla

6. Minister of Transport and Highways
Ministry of Transport and Highways
9th Floor, "Maganeguma Mahamedura"
Denzil Kobbekaduwa Mawatha
Koswatte
Battaramulla
7. Minister of Agriculture
Ministry of Agriculture
No.80/5, "Govijana Mandiraya"
Rajamalwatte Road
Battaramulla
8. Minister of Justice, Prison Affairs and
Constitutional Reforms
Ministry of Justice
No.19, Sri Sangaraja Mawatha
Colombo 10
9. Minister of Tourism and Lands
Ministry of Tourism and Lands
No. 2, Asset Arcade Building
51/2/1, York Street, Colombo 1
10. Minister of Plantation Industries
Ministry of Plantation Industries
11th Floor, Stage II
"Sethsiripaya"
Battaramulla
11. Minister of Urban Development and
Housing
Ministry of Urban Development and
Housing
17th Floor "Suhurupaya"
Sri Subathipura Road
Battaramulla
12. Minister of Foreign Affairs
Ministry of Foreign Affairs
Republic Building
Sir Baron Jayathilake Mawatha
Colombo 1
13. Minister of Buddhasasana, Religious and
Cultural Affairs
Ministry of Buddhasasana, Religious and
Cultural Affairs
No.135, Srimath Anagarika Dharmapala
Mawatha
Colombo 7

14. Minister of Power and Energy
Ministry of Power and Energy
No.437, Galle Road
Colombo 3
15. Minister of Environment
Ministry of Environment
No/416/C/1, "Sobadham Piyasa"
Robert Gunawardena Mawatha
Battaramulla
16. Minister of Irrigation
Ministry of Irrigation
No.500, 10th Floor
T. B. Jayah Mawatha
Colombo 10
17. Minister of Labour and Foreign
Employment
Ministry of Labour and Foreign Employment
6th Floor, "Mehewara Piyasa"
Narahenpita
Colombo 5
18. Minister of Trade, Commerce and Food
Security
Ministry of Trade, Commerce and Food
Security
No.492, L. H. Piyasena Building
R. A. de Mel Mawatha
Colombo 3
19. Minister of Water Supply and Estate
Infrastructure Development
Ministry of Water Supply and Estate
Infrastructure Development
No. 35, "Lakdiya Medura"
New Parliament Road, Pelawatte
Battaramulla
20. Minister of Health
Ministry of Health
"Suwasiripaya"
No.385, Rev. Beddegama Wimalawansa
Thero Mawatha
Colombo 10

21. Minister of Public Security

22. Secretary

Both at:
Ministry of Public Security
14th Floor, "Suhurupaya"
Battaramulla

23. Secretary to the Cabinet of Ministers
Office of the Cabinet of Ministers
Republic Building
Sir Baron Jayathilake Mawatha
Colombo 1

24. Secretary to the Treasury
Ministry of Finance
The Secretariat
Colombo 1

25. Secretary
Ministry of Foreign Affairs
Republic Building
Sir Baron Jayathilake Mawatha
Colombo 1

26. Controller General of Immigration
Department of Immigration and Emigration
"Suhurupaya"
Sri Subhuthipura Road
Battaramulla

27. Sri Lanka Tourism Development Authority
No.80, Galle Road
Colombo 03

28. Sri Lanka Data Protection Authority
Ministry of Technology
Level 11
Unit No. 1101
One Galle Face Tower
No. 1A, Centre Road, Galle Face
Colombo 2

29. Auditor General
306, 72 Polduwa Road
Battaramulla

30. Mobitel (Private) Limited
Rotunda Towers

No.109, Galle Road, Colombo 3

31. Scicom Lanka (Private) Limited
No. 466
Galle Road, Colombo 3

32. GBS Technology Services & IVS Global FZCO
IFZA Dubai Digital Park
Dubai Silicon Oasis
Dubai
United Arab Emirates

33. VF Worldwide Holdings LTD
Unit 3101A
Jumeirah Business Centre 1
Cluster-G, JLT
Dubai
United Arab Emirates

34. Honourable Attorney General
Attorney General's Department
Colombo 12

(Under and in terms of the proviso to Article 35(3) of the Constitution, as representing and binding the Minister of Finance, Economic Stabilization and National Policies, Minister of Defence, Minister of Women, Child Affairs and Social Empowerment, Minister of Technology and Minister of Investment Promotions, as well as under and in terms of Article 134(1) of the Constitution.

RESPONDENTS

On this 30th day of July 2024

TO HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

The PETITION of the Petitioners above-named, appearing by Thushari Jayawardena, their Registered Attorney-at-Law, states as follows:

SCOPE OF THE APPLICATION

The instant application impugns the wrongful procedure/processes followed by one or more Respondents to procure the services of private entities to process the online visa applications of foreigners who wish to visit Sri Lanka, and the avoidance and/or failure and/or omission and/or disregard and/or neglect by one or more of the Respondents to comply with the law and/or guidelines and/or regulations and/or mandatory procedures applicable thereto, requiring review of the said acts and/or omissions of the Respondents by Your Lordships' Court.

The Petitioners *inter alia* allege the failure of one or more Respondents to uphold the fundamental rights of the Petitioners, as well as of the general public, as enshrined in Article 12(1) and 14A of the Constitution, as morefully enumerated hereinafter.

THE PETITIONERS

1. The 1st Petitioner is a body incorporated under and in terms of the Companies Act, No.7 of 2007, is a juristic person with the capacity to sue and be sued, and is represented by a membership of whom more than three-fourths are citizens of Sri Lanka.
2. The primary objects of the 1st Petitioner are, *inter alia* to encourage the growth of democratic concepts, practices and governance in Sri Lanka, to promote accountability, the eradication of corruption in public institutions, departments, and other areas of both government and private sector entities, to take steps to promote and bring about transparency and integrity in governance in all spheres of life in Sri Lanka.
3. The 2nd Petitioner is an Attorney-at-Law, and the Chairman of the 1st Petitioner.
4. In terms of Article 3 of the Constitution, sovereignty is vested in the People of the Republic of Sri Lanka, and sovereignty includes the powers of government, fundamental rights and franchise.
5. The Petitioners have filed the instant application in the PUBLIC INTEREST, and also in the interest of the 1st Petitioner's members, *inter alia* in terms of Article 28 of the Constitution, to uphold and defend the Constitution and the law, to further the national interest, to preserve and protect public property, to combat misuse and waste of public property, and to respect the rights and freedoms of others.

6. The Petitioners state they have a clear and direct interest to institute this application, being concerned in the failure to adhere to transparent procurement processes when entering into agreements with private entities, arising from the acts and/or omissions of one or more Respondents, as morefully stated hereinafter.

Copies of the Certificate of Incorporation of the 1st Petitioner and its Articles of Association, compendiously marked PI are annexed hereto and pleaded as part and parcel hereof.

THE RESPONDENTS

7. The 1st Respondent is the Prime Minister of Sri Lanka, and the Minister of Public Administration, Home Affairs, Provincial Councils and Local Government.
8. The 2nd to 21st Respondents are members of the Cabinet of Ministers of Sri Lanka.
9. The 22nd Respondent is the Secretary of the Ministry of Public Security.
10. The 23rd Respondent is the Secretary of the Office of the Cabinet of Ministers of Sri Lanka.
11. The 24th Respondent is the Secretary to the Treasury.
12. The 25th Respondent is the Secretary to the Ministry of Foreign Affairs.
13. The 26th Respondent is the Controller General of Immigration of the Department of Immigration of Sri Lanka.
14. The 27th Respondent is the Sri Lanka Tourism Development Authority which was established by the Tourism Act, No.38 of 2005, and is a body corporate with perpetual succession, and can sue and be sued in its corporate name.
15. The 28th Respondent is the Data Protection Authority of Sri Lanka, which was established by the Personal Data Protection Act No.9 of 2022, and is a body corporate with perpetual succession, and can sue and be sued in its corporate name.
16. The 29th Respondent is the Auditor General of Sri Lanka.
17. The 30th Respondent is Mobitel (Pvt) Ltd, a company duly registered under the Companies Act No.07 of 2007, and is a body corporate with perpetual succession, and can sue and be sued in its corporate name.
18. The 31st Respondent is Scicom Lanka (Private) Limited, a company duly registered under the Companies Act No.07 of 2007, and is a body corporate with perpetual succession, and can sue and be sued in its corporate name. Scicom Lanka (Private) Limited is a company which develops software solutions.

19. The 32nd Respondent is GBS Technology Services & IVS Global FZCO, which is a company registered in Dubai, and having its registered address at the aforesaid address, to the best of the Petitioners' knowledge and belief.

20. The 33rd Respondent is VF Worldwide Holdings LTD, which is a company registered in Dubai, and having its registered address at the aforesaid address, to the best of the Petitioners' knowledge and belief.

21. The 34th Respondent is the Honourable Attorney General of Sri Lanka, and has been named as a Respondent herein, under and in terms of the provisions of Article 134(1) of the Constitution, as well as under and in terms of the provisions of the proviso to Article 35(3), as representing and binding the Minister of Finance, Economic Stabilization and National Policies, Minister of Defence, Minister of Women, Child Affairs and Social Empowerment, Minister of Technology and Minister of Investment Promotions.

It is specifically averred that the relief sought in this application against the 34th Respondent, is constitutionally enforceable against, and binding on, the Minister of Finance, Economic Stabilization and National Policies, Minister of Defence, Minister of Women, Child Affairs and Social Empowerment, Minister of Technology and Minister of Investment Promotions, under and in terms of the provisions of Article 35(3) of the Constitution.

22. The impugned acts and/or omissions of the 1st to 28th and/or 32nd to 34th Respondents, and/or any one or more of them, constitute executive and/or administrative acts as contemplated by Article 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka and are consequently subject to the jurisdiction of Your Lordships' Court.

FACTUAL BACKGROUND TO THE INSTANT APPLICATION

23. The Petitioners have invoked the jurisdiction of Your Lordships' Court in view of the overwhelming PUBLIC INTEREST *vis-à-vis* the subject matter of this case, and more particularly, the irregular and wrongful manner by which private entities have been selected as authorised representatives for issuance of visas, the manner by which an agreement with private parties has been entered into and proceeded with, notwithstanding the severe financial loss and the grave and irreparable damage potentially to be caused thereby, in particular to the tourism industry of the island.

24. At the outset, it is stated that, notwithstanding the intensely public nature of the matters placed in issue in this application, and their vital importance to the general public as well as the paramountcy of transparency and openness in good governance, there is a paucity of officially available data and information thereof.

Consequently, the Petitioners have had to embark on a concentrated effort to obtain the said data and information with extreme difficulty, in the face of a palpable culture of secrecy surrounding the same, and with the assistance of *bona fide* and civic-minded concerned citizens and institutions.

25. The Petitioners are still endeavouring to uncover additional material and/or clearer specifics to buttress the findings and concerns of the Petitioners, which are urged in this application, and respectfully reserve the right to tender any further information and/or material to Your Lordships' Court, as and when the same are discovered by the Petitioners.

26. The matters pleaded hereinafter are demonstrative of the abject disregard of one or more Respondents to comply with the law, regulations, guidelines and/or procedures *vis-à-vis* the appointment of authorised representatives to issue visas to tourists entering Sri Lanka, which can only be inferred by the Petitioners as deliberate subterfuge.

27. It is stated that these Petitioners are becoming incrementally aware of the nature, magnitude and impact of the impugned acts and/or omissions of the Respondents, and that the said process is continuing, with startling new disclosures reaching the public domain periodically.

It is further specifically stated that the impugned acts and/or omissions of the Respondents form a connected sequence of events, which the Petitioners are continuing to become aware of.

The Petitioners very specifically state that the said connected sequence of events culminated on or about 01/05/2024 with an incident at the Bandaranaike International Airport, which the Petitioners became aware of on or about 02/05/2024, regarding the appointment of several private entities as authorised representatives to issue visas to tourists, as will be more fully averred hereinafter.

In these circumstances, it is very specifically stated that there is a continuing violation and/or imminent violation of the fundamental rights of the Petitioners, and the general public, which stand to imminently become more and more grave and irreparable, warranting the immediate intervention of Your Lordships' Court.

APPOINTMENT OF AUTHORISED REPRESENTATIVES TO PROCESS THE VISA APPLICATIONS OF FOREIGNERS WHO VISIT SRI LANKA, AND PASSPORT APPLICATIONS OF SRI LANKANS OVERSEAS

28. The events and factual circumstances hereinafter described and referred to have come to the knowledge of the Petitioners upon them having engaged in a concentrated effort to discover information, upon them having realized that issuance of visas to tourists at the Bandaranaike International Airport [hereinafter 'BIA'] had been outsourced to several private entities.
29. The Petitioners state that an incident at the BIA on 01/05/2024 was the catalyst which alerted the Petitioners to the matters pleaded hereinafter. The events leading up to the said incident, which became known to the Petitioners after the above event, will be more fully elaborated hereinafter.
30. In or around 2012, the Department of Immigration and Emigration [hereinafter 'DoIE'] introduced the online Electronic Travel Authorization [hereinafter 'ETA'] system to facilitate the issuance of visas to foreigners who wished to visit Sri Lanka.
31. To do so, the DoIE partnered with Mobitel (Pvt) Limited [hereinafter 'Mobitel'] and launched an ETA Front-end Platform [hereinafter 'ETA Platform'] on 01/01/2012, which improved the efficiency of the immigration counters at the BIA.
32. This ETA Platform was in operation from 01/01/2012 until 17/04/2024, without the occurrence of any major breakdowns, negative publicity, data breaches or other complaints.
33. During its period of operation, Mobitel had informed the DoIE on multiple occasions that the ETA Platform required revamping, and in or around September 2020, as well as in August 2022 and August 2023, Mobitel tendered project proposals for the improvement of the ETA Platform and enhancement of border control, which was to be conducted by Mobitel, with zero cost to the Government of Sri Lanka [hereinafter 'GoSL'].
34. Meanwhile, on 17/08/2021, the Cabinet of Ministers granted its approval, by Cabinet Decision No. CP/21/1477/303/117, to revamp the ETA Platform and to "*intensify national security*".

The Petitioners respectfully state that they are not in possession of the said Cabinet Decision and respectfully seeks the permission of Your Lordships' Court to tender the same, no sooner it is obtained.

35. Subsequently, Mobitel conducted an update of the solution hardware in February 2022 and proceeded to make inquiries from DoIE about proceeding with revamping the ETA solution. Mobitel engaged in technical discussions to finalize the technical requirements and sought the expeditious assistance of the DoIE to proceed with system requirement-gathering to arrive at the optimal software solution.

36. Mobitel submitted a new system requirement scope document to the DoIE in May 2023. However, upon the DoIE referring to several new system requirements for the ETA Platform, which were not communicated to Mobitel previously, Mobitel submitted an updated proposal along with Scicom Lanka (Private) Limited [hereinafter 'Scicom'], the software solution partner which partnered with Mobitel to tender the proposal to the DoIE, on 18/08/2023, which met the requirements stipulated by the DoIE, at the time.

A copy of the technical proposal submitted by Mobitel on 18/08/2023 marked P2 is annexed hereto and pleaded as part and parcel hereof.

37. It is in the context of Mobitel providing its technical solutions to upgrade the ETA Platform in August 2023, on *inter alia* the following terms that the events described hereinafter materialized. The terms proposed by Mobitel were *inter alia*:

- a. A convenience fee of USD 1.00 to be levied for each ETA application submitted and processed through the system;
- b. All financial and operational risks to be borne by Mobitel and Scicom;
- c. 100% data ownership by the DoIE;
- d. Mobitel and Scicom to be responsible for funding the design, development, implementation and maintenance of the software at zero cost to the GoSL;
- e. Preventing unauthorised access and ensuring data security.

38. However, by Cabinet Memorandum dated 08/09/2023, entitled "*Appointment of Authorized Representatives to submit online the visa applications of foreigners who visit Sri Lanka and passport applications of Sri Lankans travelling overseas*" [hereinafter sometimes referred to as "Appointment of Authorized Representatives"], the Minister of Public Security sought the approval of the Cabinet of Ministers to appoint an Evaluation Committee to submit

recommendations upon studying the agreement and project proposal submitted by an entity referred in the said Cabinet Memorandum as "IVS-GBS Global Services".

The Cabinet Memorandum also sought the approval of the Cabinet of Ministers to require the said Evaluation Committee to submit to the Cabinet of Ministers a report containing the recommendations of the said Committee, and a report containing the clearance of the Attorney General for the agreement proposed to be signed with the "Company"

A copy of Cabinet Memorandum dated 08/09/2023 marked P3 is annexed hereto and pleaded as part and parcel hereof.

39. It is very pertinent that the said IVS-GBS Global Services [hereinafter 'IVS-GBS'] and VF Worldwide Holdings LTD [hereinafter 'VFS Global] had, in June 2023, jointly submitted a proposal on E-Visa, Consular Services, Visa Services, Biometric Services and Tourism Promotion to the Ministry of Public Security and the Ministry of Foreign Affairs. Thus, it is evident that the said Ministries had sought a proposal from IVS-GBS and VFS Global, notwithstanding Mobitel providing its services, and having proposed revamping the ETA Platform.

The Petitioners are unaware of proposals being called from any other service provider for provision of *inter alia* ETA services, at the time. These circumstances bring one to the irresistible conclusion that no other proposals were called for and/or received in this regard from other service providers, and/or that an unsolicited proposal was called for from IVS-GBS and VFS Global.

A copy of the said proposal submitted in June 2023 marked P4 is annexed hereto and pleaded as part and parcel hereof.

40. By its decision dated 11/09/2023, the Cabinet of Ministers granted approval for the recommendations contained in the Cabinet Memorandum dated 08/09/2023.

A copy of Cabinet Decision dated 11/09/2023 marked P5 is annexed hereto and pleaded as part and parcel hereof.

41. Subsequently, by letter dated 21/09/2023, the Secretary to the Ministry of Public Security informed several individuals that they were selected to the proposed Evaluation Committee to evaluate the proposals of "IVS-GBS Global Services" and for the Appointment of Authorized Representatives.

A copy of letter dated 21/09/2023 marked P6 is annexed hereto and pleaded as part and parcel hereof.

42. The said Evaluation Committee proceeded to provide its Committee Report regarding the Appointment of Authorized Representatives. The said Report stated that "GBS Technology Services & IVS Global- FZCO (IVSGBS)" and an entity named "VFS VF Worldwide Holdings LTD (VFS Global)" had tendered a proposal and an agreement, regarding which the Evaluation Committee *inter alia* observed that:

- i. IVS-GBS operates in 145 countries;
- ii. a service charge of USD 18.50 would be levied per application submitted and processed;
- iii. issuance of travel insurance for tourists;
- iv. provision of services in several languages;
- v. Mobitel provides the ETA Platform services for USD 1, with no further cost to the DoIE;
- vi. By Cabinet Decision dated 22/01/2020, Travelson International Travel Services (Shanghai) provides visa services only for Chinese nationals;
- vii. GBS Technology Services & IVS Global- FZCO and VFS Global would come into possession of information relating to diplomatic visas which ought not to come into possession of third parties;
- viii. If the service of issuing passports is to be given to GBS Technology Services & IVS Global- FZCO and VFS Global, the law would require amendment;
- ix. There was insufficient information on aspects of accountability and how each entity would be accountable for the system.

A copy of the report of the said Evaluation Committee marked P7 is annexed hereto and pleaded as part and parcel hereof.

43. The Evaluation Committee made several recommendations in the Committee Report including *inter alia*:

- i. Obtain information regarding the legal status of each of the entities involved prior to entering into an agreement;
- ii. DoIE to obtain reports from security divisions on the impact caused to national security by the issuance of visas by the said entities;

- iii. Ensure that a cost is not incurred to the DoIE or GoSL by proceeding with the proposal submitted by the entities;
- iv. Obtain the recommendations of the Attorney General upon the report of the Evaluation Committee being made available to the Attorney General.

44. The Petitioners are unaware if the aforesaid recommendations of the Evaluation Committee were considered and/or whether the same were disregarded. If the said recommendations were disregarded, serious doubts are raised as to why the same were disregarded. Such information being unavailable in the public sphere is demonstrative of the utter disregard of one or more Respondents regarding such matters being subject to scrutiny, and evincing the total disregard of the Respondents to the rights of the general public to information.

45. The Petitioners have been reliably informed, and verily believe that, on or around 15/11/2023, the Honourable Attorney General had provided an opinion regarding the draft agreement to be entered into between the DoIE and "GBS Technology Services & IVS Global-FZCO (IVSGBS)" and an entity named "VFS VF Worldwide Holdings LTD (VFS Global)" [hereinafter sometimes collectively referred to as "the Service Providers"].

At the stage of filing this application, the Petitioner is not privy to the draft agreement tendered to the Attorney General's Department for review, and respectfully reserves the right to tender the same if it is made available to the Petitioners.

The Petitioners have further been reliably informed, and verily believe that, the said opinion refers *inter alia* to:

- i. The lack of approval from the Cabinet of Ministers for the company entering into the agreement to do so, i.e. "GBS Technology Services & IVS Global- FZCO (IVSGBS)";
- ii. Inclusion of all entities within the definition of "Service Provider"
- iii. The need to clarify several terms used in the agreement;
- iv. The need to obtain approval of the DoIE for several clauses;
- v. Reconsider several clauses of the draft agreement;

The Petitioners most respectfully seek an Order of Your Lordships' Court, to call for the said opinion.

46. On 04/12/2023, the Minister of Public Security submitted a Cabinet Memorandum to obtain the approval of the Cabinet of Ministers to the recommendations contained in the Report of the Evaluation Committee regarding the proposed agreement with the said Service Providers.

It is noteworthy that at this point, the Minister of Public Security sought the approval of the Cabinet of Ministers to amend the name of the entity with whom the agreement was to be entered into from "IVS-GBS Global Services" to "GBS Technology Services & IVS Global-FZCO" and VFS VF Worldwide Holdings LTD." This is shockingly demonstrative of the very Ministry which initiated the agreement being unaware of the names of the entities involved as service providers.

A copy of the Cabinet Memorandum dated 04/12/2023 marked P8 is annexed hereto and pleaded as part and parcel hereof.

47. On 11/11/2023, the Minister of Finance tendered his observations regarding the Cabinet Memorandum dated 04/12/2023. It was observed that the Minister of Finance had no objection to obtain the approval of the Cabinet of Ministers to implement the recommendations of the Evaluation Committee, subject to adherence to the recommendations made. The Minister of Finance further observed that strict compliance must be made with all recommendations of the Attorney General's Department regarding the agreement.

A copy of letter dated 11/11/2023 marked P9 is annexed hereto and pleaded as part and parcel hereof.

48. By its decision dated 11/12/2023, the Cabinet of Ministers granted its approval to the recommendations contained in Cabinet Memorandum dated 04/12/2023.

A copy of Cabinet Decision dated 11/12/2023 marked P10 is annexed hereto and pleaded as part and parcel hereof.

49. The Petitioners are now privy to the "Outsourcing Agreement" entered into on 21/12/2023 between entities named GBS Technology Services & IVS Global- FZCO and VF Worldwide Holdings LTD, the latter being designated as the "technical partner" for IVSGBS.

The Petitioners state that GBS Technology Services and IVS Global- FZCO, which have been treated as a single entity, may in fact be two separate corporate entities. In the circumstances, entering into an Outsourcing Agreement with two separate entities, which are treated as a single party, raises serious concerns as to the accountability of each entity and the sharing of accountability by those entities

A copy of the said Outsourcing Agreement dated 21/12/2023 marked P11 is annexed hereto and pleaded as part and parcel hereof.

50. The said Outsourcing Agreement provides *inter alia*

- i. The tenure of the agreement is 10 years, and may be extended by a further six years;
- ii. IVS-GBS and VFS Global are not liable for any indirect, special or consequential loss or damage however caused which arises out of or in connection with the provision of services under the agreement;
- iii. The *service fee* for an individual tourist is USD 18.50 per applicant; and
- iv. The *service fee* is exclusive of any payment gateway charges, local taxes and other transaction fees.

51. The Petitioners have now been made aware that the said Service Providers took over the issuance of visas at BIA, on or around 17/04/2024, subsequent to their purported appointment as Authorised Representatives. In fact, Mobitel had been informed by the Controller General to discontinue its services on the ETA Platform from 00.00 hours on 17/04/2024.

52. On 01/05/2024, an incident which occurred at the BIA, was widely shared on social media, and was the subject of discussion, drawing the attention of the Petitioners to the controversial purported appointment of the Service Providers.

The incident at the BIA involved the rejection of a visa of a non-Sri Lankan spouse of a Sri Lankan national, resulting in the Sri Lankan national lashing out at the agents of the Service Providers who were involved in issuance of visas. The individual was heard to state that Indian nationals had been authorised to issue visas for entry to Sri Lanka, while ignoring the capable workforce of the DoIE. The individual asserted that he is a taxpayer of Sri Lanka and that he (and his wife) should not face rejection of visa by Indian nationals.

Long queues were seen at BIA in the video footage of the incident, which was shared on social media, demonstrating that the system for issuance of visas by the Service Providers had faced serious inadequacy.

A copy of newspaper articles which reported the said incident compendiously marked P12 are annexed hereto and pleaded as part and parcel hereof.

53. Reports on the said incident revealed that the Service Providers were charging over USD.100 per entry visa, a grossly excessive sum, when compared with regional rates.

54. These Petitioners have been reliably informed, and verily believe, that these circumstances drew the attention of the Committee on Public Finance (CoPF) of the Parliament, which immediately launched an investigation into the matter.

55. The Petitioners have also been reliably informed, and verily believe, that on or around 13/05/2024, the Honourable Attorney General, responding to clarifications sought by the CoPF on 09/05/2024, responded to the clarifications thus sought.

It is very pertinent that such clarifications were sought in May 2024, only at the behest of CoPF, nearly six months after signing the aforesaid "Outsourcing Agreement" with the Service Providers, and subsequent to the widespread social media coverage of the events at the BIA, raising doubts as to whether such clarifications would have been sought, if the incident was not widely discussed on social media and among the public.

The Petitioners have also been reliably informed, and verily believe, that the clarifications provided by the Honourable Attorney General makes specific reference to the scope of the observations contained in the said letter, and also states that the process by which the Service Providers were selected or the necessity, viability, or suitability of the project concerned was not examined. The letter is also believed to state that no observations are made in respect of the financial provisions, including the service fees charged.

The Petitioners most respectfully seek an Order of Your Lordships' Court, to call for the said observations of the Honourable Attorney General.

56. On 14/05/2024, the CoPF released the report of its Technical Team regarding the Appointment of Authorized Representatives. It is very pertinent that the said Report referred to *inter alia*

- i. A data/security breach which occurred subsequent to the Service Providers taking over the services in or around April 2024, where names, addresses and passport numbers of tourists applying for visas at the BIA were leaked to an individual who had obtained a visa through the Service Providers;
- ii. The cost of issuing visas for a 30-day entry visa is much higher than in other countries in the region;

- iii. The provision of services by Mobitel was discontinued, even after it had developed the necessary system with no cost to the DoIE;
- iv. That the system was not tested prior to entering into the Outsourcing Agreement, and prior to being implemented;
- v. Clause 1.2.2 of Annexure 2 to the Outsourcing Agreement excludes payment gateway fees, local taxes and other transaction fees from its service fee, permitting the Service Provider to charge applicants additional and indeterminate fees when providing services;
- vi. Non-inclusion of the investment of USD 200 million by IVSGBS, as referred to in the Cabinet Memorandum dated 08/09/2023;
- vii. What the justification for circumventing procurement guidelines, including an open and transparent tender process when awarding the Outsourcing Agreement to the Service Providers was.

A copy of the Technical Report of the CoPF dated 14/05/2024 marked P13 is annexed hereto and pleaded as part and parcel hereof.

57. It is specifically stated that the said data/security breach is a violation of clause 6.1 of the Outsourcing Agreement, rendering it possible for the Controller General to terminate the said agreement for violation of a clause of the same.

58. The CoPF has probed further into Mobitel not being appointed as the authorised representative for issuing visas at BIA. Accordingly, on 21/05/2024, Mobitel had provided a response referring to its relationship with the DoIE. The said response refers to *inter alia*:

- i. The relationship between Mobitel and the DoIE since 2012;
- ii. The absence of any major breakdowns in the system provided by Mobitel;
- iii. Updating of the solution hardware and ETA Platform at no cost to the DoIE;
- iv. Mobitel requesting the DoIE to finalize the requirements of the system to start developing the system;
- v. New requirements, which were not previously communicated to Mobitel, were communicated in July 2023;
- vi. Application fee for processing a visa is USD 1;

- vii. Mobitel being in receipt of an email from the Assistant Director IT of the DoIE to discontinue its ETA solution by 05/04/2024, but also receiving an email on the same day to not discontinue its services;
- viii. No reasons were provided for the said request to discontinue services;
- ix. The Controller General of the DoIE sent an official communication to discontinue the ETA Platform from 00.00 hours on 17/04/2024.

The Petitioner is currently in possession of only the Executive Summary of the said report and respectfully reserves the right to tender the complete report to Your Lordships' Court, no sooner it is obtained.

A copy of letter dated 21/05/2024 and the attached Executive Summary marked P14 is annexed hereto and pleaded as part and parcel hereof.

59. On 30/05/2024, the CoPF urgently called for several documents relating to the appointment of authorised representatives and the visa application process from the Secretary to the Ministry of Public Security.

A copy of letter dated 30/05/2024 marked P15 is annexed hereto and pleaded as part and parcel hereof.

60. The CoPF released its report on the outsourcing of online visa and passport application services to the Service Providers on 12/07/2024. The said report reveals *inter alia* that:

- i. That the DoIE asserted that Mobitel lacked the required capabilities;
- ii. Mobitel had made several requests and proposals to revamp the existing system for issuance of visas but received minimal feedback from the DoIE;
- iii. There is a potential conflict in view of Tavelson International Travel Service (Shanghai) Company already issuing visas to Chinese nationals through its own ETA system;
- iv. The fee structure proposed by Mobitel was 94.5% lower than the fee of USD 18.50 per visa quoted by the Service Providers;
- v. The Outsourcing Agreement had a specific exclusion clause [vide Clause 5.3] which excluded the liability of Service Providers for indirect, special or consequential losses. On a comparison, the agreement with Mobitel did not include a similar clause;

- vi. Whether the system proposed by the Service Providers was tested prior to being implemented;
- vii. IVS-GBS only provided services to three governments, namely India, Malaysia and Greece. It is VFS, the technical partner, which serves 145 countries, thus a misrepresentation had been made in the Cabinet Memorandum dated 08/09/2023 and the Report of the Evaluation Committee;
- viii. The Service Providers had written to the Ministry of Foreign Affairs, bypassing the Sri Lanka Tourism Development Board, offering to boost tourist arrivals, without the involvement of the SLTDB;
- ix. It was discovered that in addition to the service fee, a convenience fee of USD 7.27 had been charged from each applicant by the Service Providers.

A copy of the news article dated 12/07/2024 which contained the link to the report of the CoPF dated 12/07/2024 and the said report, compendiously marked P16 are annexed hereto and pleaded as part and parcel hereof.

61. The CoPF recommended that the Auditor General undertake a comprehensive forensic audit of the entire procurement process pertaining to the Appointment of Authorised Representatives, considering the findings of its report. It was recommended that the findings of the Auditor General from the audit initiated on 04/06/2024, be used to determine necessary action.

62. It is evident, and has now been revealed, that had a tender process been followed, and bids called from private entities to provide visa issuance software and processes, the incident at the BIA on 01/05/2024 could have been averted, and a single-entry visa cost could have been significantly reduced to be on par with regional rates.

Copies of newspaper articles regarding the same, compendiously marked P17 are annexed hereto and pleaded as part and parcel hereof.

63. The Petitioners have been made aware that several newspaper articles have revealed that the VFS Global have not functioned effectively in several countries. Pakistan has seen a large backlog of visa applications which could not be processed in a timely manner by VFS Global, while South Africa has witnessed several extensions of contracts with VFS Global upon having placed reliance on a purportedly illegally awarded tender. In Canada, in an alarming turn of events, two employees of VFS Global were alleged to have engaged in visa fraud by fraudulently enrolling biometrics of 28 applicants.

The Petitioners are also aware that VFS Global has been allegedly named in a Maltese National Audit Office report which investigated bribery and corruption. The service provided by VFS Global in the United Kingdom has been considered to be unsatisfactory. Further, the said audit report had alleged bribery and corruption by VFS Global when issuing 3,696 Algerian visas. Such matters were seemingly completely overlooked when awarding the Outsourcing Agreement to the Service Providers.

Copies of the newspaper articles referred to above, compendiously marked P18 are annexed hereto and pleaded as part and parcel hereof.

64. It is very pertinent that charging tourists excessive entry fees to Sri Lanka goes against the reciprocal obligations owed to tourists from countries which offer Sri Lankans free visa on arrival. Such matters have not been considered when entering into the Outsourcing Agreement.

65. Considering the circumstances pleaded hereinbefore, a complaint was submitted on behalf of the 1st Petitioner to the Human Rights Commission (HRC), alleging the violation of fundamental rights of the Petitioners, as well as the general public, in particular under Articles 12(1) and 14A of the Constitution. The said complaint was filed at the HRC on or around 31/5/2024.

Follow-up requests for information on the progress of the inquiry was sent to the HRC on 05/07/2024 and 25/07/2024.

In response to the said inquiries made on behalf of the 1st Petitioner, the 1st Petitioner received a telephone call on 29/07/2024 from the HRC on the number +94(72)8808374, requesting the 1st Petitioner to tender any further documents or material that it possessed in this regard to the HRC on or before 8/8/2024.

The 1st Petitioner received a response dated 30/07/2024 from the HRC in respect of the complaint

A copy of the complaint filed in the HRC on 31/05/2024 and the acknowledgment received thereto marked P19 are annexed hereto and pleaded as part and parcel hereof.

Copies of the said follow-up requests sent to the HRC on 05/07/2024 and 25/07/2024 and response dated 30/07/2024 marked P20 are annexed hereto and pleaded as part and parcel hereof.

VIOLATION OF THE PETITIONERS' FUNDAMENTAL RIGHTS

66. The totality of the aforesaid is amply demonstrative of the violation of the fundamental rights and/or continuing violation and/or imminent violation of the fundamental rights of the Petitioners as well as the general public, to equality before the law and equal protection of the law and the right to information.
67. The aforesaid narrative is amply demonstrative of the Petitioners as well as the entirety of the general public of Sri Lanka being subjected to violation of their fundamental rights and/or continuing violation and/or imminent violation of their fundamental rights guaranteed under Article 12(1) and 14A of the Constitution by the acts of one or more Respondents in view of the failure to adhere to a transparent procurement process and disclose necessary information to the public regarding contracts entered into with private entities.
68. The agreement with the Service Providers being excluded from public scrutiny is violative of the fundamental right of the Petitioners and the general public to information as guaranteed under Article 14A of the Constitution. Such information must necessarily and by law, be proactively disclosed on public channels, instead of being shrouded in secrecy, requiring the general public to have to unearth such information with great difficulty, as encountered by the Petitioners to this application.
69. The secrecy surrounding the purported appointment of Authorized Representatives is further evinced by disadvantages of appointing the Service Providers only reaching public scrutiny subsequent to the events at the BIA. It is very pertinent that had the said event not unfolded, the Petitioners and the general public would have not been alerted to the gravely disadvantageous Outsourcing Agreement entered into with the Service Providers, further evincing the violation of the fundamental right to information of the Petitioners and the general public.
70. The dearth of information pertaining to several concerns regarding the Outsourcing Agreement, including costs charged on applicants, data/security breaches, exclusion of liability, selection of the Service Providers when Mobitel offered to provide the services at a cost lower by 94.5%, and the absence of adherence to the procurement processes when selecting the Service Providers are all matters which ought to have been available to the Petitioners and the general public for their scrutiny.

71. The aforesaid narrative is demonstrative of one or more Respondents, who are repositories of the power held in trust for the public, failing to exercise such powers for the well-being of the general public and working deliberately against the public's rights and interests.
72. This is particularly so in view of Sri Lanka now charging an excessive visa fee from applicants, which is significantly higher than the visa charges of countries in the region. This is particularly significant for the attraction of tourists, as a higher visa cost being charged for entry to the country could dissuade tourists from visiting Sri Lanka. This could potentially have disastrous consequences for the tourism industry of the country and the potential for income-generation arising therefrom.
73. The acts of one or more Respondents reek of partiality to preferred parties, namely the Service Providers, for extraneous considerations. Selection of the Service Providers *sans* a transparent procurement process demonstrates the desire of one or more Respondents to ensure a predetermined outcome *vis-à-vis* the awarding of the Outsourcing Agreement to the Service Providers.
74. It is evident that all procedural steps, or the lack thereof, have seemingly been manipulated to entail a desired outcome. One or more Respondents have blatantly ignored several relevant considerations, including the cost of visas issued to applicants, which could have a significant impact on tourist arrivals in the island.
75. The Petitioners can only infer that the actions of some of the Respondents are motivated by extraneous considerations which ultimately result in a strain on the public purse and is diametrically opposed to the interests of the public.
76. Failure to take cognizance of the totality of the aforesaid constitutes treatment of the Petitioners and the general public which is violative of their fundamental rights and/or constitute a continuing violation and/or imminent violation of the fundamental rights of the Petitioners and is hence illegal, unlawful, null and void, and of no force or avail in law, as will be more fully demonstrated during the course of the hearing of this application inasmuch as, *inter alia*
- a. it totally nullifies and negates their legitimate expectations of being entitled to equality before the law, as enshrined in Article 12(1) of the Constitution;
 - b. it totally nullifies and negates their right to information, as enshrined by Article 14A of the Constitution;

- c. it is contrary to the spirit and the letter of existing laws, regulations, guidelines and circulars on awarding contracts to private entities;
- d. the conduct of one or more Respondents is demonstrative of utter disregard for the interests of the general public; public security, public resources and public finances;
- e. is a total abuse of the public trust vested in one or more Respondents;
- f. entails the potential lowering of the generation of income for the State through the decrease of inflow of tourists;
- g. is unconstitutional.

77. The Petitioners state that grave and irreparable loss, harm, damage and prejudice would be caused to them and the instant application would be rendered nugatory and futile, unless Your Lordships' Court be pleased to grant and issue the interim relief prayed for through this application.

78. The Petitioners respectfully reserve the right to amend this Petition and/or add further parties and/or adduce further material in the event it becomes necessary and/or expedient to do so, depending on the disclosures emanating from the pleadings and/or submissions made on behalf of the Respondents or in the public domain.

79. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

80. An affidavit of the 2nd Petitioner is annexed hereto in support of this Petition.

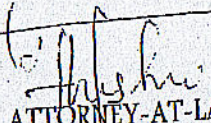
WHEREFORE, the Petitioners pray that Your Lordships' Court be pleased to:

- a. grant the Petitioners leave to proceed to Your Lordships' Court in the first instance;
- b. call for the entire file and/or records held by the Respondents and/or any one or more of them, in respect of this issue, including, but not limited to:
 - i. the call for bids for the appointment of Authorised Representatives, if any,
 - ii. responses received, if any, for the aforesaid call for bids
 - iii. deliberations of the Cabinet Appointed Negotiation Committee on the Appointment of Authorised Representatives, if any;
 - iv. system requirements of the Department of Immigration and Emigration for the ETA Platform;
 - v. assessment of the ability of the 32nd and 33rd Respondents to meet the system requirements of the Department of Immigration and Emigration
 - vi. the clarifications dated 13/05/2024 that the Honourable Attorney General provided to the CoPF [subject to such conditions as to Your Lordships' Court shall deem necessary]; and,
 - vii. the Opinion dated on or around 15/11/2023 of the Honourable Attorney General regarding the draft agreement to be entered into between the DoIE and "GBS Technology Services & IVS Global- FZCO (IVSGBS) and VFS Global" [subject to such conditions as to Your Lordships' Court shall deem necessary].
- c. declare that there is an infringement and/or a continuing infringement and/or imminent infringement of the fundamental rights of the Petitioners, and the general public, to equality before the law and equal protection of the law, as guaranteed under and in terms of Article 12(1) of the Constitution by the actions/inactions of the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, and/or any one more of them, by deciding to award the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents;

- d. declare that there is an infringement and/or a continuing infringement and/or imminent infringement of the fundamental rights of the Petitioners, and the general public, to equality before the law and equal protection of the law, as guaranteed under and in terms of Article 12(1) of the Constitution by the actions/inactions of the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, and/or any one more of them, by awarding the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents;
- e. declare that there is an infringement and/or a continuing infringement and/or imminent infringement of the fundamental rights of the Petitioners, and the general public, to the fundamental right to information, as guaranteed under and in terms of Article 14A of the Constitution by the actions/inactions of the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, and/or any one more of them *vis-à-vis* the decision to award the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents;
- f. declare and direct that the purported decision and/or determination of the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents, and/or any one more of them, to award the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents is wrongful, illegal, unlawful, null and void, and of no force or avail in law;
- g. declare and direct that the awarding of the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents by the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents, is wrongful, illegal, unlawful, null and void, and of no force or avail in law;
- h. declare and direct that any purported ancillary and/or consequential decisions and/or determinations of the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, and/or any one more of them, taken pursuant to the decision/determination to award the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents, is wrongful, illegal, unlawful, null and void, and of no force or avail in law;

- i. declare and direct that the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, and/or any one more of them, are not entitled to make any payments to the 32nd and/or 33rd Respondent, or any associate entity, in respect of the said Outsourcing Agreement dated 21/12/2023 marked PII;
- j. declare and direct the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, and/or any one more of them, to cancel and/or terminate the said Outsourcing Agreement dated 21/12/2023 marked PII;
- k. declare and direct the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, to strictly follow the lawful procurement procedure, and call for open, competitive bids, for the appointment of Authorized Representatives to process the online visa applications of foreigners who wish to visit Sri Lanka, as well as passport applications of Sri Lankans travelling overseas;
- l. direct the 29th Respondent and/or his servants and/or agents and/or successors to compute the loss caused to the State by awarding the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents, and to take consequential steps to effect the recovery thereof;
- m. direct the 29th Respondent and/or his servants and/or agents and/or successors to conduct a forensic audit of the procurement process followed to award the said Outsourcing Agreement dated 21/12/2023 marked PII to the 32nd and 33rd Respondents, and to take the necessary consequential steps thereon;
- n. grant and issue an Interim Order staying/suspending the operation of the said Outsourcing Agreement dated 21/12/2023 marked PII awarded to the 32nd and 33rd Respondents, until the final determination of this application, subject to such terms, if any, as to Your Lordships' Court sees fit;

- o. grant and issue an Interim Order restraining the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors from taking any ancillary and/or consequential decisions and/or determinations, and/or staying the operation thereof, pursuant to the said Outsourcing Agreement dated 21/12/2023 marked PII awarded to the 32nd and 33rd Respondents, until the final determination of this application, subject to such terms, if any, as to Your Lordships' Court sees fit;
- p. grant and issue an Interim Order restraining the 1st to 28th and/or the 34th Respondents, and/or their servants and/or agents and/or successors, from making any payments to the 32nd and/or 33rd Respondents, and/or any associated entity, in pursuance of the said Outsourcing Agreement dated 21/12/2023 marked PII;
- q. grant and issue an Interim Order directing the 1st to 28th and/or the 34th Respondents, and/or any one or more of them, and/or their servants and/or agents and/or successors, to restore the *status quo ante* regarding the issuance of visas at BIA, as it stood on 16/4/2024, , until the final determination of this application, subject to such terms, if any, as to Your Lordships' Court sees fit;
- r. make such further and other just and equitable orders as to Your Lordships' Court shall seem fit, in the circumstances of this application, under and in terms of Article 126(4) of the Constitution of the Republic;
- s. grant compensation, in such sum, and to such persons, as deemed appropriate to Your Lordships' Court;
- t. grant costs; and,
- u. grant such further and other relief as to Your Lordships' Court shall seem meet.


ATTORNEY-AT-LAW FOR THE
PETITIONERS