Using a Rights Based Prevention Approach in Conflict settings: Examples from Israel/Palestine and Nepal

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**Rights and Accountability**

The term 'rights' elicits a sense of obligation; a sense that someone, somewhere must be held accountable for the denial of basic human rights. In the preamble of the United Nations Declaration of Human Rights, members pledged to achieve the promotion of universal respect for, and observance of, human rights and fundamental freedoms, but how does this play out in conflict-affected countries? Who protects? Who Promotes? Who Provides?

Echoing the values of the UN Declaration, the rights-based approach (RBA) starts from the ethical position that all people are entitled to a certain standard of living. It recognizes individuals as active rights-holders and removes aspects of charity from the realm of development by emphasizing rights and responsibilities. A right is a basic entitlement or claim, in which, an individual can assert and call on another person or institution to uphold that right.

As defined by the United Nation Human Rights Commission, RBA focuses on raising levels of accountability by identifying rights-holders (the individual who asserts the claim) and the corresponding duty-holders (the individual or institution with the responsibility to uphold the claim). In examining the role of duty-holders, RBA highlights not only our negative obligations – to abstain from violations – but also our positive obligations – to protect, promote, and provide. These three Ps are central to duty-holders, (whether it be the state, the community, or non-governmental organizations). Yet many players continue to dismiss their role, preferring to turn a blind eye instead of taking direct action. This sense of duty is what a rights-based approach seeks to create. In using the language of rights, it automatically raises the question of accountability.

Below we examine two examples of conflict-affected countries where health organizations are committed to working for human rights in the absence of government action.

**Nepal Physicians for Social Responsibility**

Nepal, a landlocked country situated between India and China, has until recently, been a Hindu hereditary monarchy. A 10-year armed insurgency waged by an underground Maoist Communist Party of Nepal (CPN) came to an end following a peace agreement between the democratic political parties and the Maoists and the resultant elected Constituent Assembly voted, by a whopping majority, to oust the monarchy and establish a federal republic system of governance in Nepal.

The new republic inherited a health system that failed to deliver the people's basic health care needs. Nepal's health indicators are among the poorest in the world. The Infant Mortality Rate (IMR) is 46 per 1000 live births, life expectancy 63 years at birth and Adult Literacy Rate 55.2 per 100 (UNDP, 2007/8). According to the same sources, the US has IMR of 6.3 per 1000, life expectancy 78 years at birth and Adult literacy rate 99 per 100. People in general have been deprived of minimal basic health care with health care facilities and meager resources (Dahal, 2005). Some reasons underlying the poor health indicators in Nepal include inequitable distribution of available resources, rampant corruption

and the bloody insurgency that has disrupted the tenuous health care infrastructure in Nepal (Singh *et al.*,, 2005).

*History*

Health professionals from Physicians for Social Responsibility Nepal (PSRN) rightly understood these facts and worked to change the political system to one that was more just, democratic, less corrupt and more promotive of health (Adams, 1998 and Dahal, 2008). The documented and substantial involvement of Nepali physicians in defending human rights and helping to establish democracy, dates back to 1991 (Maskey, 2004). That year, physicians and other health professionals under the leadership of prominent physicians affiliated with PSRN including Professor Mathura Shrestha, Drs Mahesh Maskey, Arun Sayemi and Bharat Pradhan worked to create mass appeal in seeking solidarity of the people to the movement to oust the partyless Panchayat system, which was developed and supported by the monarchy, and replace it with multiparty democracy (Akura, 2006). From the planning phase, the physicians were involved in the movement, later rescuing it when it was about to implode due to people's frustration and the arrest and suppression of its active leaders.

Nepal's record of human rights deteriorated when the Maoist CPN launched a war against the existing establishment and the latter retaliated (Singh, 2005). When political demonstrations were outlawed and the government employed Dumdum bullets as "non-lethal means to disperse the crowds" the doctors' critique assisted in forcing the government to withdraw the bullets from use (Adams, 1998). They organized a network of clinics and hospitals in the hideouts of the capital, Kathmandu, to provide treatment to a large number of wounded demonstrators (Maskey, 2004). The medical community of Nepal also was an integral part of Professional Alliance for Peace and Democracy (PAPAD) that coordinated the activities of civil societies in the country to defend the rights of the people and their respective professions.

When the democratic movement emerged in 2006, physicians were part of the civil society response, playing a decisive role in establishing peace and republican system in Nepal (Dahal, 2008). This movement was supported by the then underground CPN, which was waging a violent war that had already taken a toll, killing more than 13000 people and leaving more than a hundred thousand people injured and displaced (Gautam, 2007). Besides supporting the movement and issuing press releases protesting the government's suppression of peaceful demonstrations, the physicians were involved in the immediate treatment of the injured, likely decreasing the number of casualties (Dahal, 2008). They defended the right to freedom, to peaceful assembly, the right to medical treatment, the right to walk freely and right to expression and opinion. The Nepal Medical Association (NMA), the umbrella organization of Nepali physicians, coordinated the movement throughout the country through their branches in different zones of Nepal (Dahal, 2008). When communication was not possible due to the disruption of mobile phones services by the government and the imposition of day-time curfews in major cities of Nepal, the activities were organized at the local level, where the communication was easier and well-planned.

*The Role of Outsiders*

Substantial support from international health and human rights groups and participating individuals in the movement was critical. When leaders of the movement were arrested, PSRN and allied physicians mobilized an international network to pressure the government diplomatically. Dr. Sonal Singh, a US-based physician of Nepali extraction, helped design an e-petition, which was later signed by almost 3000 international doctors, medical students, other health professionals and human rights defenders

(Pandey, 2006), to help release the Nepali physicians and medical students detained during the peaceful demonstrations. Singh also authored an open letter to the *Lancet* demanding the safe and immediate release of the Nepali colleagues (Singh *et al.,* 2006). IPPNW, the federation of the physicians working to abolish nuclear weapons, supported its Nepali affiliate by writing letters to Nepalese diplomatic representatives throughout the world (Dahal, 2008).

*After the 'victory'*

After the signing of the comprehensive peace accord between the Maoists and the government in 2006, the 10-year Maoists' insurgency stopped and a consensus government formed to include the Maoists and other democratic parties. The Constituent Assembly to draft the constitution is inclusive, including around a third representation of females as well as representation of people from all walks of life. The goal is to ensure that their rights are upheld and to prove that 'ballots are more powerful than the bullets.' This movement has set an example for the groups and rebels waging violent wars in different parts of the world, reflecting that if they work peacefully, people may support them and help them move into the political mainstream.

Because of their commitment and participation in the movement to establish democracy and rule of law, the Nepali physicians were lauded as "Doctors for Democracy" (Adams, 1998). They have worked to enshrine "Health as a human right" in the interim constitution of Nepal 2007 (Dahal, 2008), "Every citizen shall have the right to get basic health service free of cost from the State as provided for in the law". The meaning of this, however, is yet to be actualized.

In the evolving scenario, the role of physicians in Nepal has changed. Now, they work in government positions drafting new policies, advising ministers, making and implementing plans to improve the health status of the people in Nepal. The first elected president of Nepal, Dr Ram Baran Yadav is a physician and a democratic intellectual from a "backward community" in the marginalized Terai region. With a number of physicians in the decision-making positions, people can be hopeful that they can work for what they have long been advocating for, to ensure the implementation of "health as human right" in Nepal.

*Peace, Health and Human Rights*

The doctors' participation in the movements to establish peace and democracy can be seen as occurring beyond their professional mandate. They identified the root causes of war and conflict, which in Nepal's case are lack of democracy and rule of law. They correctly identified that the lack of equal rights to the indigenous and 'backward' communities, negligence of the state towards equal access for all citizens to the state's resources, and rampant corruption, which were the main causes behind the escalation of conflict and worked well before it manifested (Dahal, 2008).

Physicians in Nepal have worked to defend various forms of human rights of the people and establish health as a human right, applying the principle of the collective benefit, without losing health as a basic individual human right. It is important to understand that they thought strategically by creating a structure, advocating for their patients, mobilizing the community, and developing international support, they were able to achieve their goals through non-violent political means.

Opposing the corrupt and undemocratic regime, making people aware of their rights, speaking out against the government atrocities and violations of international human right conventions, and working to safeguard the physicians' right to treat people irrespective of their race, religion and political belief

was central to the Nepali doctors' efforts.

In Peace through Health terms, mentioned elsewhere in this book, this may be seen as primary prevention of violence and even of poor health, since corruption and lack of democratic rights are considered as root or enabling causes of structural violence, the growing disparities and dividing gaps between haves and have-nots and substandard health situation of the country (Adams, 1998). Doctors feel that with peace established, substantial changes can be brought to improve the health of the people through the formulation and effective implementation of right and people-oriented policies (Dahal, 2008). As the conflict comes to the end, more resources can be allocated to education, healthcare and development projects. In the post-conflict situation, the donor agencies are willing to invest more in rehabilitation process and development projects that engage people in sustaining peace. So, reciprocally in Nepal's case: peace may have been achieved through health and health may be achieved through peace.

Physicians in Nepal operated under a system whereby a gap in the provision of health services led them to assume the rights and responsibilities typically reserved for the state. This meant that physicians undertook traditionally state-controlled roles as they served to protect the rights of Nepali citizens, promoting their security and providing for their health needs.

**Physicians for Human Rights-Israel: Doctors as Duty-Holders**

In the occupied Palestinian territories (oPt), the health situation has deteriorated to unprecedented levels and the lack of state action has created a similar occurrence to that of Nepal, whereby physicians have found themselves not only providing health care, but protecting and promoting the right to health.

In terms of traditional indicators of health, the World Health Organization reports that in the oPt the under five mortality rate is 25.3 per 1,000 (higher in the Gaza Strip than the West Bank - 28.8 and 22.9 per 1000 live births, respectively) and the maternal mortality rate is 6.2 per 100,000 births, much better than Nepal, but significantly worse than in Israel (WHO/Reliefweb, 2008). In fact, since the beginning of 2000, 68 women in labour were delayed at checkpoints or refused permission to reach medical facilities (PICCR, 2007); And the fear of such hardships has led a significant number of Palestinian women to give birth at home, with an increase by 8.2% in home deliveries (United Nations, 2007). To complicate this matter, in Palestine there are only1.6 physicians) and 1.3 hospital beds per 1000 people (PCBS, 2009.

**Comment [Judy Kitt1]:** See references below for my notes

A similar picture is illustrated when exploring the social determinants of health in the oPt. Poverty in the Gaza Strip has risen to an unprecedented level, affecting 80% of households; unemployment in the Gaza Strip rose from 30% in 2005 to 38% in the third quarter of 2007. Rising poverty and unemployment has had a devastating effect on school attendance across the oPt. In the 2005/6 school year the number of students whose families could not afford the NIS 50 ($11) school fee doubled from 29,000 to 56,000 (PM, 2008).

**Comment [Judy Kitt2]:** See references below for my notes

The extensive system of checkpoints and barriers with arbitrary closure, the construction of the security fence, and random destruction and seizure of property, violate the right of Palestinians to shelter, mobility, health, and safety.

Unfortunately this bleak picture is not exclusive to Palestinians in the oPt, but rather similar conditions exist among other marginalized populations within Israel. Two of us (Judy Kitts and Neil Arya) have studied the social determinants of health within Israel, exploring the complete physical, mental and

social well-being of Bedouin Arabs, migrant workers, refugees and asylum seekers, Ethiopian Jews, Sephardic Jews, and Ultra Orthodox Jews. Findings suggest that other marginalized populations within Israel are experiencing similar disparities in care. For example, Bedouin Arabs in the unrecognized Villages of the Negev are not connected to the national water grid and many inhabitants are forced to obtain their drinking water from water access points located several kilometers from their villages via improvised plastic hose connections or by transporting the water in unhygienic metal containers by vehicle or donkey (NCFCE, 2006).

From the start of the Israeli occupation in 1967, the Israeli Authorities assumed responsibility for the provision of basic health, education, and other municipal services. In 1993, with the implementation of the Oslo Accords, these responsibilities were handed over to the Palestinian Authority, which is now on the brink of collapsing as it struggles with a lack of resources and a divided Palestinian population. Given Israel's retention of control over the territories – its borders and land – taxation, and many aspects of the lives of its inhabitants, according to international law it must remain responsible for health in the oPt. According to the Geneva Conventions, an occupying force has a duty to ensure the food and medical supplies of the population, as well as maintain hospitals and other medical services, *"to the fullest extent of the means available to it*"(ICRC, 2005).

Medical ethics, as epitomized by the Hippocratic Oath, places an obligation to treat those in need at an individual level, impartially. But in reaction to such blatant violations of health and human rights, not just at an individual but general, systemic population health level, two simple questions remain --Who *is* accountable? Who should respond? For physicians, there is a corollary question - when the state fails to act, is there a responsibility, as duty-bearers, to provide medical or health service and to act to change the situation?

With Israel denying its responsibilities and the Palestinian Authority unraveling, the right to health including the availability, accessibility, and quality of health facilities, services and goods in the oPt is deteriorating. The failure to meet these basic human rights has resulted in a precarious impact on the health status of people living in the oPt, while the responsibility to provide, promote, and protect the rights of Palestinians has fallen in the hands of civil society, including PHR-I as a proliferation of international donors and NGOs struggle to fill the gap in the provision of health services.

*How PHR-I works*

Established in 1988, Physicians for Human Rights-Israel (PHR-I), is composed of Israeli and Palestinian physicians, together with human rights activists. In the absence of government action, PHR-I works to *protect* the rights of Palestinians living in the oPt by fighting the injustices at the Israeli Supreme Court of Justice, works to *promote* their rights in Israel and around the world through the discovery and dissemination of facts, and works to *provide* immediate health care services through its mobile health clinics and training and educational services. Not surprisingly, it is recognized as a model for the rights-based approach, not only through its programs that highlight their role as a duty-holder, but also by drawing attention to the lack of state accountability.

PHR-I recognizes that the medical community has a clear obligation to advocate for the realization of every person's universal right to health, medical treatment and proper living conditions (PHRI, 2007),yet it also maintains that Israel has effective control over the occupied Palestinian territories.

**Comment [Judy Kitt3]:** See references for my notes

While the state is ultimately accountable for the provision of rights[1], including the right to health, in recent years, the role of local NGOs has significantly increased as Israel has shirked its responsibility in the face of international law[2]. PHR has also felt compelled to act when the Israeli medical community accepts 'moderate physical pressure' or torture, in violation of international law.

PHR-I is one of these many actors working to combat the systemic harm inflicted on the lives of Palestinians by improving accessibility to health care, yet members of PHR-I state that their involvement with the organization has less to do with its success,[3] and more to do with obligation. One member explains: "We do this work because we can't do otherwise, not because there is an evidence base... We do it because we are politically and morally obliged."[4] (Interview with Author Judy Kitts)

It is evident that members of PHR-I recognize their role as duty-bearers, yet they also question whether or not their work is directly or indirectly supplementing the responsibilities of the state, thereby allowing the government to shirk its responsibilities under international humanitarian law. International and local organizations must then consider whether they do more harm than good when working in sensitive conflict situations (Anderson *et al.*, 2003; CDA, 2004).

For example, in June 2005, 20 Palestinian organizations called for a boycott against cooperation with Israeli institutions and NGOs that were complicit with the occupation (Union of Health Workers *et al.*,2005). The call put forth the argument that it wasn't enough for Israeli organizations to promote dialogue and collaboration between Palestinians and Israelis, rather they "may want to consider becoming actively involved in Israeli or joint Israeli-Palestinian activities aimed at ending Israeli military occupation of Palestinian land, the removal of closures, checkpoints, siege and the Apartheid Wall, among other manifestations of the root cause of ill health: the occupation" (Ibid).

*The Role of Outsiders*

Outsiders who seek to use health as a connector in conflict situations must be cautious. Though their voices shedding light on the situation for the outside world is often invaluable, when they strive to protect, promote and provide they may become party to the conflict, being perceived as unwelcome by many, particularly if they act in what they consider solidarity with those they see as oppressed. This can have legal consequences for them and sometimes endanger the very people they seek to protect.

What happens when outsiders try to be above politics? The Canada International Scientific Exchange Program (CISEPO) (Skinner *et al.*, 2005), works from a Peace through Health perspective, trying to be above the politics of the Middle East. As such, in developing and implementing health sector cooperative activities in the Middle East between Arabs and Israelis, CISEPO has been criticized for focusing solely on individual human relations and failing to recognize the social and political realities

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1 Under the International Covenant on Economic, Social, and Cultural rights, states are required to take immediate steps for the progressive realization of the rights concerned, so that a failure to take the necessary steps, or any retrogression, will flag a breach of the State's duties. Under the International Covenant on Civil and Political Rights, states are bound to respect the rights concerned, to ensure respect for them and to take the necessary steps to put them into effect.

2 The Israeli government maintains that it does not regard the Fourth Geneva Convention as legally applicable to the West Bank and Gaza Strip. The Fourth Geneva Convention prescribes rules for an occupying power in relation to the inhabitants, who are described as "protected persons". Among other things, the rules prohibit the occupying power from wilfully killing, ill-treating or deporting protected persons. It also prohibits it from transferring its own civilian population into the territory, and from carrying out reprisals or collective punishments

3 PHR-I has impacted the lives of thousands of Palestinians (in 2007, PHR-I's mobile health clinics treated 10,676 patients, of which 2,591 were children mention), but still struggles to have an effect on Israel's discriminatory policies.

4 Interview with author

of the conflict (Jabbour, 2003). CISEPO, and other like-minded initiatives, may help to create and enhance opportunities for cooperation, but their failure to address the systemic inequality of conditions, or justice issues may have the opposite effect (Arya, 2004). A middle ground might be seen in Healing Across the Divides, an American non-profit organization, which uses a health rights based approach to peace-building by increasing awareness on the part of policymakers of the obstacles hindering the improvement in health of both populations (HATD, 2009).

*PHR-I and RBA*

PHR-I's activities demonstrate the organization's commitment to extending altruism to "out groups" as they push "beyond traditional in-group identities, challenging and extending the boundaries of health care" (MacQueen & Santa Barbra, 2000) yet members of PHR-I continue to remind themselves that "*There is no replacement for a regional, advanced, and financially secure medical system run by the local authorities*." How then should duty-bearers respond to a state's inaction?

**Comment [Judy Kitt4]:** This is a direct quote from PHR-I's website. I see that their website has a complete 'renovation' and the quote is no longer on the home page. I did do a search in google for it and it did come up when I put the quote in brackets, but the page won't open (likely because it is a super old page). --- see this link --- http://www.google.ca/search?hl=en&client=firefox-a&rls=org.mozilla%3Aen-GB%3Aofficial&hs=7Qi&q=%22no+replacement+for+a+regional%2C+advanced%2C+and+financially+secure+medical+system+run+by+the+local+authorities%22&btnG=Search&meta=&aq=f&oq= That being said, I can't put a reference in unless the one above will open up or unless we put in a phrase that says "PHR-I's website states" – though that isn't exactly accurate, cause their old website stated that, not their new one… thoughts?

PHR-I has responded by moving beyond the provision of immediate health services, to identifying, uncovering, and addressing the root causes of these health inequities. PHR's political activism, representing Palestinians before the Israeli Supreme Court, writing petitions, writing reports (in English, Arabic, and Hebrew), organizing demonstrations, even maintaining contact with the almost completely cut-off Gaza to try and advocate for their rights, is what allows the organization to gain credibility to work closely with Palestinian partners. As the President and Founder, Ruchama Marton states: "I think that everyone, including doctors, need to be politicized. Otherwise, it is a kind of mild, blind, non-affective activity. Even though a person can come home at night and tell himself how wonderful he was today, it is not very helpful to the dynamics of the whole thing. The organization and each and everyone in the organization must be outside the consensus, which is not an easy place to be" (Interview with Author Judy Kitts).

Central to RBA is the premise that people have inalienable, indivisible rights that cannot be addressed with quick fixes, rather it requires slow tactical steps that go beyond surface problems, taking up deep-rooted questions and challenging all parties for answers. PHR-I recognizes this inextricable link between health and politics and has likened to the realization of health to the end of the occupation: "Our vision is to end the occupation… It won't help even if we bring 500 people out of Gaza for medical treatment in Israeli hospitals. It won't help them afterward. It is just a band-aid. The system in [the oPt] will remain the same" (Interview with Author Judy Kitts). The fact that the basic health rights of Israeli citizens are also overlooked may actually serve to create a sense of solidarity as Palestinians and Israelis alike come to recognize that the state of Israel has an obligation to provide basic health rights.

## Conclusions

The capacities of health professionals to act when states abdicate their responsibilities differ in the contexts of Israel/Palestine and Nepal. Yet in both these countries, physicians continue to document and speak out against injustices, engage in diplomacy with political leaders, write petitions on behalf of marginalized populations, and treat patients impartially; they have done this all while accepting the severe consequences of these actions.

RBA proposes that a right is a basic entitlement, in which an individual can assert and call on another person or institution to uphold that right. While we continue to struggle with the questions: Who

protects? Who Promotes? Who Provides? We find 'duty-bearers' taking various shapes from everyday citizens who actively participate in human rights organizations, to physicians who uphold the Hippocratic Oath as a framework for service. These duty-bearers recognize that while international humanitarian law holds states accountable for the provision of human rights, inaction cannot be met with further inaction, or it will only serve to legitimate the system that continues to place obstacles in the way of human rights, whether it be concrete walls of separation or economic and social barriers.

Could such approaches work in other contexts? Would this help in the case of genocide as in Rwanda, or unaccountable regimes with great power as in Burma (Myanmar) today? This is less certain. As such this would become the responsibility of the international community to act to protect vulnerable populations, and Chapter XX shows that this might be approached using medical principles.

Systemic issues are often the main cause of intractable conflicts, and central to minimizing conflict is the ability of duty-bearers to transform the structures and dynamics that create the foundation for such injustice, and being above, but not beyond, politics unites the doctors of Israel/Palestine and Nepal.

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**Comment [mwhalin5]:** This site was not working to gather reference info

**Comment [Judy Kitt6]:** I got it to work – it came right up actually. http://www.palestinemonitor.org/spip/spip.php?article11 Here's what I found in case you can't open it – Palestinian Monitor Factsheet: Children. Updated December 18, 2008. No author is listed.

**Comment [mwhalin7]:** Need Full Reference

**Comment [Judy Kitt8]:** I have attached the reference as a pdf to this email. The report is by PICCR and the report references another report by Palestinian Ministry of Health (see page 236 of attached document). I tried to find the direct source, but couldn't find it.

**Comment [mwhalin9]:** Need Full Reference

**Comment [Judy Kitt10]:** I have attached the report from PCBS. There is no date in the report, but I found this link also from PCBS, which dates the report as May 13, 2009. Given that the report uses 2007 and 2008 data, I think this is date is accurate.http://www.pcbs.gov.ps/desktopmodules/newsscrollEnglish/newsscrollView.aspx?ItemID=894&mID=11170

**Comment [mwhalin11]:** Need full Reference

**Comment [Judy Kitt12]:** This is an actual hard copy document that I received from PHR-I. It is a small booklet that was in the office's lobby. It is just basic general information about the activities of PHR-I. It says nothing on the cover except PHR-I, and inside it is dated 2007. If this isn't enough information, I would suggest deleting the sentence, as this is the source, but I understand that it is pretty vague.

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Union of Health Workers et al. 2005.Judy to give Union of Health Work Committees; Union of Palestinian Medical Relief Committees; Central National Committee for Rehabilitation; Health Development Information Policy Institute; General Union of Palestinian Workers; General Union of Palestinian Charitable Societies; Women`s Affairs Technical Committee; Center for the Treatment and Rehabilitations of the Victims of Torture; Gaza Community Mental Health Programme; Red Crescent Society – Nablus; General Union of Disabled Palestinians; Center for University services - al-Najah University; Center for Development of Community Resources; arab Women`s Society; Friends of al-Najah University Society; Union of Palestinian Youth; Youth Counseling Center; Patients` Friends Society – Jenin; Palestinian National Council of Non-Governmental Organizations; Field Research Group. 2005. An Open Letter to the Palestinian and International Community. In *Occupation Magazine*. [cited February 2007]. Available from *http://www.kibush.co.il/show_file.asp?num=4373*

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**Comment [mwhalin13]:** Need full reference…?

**Comment [Judy Kitt14]:** I have attached what I think is the complete reference – to verify, you can visit the website listed. I just checked to see that it was working, and it is.