

# LST

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# HUMANS IN HUMAN RIGHTS



**LAW & SOCIETY TRUST**

## **Law & Society Trust**

#3, Kynsey Terrace, Colombo 8

Tel : +94 11 2691228/2684845/2684853

Fax : +94 11 2686843

Email : [lstadmin@slt.net.lk](mailto:lstadmin@slt.net.lk)

Website: [lstlanka.org](http://lstlanka.org)

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## EDITORIAL:

# Humans in Human Rights

*"The life of the dead is placed in the memory of  
the living"*

– **MARCUS TULLIUS CICERO**

On the 24<sup>th</sup> of August 2017, Vijay Nagaraj was driving to Batticaloa when he was killed in a road accident. He was only 44 years old. Vijay had arranged this first meeting with women community leaders and feminist activists committed to creating a core team of 'barefoot feminist economists.' He was as committed as they were, to linking women's movements across various struggles in which they engaged. These included caste based struggles and struggles for labour rights and land.

Although I had heard of Vijay when interacting within NGO circles, I unfortunately, did not have the pleasure of meeting Vijay before his untimely demise. In the process of putting together this journal however I begun to build a picture of Vijay through his written work, and of the man as seen through the eyes of others.

One year on, the mention of the name Vijay Nagaraj, lights up people's eyes with awe and affection. Officially, Vijay functioned as Head of Research at the Law and Society Trust, but in reality, he did so much more – both for the Law and Society Trust and for the wider human rights community in Sri Lanka and the region. His colleagues and partners had a deep admiration and respect for him – for what he

believed in, and the way in which he conducted himself. Vijay, they say, never allowed fashionable trends or discomfort to determine his ethical priorities.

He was unafraid to canvass for issues he regarded to be important. He was deeply committed to human rights, and believed that human rights study should inform human rights activism. He contested approaches that prioritised the study of political forces, emphasising political and civil rights at the expense of studying economic forces and their impact on economic rights. He challenged “slick” presentations that sacrificed attention to detail and context. He viewed these approaches as “gimmicky, and “market friendly” and decried them for losing sight of the human beings and communities who should have been the focus. While bemoaning the loss of humanity, he rightfully and courageously called out in public, such human rights studies, approaches and activism as being “just consumerism by other means”. Thus, this issue of the Review, in tribute to Vijay, on the first anniversary of his death, centres on the ground realities of human rights in Sri Lanka, as viewed from the perspectives of grassroots upwards, as Vijay did.

Ruki Fernando, Marisa de Silva and Deanne Uyangoda examine the evolving fight for justice in the post 2015 era. They review critically, the engagement of activists with the government, including their engagement with the reformist government by participating in independent commissions. They also examine the slow and inadequate response from the government to fulfil other aspects of the reformist agenda. They look at the struggles, achievements and changing roles of survivors, victims’ families and affected communities in the long-drawn and unpredictable journey to achieve justice. They also delve into the dynamics of international

involvement and donor influence in shaping and advancing the reform agenda.

Dr Kiran Grewal reflects on fundamental challenges facing human rights practice and offers suggestions on rethinking the approach. Vijay, she states, understood and embodied the kind of practice that she believes in and towards which we should aspire. Dr Grewal argues that the social scientific methods and concepts used in human rights research are limited to instrumental adoption of tools. She argues that human rights research should more fully adopt social science methodology and reflect on questions of ontology and epistemology, on positionality and reflexivity to provide useful insights. A divide exists between practitioners and theorists, action and critique; and human rights are depoliticised in an attempt to make it palatable across the political spectrum. This risks undermining the progressive political agenda.

With the human rights discourse increasingly dominated by ‘experts’, ‘good governance’ and ‘best practice’, points out Dr Grewal, the space for political debate is removed.

A case in point specified by Dr Grewal, is the inattention paid to the manner in which victims may be forced to tell their stories. They are called upon to tell their stories within pre-established frameworks of truth.

Shermal Wijewardene discusses Vijay’s techniques for interviews in human rights practice. Vijay’s techniques were a liberation from the inflexible nature of the normative standard and stretched beyond previously prepared structures. He embraced ‘unwieldy’ interviews in an attempt to build a ‘thick description’ of human rights practice, and during a period of two years they researched

and wrote *Human Rights Practice in Sri Lanka: Towards a Thick Description* (2014).

Vijay, writes Wijewardene, believed in listening beyond self-imposed limits by encouraging interviewees to take as wide a sweep of the history as they wanted to, often beyond the strict bounds of relevance to their study, to create a density of understanding for themselves. Warning the interviewee ahead of his approach, he asked provocative questions, offered up interview analysis to the interviewee mid-stream and dialogued around that analysis. This was a disruption of the conventional understanding of the roles of researcher and respondent, where analysis is reserved for the former and takes place without the latter.

Finally, LST's senior researcher and author of *Reimagining 'The Worker' and Resistance in the Neoliberal Era*, Vidura Prabath Munasinghe, converses with Virigina Gomes, Chairperson of the UN Committee on Economic, Social and Cultural Rights.

Sri Lanka ratified the International Covenant on Economic, Social and Cultural Rights in June 1980. This obliges the state to take steps towards the progressive realisation of economic, social and cultural rights, allocating the maximum available resources to securing these rights. Gomes discusses the importance of economic, social and cultural rights within the human rights framework and states there is a tendency to identify human rights with political and civil rights alone, and warns of socio-economic rights being subsumed within

development goals. She addresses the vicious cycle promulgated by institutions such as the World Bank and International Monetary Fund of compelling countries ensnared in debt traps to cut social welfare benefits and public expenditure in essential areas such as education and health, further diminishing the nation's ability to uphold its citizens' economic, social and cultural rights.

Economic, social and cultural rights are as important as political and civil rights, if not more so. The rights to food, water, sanitation, housing, health and access to justice, to name a few, have implications on the enjoyment of all human rights. The lack of socio-economic rights negatively affect social and economic stability. If they are considered to be irrelevant in the mainstream discourse on human rights, it is only because elites have taken over the discourse and become the 'representative voices'.

The promise of constitutional reform has faltered in Sri Lanka and to date socio-economic rights are not explicitly integrated in the Constitution. Even in the debates on constitutional reform, opinion is divided as to whether socio-economic rights should be included. We, as was Vijay, are of the view that the government must ensure all economic, social and cultural rights are included in the Constitution and in the national legal system, and that these rights should be justiciable.

# Ground truths from the evolving fight for justice

– RUKI FERNANDO, MARISA DE SILVA & DEANNE UYANGODA

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In this article, the authors critically review the engagement of civil society activists with the government formed in 2015, the struggles and achievements of survivors, victims' families and affected communities and international and donor involvement in rights activism. In conclusion, the authors describe the challenges faced in meeting human rights standards, sustaining, strengthening and expanding networks.

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*Ruki Fernando* is an activist who has worked with survivors, victim families and communities pursuing truth, justice and reparations. He has also been involved in protection of those at risk, national and international advocacy, trainings in Sri Lanka and Asia and writes regularly on rights and justice issues and struggles.

*Marisa de Silva*, having read for a Masters in Human Rights and Democratisation and worked as a newspaper journalist, is currently a human rights activist, primarily documenting and campaigning on conflict related violations in the North and East, including on enforced disappearances, land occupation and political prisoners. She also works on issues pertaining to violence against women and children, violence against religious minorities and on protecting the right to freedom of expression and association. She is currently working as Coordinator of the People's Alliance for Right to Land (PARL), and is involved in a border village study.

*Deanne Uyangoda* is an Attorney-at-Law

Movements and initiatives for social justice and human rights change constantly with the political context. The year 2015 marked a major political change in Sri Lanka. Many who hoped that the end of the Rajapaksa era would mark a sharp turn in the attitude and approach of the Sri Lankan state, towards protecting and realising rights, have been increasingly frustrated and disappointed at the slow pace of change and the inadequate response to those whose rights have been violated and made vulnerable by intersecting issues of ethnicity, religion, geography, gender, caste, etc.

Despite a visible reduction in the spate of violations, the machinery of the Sri Lankan state, including the military, civil, political and economic structures, and the culture of impunity that enabled systemic rights violations and injustices, remains very much intact. Social structures such as religion, caste and gender that discriminate and oppress, also remain intact. What is particularly apparent is a lack of respect for the rights, dignity and humanity of survivors, victims' families and affected communities and an absence of empathy for their prolonged suffering, from the government as well as larger society.

## To engage or not to engage

Despite misgivings, many activists, including the three of us, have been drawn into varying forms of engagement with this government and others responsible for abuses and injustices. These engagements need to be looked at critically.

After the strengthening of the legislative framework for independent statutory institutions after 2015, some activists accepted positions in institutions such as the Human Rights and Right to Information Commissions. They contributed to the emergence of these as independent institutions that have challenged and critiqued state policy and practice on a variety of issues such as school admissions, the death penalty, religious freedom and torture and lifted the veil of secrecy on issues such as military run businesses, land, blockade of websites, a draft law on reparations, etc.

Activists also served on a national and provincial/district level taskforce that conducted public consultations on reconciliation mechanisms and on a committee that held public consultations on the proposed new constitution. Their leadership and contributions, despite the lack of interest from the government that appointed them, were instrumental in the production of historical reports that contain viewpoints of a diverse cross section of Sri Lankans. They also ensured the immediate publication of these reports, breaking with the tradition of secrecy of the past.

However, the government has generally been reluctant to pay attention to the findings and heed to the recommendations of these bodies.

The three of us were part of a small group which made three substantial submissions towards the creation of the Office of the Missing Persons (OMP), the first and only reconciliation mechanism that has been established, of the four that the government committed to establish three years ago. But we were dismayed at the unwillingness of this government to engage in any meaningful discussion with victims' families and take their needs and views into account.

The government drafted legislation for the OMP in secrecy, rushed it through Parliament without due consultations, but waited for one-and-a-half years more to make appointments to it. However, on our part, we have also been unable to engage with the OMP to follow up on our previous engagements before its creation, succumbing to the emblematic problem with activism that is ad hoc, short-term and interventionist without serious follow-up.

In a context where some survivors, victims' families and affected communities are keen to have their own voices heard, whether as critics, skeptics or active participants, activists who are better connected to the state and other powers, must also be cautious about taking up spaces, dominating conversations and legitimising flawed tokenistic processes.

### **Struggles and achievements of survivors, victims' families and affected communities**

Even under the repressive and corrupt Rajapaksa rule, some survivors, victim families, and affected communities had remained steadfast in their search for justice. Since 2015, some struggles saw progress, albeit in varying degrees. We have also been part of some of these struggles in different forms.

One of the most significant of community victories occurred in April 2018, when natives of Iranaitheevu, an island in the North which had been occupied by the Navy for 28 years, gave up on government promises after many negotiations and a continuing protest for 359 days, and they sailed to the island and reclaimed their lands. Earlier, villagers in the eastern village of Panama had also reclaimed some of their occupied lands, a decision that was later upheld in a court battle.

Also in the North, continued overnight protests by communities whose lands have been occupied by the Navy, Air Force and Army led to some of these lands being released. These occurred in Paravipaanchan, Pilakudiyiruppu and Puthukudiyiruppu, and partial releases in areas such as Mullikulam and Kepapulavu.

Seeking justice from the Sri Lankan judiciary has been painfully slow, emotionally frustrating and even physically dangerous, but this was another area where the perseverance of some survivors and victims' families brought in results in the last three years, through landmark convictions against perpetrators in 2015. After a prolonged struggle for more than 14 years, in December 2015, two men were convicted for the rape of Rita, a schoolgirl in Talawakele. Earlier in 2015, four Army personnel were convicted for the rape and sexual abuse of two Tamil women in the North in 2010, after a sustained campaign by women's groups in the North and East, which also included essential support for the survivors. Also in 2015, two policemen were convicted for severely torturing two men near Kandy, after the survivors had gone through the complicated and difficult process of complaining and seeking judicial action, with the help of some lawyers and activists.

The last few years also saw the arrest of Navy and Army personnel in relation to the disappearances of 11 youth from around Colombo, the disappearance of journalist Prageeth Ekneligoda, and the abduction and assault on journalist Keith Nohyar. A determined campaign braving death threats by an eyewitness and other activists led to the publication of a long withheld report of a committee of inquiry and the arrest of prison officials in relation to the 2012 massacre of twenty-seven inmates in Welikada prison.

An uncompromising and brave campaign for justice by the wife of disappeared journalist Prageeth led to the conviction of notorious Buddhist monk Gnanasara, after he had threatened her and behaved in an unruly manner in courts. The rogue monk was also convicted for contempt of court later on.

The fact that these are exceptions, rather than the norm, and the time they took, indicates the serious deficiencies in the systems of justice and governance in Sri Lanka. These were only possible due to long drawn out, determined and courageous struggles waged by the survivors, victims' families and affected communities, in the face of severe economic hardships, emotional trauma and physical threats, with help of activists, lawyers, journalists and others, in Sri Lanka and outside.

These exceptional struggles and achievements inspire us in an otherwise largely bleak scenario, as well as provide much food for thought, reflection and action as activists.

### **Changing roles of survivors, victims' families and affected communities**

We have seen many survivors, victims' families and affected communities become embittered by their protracted battle for truth, justice and redress, but also become more empowered and mature. We have particularly seen this in the struggles of families of those disappeared. Some, like Mauri Jayasena from Anuradhapura, whose husband was abducted in September 2013, have been proactive in initiating protests and campaigns on their own and inviting us to join and support them, instead of just joining activities organised by activists. Sandya Ekneligoda, whose journalist/cartoonist husband was disappeared in 2010, has won national and international awards in



recognition of her struggles whilst families of disappeared in Mannar published a book about their disappeared family members. In five places in the North and East, Tamil families of those disappeared engaged in more than 500 days of continued roadside protests, and insisted on and claimed a space for their voices to be heard, at the domestic level - with the President, ministers and other politicians - and internationally, with the UN Human Rights Council in Geneva, visiting UN officials and foreign government representatives.

They are also no longer willing to be objects of the latest state driven enterprises. “We vehemently refuse to be deceived again” was the last line in a press release issued on 17 August 2017, by the Association of the Relatives of the Enforced Disappeared in Kilinochchi district, at a press conference in Colombo. It took place in the context of six-month long protests by Tamil families of those disappeared in the North and East, and empty promises by President Sirisena. An year later, in August 2018, when met by the Swiss Federal Councillor and Head of the Federal Department of Justice and Police, the families pointed out that their concerns in relation to the OMP had not been addressed and given that the President had failed to deliver his promises in relation to releasing the lists, they were left with no option but to conclude that the “OMP will be an exercise in futility”. They insisted that they “cannot be asked to repose blind trust in the OMP just because some actors locally and internationally want to show goodwill to the incumbent government. We cannot be asked to throw ourselves, beg and kneel for justice before any commission or office the government establishes. We have done enough of that”.

With experience, they are less convinced by the traditional means and rhetoric used to

negotiate, coerce or compel their silence. New state structures and initiatives as well as activists, particularly those viewed as sympathetic or close to the government, are placed under microscopic scrutiny, questioned and challenged about their actions or lack of actions.

This has challenged us and other activists to be more transparent, especially in our dealing with the state, each other, and victim groups, and represent accurately and honestly what victims may or may not expect from a national or international intervention, regardless of our own personal or political views. Our principles, positions, approaches, associations, rather than our words and mere actions, are becoming determining factors in shaping our relationships with survivors, victim families and affected communities.

### **International involvement and donors**

International involvement has been and still is controversial in rights activism, including the different ways this is perceived by different survivors, victims’ families and affected communities and activists. The nature and degree of international involvement expected has led to divisions along ethnic and regional lines. These divisions are especially manifest along the ethnic lines of Sinhalese–Tamil and the regional lines of the North and East from the rest of the country. The three of us too have been involved in international activism in our own different ways, including lobbying the UN and foreign governments. Although we have de-escalated this in the post-2015 context and prioritised domestic battles, we still feel there has to be strong international involvement and engagement in struggles for justice in Sri Lanka.

In another development after 2015, international organisations began to recruit

Sri Lankan activists as staff and consultants, with relatively high compensation compared to payments made by local groups. Most of those recruited were committed and experienced activists with skills in areas such as research, documentation and advocacy and the English language. This has further depleted local and national initiatives and movements, at a time when they need to be strengthened to maximise limited and time bound opportunities presented.

Amongst the challenges of international activism is to go beyond foreign governments and international bodies, and recognise the importance of global solidarity, from social movements, students, academics, researchers, writers and filmmakers among others.

Another challenge has been to extend support to survivors, victims' families, affected communities and activists in other countries. We have tried to do this to some extent by welcoming and hosting in Sri Lanka South Asian activists in danger, organising and joining protests, supporting petitions, facilitating trainings in other countries, etc. However this is inadequate, especially in the context of the support and solidarity we have received from them both during the war and after.

## Donors and activism

From emergency support to save the life of an activist/journalist at risk to provision of legal aid for detainees, public interest litigation, research and documentation, engaging in media and other campaigns, and domestic and international lobbying, donor support has been crucial. All three of us have worked for organisations that have been funded by foreign donors. But being part of small organisations receiving relatively small funds from flexible

donors, we did not have to adjust our work to suit donor needs, but rather, donors agreed to adjust their mandates to support and respond to what we knew were the needs.

But we also know of situations of financially weak organisations feeling compelled to adjust their initiatives to match mandates and expectations of donors. Recently, a local group that needed funds, was compelled to refuse a large chunk of money offered by an American donor, due to the intrusive donor involvements in programmatic work and insistence on disclosure of sensitive and confidential information from and about those who would be involved and benefit from the project. We found it easy to find funding for threatened activists to relocate overseas, but more difficult to find funding support for them to return.

Broad-based activism without donor funding, though not widespread, has happened in Sri Lanka, and should be an ideal to aspire to and must be experimented with and promoted. But the practical reality in Sri Lanka is that many struggles for justice will also depend on availability of funding, at least in the coming years. Hence, the sensitivity and flexibility of donors, along with principled and assertive engagement by activists will be crucial to sustain collective activism.

## High expectations and sustaining, strengthening and expanding networks

These challenges are overwhelming. On the one hand, we try to engage in activism with long-term goals such as movement building; civic mobilisations; and structural, institutional and legal reform. But we were also confronted with urgent protection and campaign needs, along with short- and mid-term projects such

as research, trainings, and discussions. We also faced dilemmas in supporting the individual struggles of a survivor, victim's family or affected community, while trying to support broader struggles for justice across ethnicity, religion and geography.

We have been privileged to have had the opportunity to work with some individuals, collectives and communities who have braved extreme odds and risks to pursue justice. Some examples and the names of those struggling have been mentioned earlier on.

We have also been inspired and tried to learn from some of our fellow activist friends and colleagues, especially those working directly with survivors, victims' families and affected communities. One such example is the prolonged accompaniment and comprehensive support offered by Fr. Nandana Manatuna and his team to Rita, from the time she was raped when she was a school student, and through her adulthood as employee, wife and mother. This helped Rita rebuild her life and ensure the conviction of the perpetrators. The support ranged from legal, domestic and international campaigns and advocacy, counselling, safe houses, financial support and spanned more than 15 years and accompaniment to more than 100 court visits.

We have not been able to match their resilience, courage and commitment, and have fallen short of sustaining our accompaniment and support to the struggles of survivors, victims' families and affected communities. At the same time, we have also tried to support the building up of strong victim-led community groups and networks by equipping them with information we and other activists come across; making introductions between them and national and international actors, diplomats and donors; and

training and mentoring in basic skills such as documentation, filing complaints, security and protection.

Survivors, victims' families and affected communities also have their own political ideologies, sometimes with serious differences amongst themselves and some activists. Those offering financial, political and other forms of support founded on different agendas also can influence them. It is a tricky minefield to navigate, particularly when factors like ethnicity, caste and gender also become factors.

### **Conclusion: Thoughts and Challenges**

We will have to pay more attention to civic mobilisations and the challenges of building movements. Shortcuts will rarely work and much of the work will involve long hours of difficult labour behind the scenes that is neither glamorous nor sensational. Passion will have to be combined with skills, a warm heart with a cool head.

It is important for all of us to constantly analyse the changing political context, particularly the behaviour of the state. We also need to consider other influential and powerful actors responsible for rights violations and injustices, such as armed groups, religious institutions, business enterprises and international financial institutions. Defining how and when to engage, whether to engage or not, should be a constant reflection, without ignoring principles and practical realities. Figuring out the nature and extent of international involvement and relationships with donors are also important factors.

Supporting and encouraging broader collective struggles while supporting individual efforts, such as an initiative by one family of a

disappeared or one community whose land has been occupied is also a challenge. This is also linked to balancing essential micro-level short-term struggles with broader long-term struggles involving structural, legal and institutional changes.

Prioritising solidarity actions, alongside the more popular “project activities” such as trainings, legal support, research, documentation, advocacy and so on is also something that needs serious consideration.

Lastly and of great importance is to recognise the struggles and achievements of survivors, victim families and affected communities, and open ourselves to unlearn and learn from them

and support them in the longer term and in a comprehensive manner. They have taken on the might of the state, those seen as powerful and enjoying social and political support, such as the military, rampaging Buddhist monks and the system that is inherently hostile to them. They have persevered and come out victorious at times. The 14 year long court battle of Rita, 500 days of overnight roadside protests by Tamil families of those disappeared, non-violent reclaiming of land occupied by the Navy in Iranaitheevu, and Sandya’s pursuance of the complaint against Gnanasara, teach us the importance of multipronged approaches and long-term sustained campaigns and advocacy instead of event/project based, ad hoc, interventionist activism.

# Working with the complexity and diversity of reality: Rethinking the approach to human rights praxis

*DR KIRAN KAUR GREWAL*

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In this paper Dr. Kiran Grewal reflects on fundamental challenges facing human rights practice and offers suggestions on rethinking the approach. Dr. Grewal argues that social scientific methods and concepts used in human rights research are limited to instrumental adoption of tools.

## **Introduction**

I have been working in the field of human rights for about 15 years now, as a lawyer, teacher, human rights practitioner and activist. Over this time a number of issues about the ways in which we approach the practice of human rights have come to perturb me. This paper is an attempt to reflect on some of these issues and to offer some suggestions for how we might rethink our approach. I also offer this paper as a tribute to Vijay Nagaraj who understood and embodied the kind of practice I believe towards which we should aspire.

In the first part of this paper I will cover three topics: the need for greater engagement with the social sciences among human rights scholars and practitioners; the relationship between critique and practice; and the place of politics in human rights. In attempting to reflect on the practical implications of these issues, the second part of this paper will introduce some of the strategies I have tried to incorporate into my work. These are aimed at improving human rights practice in both academic and non-academic environments.

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*Dr Kiran Kaur Grewal*, Reader in Sociology, Goldsmiths, University of London

## A. THREE SITES FOR REFLECTION

### 1. Social Science Engagement in the Field of Human Rights

It is increasingly common to see social scientific methods and concepts being used in human rights research. This is certainly a positive development, as is the increased recognition of the value of inter-disciplinary approaches to the field. For too long human rights was the domain of lawyers and philosophers. Many normative claims are made by both of these disciplines about how to achieve human rights protection and promotion whilst offering little empirical evidence.

However, during a conference on human rights fact finding at New York University (NYU) Law School in 2014, I was struck by the extent to which this engagement seemed to revolve around the instrumental adoption of tools (such as statistics or quantitative research methods). Annelise Riles (2006) has observed a similar instrumentalism in human rights lawyers' engagement with anthropology. This is missing the most valuable contribution that engagement with the social sciences can make to improving human rights practice.

The social sciences have more to offer than a toolbox of methodologies and I will give some concrete examples a little later in this paper. In particular, social scientists' reflections on questions of ontology and epistemology, on positionality and reflexivity all provide useful insights for anyone working in the field of human rights. Reflecting on these questions allows us to examine what we believe to be the important issues, the foundational assumptions from which we operate and the appropriate sites and methods of intervention we identify and promote. In practice this would not necessarily

*change* what we do (although it might, as I will illustrate a bit later) but it would allow us to see our place in a bigger structure and to be more strategic and circumspect in what we hope to achieve. This leads me to my next point.

### 2. Complexity versus 'Pragmatic Black and White-ism'

One of the most common divides I see drawn in the human rights world is between those who 'do' versus those who 'just critique'. Florian Hoffmann captures this trend well when he describes the antipathy frequently exhibited by the 'human rights mainstream' to attempts to question the content and basis of human rights:

Frequently the argument is made that, for as long as even the mainstream canon of human rights is unrealised, and not fully embedded in doctrine, 'playing around' with esoteric concepts is at best 'useless' and at worst detrimental to the 'cause'. Hence, critical, postmodern or, indeed, pragmatic accounts of human rights are essentially taken to amount to bookish extravagances that fly in the face of the real needs of the victims of human rights violations (2006: 226-227).

An example of this can be found in an article that appeared in *Human Rights Quarterly* – arguably one of the most internationally influential human rights journals – in 2012. In taking issue with a recent ethnographic study of women's rights discourses in Iran by anthropologist Arzoo Osanloo, Reza Afshari writes: "Scholars discussing today's human rights discourse and practice while harping on outdated anti-imperialist narratives may run the risk of sounding anachronistic, particularly in the context of a repressive state such as the Islamic republic" (Afshari 2012, 540). For Afshari, postcolonial critiques come as

'baggage', which get in the way of the real work of human rights: documenting violations. Indeed his biggest criticism of this 'trendy new genre' of ethnographies of human rights is that they provide little in the way of practical advice for human rights advocates who – it is implied – are the ones doing 'the real work' of representing and assisting victims.

This dichotomisation of 'practitioners' and 'theorists' belies the more complex and diverse reality of many of us working in the field. I did not begin reading postcolonial critiques of international law in the abstract. In fact, I only became aware of this literature upon returning home from time at the UN Special Court for Sierra Leone. I was devastated by the inadequacy of both my own and the international community's actions and responses to that nation's legacy of violent armed conflict and sought to understand why. Many of those whose work I find most inspirational – Balakrishnan Rajagopal and other members of the Third World Approaches to International Law (TWAAIL), activist anthropologists Charles Hale and Shannon Speed – are in fact those who have worked (and/or continue to work) 'in the field' even as their critiques engage with and rearticulate complex theoretical arguments.

There seems to be a continuing need for those of us working in human rights to immerse ourselves in the cold, uncomfortable water of critique as *central* to our work. While sometimes this is seen as counterproductive, crippling us from action, for me it is in fact the opposite: it is only by rendering ourselves vulnerable to the critique and exhibiting hyper-critical self reflexivity that we can find a place from which to take action strategically. As Wendy Brown and Janet Halley have argued: "critique allows us to recover the kindling spirit of what has become a cynical or disingenuous relationship" to particular policies

and approaches (Brown and Halley 2002: 29). This led them to dedicate an entire volume to critique of various progressive movements by those involved. It may not be easy to simultaneously act and constantly be critiquing one's own action but it is essential to creating new possibilities and maintaining the humility we need in the face of so many marginalised and suffering people. We therefore need to find ways to overcome this divide between critique and action.

### 3. Human Rights as Politics

This takes me to the third point I wish to make: the (re)politicisation of human rights. Throughout the NYU conference I mentioned above there were repeated discussions about the political nature of human rights and how best to deal with this. Politics was generally treated as a negative, impeding 'justice'. For many working in the field, it is the ability to assert an apolitical ethical position that has been the power of human rights. The old Amnesty International creed has been well-entrenched that it is only by not taking political sides that we can hope to speak truth to power. But in fact the debate about the place of politics in human rights is a complex one and all too often conflates rather separate discussions. Vijay Nagaraj's own research (with Shermal Wijewardene) on human rights practice in Sri Lanka has highlighted this fact (see for example Nagaraj and Wijewardene 2014).

For example, in the process of making human rights palatable across the political spectrum, do we run the risk of undermining the progressive political agenda that drew many of us to human rights in the first place? As Costas Douzinas points out: "The rhetoric of human rights seems to have triumphed because it can be adopted by the left and the right, the north and the

south, the state and the pulpit, the minister and the rebel” (2007, 33). A recent theatre performance I observed on ‘children’s rights’ in Sri Lanka acted as a vehicle for reinforcing Sinhalese, Buddhist authoritarianism in the guise of ‘safeguarding’ children and educating them properly. Ratna Kapur (2005) has also written about the use of ‘women’s human rights’ language to promote conservative policies and discourses in India, restricting women’s sexual autonomy and mobility. For me human rights hold little appeal if they are not committed to a progressive political agenda.

And while we may be rightly cynical about politics in the form of political parties and corrupted state institutions, is this the only form that politics can and should take? The conflation of ‘politics’ with institutional(ised) political structures urgently needs to be called into question. For this reason I find French political theorist Jacques Rancière’s distinction between “*la police*” – the dominant institutional forms of politics - and “*la politique*” – the political practice of democracy - useful. For Rancière, “politics is not primarily a matter of laws and constitutions. Rather, it is a matter of configuring the sensible texture of the community for which those laws and constitutions make sense” (2009, 8). This aspect of democracy is lost when we reject politics in favour of legal and other technocratic solutions. With human rights increasingly dominated by ‘experts’, ‘good governance’ and ‘best practice’, the space for political debate is removed.

This has led human rights on a paradoxical trajectory. While ‘empowerment’ has always been espoused as a *raison d’être* of the human rights movement, this empowerment seems to have become more and more a product to be delivered to the masses. It is the ‘experts’ who give training, translate suffering into actionable

violations and make proposals for solutions. In the words of political theorist Nikita Dhawan (drawing on Spivak): “The distance between those who “dispense” justice, aid, rights, and solidarity and those who are simply coded as “victims of wrongs” and thus as “receivers” remains a signature of historical violence” (Dhawan 2013, 145). Rather than *empowering* the most marginal, this process reinforces the divide between those who save and those who must always be saved. Again, this undermines the progressive aims of most of us working in the field.

Where do all these critiques leave the field of human rights? Is it practical to incorporate these concerns while maintaining the core of what the human rights movement has been able to do reasonably successfully? In the next section of the paper, I will identify some of the tools I have been using to try and think about ways in which we may better respond and equip those working in the field.

## B. TACKLING THE CHALLENGES: SOME POSSIBLE STRATEGIES

The challenge of ‘operationalising’ human rights has become a key concern for many within the field in recent years. We have moved from the standard-setting period into a new era in which actual implementation has become an objective. This is reflected in the increasing attention on areas such as security sector reform and the vast array of training and human rights education programmes being conducted all over the globe seeking to implement international standards (Celmajer and Grewal 2013). In my own work in these areas I have been trying to incorporate some of my above reflections into my practice in the following ways.



## 1. Situating the Law

I will start with the question of integrating social science knowledge into our work. As I have noted above, this has to go beyond simply incorporating methodological tools in an instrumentalist fashion. Aside from the fact that lawyers may not be the best placed to make use of these tools, it misses what are to my mind the most valuable contributions that engaging with social sciences can make to our work.

One of the most rewarding aspects of my human rights teaching experience has been the mixing of legally and non-legally trained students. As lawyers we are often completely unaware of the ontological and epistemological biases of our discipline. It is often only in the process of having to justify ourselves, our assumptions and our approaches to a non-legal but equally expert audience that we are forced to articulate our own foundational assumptions.

Take for example the practice of ‘fact-finding’. This has become a key feature of human rights work. But what are the assumptions we make in dedicating so much time and energy and so many resources to this? What do we assume about a ‘truth’ that can be established? How do we go about finding this truth? And what do we assume will happen as a result of naming this? This is what I mean by the need to reflect more on questions of ontology (the foundation of knowledge) and epistemology (ways of knowing and producing knowledge).

In her critique of human rights advocates’ reliance on law Claire Moon writes:

“law often does little to change the social and political conditions that make violations possible in the first place... law treats, primarily, the violent *symptoms* rather than

the root causes of historically profound social and political injustice, the remedy for which must, surely, be sought elsewhere, beyond the realm of technical administration.” (2012, 880 emphasis in original)

So too there is a tendency in fact-finding to treat the process of interviewing as a straightforward means of gathering ‘truths’. Yet in the social sciences there are volumes dedicated to the complexity of the interview: the relationships between perceptions and truths, the role of the interviewer, the nature of power. Often these are glossed over in accounts of fact-finding. The objective becomes to verify the ‘truth’ of the account being given and the ways to do this are – in the style used in legal interviewing – to ask more questions (see for example Diane Orentlicher’s article). Little attention is given to the ways in which victims may be forced to tell their stories within pre-established frameworks of truth. Nor to the ways in which using a legal frame shapes what can and cannot be heard.

I therefore now teach an entire course on research methodologies in the human rights programme I run. In this course we learn about current human rights research methodologies. But we also explore questions like whether the subaltern can speak and be heard within our existing practices (to draw on Gayatri Spivak’s (1988) famous question: for more on this see also Kapoor 2004). We discuss how to approach issues of ethics that are more complicated than simply ‘doing no harm’ and obtaining ‘informed consent’. We challenge the idea that research and activism cannot coexist, instead seeking to identify ways of engaging in ‘critically engaged activist research’ (Speed 2008). We also discuss the ways in which other forms of qualitative research (like ethnography) may enhance our knowledge. The interview is not the only

methodology available to us. Nor is the legal interview the only form.

## 2. From the Courtroom to the Drawing Board

It is not only in academic settings that we can challenge the narrow legalistic focus of human rights. In a workshop some colleagues<sup>1</sup> and I conducted with security and law enforcement personnel in Sri Lanka we tried a new exercise aimed at shifting human rights training practices away from simply informing participants of the law. By bringing together classic human rights training with project management tools, we have been trying to think strategically about ways in which we can affect actual change in behaviours and practices. This has been an extremely challenging exercise (and we are yet to see if it will bear fruit) but I think it raises some interesting questions for those of us working in the field of human rights.

On day one of the workshop the participants were taken through a standard human rights training format. After receiving a short history of human rights, they were led through the important provisions within both international and national human rights legislation, which they were told were key parts of their responsibilities as state officials. As they were being presented with a particular case in which police officers in Sri Lanka had been found to have violated fundamental rights provisions under the Constitution, I was struck by the scenario.

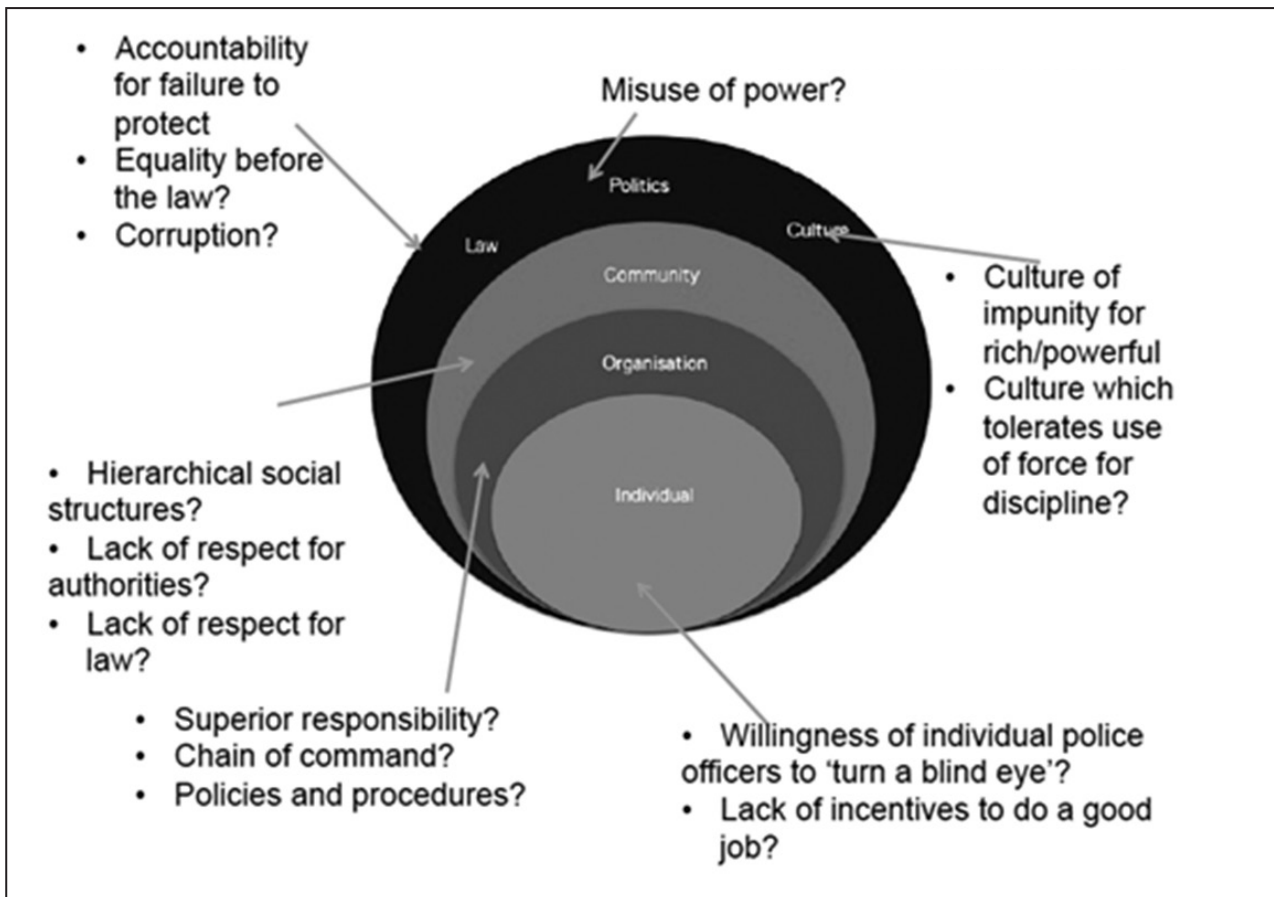
It involved police officers who had failed to stop a number of powerful local politicians from entering the police station and assaulting a person in police custody.<sup>2</sup> Having conducted field research in South Asia I know that problems of political interference can be key factors in police violations of human rights

(Beatrice Jauregui (2016) makes similar findings in her ethnographic study of the Uttar Pradesh police). With this in mind I wondered how the police officers in the room saw this case. On the one hand they were being told that there was a possibility of them being held liable for human rights violations by the courts, on the other, their reality is one in which allowing politicians to do as they wish is often a means of survival. How would they make sense of this contradiction in a way which did not mean they simply rejected human rights principles as idealistic nonsense at best and actively persecutory at worst? And would their knowing that there was a possibility of punishment under law be sufficient to prevent a similar set of events in the future?

In considering these questions I decided to try a somewhat risky exercise. Drawing on the facts of this case, in days two and three of the workshop I returned to the situation of the violating police officers. Moving from legal considerations regarding how their conduct amounted to a violation of such and such article of the Constitution, I sought to contextualise the situation within the systems approach we were using in our project.

Following this, once we had introduced the problem tree as a project mapping tool used frequently in the public health and development sector, with my Sri Lankan colleague who had originally presented the case, we drew up a problem tree for this case. In doing this we sought to identify not only the violation but the primary and secondary causes of that violation as well as the possible effects.

It was a risky exercise because, as others pointed out, the situation was a particularly difficult one for the individual participants we were working with (mid-level officers) to be able to



### Systems Analysis of *Faiz v Attorney-General*

combat. However, to my mind it was precisely by tackling this extremely difficult situation that we were able to name the elephant in the room and in fact move commitment to human rights away from abstract endorsement of moral and legal principles towards a tricky problem-solving exercise. Indeed, the exercise sparked a lengthy debate about possible sites of intervention and very quickly moved us away from simply talking about possible prosecutions towards ways in which individual actors may pragmatically make use of resources (local community, media, civil society and others within the criminal justice system). This was an important shift away from the 'ideal' towards the messy reality within which human rights can be both violated and protected.

Buoyed by the potential of this exercise, I have trialled it again: this time in a workshop with

members of local government and civil society in the North and East of Sri Lanka working on implementing Security Council Resolution 1325 (Women, Peace and Security). In this case, I was extremely conscious of my own limited understanding of the on-the-ground realities facing activists and the general population (a point I will come back to) and therefore decided to do my problem tree on problems of political participation of women, drawing on Australian examples. I then broke the participants up into groups and asked them to do a problem tree on an issue of their choice.

The response was amazing. One doctor from Jaffna was clearly extremely distraught by the situation facing women in the North and presented a plethora of problems. She seemed to feel incredibly hopeless. And yet, as we went through her problem tree we identified the small

strategies that she and others in the community were already using to cope (for example getting sympathetic men to speak when women could not, organising support for women with small children so they could participate in public meetings, groups of war widows banding together to support each other). What became clear was that while many of the participants and indeed the trainers were thinking of ‘solutions’ or ‘sites of intervention’ in terms of advocacy for policy and institutional reform – something which made many feel hopeless given the current political climate in Sri Lanka – they were overlooking the much more low-key strategies which *were* in fact making small changes possible.

I believe this exercise has many implications. To return to a point I raised earlier: having to actually map the problem and identify sites of possible intervention made me incredibly circumspect about my understanding of the situation. This was an important humbling experience and one that can be avoided when we come in with normative prescriptions. It called into question my ‘expertise’ and shifted the relationship with participants from one of ‘teacher’ and ‘pupil’ to collaborative problem-solvers. It shifted the dynamic of the workshop from one of knowledge transmission to debate and discussion.

In doing this, not only was I forced to reflect upon my own positionality but it also highlighted the complex ways in which human rights issues are embedded in existing social structures and the intersecting sites of both oppression and possible resistance. Finally, by engaging with participants’ own practices it became possible to actually valourise and identify possible sites for intervention or enhancement that moved beyond simply a top-down institutional response. Again, there is a lot

of work to be done in making it as effective an exercise as possible – and I would value input, feedback, ideas – but I also believe that there is a lot to be gained by trying to delve into the messiness in terms of both forcing ourselves and our interlocutors to engage in some critical reflexivity. I also see it as providing a fruitful way to both maintain the complexity *and* come up with pragmatic practical strategies.

### 3. Cultivating “Spaces of Dissent”

A final effort I have been making is to take my engagement with human rights outside of the spaces with which I am most familiar and comfortable. As I said earlier, the trend in human rights is to focus on institutionalisation. This takes the form of advocating for better governance structures and educating people about their legal rights. While both important initiatives, I am reminded of Vasuki Nesiya’s 2014 plea during a conference on transitional justice in Colombo. For Nesiya there is a need for us to shift our attention from ‘good governance’ towards cultivating ‘spaces of dissent’. This is also the democratic dimension Rancière is speaking about and it requires a willingness to move beyond the formal, established spaces that remain exclusionary to many of the most marginal and dispossessed (Grewal 2016).

To return to the question of the subaltern – as various scholars have pointed out, the nature of subalternisation is the exclusion from all forms of dominant knowledge (Dhawan 2013; Kapoor 2004; Spivak 1988). Therefore ‘desubalternisation’ cannot be achieved by simply inserting the subaltern into our existing systems. If we are really committed to engaging with and supporting the empowerment of subalterns we have to be willing to both unlearn and learn anew. For this reason in recent years I have been interested in the work of

community activists like Sivagnanam Jeyasankar who through reformulating traditional arts like *kooththu*<sup>3</sup> have been trying to engage marginalised communities in their own spaces. The process involves cultivating indigenous democratic practices already present and using these already established communal spaces for socio-political debate.

So too I have begun attending the rituals of temples across the east and north of Sri Lanka, treating them not as cultural oddities but as important sites of social and political discourse (for more see Grewal 2016 and 2017). This has required me to move outside my usual spheres both physical and intellectual. It has also involved me giving up certain privileged positions of knowledge as I struggle to understand a completely different way of experiencing and narrating the world. Not only is this personally enriching, developing new skills and insights in myself, it is also a way of trying to challenge the dominant hierarchy of knower (the subject) and known (the object). I constantly feel incredibly inept, clumsy, ignorant and in need of instruction, far from my normal position of university lecturer or international lawyer. And it hopefully promotes a new type of ethical relationship between those of us working for human rights and those who human rights are aimed at empowering.

## Conclusion

In this paper I have sought to articulate what I see to be some of the fundamental challenges facing human rights practice. There are no doubt many others. But the questions of how we navigate the spaces between idealism and pragmatism, normative principle and complex reality and knowledge and power are crucial for all of us who are seeking to move human rights from the abstract into the practical.

In attempting to identify a few strategies I have been working to develop I hope to start a discussion in which it becomes possible to break down the artificial divides between social science and law, practitioner and theorist and the political and apolitical nature of human rights.

## Notes:

- <sup>1</sup> I would particularly like to acknowledge Kaushalya Ariyaratne, Anna Noonan, Gehan Gunatilleke and Vidura Munasinghe all of whom facilitated this workshop with me.
- <sup>2</sup> The case is *Faiz v. Attorney General* [1995] 1 Sri L.R. 372.
- <sup>3</sup> *Kooththu* is a traditional form of musical theatre practiced by Tamil communities involving the retelling of stories from the Hindu epics.

## References:

- Afshari, Reza. 2012. "An Anthropologist Engaging the Human Rights Discourse and Practice." *Human Rights Quarterly* 34(2): 507-545.
- Brown, Wendy and Halley, Janet.(eds.) 2002. *Left Legalism, Left Critique*. Durham NC: Duke University Press.
- Celermajer, Danielle and Grewal, Kiran. 2013. "Preventing Human Rights Violations'From the Inside': Enhancing the Role of Human Rights Education in Security Sector Reform." *Journal of Human Rights Practice* 5(2): 243-266.
- Dhawan, Nikita. 2013. "Coercive Cosmopolitanism and Impossible Solidarities." *Qui Parle* 22(1): 139-166.
- Douzinis, Costas. 2007. *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*. Abingdon and New York: Routledge-Cavendish.
- Grewal, Kiran K. 2017. *Essays 2012-2017*. Batticaloa: Swamy Vipulananda Institute for Aesthetic Studies.
- Grewal, Kiran K. 2016. *The Socio-Political Practice of Human Rights: Between the Universal and the Particular*. London: Routledge.
- Hoffmann, Florian. "Human rights, the self and the other: reflections on a pragmatic theory of human rights". In *International Law and its Others*, edited by Anne Orford, 221-246. Cambridge, New York, Melbourne: Cambridge University Press.
- Jauregui, Beatrice. 2016. *Provisional Authority: Police, Order, and Security in India*. Chicago: University of Chicago Press.
- Kapoor, Ilan. 2004. "Hyper-self-reflexive development? Spivak on representing the Third World 'other'". *Third World Quarterly* 25(4): 627-647.

- Kapur, Ratna. 2005. *Erotic Justice: Law and the new politics of postcolonialism*. London, Portland Oregon: Glass House Press.
- Moon Claire. 2012. "What one sees and how one files seeing: reporting atrocity and suffering." *Sociology* 46 (5): 876-890.
- Nagaraj, Vijay and Wijewardene, Sermal. 2014. "A Very Highly Political Job': Human Rights Practice, 'The Political' and Practitioners' Dilemmas in Sri Lanka." *Journal of Human Rights Practice* 6(3): 399-421.
- Orentlicher, Diane F. 1990. "Bearing Witness: The Art and Science of Human Rights Fact-Finding." *Harvard Human Rights Journal* 3: 83-135.
- Riles, Annelise. 2006. "Anthropology, Human Rights and Legal Knowledge: Culture in the Iron Cage." *American Anthropologist* 108(1): 52-65.
- Speed, Shannon. 2008. Forged in dialogue: toward a critically engaged activist research. In *Engaging Contradictions: Theory, Politics, and Methods of Activist Scholarship*, edited by Charles Hale, 213-236. Berkeley CA: University of California Press.
- Spivak, Gayatri C. 1988. "Can the Subaltern Speak?" In *Marxism and the Interpretation of Culture*, edited by Cynthia Nelson and Lawrence Grossberg. Urbana Illinois: University of Illinois Press.

# Researching with Vijay Nagaraj: Archiving, Proposition and Provocation

DR SHERMAL WIJewardene

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In this essay, Shermal Wijewardena sets down her impressions of Vijay's style of researching and writing when they worked together on *Human Right Practice in Sri Lanka*.

The essay begins with her impressions of how Vijay managed two activities and impulses simultaneously: archiving and interviewing. In the second section, she looks at how he utilised cumulative knowledge from previous interviews into new interview experiences, making a proposition and putting a range of activists' voices into conversation and contestation. And in the third part, she considers how Vijay used his own brand of provocation productively during the interview process.

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Dr. *Shermal Wijewardene* is Head of the Department of English at the University of Colombo. She has an MPhil in English Studies from Oxford University and a PhD in Gender Studies from Monash University. She is Chairperson of the Board of Directors of the Women and Media Collective, Colombo.

## Introduction

Vijay Nagaraj and I researched and wrote *Human Rights Practice in Sri Lanka: Towards a Thick Description* (2014) over a period of two years. In that time, we continually refined the initial research idea, which was to create a descriptive and analytical account of an approach to engagement with human rights in Sri Lanka by way of perceptions of the performance of it.

We were specifically interested in the views of a selected group of human rights practitioners, those who were known in Sri Lanka for their hands-on involvement in human rights (being heads of NGOs or people in second-rung leadership positions) and who were experienced in different areas of rights work (Wijewardene & Nagaraj, 2014). Our monograph says that we encouraged them to 'think aloud' during the interview, to muse on the question and their response to it, as if they were reflecting on a topic, without feeling that they had to supply a direct 'answer' to a question (Wijewardene & Nagaraj, 2014, p. 17).

On listening to our interviews again over five years later, I remembered just how much Vijay himself had wanted to follow this methodology as the interviewer. He often listened to himself asking a question. Not posing it flatly, he would remain attentive to the language he was using,

self-correcting frequently until it reflected what he wanted to say. His main question was often only an entry point to what he wanted to ask, containing a series of nested sub-questions which occurred to him as he pursued his line of thinking out loud, prompting one person to tease him, when asked to respond, “What? All of them?”

None of this will be new to most people who have researched with Vijay. His style as a researcher is not easy to capture, and it must have changed dynamically in response to the style of his co-researcher, but it clearly is very material to the study in which he was involved—or at least it was to ours. Our monograph does not directly record that style, although it has been absorbed in the research and writing. It does not outline the questions he asked or, more importantly, of the way he asked (and re-asked) them.

Researchers write a self-reflexive account of conducting a study, and Vijay certainly did some of that in the introduction to the monograph. We wrote of our joint process, but formally, without really conveying how we were struck by (and negotiated) each other’s ways of working. In this essay, I set down my impressions of Vijay’s style of researching and writing when we worked together on *Human Right Practice*. I use some of Vijay’s questions and reflections here, conscious that we had planned to archive the interviews in some form with agreement from everyone involved. These are my perceptions. They are not a claim to know Vijay’s inner motivations apart from what we discussed about the project and what is in the interviews. My perceptions are filtered by memory and by how I hear Vijay (and myself) in the interviews after some time and distance from the project.

The essay begins with my impressions of how Vijay managed two activities and impulses simultaneously: archiving and interviewing. In the second section, I look at how he brought our cumulative knowledge from the interviews into each interview experience, making a proposition and putting a range of activists’ voices into conversation and contestation. And in the third part, I consider how Vijay used his own brand of provocation productively during the interview process.

## Archiving

Vijay was intensely interested in different frameworks of history (personal, social, national, organisational, and so on), in themselves, as well as for their bearing on how human rights practitioners saw their engagements. To this end, he often listened for how the person we were interviewing would historicise their perceptions. When he knew that they were particularly disposed towards a historical perspective, when that was their preferred way of speaking, he prompted them to take as wide a sweep of that history as they wanted to, often beyond the strict bounds of relevance for our study.

“You have a fabulously rich description of your activism in the 1980s,” he said to one activist, “What about the 1990s?” “I don’t know if it’s [i.e that period] useful to you,” the activist replied. “No, no, no!” Vijay exclaimed, “everything’s useful. Just give it to us”. Just in that way, interview schedules became notional for periods of time and some interviews were set loose and allowed to follow a combination of life history and movement history research. Lengthy and non-linear, these were unwieldy resources, and Vijay and I had to sort through them carefully afterwards to make sure that we



did not miss the complex ways in which the interview answered our questions.

If we were to build a ‘thick description’ of human rights practice, Vijay’s rationale went, we had to first create density of understanding for ourselves, and that meant listening beyond our own self-imposed limits. But building our knowledge of the relevant ‘background’ information was not just instrumental. Part of it was his story for the fact that he often wanted to lose himself in the pleasure of listening to the oral histories of the activists. There was no denying that there was an element of purely personal satisfaction, even romance and nostalgia, that he gained from the recreation of past social justice organising through their eyes. He had developed a taste for it from many years of such experiences elsewhere.

This affect and personal history shaped our interviews and writing, as did mine, and there was no question of indulging him. The labour of negotiating ‘unwieldy’ interviews could not be resented. Vijay was intellectually and politically interested in the documentation of social movement histories, and he felt that it was important to record the granular details, subjective perceptions, and often private knowledge of key moments that only resided in activists’ memories. He laid store by documenting material histories, at the same time as he acknowledged that meaning does not inhere in ‘things’ but is ascribed discursively. While he did not subscribe to any essentialist notions of historical ‘truth’, he was quick to call me out if he thought a particular historical critique was faddishly poststructuralist. He believed that there was access to experiences of a period through those memories, and he was driven by the urgency that they would be lost if these stories were not documented. To this end, he wanted to forget that there were any

‘technical’ methodological and time constraints which made it strictly an interview, instead encouraging activists to speak in historical terms so that there was some archiving of their memories at the same time.

Yet he was uneasy about taking what he heard at face value, often reformulating what he heard in more critical terms to probe more closely. In the example below, he poses a question about how activists could retain the political agenda of human rights work during times of political repression. He said, “Historically speaking, over the past 20-25 years, this period of time in Sri Lanka offers two arguments - that the challenges are unprecedented in terms of space [for human rights activists to manoeuvre], and the response of the state ... it has been suggested that all that is true. But none of that is entirely new, not a new phenomenon. A lot of the behaviour of the state, of the media, is learned behaviour, that is conforming to certain older patterns, which goes back to the late 1970s at least.” Putting pressure on the “two arguments” that are usually cited, the question prompts for a critical response, calling in the first instance for an awareness of taking such so-called historical ‘truths’ for granted, and to consider them as historical framings. Interviews were being re-purposed for archiving in this way, and both activities ran parallel and sometimes intentionally.

### **Proposition**

As each interview helped us to clarify and develop our research idea for the next one, Vijay creatively exploited that process. He framed the questions he posed to the person whom we were interviewing in that moment, by using some of the ideas expressed by other activists in previous interviews. He extrapolated their ideas further, beyond their original contextual meaning,

then spliced them with what was expressed in the current interview, and did what he called ‘making a proposition’, an independent analysis of the theme under discussion. Woven densely together, this material was a critical point of departure, a place from where he could process his cumulative impression of past and present interview information, synthesise it, “construe” what an activist was saying, and prompt for more information.

In short, interview analysis was not something that Vijay did only after the interviews had been conducted; he did it on the go, in real time, during the interview. He offered it to the person we were interviewing, in the course of our conversation, inviting their views and analysis. In that way, he disrupted the conventional understanding of the roles of researcher and respondent, where analysis is reserved for the former and takes place without the latter. The idea of placing activists’ voices in conversation and contestation with one another was so that they could both voice their views and at the same time respond analytically to them, so that they could see their own and others’ relationships to discourse. Each interview was located in relation to this evolving discursive framework, and both interviewer and interviewee were required to undertake that task.

In one of the first few interviews we conducted, we explored the “ethnic turn in human rights work” and the possibilities for activists to “cross the ethnic line”, as Vijay put it, and work on and speak for human rights issues associated with an ethnic community to which they did not belong. We learned from the activist we spoke to, that there was a growing consciousness of having to hold back and contemplate whether it was right to do so in the case of “hard” human rights issues.

Vijay incorporated these insights creatively into certain propositions in subsequent interviews. For instance, he shifted the direction of a conversation which had settled into only focusing on external forces (such as state repression) as factors inhibiting human rights work, re-framing it in terms of internal factors such as the “ethnic turn in human rights” that constrain human rights engagements, in a bid to encourage more self-reflexivity. Suggesting that this “ethnic turn” has “contributed to a kind of silencing, censorship, self-imposed limitation in terms of thinking about certain issues”, he said:

“I want to make a proposition that ethnicity has played that role in the human rights movement, irrespective of whether there is a fear of [state] repression of any kind. That the human rights movement has also internalised ethnic divisions such that there is the question of ‘Oh that is that community and this community’.”

In a later interview with another activist, he returned to the same set of issues, asking,

“The question about the kind of silencing, self-censorship [on the part of human rights activists] about issues happening in the ‘other’ ethnic community, that these are Tamil issues for instance, and therefore non-Tamil activists would hesitate to speak about it ... what are your views? What’s your understanding/narrative?”

Whether this constituted ‘leading’ the interviewee was something that Vijay did contemplate. However, the form of a proposition permitted just the kind of articulation that he aimed for and it was far more satisfying than asking a simple question.

## Provocation

Like ‘proposition’, ‘provocation’ is a word that Vijay himself used to describe his style of researching. It crops up a few times in our interviews with different activists. In its crude mechanics, it describes Vijay’s interest in bringing up a confronting counterpoint to what the interviewee is saying. Vijay would warn ahead, saying that he was going to ask a provocative question. By announcing the provocation, he was partly giving it a performative cast, thereby neutralising the sting, and leaving both interviewer and interviewee free to challenge and critique the stability of both views.

A provocation was often used to dislodge tired narratives, not to refute them but to surface the underlying assumptions and to add complexity to the scenario. The oppressive influences of donor funding, and the victimisation of grassroots movements, are examples of such narratives. In one interview which raised questions about what kind of work had legitimacy as human rights work, the activist suggested that funding exigencies and donors shaped that recognition. She cited the example of community-oriented organisations that were victimised by having to court such legitimacy for their economic survival. Vijay said, “If I ask in a provocative sense, do you think that legitimacy in those areas is enough of a force for those organisations to build a strong people’s movement in those places?”

Sometimes, a provocation was the inauguration of a delicate topic, one that an interviewee might potentially find discomfiting. One such was Vijay’s interest in the politics of post-war donor funding. In one interview, he says, “Can I ask a provocative question? [...] In the pre-war context, access to any kind of civil society

organising in the North was very limited. [...] Is there a concern amongst those groups that in some ways the changing post-war context has also meant a dilution of their own power, in the sense that now they are not the two-three organisations, the only ones, and donors can go on their own and find and fund?”

Vijay’s interest in using provocations strategically meant that the interview material was never insulated from a challenge. Any traditional norms that the interviewer must take the interviewee’s response for what it is, and must guard against being too intrusive, were put to the test. While not without its problems, this aspect of Vijay’s style highlighted his recognition that interviewing was a dialogic and performative process. One example is from an interview in which we spoke about the usefulness of deploying the human rights language with the state. The activist we spoke to felt that, to be effective, “you have to speak their [i.e. that particular regime’s] language, and that’s not the human rights language, so you have to find ways to counter and respond”. Vijay questioned whether activists should “search for a language that is more appropriate to the regime” rather than to “the depth of the [social problem]” they were addressing, especially given that “human rights language is very state facing, [and] very often I feel that maybe our correctives to that are *even more* state facing.”

## Conclusion

Vijay would probably note with irony that I have made his style of research an object of my research, maybe even challenge me for fetishising it, but these impressions of him are so vivid, even after five years, that I had to write them in this way. These three dimensions are not the only aspects that I recall, but they are the most memorable. Dividing them up in this way

may make it seem as if his way of researching was intentional and instrumental at all times and in all respects. Perhaps the very strenuousness of my attempt may convey that meaning as well. In the context of what was a research relationship,

it was strange to isolate this aspect of him and write about him as a researcher. I did not want to objectify or caricature this dimension. Others who worked with him will add to this knowledge about researching with Vijay.

# Beyond civil and political rights: Economic, social and cultural rights are human rights too

*INTERVIEWED BY VIDURA PRABATH MUNASINGHE*

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Virginia Bras Gomes, Chairperson, UN Committee on Economic, Social and Cultural Rights, in this interview, emphasises the significance and relevance of the human rights based approach in the formulation of public policy and the need to reduce the gap between duty bearers/government and rights holders in achieving true accountability. She also reiterates the importance of a practical understanding of human rights as opposed to a mere academic or theoretical approach and the central role of economic, social and cultural rights in the global context.

**You presently work in the human rights sector but hail from a public policy background. How do you view the connection between public policy and human rights?**

Public policy principles such as participation, accountability, non-discrimination and equality also cut across human rights obligations. There can be no full realisation of rights without adequate reflection in policy making which has to incorporate not only human rights principles and cross cutting obligations, but also allocation and generation of resources.

It is important for all stakeholders, be they activists, development professionals, human rights defenders or NGOs, to be better informed about public policies. The public needs to be informed of how laws are made and regulations implemented. It is important that policymakers utilise a human rights based approach, i.e. that human rights are for every individual, but also for collective groups. You cannot properly assess how well a policy is working unless you take into account the opinion of rights holders.

Public policies that do not in actual fact reflect rights, are neither sound nor sustainable in the long run.

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*Vidura Prabath Munasinghe* is a Senior Researcher at the Law & Society Trust.

**Elaborate further on the importance of sound, sustainable public policies created with a human rights based approach?**

The sustainability and consistency of policies have to be safeguarded against political cycles and government changes. Governments all over the world, upon coming into power, work to erase the previous government's efforts, as if all their endeavours were futile and must be changed. Public policies that follow a human rights based approach however are safeguarded against very abrupt changes, even strategic change when governments change.

It is not that governments cannot have their own ideas, political platforms and projects, but the strategic components of public policy must not change every four or five years. State parties accept the obligations under human rights treaties of their own free will. Thus, upon ratification, they are obligated to commitments towards all people under the jurisdiction of the state. This is what the International Covenant on Economic, Social and Cultural Rights requires, and why it calls for the protection of migrants, refugees, asylum seekers, stateless people, etc. Thus, a human rights based approach strengthens public policies from within and safeguards them from unnecessary and undesired changes each time a government changes.

**In policy making, there tends to be a large gap between the levels of decision making and implementation or supposed beneficiaries in developing countries. How do you view the difference between developed and developing countries in this context?**

There are certainly some differences but the gap between duty bearers/governments and rights holders exists everywhere.

A culture of accountability requires far more thought and work. Accountability is not limited to integrating accountability mechanisms into legislation. Even this however does not happen very often as can be seen browsing legislative texts in different countries. Especially, countries in post conflict situations, like Sri Lanka must commit to accountability with seriousness, to rebuild society and put in place a transitional justice system.

If decision makers are to be perceived as real and accountable, this distance must be overcome. On the other hand, rights holders require further encouragement and awareness of their rights to be able to claim them and fight for them.

For example, the rights to education, health, housing and social protection are all interdependent. When public policies to realise these rights are inadequately articulated, people fall through the cracks. Accountability must be understood in its fullest sense, as a substantive obligation rather than mere procedural requirement. There are a number of tools that can help, such as the use of human rights indicators, gender budgeting, measuring government compliance with their core obligations to vulnerable groups, or the progressive realisation of rights.

In my experience since 2012 in the UN Committee on Economic, Social and Cultural Rights, I am yet to come across a country that has not done something to increase the protection of economic, social and cultural rights, even in situations of conflict. The question is not whether they have or have not done something, but rather if they have used the maximum resources available to them. That is what the covenant requires and that is what they have committed to do by ratifying the covenant.

They may have done something, but they have certainly not done enough.

Yes, there are differences in the understanding of participation and accountability derived from cultural contexts, but they are not that important. We need to work hard to close the gap.

**Millions of rupees of funding has been spent to educate communities on human rights but we rarely see the participants of these programmes frame the issues they face in terms of their rights and claim for them. In your experience, is this the usual case and what are the reasons for it?**

Making aware is not always teaching as it is traditionally understood. Human rights education is fundamental but must also be meaningful. I conduct training in human rights for school children aged between 10 and 12. They do not lack academic knowledge of human rights but have no practical understanding of what rights are and how they can be claimed. You have to share the experience with them. In our training sessions, we use role play. In a neighbourhood where most schools have a majority of second generation migrant African kids, we enacted scenarios to illustrate different situations. For example, a house owner who did not want to rent his house to an African family because they made a lot of noise in the weekends. Those playing the role of the house-searching family stated that this was their way of mingling with people and enjoying their free time. This provided me the opportunity to speak about cultural differences and the right to participate in cultural life. One little boy told me, "So this is what human rights are? We study human rights, but now I understand it's all about everyday life".

The practical approach is very beneficial. When the rights being taught come into play in real life situations people understand them better. For me, human rights education is a lifelong, ongoing process. Different approaches are required for different people in different countries at different stages of their lives. In the final analysis, what we really need to understand and to become part of our thinking process is that human rights are about everyday life. Human rights are yours because you are a human.

**You visited Sri Lanka in February 2018. You met families of disappeared persons, people who were deprived of their land rights, etc. What was your experience of the efforts Sri Lanka has made regarding economic, social and cultural rights?**

I met many people, who, like me, understand that economic, social and cultural rights are fundamental in any post conflict reconstruction scenario. This can be seen in all countries that have been plagued by conflict(s). To not recognise the importance of economic, social and cultural rights in post conflict constitutions and agreements is a major failure.

In any post conflict situation, there is a huge focus on civil and political rights and that is good. But we cannot forget that the underlying cause that led to many of these conflicts in the first place was the lack of enjoyment of economic and social rights, such as the rights to work, housing, education, and social protection, at times by the whole population and at other times by certain discriminated groups. I have been heartened by the many people in Sri Lanka including decision makers who think economic, social and cultural rights should be fully recognised in the Constitution. Those involved in the constitutional reform process

need to comprehend why economic, social and cultural rights should be fully recognised in the new constitution at the same level of relevance as civil and political rights. My own understanding after meeting with many Sri Lankans at the grassroots level is that they still feel unsure of their rights to education, health and in particular, land and food. How a transitional justice process recognises the issues of the right to land, devolution, displacement, stolen lands, lands unaccounted for, distribution of land for women, etc and reflects them in the constitution are crucial. Justice is not only ensuring political rights but also the realisation of basic living rights. I think it is fundamental to recognise economic, social and cultural rights in the Constitution in a manner that is meaningful to people, and that is recognisable to them as a difference.

**Economic, social and cultural rights are quite often being framed as development issues.**

**In Sri Lanka, a prospective candidate for the presidential elections in 2020 even stated that the only post conflict issue being experienced is development. What is your opinion on this framing?**

Yes, it is an argument made by some governments, but I think most governments now understand that there can be no development without human rights. Everything cannot be subsumed under development. There are countries that have acquired a certain level of development, but have not seen improvement in the lives of all of their citizens. If development is the answer to all such problems, then why do developed countries still have human rights issues? Why do many developed countries still have pockets of people living in poverty and suffering multiple deprivations? Even in the US and Europe, there is much more to be done in terms of economic, social and cultural rights.

It is not only about development but also individual rights. Everyone is entitled to claim her/his own rights, to see them realised, and in case of violation to claim them in courts or be entitled to other remedies -- not always judicial remedies, but also administrative, social and educational remedies. If economic, social and cultural rights are not written into the Constitution however, and only present as development objectives, they are not justiciable. Sri Lanka can make good use of the lessons learnt to progress to a country that is more respectful, responsive and conducive to human rights, particularly to economic, social and cultural rights.

**When foreign donor agencies such as the World Bank and the International Monetary Fund decide on funding projects in nations like Sri Lanka, they usually consider the human rights record of the country. However it is the civil and political rights record that they consider. Most often these countries are unable to achieve the expected targets set, for many reasons including corruption, and thus unable to pay back the loans. As a result, they become snared in the so-called debt trap. In such situations, donor institutions more often than not insist on cutting of social welfare benefits. This affects economic, social and cultural rights. Is this not a vicious cycle?**

It absolutely is! International financial institutions keep insisting on cuts in social spending. As a result, there is an increase in poverty and decrease in rights protection and enjoyment of human rights. The end result is that people are pushed even further away from development and access to their rights.

We all know that governments need to take measures to regulate spending. In 2012, the committee wrote a letter to the governments



of all state parties to the covenant expressing our understanding that in certain situations financial cuts are necessary and that those cuts may affect the enjoyment of economic, social and cultural rights. We established certain criteria for countries that needed to make financial cuts but still wanted to be in line with the covenant. The measures related to austerity need to be temporary and they should be taken only after all other possibilities are exhausted. It is not that countries cannot implement financial cuts. They can, but they need to do so without violating economic, cultural and social rights. More recently, in 2016, we adopted a statement on public debt addressed to international financial institutions and to donor and recipient countries, stating that all of them have different obligations under the covenant.

The committee has consistently alerted governments and financial institutions that blanket cuts on social spending have promoted deeper inequalities, pushed people further away from access and enjoyment of rights and in the final analysis, they have weakened communities and societies, specially the less resilient ones. This is happening not only in developing countries, but also in developed countries and many of us have gone through that experience. I think donors need to reconsider their lending and funding policies. Sometimes they do lip service, but in reality their approach doesn't change. It is more about procedural requirements and there is no real concern about realising rights. This needs to change and all of us have a role to play - the committee, civil society organisations, international financial institutions, donor organisations, and recipient countries' governments.

**As the Chairperson of the UN Committee on Economic, Social and Cultural Rights, what is your opinion of the current economic, social and cultural rights discourse?**

Uprisings like the Arab Spring were instrumental in making people understand that economic, social and cultural rights are absolutely fundamental. On the other hand, due to austerity measures, the middle classes in developed countries have also realised the indispensability of public policies not only for disadvantaged individuals and families but for the middle class itself. People understood the need for strong policies on public education, public health and a public social protection system. Having previously believed falsely that the underprivileged were disadvantaged because they did not extend sufficient effort, the middle class finally understood that if economic growth is not for everyone it is because public policies are weak and redistribution of resources is ineffective.

I believe the importance of economic, social and cultural rights discourse is increasing, and I think the optional protocol to the covenant which came into force a couple of years ago is being instrumental to illustrate violations of economic, social and cultural rights, be they violations that require reparation and compensation or policy flaws and lack of coordination between government agencies. When your right to housing is violated you may have your right to work violated too. Your children may not be able to attend school and your family can experience health problems, all derived from the violation of your right to housing. That shows lack of coordination between government agencies and the existence of flaws in public policy.

The committee will continue to build jurisprudence pointing to the lack of policy coordination and issue general recommendations to countries to improve this coordination. I hope more countries will ratify the optional protocol. I am sad that Asia has the lowest rate of ratification. We have to convince all other stakeholders including governments that if both sets of rights are not given the same political importance they are doing their country and the rights holders, a

disservice. You cannot adequately exercise your right to vote if you are hungry, or if you are not educated. On the other hand, you may have food and education but if you do not have the choice to elect your officers and to be able to complain against them when you need to, then you are deprived of a fundamental freedom. Only if both sets of rights are considered interdependent and universal in their fullest sense will societies truly progress.

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PEOPLE CHANGING THE WORLD

## CONTRIBUTORS

**Ruki Fernando,  
Marisa de Silva &  
Deanne Uyangoda**

Ground truths from the  
evolving fight for justice

**Dr Kiran Kaur Grewal**

Working with the complexity  
and diversity of reality:  
Rethinking the approach to  
human rights praxis

**Dr Shermal Wijewardene**

Researching with Vijay  
Nagaraj: Archiving,  
Proposition and Provocation

**Interview: Virginia Bras  
Gomes**

Beyond civil and political  
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and cultural rights are  
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## Humans in Human Rights

This issue of the LST Review is dedicated to the memory of Vijay Nagaraj, former Head of Research, Law & Society Trust on the first anniversary of his death. It centres on the ground realities of human rights in Sri Lanka, as viewed from the perspectives of grassroots upwards, as Vijay did.

**Ruki Fernando, Marisa De Silva and Deanne Uyangoda** critically review the engagement of civil society activists with the government formed in 2015, the struggles and achievements of survivors, victims' families and affected communities and international and donor involvement in rights activism. In conclusion, the authors describe the challenges faced in meeting human rights standards, sustaining, strengthening and expanding networks.

**Dr. Kiran Grewal** reflects on some of the issues that have arisen while working as a lawyer, teacher, human rights practitioner and activist while working in the field of human rights and offers some suggestions on how to rethink the approach to the practice of human rights.

Dr. Grewal elaborates on the need for greater engagement with the social sciences among human rights scholars and practitioners, the relationship between critique and practice, and the place of politics in human rights. In attempting to reflect on the practical implications of these issues, she describes some of the strategies she has tried to incorporate into her work, aimed at improving human rights practice in both academic and non-academic environments.

**Shermal Wijewardena** sets down her impressions of Vijay's style of researching and writing when they worked together.

Beginning with her impressions of how Vijay managed two activities and impulses archiving and interviewing simultaneously, she looks at how he brought out cumulative knowledge from the interviews into each interview experience, making a proposition and putting a range of activists' voices into conversation and contestation. She also considers how Vijay used his own brand of provocation productively during the interview process.

**Virginia Bras Gomes**, Chairperson, UN Committee on Economic, Social and Cultural Rights, in this interview, emphasises the significance and relevance of the human rights based approach in the formulation of public policy, the need to reduce the gap between duty bearers/government and rights holders in achieving true accountability. She also reiterates the importance of a practical understanding of human rights as opposed to a mere academic or theoretical approach and the central role of economic, social and cultural rights in the global context.