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Detention of Migrants and Asylum-Seekers: The Challenge for Humanitarian Actors

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ABSTRACT

The systematic detention of migrants and asylum-seekers is increasingly used as a tool to restrict the influx of migrants and refugees, affecting hundreds of thousands of migrants in host and transit countries. Médecins Sans Frontières (MSF) has worked in immigration detention settings and has exposed the detrimental impact of detention on migrants' health. This work has also led to a series of ethical challenges related to working within an incarceration system that inherently limits efforts to alleviate suffering. The dilemmas faced by aid workers include issues of independent action, access, acceptance, and responsiveness to beneficiary needs. First, unrestricted access is impossible in prison-like facilities where daily operations are dependent on state consent. Secondly, when access is granted, MSF teams risk being perceived as part of the detention system, or at least seeming to collaborate with and accept it. Thirdly, the relevance and effectiveness of intervention is limited when the intervention setting is inherent to the suffering that humanitarian action seeks to alleviate. Such issues raise the question of when MSF's "ethic of refusal" should apply, as well as illustrating the sacrifices aid agencies have to make in difficult and restrictive conditions.

KEYWORDS: detention, medical care, advocacy, humanitarianism

1. INTRODUCTION

Immigration detention has been increasingly used around the world over the last 15 years. It serves as a tool for governments to restrict irregular migration flows, including secondary movements of forcibly displaced populations, as well as facilitating the return of irregular migrants and rejected asylum-seekers. Linking migration with security has influenced policy-making and public rhetoric, prioritising public order – often in a xenophobic climate – over humanitarian requirements to protect displaced populations. The practice of immigration detention has been described by scholars in public health as "a threat to key human rights principles", including the right to seek asylum, the right to be free from arbitrary arrest, the right to freedom of movement, and the right to be free from torture and cruel, inhuman or degrading treatment or punishment.[1]

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1 Z. Steel, B. J. Liddell, C. R. Bateman-Steel & A. B. Zwi, "Global Protection and the Health Impact of Migration Interception", *PLoS Medicine Series on Migration and Health*, 8(6), 2011, 2–3.

To begin with definitions: immigration detention is defined by the United Nations High Commissioner for Refugees (UNHCR) as "the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities."[2] The definition clarifies that "[t]he place of detention may be administered either by public authorities or private contractors; the confinement may be authorised by an administrative or judicial procedure, or the person may have been confined with or without 'lawful' authority".[3] This definition reflects the diversity of detention practices and the kind of situations asylum-seekers and migrants are placed within. It also points to how migrants may be detained for several reasons: for having entered the territory of a State without possessing the necessary travel documents, for identification and screening purposes, or as a prelude to deportation. Furthermore, the definition reflects the fact that individuals under administrative detention may be offered less procedural protection compared with that available in the criminal justice system, primarily because confinement may be ordered with an administrative act and without procedural guarantees and possibilities for effective remedy.[4] In countries such as Australia and the United Kingdom (UK), the law does not even impose an upper limit on the length of administrative detention, and as a result, asylum-seekers in Australia have been detained for periods as long as seven years.[5]

Immigration detention is predominantly imposed as an administrative measure, and misleading terminology is often used to describe the practice (e.g. "guesthouses" in Turkey and "welcome centres" in Italy).[6] Most examples of detention, however, resemble incarceration on penal grounds. Freedom of movement is imposed in prison-like facilities or even in regular prisons. Handcuffs are often used during transfers, even in hospitals and clinics; facilities are controlled by uniformed staff, such as police, army, or private security; and detention spaces are monitored by surveillance cameras. In many cases, migrants and asylum-seekers are detained in facilities that do not even meet the standards of regular prisons, including inadequate provision for keeping clean, absence of recreational space, and are inappropriate for long-term accommodation, such as containers, storage buildings, old army barracks, and police station cells.

In recent years, the policy of immigration detention has come under scrutiny on humanitarian, on legal, and (increasingly) on practical grounds.[7] Evidence from the work of non-governmental organisations and researchers stress the highly

2 UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, Geneva, UNHCR, 2012, 9, para. 5, available at: http://www.unhcr.org/refworld/docid/503489533b8.html (last visited 22 Feb. 2016).

3 *Ibid*., 9, para. 6.

4 I. Majcher, *"Crimmigation" in the European Union through the Lens of Immigration Detention*, Global Detention Project Working Paper No. 6, Geneva, Global Migration Centre, Graduate Institute of International and Development Studies, 2013, available at: http://www.globaldetentionproject.org/fileadmin/publications/Crimmigration_EU_final.pdf (last visited 22 Feb. 2016).

5 Steel et al., "Global Protection and the Health Impact of Migration Interception".

6 M. Flynn, "Be Careful What you Wish for", *Forced Migration Review*, 44, 2013, 22–23.

7 A. Edwards, "Detention under Scrutiny", *Forced Migration Review*, 44, 2013, 4–6.

detrimental impact of detention on the health of migrants and asylum-seekers.[8] The widespread and systematic application of immigration detention is also vehemently challenged by human rights groups as it compromises fundamental human rights, particularly liberty and safety, while failing the tests of necessity and proportionality.[9] More recently, immigration detention has been challenged in terms of cost-effectiveness, in particular when compared with alternative measures.[10]

Médecins Sans Frontières (MSF) is one of a handful of international humanitarian agencies that has worked in immigration detention settings, and it has publicly shared its strong concerns over the detrimental impact of detention on migrants' health and well-being.[11] It is less often acknowledged, however, that working with detainees poses unique challenges and dilemmas, especially for an organisation committed to classical humanitarian principles, such as independence, which dictates that humanitarian action must be autonomous from the political, economic, military, or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

This article discusses MSF's experiences of working with detained migrants and asylum-seekers in Greece, focusing in particular on the constraints, challenges, and dilemmas it has faced. It argues that the main issues have been access, acceptance, accountability, relevance, and efficacy. First, unrestricted access is impossible, bringing into question the application of the principle of independence. Secondly, when access is granted, MSF teams risk being perceived as collaborating with the detention system, raising issues of acceptance and accountability. Thirdly, the impact of MSF's work can only be limited in such constrained conditions, raising problems of relevance and effectiveness.

The article draws primarily on the author's experience working on projects with detained migrants and asylum-seekers in Greece over a period of five years between

8 K. Robjant, R. Hassan & C. Katona, "Mental Health Implications of Detaining Asylum Seekers: Systematic Review", *The British Journal of Psychiatry*, 194, 2009, 306–312. Z. Steel et al., "Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees", *British Journal of Psychiatry*, 188, 2006, 58–64; G. J. Coffey, I. Kaplan, R. C. Sampson & M. Montagna Tucci, "The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum", *Social Science and Medicine*, 70, 2010, 2070–2079; A. Lorek et al., "The Mental and Physical Health Difficulties of Children Held within a British Immigration Detention Center: A Pilot Study", *Child Abuse & Neglect*, 33, 2009, 573–585; A. S. Keller et al., "Mental Health of Detained Asylum Seekers", *Lancet*, 362, 2003, 1721–1723; J. Cleveland, "Psychological Harm and the Case for Alternative", *Forced Migration Review*, 44, 2013, 7–8.

9 UNHCR, *Detention Guidelines*.

10 D. Angeli, A. Triantafyllidou & A. Dimitriadi, *Assessing the Cost-effectiveness of Irregular Migration Control Policies in Greece*, Migration and Detention Assessment (MIDAS), Report, 2014, available at: http://www.eliamep.gr/wp-content/uploads/2014/11/MIDAS-REPORT.pdf (last visited 22 Feb. 2016).

11 MSF, *Invisible Suffering: Prolonged and Systematic Detention of Migrants and Asylum Seekers in Substandard Conditions in Greece*, MSF, 2014, available at: http://www.msf.org/sites/msf.org/files/invisible_suffering.pdf (last visited 22 Feb. 2016); MSF, *Torture, Exploitation and Abuse of Migrants in North Africa*, MSF, 2011, available at: http://association.amsterdam.msf.org/sites/default/files/file/ChouchaMHfinal%20Small.pdf (last visited 22 Feb. 2016); MSF, *Over the Wall: A Tour of Italy's Migrant Centres*, MSF Italy, 2010, available at: http://www.msf.org.br/sites/default/files/80.pdf (last visited 22 Feb. 2016); MSF, *Migrants in Detention – Lives on Hold*, Athens, MSF Greece, 2010, available at: http://www.doctorswithoutborders.org/sites/usa/files/Migrants-in-Greece-Report.pdf (last visited 22 Feb. 2016); MSF, *"Not Criminals": Médecins Sans Frontières Exposes Conditions for Undocumented Migrants and Asylum Seekers in Maltese Detention Centres*, Brussels, MSF, 2009, available at: http://www.meltingpot.org/IMG/pdf/Report_Malta_04_2009.pdf (last visited 22 Feb. 2016).

2009 and 2014. This was MSF's most extensive programme in immigration detention centres, in which nearly 10,000 individual medical and mental health consultations were provided.[12] The article contains reflections on the implications of this situation for humanitarian action, made on the basis of policy engagement, experience on the frontlines, and a deep engagement in the everyday dilemmas of aid.

The structure of the article is as follows. The next, second section examines the proliferation of detention in recent years. The third section looks more specifically at detention in Greece between 2009 and 2014, which is the period of concern for this article.[13] The fourth section considers the impact detention has on the health of migrants and refugees, and outlines MSFs activities in detention centres. The fifth section considers the dilemmas, debates, and implications of working in detention centres for humanitarian agencies, and the sixth section looks at the consequences of advocating more forcefully for the rights of detainees – something that has particular implications for a humanitarian aid agency. The main points are brought together in a conclusion.

2. PROLIFERATION OF IMMIGRATION DETENTION

In the course of the last two decades, the detention of migrants and asylum-seekers has become institutionalised in migration management frameworks and relevant legal instruments, and the practice has proliferated. In the European Union (EU), the administrative incarceration of migrants awaiting return and asylum-seekers awaiting decision on their asylum claim was legitimised by the EU Returns Directive and the EU Reception Conditions Directive,[14] although both Directives pose stringent preconditions on detention.

In the United States (US), congressional appropriations laws have included a quota on immigration detention beds since 2009, mandating the Department of Homeland Security to maintain no fewer than 34,000 immigration detention beds filled on a daily basis.[15] No other law enforcement agency is subject to a statutory quota on the number of individuals it must detain.[16] Alongside the privatisation of the detention system, this has made the incarceration of migrants a lucrative business in countries where it is outsourced to private agencies, such as the US and the UK. In the US, during 2012 alone, 478,000 people were detained in 250 detention

12 MSF, *Migrants in Detention – Lives on Hold*; MSF, *Invisible Suffering*.

13 Following the change of administration, after the national elections of Jan. 2015, the widespread and lengthy use of immigration detention stopped. The population of detained migrants has been drastically reduced and the length of detention does not exceed six months.

14 See Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals, OJ L 348/98, 24 Dec. 2008; and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180/96, 29 Jun. 2013. This last Directive replaces Directive 2003/9/EC (OJ L 31/18, 6 Feb. 2003), except for the United Kingdom and Ireland which are still bound by the 2003 version.

15 Department of Homeland Security Appropriations Act, 2010. 111 (H.R. 2892).

16 National Immigrant Justice Center (NIJC), *Immigration Detention Bed Quota Timeline*, Mar. 2014, available at: http://immigrantjustice.org/sites/immigrantjustice.org/files/Immigration_Detention_Bed_Quota_Timeline_2014_03_1.pdf (last visited 22 Feb. 2016).

facilities, including regular jails, at an annual cost of US$1.7 billion.[17] In the UK, during 2010 approximately 26,000 people were detained on immigration powers; half of them were asylum applicants.[18] Overall, in the EU there is a recorded detention capacity of at least 37,000, and between the years 2000 and 2012 the number of immigration detention centres increased from 324 to 473.[19]

The proliferation of immigration detention worldwide has gone hand in hand with the adoption of restrictive migration policies such as increased border controls and a stringent return policy, the propagation of anti-migrant rhetoric in the public sphere, and the "criminalisation" of migrants in irregular situations. These trends are observed worldwide and have intensified in the last decade following the post 9/11 securitisation of the migration agenda.[20] In the EU more specifically, national legislation in 22 out of 25 Member States punishes unauthorised entry with sanctions, which include imprisonment and often a fine.[21] Ten EU Member States also punish irregular stay, with a fine and sometimes imprisonment.[22] Sanctions can also be imposed on people who assist migrants in an irregular situation – national legislation in eight EU Member States penalises people who help migrants to stay in the country even if their motivation is not profit driven.

The long period of administrative detention (18 months) allowed by the EU Returns Directive is also indicative of the trend to "criminalise" the infringement of immigration laws. Eighteen months of deprivation of personal liberty is comparable to penalties handed out for serious criminal offences in many countries.[23] Moreover, migrants and asylum-seekers under administrative detention may also be detained in ordinary prisons, as is the case in Cyprus and the US, where 67 per cent of migrants and asylum-seekers is detained in county and city jails.[24] The "criminalisation" of

17 Detention Watch Network, *The Influence of the Private Prison Industry in Immigration Detention*, Washington, DC, Detention Watch Network, undated, available at: http://bit.ly/1htGvGA (last visited 22 Feb. 2016).

18 N. Tsangarides, *The Second Torture: The Immigration Detention of Torture Survivors*, London, Medical Justice, 2012, available at: http://bit.ly/1pugQlX (last visited 22 Feb. 2016).

19 Migreurop, *Carte Atlas*, Migreurop, 2012, available at: http://www.migreurop.org/IMG/pdf/Carte_Atlas_Migreurop_19122012_Version_francaise_version_web.pdf (last visited 22 Feb. 2016)

20 A. Moscoe, "Not So Normative After All: The Securitization of Migration since 9/11 and the Erosion of Normative Power in Europe", *Carleton Review of International Affairs*, 2, 2013; D. Schlentz, *Did 9/11 Matter? Securitization of Asylum and Immigration in the European Union in the Period from 1992 to 2008*, Oxford, Refugee Studies Centre Working Paper Series No. 56, University of Oxford, 2010.

21 Unauthorised entry can include crossing the border into a country illegally (not from an authorised crossing point), using false travel documents, or legal documents but providing false information in these documents. C. Morehouse & M. Blomfield, *Irregular Migration in Europe*, Washington, DC, Migration Policy Institute, 2011, available at: http://www.migrationpolicy.org/research/TCM-irregular-migration-europe (last visited 22 Feb. 2016).

22 Irregular stay can be the result of overstaying a visa-free travel period or temporary residence permit; loss of status because of non-renewal of permit for failing to meet residence requirements or breaching conditions of residence; being born into irregularity; absconding during the asylum procedure or failing to leave a host country after a negative decision; a State's failure to enforce a return decision. See Morehouse & Blomfield, *Irregular Migration in Europe*.

23 F. Bertin, E. Fontanari & L. Gennari, *At the Limen: The Implementation of the Return Directive in Italy, Spain and Cyprus*, Project by Education, Audiovisual and Culture Executive Agency, 2013, available at: http://www.borderline-europe.de/sites/default/files/features/2014_Final_brochure_at-the-limen.pdf (last visited 22 Feb. 2016).

24 A. Kalhan, "Rethinking Immigration Detention", *Columbia Law Review Sidebar*, 110, 2010, 42–57; Detention Watch Network, *About The U.S. Detention and Deportation System*, Washington, DC,

violations in immigration law sends out a message of intolerance, which can negatively influence host societies' perceptions and attitudes towards foreigners. As Bosworth suggests: "[Immigration detention facilities] are justified by, and legitimate a politics of identity in which 'foreigners' are dangerous and unwelcome".[25]

3. IMMIGRATION DETENTION IN GREECE, 2009–2014

The case of Greece between 2009 and 2014 shows how domestic politics, social tensions linked with the recession, and EU policies led to the widespread and prolonged use of immigration detention. In the period surrounding the 2012 national elections, which took place during a period of deep financial crisis and social tension immigration, detention capacity increased by 4,500 spaces. This three-fold increase coincided, from August 2012, with large-scale police operations conducting identity checks of foreign looking people in the streets of Athens and other big cities. The aim of these identity checks was to "crack down" on irregular migration. The political support for this was extensive at the time: in the words of the former Prime Minister Antonis Samaras, "Greece today has become a centre for illegal immigrants. We must take back our cities, where the illegal trade in drugs, prostitution, and counterfeit goods is booming. There are many diseases and I am not only speaking about Athens, but elsewhere too."[26]

Immigration detention has been applied systematically and indiscriminately and has affected migrants of many types. This includes rejected asylum-seekers; those without a valid stay permit (such as those who had been living for many years in Greece but were unable to renew their work permits as a consequence of the financial crisis); people who had not been able to apply for asylum before; people who only applied while in detention; as well as the newly arrived – which since 2012 have been mainly Afghan and Syrian nationals.[27] Many international observers have condemned detention conditions, and the United Nations Working Group on Arbitrary Detention, following their visit to Greece in 2013, wrote:

> The non-application of alternatives to detention, lack of effective judicial review, and the excessive length of detention may render the detention of an individual arbitrary. In most detention facilities visited by the Working Group, conditions were well below international human rights standards, including in terms of severe overcrowding. In detention centres for asylum seekers, the

Detention Watch Network, undated, available at: http://www.detentionwatchnetwork.org/resources (last visited 22 Feb. 2016).

25 M. Bosworth & E. Kaufman, "Inside Immigration Detention: Foreigners in a Carceral Age", *Stanford Law and Policy Review*, 22(2), 2011, 429–454.

26 Human Rights Watch, *Unwelcome Guests Greek Police Abuses of Migrants in Athens*, New York, Human Rights Watch, Jun. 2013, available at: https://www.hrw.org/report/2013/06/12/unwelcome-guests/greek-police-abuses-migrants-athens (last visited 22 Feb. 2016).

27 Syrian nationals had also been routinely detained upon arrival until Apr. 2013 when the Government decided to hand them with six-month long "postponement of removal" decisions. A. Triandafyllidou, *Migration in Greece Recent Developments in 2014*, Report prepared for the OECD Network of International Migration Experts, Paris, 6–8 Oct. 2014, available at: http://www.eliamep.gr/wp-content/uploads/2014/10/Migration-in-Greece-Recent-Developments-2014_2.pdf (last visited 22 Feb. 2016). The asylum system in Greece prior to 2013 lacked legal guarantees for the substantial examination of asylum applications and had an average recognition rate of 0.5 per cent.

> conditions are often appalling and unhygienic, and facilities were in a poor state of repair.[28]

As a result, Greece was convicted repeatedly by the European Court of Human Rights in connection to the detention of migrants and asylum-seekers for violations of the European Convention on Human Rights; in particular for violations of Article 3 which prohibits inhuman and degrading treatment and Article 5(1), which ensures the rights to liberty and security.[29] Ironically, however, this immigration detention policy has been made possible in part due to the co-financing by European Commission Funds, such as the European Return Fund, which finances – with a rate of up to 95 per cent – costs relating to the operation of immigration detention centres in Greece.[30]

4. IMPACT OF DETENTION ON MIGRANTS' HEALTH AND MSF'S RESPONSE

MSF has a long history of working with people on the move since its foundation in 1971, motivated by recognition of their increased vulnerability during different stages of the displacement process. This is considered by MSF as an area where life, health, and human dignity are put at risk, and detention is one of the harmful experiences faced by people during the migration process.

As increasing numbers of migrants have been detained over the past few years, MSF and other humanitarian organisations have responded to their medical and humanitarian needs, which remain unmet in detention. More specifically, MSF has provided medical and relief support to migrants and asylum-seekers held in detention facilities in different countries and contexts since 2004, including Greece, Malta, Belgium, Italy, Yemen, South Africa, and Malaysia. The situation of migrants and asylum-seekers in detention has been worryingly similar across the countries where MSF worked: serious barriers to accessing healthcare, including mental healthcare; interruption of medical treatment; absence of a system for the identification and management of vulnerable persons, including minors, pregnant women, torture victims, and seriously ill patients; very limited access to support services such as legal aid and interpretation; and lack of communication with the outside world.[31]

28 The Greek legislation in accordance with EU legislation sets an upper limit of 18 months for the detention of migrants and asylum-seekers. However, even this upper limit has recently been violated following an Advisory Opinion (44/2014) of the Greek Legal Council which interpreted the clause of the EU Returns Directive which foresees the possibility to impose restrictive measures to persons pending their return as allowing for the prolongation of their detention indefinitely, until they cooperate for their return. See United Nations Human Rights Council, *Report of the Working Group on Arbitrary Detention – Addendum: Mission to Greece*, UN Doc. A/HRC/27/48/Add.2, 30 Jun. 2014.

29 European Court of Human Rights, *Factsheet – Migrants in Detention*, Strasbourg, European Court of Human Rights, Jul. 2014, available at: http://www.echr.coe.int/Documents/FS_Migrants_detention_ENG.pdf (last visited 22 Feb. 2016). See European Convention on Human Rights, CETS No. 005, 4 Nov. 1950 (entry into force: 3 Sep. 1953).

30 A. Fotiadis, "European Commission Bankrolls Anti-Immigrant Policies", *Inter Press Service*, 17 Mar. 2013, available at: http://www.ipsnews.net/2013/03/european-commission-bankrolls-anti-immigrant-policies (last visited 22 Feb. 2016).

31 MSF, *Invisible Suffering*; MSF, *Torture, Exploitation and Abuse of Migrants in North Africa*; MSF, *Over the Wall*; MSF, *Migrants in Detention*; MSF, *"Not Criminals"*.

Moreover, conditions in immigration detention centres have often failed to meet even the minimum standards for incarceration set by international institutions such as the United Nations Minimum Rules for the Treatment of Prisoners,[32] or by national regulations for prisons. This has, for instance, been observed by MSF in Malta and Greece where the main problems were overcrowding, inadequate sanitation and lack of basic relief items.

In immigration detention facilities, MSF's medical activities have included primary healthcare provision, mental health and psychosocial support, identification and referral of vulnerable persons, and referrals for further medical care. In addition to medical activities, MSF has addressed people's urgent relief needs by, for example, distributing personal hygiene items and clothing. The lengthiest experience of MSF has so far been in Greek immigration detention centres, where between 2008 and 2014 MSF implemented seven projects in response to the absence of healthcare provision and provided 9,921 individual medical and mental health consultations to migrants and asylum-seekers in detention.

MSF's experience in Greece and other countries indicates the extensive impact of detention on the health of migrants and asylum-seekers. Most of the medical conditions MSF teams treated in immigration detention facilities have been caused or aggravated by substandard detention conditions and the lack of adequate medical assistance. Respiratory and dermatological infections, gastrointestinal, and musculoskeletal problems were the most frequently diagnosed conditions, which were clearly linked to overcrowding, unhygienic conditions, insufficient ventilation, restricted access to the outdoors, limited physical activity, and poor diet. In the words of one MSF doctor who worked in a Greek immigration detention centre,

> [M]ost of the diseases I treat are connected to the detention circumstances. For example, it is too humid – I have seen patients who sleep on completely wet mattresses. People also face problems related to their psychological condition [. . .] they have sleep disorders and psychosomatic issues.[33]

Incarceration is in itself – notwithstanding the detention conditions – detrimental to migrants' well-being. Being detained was the single most important cause of stress and frustration for MSF patients. Lack of privacy, inactivity, dependence on others' decisions, strict security rules, maltreatment by security personnel, lack of communication with the outside world, and uncertainty about the future can all contribute to the psychological distress experienced by detainees. Many were also tormented by feelings of injustice for being deprived of their liberty without having committed any crime. As Mary Bosworth has previously pointed out in relation to her own research in UK detention facilities: "men and women [have] commonly asserted that their

32 Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council Resolution 663 C (XXIV), 31 Jul. 1957, and 2076 (LXII), 13 May 1977.

33 MSF doctor working in a Greek immigration detention centre, interviewed in Feb. 2014. MSF, *Invisible Suffering*, 9.

confinement negated their most fundamental identity, that of a human".[34] The impact of detention on the mental health of migrants and asylum-seekers is well documented by academic research, which records high prevalence of anxiety, depression, post-traumatic stress disorder, self-harm, and thoughts of suicide, but it is also borne out by research conducted with MSF patients.[35] "Now I'm starting to have psychological issues", reported a 34-year-old man after 17 months in detention; "we have lost our hope. I am beginning to have insomnia. I was 72 kg; now I have reached 64 kg. I cannot express in words the situation we are in."[36]

Most importantly, incarceration exacerbates pre-existing symptoms and hinders the healing process for patients who have already suffered traumatic experiences.[37] People on the move, in particular those forcibly displaced, are often exposed to violence and trauma prior to and during the journey. It is indicative that during 2013–2014, 36 per cent of MSF patients seen in mental health sessions in immigration detention centres in Greece reported previous exposure to violence.[38] This does not come as a surprise if one considers that the majority of the patients came from unstable, violence-ridden places, such as Afghanistan, that they have undertaken a harsh journey to Greece via human smugglers, and that they may have been exposed to racist and police violence during their stay in Greece.[39] It is not just a small minority of asylum-seekers and migrants who are affected by these levels of trauma. It is estimated that between 5 and 35 per cent of asylum-seekers worldwide have suffered torture.[40] Besides, the act of migration is stressful in its own right as it involves uprooting, multiple losses, separation from family members, disruption of daily life, and uncertainty about the future. People in immigration detention are therefore extremely vulnerable. In the words of Zachary Steel et al.:

> Immigration detention provides a clear example of the intrinsic link between the denial of basic human rights and deterioration in health and mental health in particular. Confinement, isolation, lack of freedom, perceptions of being arbitrarily punished, uncertainty about the future, and fear of being returned to situations of danger all converge to create a pattern of deteriorating mental health.[41]

34 Bosworth & Kaufman, "Inside Immigration Detention", 429–454.

35 Robjant et al., "Mental Health Implications of Detaining Asylum Seekers"; Steel et al., "Impact of Immigration Detention"; Coffey et al., "The Meaning and Mental Health Consequences"; Lorek et al., "The Mental and Physical Health Difficulties"; Keller et al., "Mental Health of Detained Asylum Seekers".

36 MSF doctor working in a Greek immigration detention centre, interviewed in Feb. 2014. MSF, *Invisible Suffering*, 9.

37 N. Tsangarides, *The Second Torture*; T. Storm & M. Engberg, "The Impact of Immigration Detention on the Mental Health of Torture Survivors Is Poorly Documented – A Systematic Review", *Danish Medical Journal*, 60(11), 2011, A4728.

38 Data recorded from mental health consultations between Sep. 2013 and Mar. 2014. MSF project in immigration detention centres in the North of Greece (on file with the author).

39 UNHCR et al., *Racist Violence Recording Network – 2013 Annual Report*, undated, available at: http://rvrn.org/wp-content/uploads/2014/04/Report2013_EN.pdf (last visited 22 Feb. 2016); Médecins du Monde, *National Report on Racist Violence*, Médecins du Monde, 2014, available at: https://mdmeuroblog.files.wordpress.com/2014/05/554_enough_report_2014_eng_net.pdf (last visited 22 Feb. 2016).

40 Tsangarides, *The Second Torture*.

41 Steel et al., "Global Protection and the Health Impact of Migration Interception", 2–3.

5. MSF'S WORK IN IMMIGRATION DETENTION SETTINGS: DILEMMAS, CHALLENGES, OPPORTUNITIES

Working in immigration detention settings has been particularly challenging both for MSF as an organisation and for MSF workers as individual professionals. It is not only due to operational limitations inherent to a context of incarceration which MSF had to manage but also the political and ethical implications of working within a system that subjects persons to the deprivation of a fundamental human right on administrative grounds. This section reflects on the dilemmas and challenges MSF has faced when working in immigration detention settings, based on the author's experience of MSF activities in immigration detention facilities in Greece and of relevant debates within the organisation and with other humanitarian and human rights actors.

It should first be underlined that MSF has considered activities in immigration detention rather atypical and that such activities have been cautiously resourced and remained very small in absolute and relevant volume. This caution is mandated by the recognition of the constraints and ethical challenges inherent to operating in an environment of incarceration, including violation of independence, risk of manipulation by the authorities, and lack of acceptance by beneficiaries.[42] Acknowledging the challenges of independence and autonomy in detention settings, the organisation has opted to intervene with a limited timeframe and including, from the onset, *témoignage* (witnessing) and advocacy as core objectives.[43]

Moreover, while interventions in immigration detention settings have been triggered, as elsewhere, by unmet medical and humanitarian needs and the presence of obstacles to accessing medical care, the decision to take action in Greece took place within the wider debate about MSF's positioning towards the detrimental impact of migration restrictive policies. In that sense, the decision to provide assistance to migrants and asylum-seekers in detention, especially in Europe, was significantly influenced by the potential to achieve policy change through advocacy. It thus stemmed, to use the words that Rony Brauman uses in his comparative analysis of MSF and ICRC's application of humanitarian principles, "from an analysis of MSF's political responsibilities rather than from bearing witness in the strict sense".[44] The understanding of this political responsibility was translated in the following operational imperatives: 1) MSF should avoid complicity with the detention regime and should therefore undertake the minimum possible responsibility within this system (for example, choosing *not* to take action to improve detention conditions even when these where directly linked with ill health); and 2) MSF should prioritise advocacy action – both quiet diplomacy and speaking out – to exert pressure on the responsible authorities to improve detention conditions and to address the harmful impact of

42 J. Biquet, "Working in a Prison in Myanmar: Médecins Sans Frontières' Experience Working in Insein Prison", *Group URD Paper: Humanitarian Aid on the Move*, No. 14, Oct. 2014, 6–10, available at: http://www.urd.org/IMG/pdf/URD_HEM_14_EN.pdf (last visited 22 Feb. 2016).

43 For more details on MSF and the principle of *témoignage*, see in this special issue the introduction by T. Scott-Smith, "Humanitarian Dilemmas in a Mobile World"; and P. Redfield, *Life in Crisis*, Berkeley, University of California Press, 2013, 98–123.

44 R. Brauman, "Médecins Sans Frontières and the ICRC: Matters of Principle", *International Review of the Red Cross*, 94(888), 2012, 1533.

detention on migrants' health. However, applying these requirements – which were primarily meant to ensure MSF's independence of action – has been controversial in practice, especially when acceptance, relevance, and efficacy of MSF activities were put under strain.

Acceptance of MSF's work by the population it intends to assist is fundamental for delivering aid and for ensuring that MSF's action is in accordance with its social mission. However, acceptance is difficult to obtain when assistance is offered in an incarceration context, which leaves no room for choice to beneficiaries. When MSF is the sole non-governmental actor in a setting run by security personnel, this situation is exacerbated, and during the first interventions of the organisation in Greek detention centres beneficiaries needed to be convinced of MSF's autonomy. In that effort, it was crucial that the assistance offered was as relevant as possible – meaning that it addressed the needs that beneficiaries consider prevalent. This can again prove challenging for two reasons: 1) the needs most highly prioritised by detained migrants often have to do with protection issues, and primarily the need to enjoy the fundamental human right of personal freedom, which MSF could not address; and 2) MSF placed limits to its own action to protect its perception as an independent actor – and to avoid complicity – which sometimes undermined the relevance of its action.

An example of this second point was the reluctance of MSF to repair sanitary infrastructures in detention facilities, fearing that it would shoulder a responsibility that belonged to the authorities. It was a choice that MSF workers on the ground had great difficulty making, and beneficiaries found hard to accept. Some argued that such an action undermined MSF's independence rather than safeguarded that independence, because it rendered MSF action hostage to the deliberate neglect authorities demonstrated for the needs of detained migrants. As a result of that decision, MSF medical teams had to deal with the health consequences of the deplorable living conditions, while their efforts had a limited impact precisely because neither the authorities nor MSF took action to improve them. In the words of one MSF doctor,

> [W]hen I first started working in the detention centres, I was shocked by the conditions. Apart from the really limited space in which people are packed, a major problem is sanitary conditions, especially in the latrines, which are in a dreadful state [. . .] Most of the diseases I treat are connected to the[se] detention circumstances.[45]

Constraints inherent to the detention environment have also been very challenging for the provision of mental health support. Acknowledging that effective provision of psychological aid can only be delivered in a safe and secure environment, which a detention setting cannot ensure, mental health practitioners had to come to terms with significant compromises in their work. In essence, aid workers had to accept that their work was geared towards damage control, as the space for a therapeutic approach was limited. This had a profound impact on aid workers who felt that they

45 MSF doctor working in a Greek immigration detention centre, interviewed in Feb. 2014. See MSF, *Invisible Suffering*.

were there to support migrants endure the incarceration experience – thus becoming unintentionally complicit with the detention system.

Based on these grounds, the MSF field team decided to discontinue its activities in detention centres in the North of Greece and speak out in the spring of 2010. This was a case of MSF's "ethic of refusal" where it was felt that compromise – always essential to a certain extent for action – had crossed the threshold and become a "surrender of principle".[46] It is interesting to note that this was a bottom-up decision taken from aid workers on the ground, but it informed future MSF interventions in immigration detention centres in Greece. In practice, it meant that subsequent work was planned as a series of short-term interventions from the outset, with a view to reducing the risk of "institutionalisation". The strategy was also to include other types of support, for example, relief assistance (e.g. personal hygiene items) – making the intervention more relevant to the needs of detained migrants and thus increasing the acceptance of the action and its "legitimacy". However, the toll on the mental health of humanitarian workers was significant, as demonstrated by high rates of burnout.[47]

In addition to the ethical concerns and dilemmas, aid workers also had to manage serious obstacles in their daily work – most importantly the constraints on their autonomous action. Indeed, in a detention setting operated and controlled by security personnel, access to the beneficiaries can be critically compromised. In the case of the immigration detention centres in Greece, it was challenging for MSF teams to work in prison-like facilities, where daily operations were fully dependent on the consent of security personnel. In many settings, direct access to the beneficiaries had to be negotiated on a daily basis, even when framework agreements had been signed with the authorities. MSF workers would have to negotiate daily with detention staff for them to unlock patients and accompany them to the medical room or for MSF staff to be allowed to enter the migrants' living area (cells). This was particularly difficult during the first months of MSF's intervention in the North of Greece, where detention staff had no previous experience and interaction with humanitarian or non-governmental actors. The insistence of MSF staff during those daily negotiations to ensure the maximum possible independent access was instrumental for improving beneficiaries' acceptance and for MSF workers to feel that they were able to meet – to some extent – the humanitarian principle of autonomy.

In this context, it was also useful for field staff to admit MSF's limitations to beneficiaries and to detention staff. To establish a trusting relationship with the beneficiaries, it was essential to explain what MSF could provide and could not provide, which helped to manage expectations and distinguish MSF's role from that of the authorities. Part of this process involved explaining why the organisation had chosen this course of action – a form of accountability towards the beneficiaries, which was particularly crucial because beneficiaries did not have much of a choice whether or not to use the services MSF provided. Such accountability involved explaining to beneficiaries why MSF chose to work in the detention centres, why the organisation

46 Brauman, "Médecins Sans Frontières and the ICRC".

47 T. G. Sicard Gleason, *Correctional Nurses and Secondary Trauma*, PhD Dissertation, Minneapolis, Capella University, 2007.

chose to provide or not to provide certain services, and what MSF was trying to achieve on a wider scale.

An important part of this process involved informing beneficiaries that MSF was also involved in advocacy on detention conditions. This helped the beneficiaries understand that the organisation was not oblivious when it came to the structural causes of their suffering. Beneficiaries needed the injustice of their situation to be acknowledged, and they repeatedly asked MSF why they were put in prison if they were not considered to be criminals. In these circumstances, it was difficult for MSF workers not to position themselves – even indirectly – against the practice of immigration detention, and the witnessing aspect of MSF's presence in the detention centres had a protective impact – indirectly protecting beneficiaries from ill treatment by security personnel. This was important for field staff, as it helped them resist the de-moralising effect of the ethical dilemmas discussed above, especially the fear that they were unintentionally complicit in the operation of the detention system.

In this working environment, the principles of humanitarian action are put to the test every day. Aid workers are forced to question whether the compromise is justified. They are called to decide whether the gains, in terms of provided relief and assistance, out-weigh the risk of manipulation by the authorities, the sense that they are supporting a system that is causing harm to people, and the concession to humanitarian principles. In the end, however, it was the gains side of that delicate balance that weighed most, as it contained the provision of medical care and essential relief to a population that otherwise might not have access to it, a protective effect that came from witnessing, and the restoration of beneficiaries' dignity. The last point on this list should not be underestimated, since the mere fact of treating the detained migrants in a humane and dignified way countered the widespread feeling amongst detainees that they had been forgotten and rejected by society. For many aid workers, this aspect of MSF's action had perhaps the deepest humanitarian significance of all.

6. MSF'S ADVOCACY WORK ON DETENTION: DILEMMAS, CHALLENGES, AND OPPORTUNITIES

Alongside working in immigration facilities, MSF engaged in advocacy in three main areas: 1) focusing on ways to ease the operational limitations inherent with working in a detention context; 2) putting pressure on the responsible authorities to provide humane detention conditions and dignified treatment; and 3) raising awareness about the suffering caused by the practice of immigration detention. These advocacy activities included quiet diplomacy and public communication. Quiet diplomacy was used to ensure access and autonomy for the organisation's activities and for putting pressure on the authorities to provide dignified conditions for migrants in detention. Public communication was used to raise awareness of the deplorable conditions and, where needed, to speak out on the indifference of the relevant authorities.

Advocacy work was not only complementary to the provision of direct assistance but a prerequisite for operations. It helped to ensure access to beneficiaries, to balance operational limitations, and to offset the risk of supporting the immigration detention system. In this respect, advocacy – and in particular its public

communication component – was much more pronounced than in "regular" MSF operations. Several reports were published about the conditions in immigration detention centres and their detrimental impact on migrants' health, which were extensively used by human rights organisations, even to support litigation cases before the European Court of Human Rights.[48] However, the impact of MSF's work in immigration detention has not been adequately assessed or acknowledged by the organisation, partly because it is difficult to measure the impact of advocacy, but also because it challenges the neutrality of MSF: another classical humanitarian principle that has a long history within the organisation.

Concerns about breaching MSF's neutrality were most pronounced when MSF's public communication was placed within the wider immigration debate. The debates around MSF position on restrictive migration policies, for example, were considerable, as they involved questioning the direct and indirect complicity of EU Member States and institutions. This was an issue that arose particularly in MSF advocacy surrounding the EU co-financing of immigration detention facilities in Greece and elsewhere, the EU pressure on first-entry countries to contain the influx of migrants and refugees, and the EU's influence on neighbouring third countries such as Libya to stop migrants from leaving their territory towards Europe.[49] In general, MSF avoided opposing the practice of immigration detention *per se* in these matters, focusing instead on advocating for beneficiaries to be released on medical grounds and for ending the detention of vulnerable groups such as children, chronic patients, and victims of torture. There was, however, a considerable internal debate on this matter, which concerned the principle of humanitarian neutrality.

On the one hand, some in MSF argued that the organisation needed to recognise the sovereign right of States to regulate migration. They suggested that MSF could not object to immigration detention *per se* and that the emphasis of advocacy should instead insist on States meeting their obligations according to international and national standards. The public messages, according to this view, should focus on the deplorable detention conditions, and they should advocate for their amelioration and the improvement of the immigration detention system in general. MSF advocacy, however, should stop short of challenging the system as such, because to do otherwise would stray too far into the political realm, and would be contrary to the classical humanitarian principle of neutrality.

An opposing view suggested that MSF should take a position against the policy of immigration detention, arguing that it is a system that harms the health of migrants – a population with increased vulnerabilities. This opinion came most strongly, as could be expected, from MSF workers in the field. Aid workers who had experienced

48 MSF, *Invisible Suffering*; MSF, *Torture, Exploitation and Abuse of Migrants in North Africa*; MSF, *Over the Wall*; MSF, *Migrants in Detention*; MSF, *"Not Criminals"*.

49 Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*, London, Amnesty International, 2014, available at: http://www.sos-europe-amnesty.eu/content/assets/docs/The_Human_Cost_of_Fortress_Europe_July_2014.pdf (last visited 22 Feb. 2016); Frontex, *FRAN Quarterly, Quarter 1, January – March 2013*, Warsaw, Frontex, 2013, 5, 21, available at: http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q1_2013.pdf (last visited 22 Feb. 2016) on the decrease of migrants and refugees entering through the Greek–Turkish land border; and MSF, *Torture, Exploitation and Abuse of Migrants in North Africa*.

the challenges and ethical dilemmas working in immigration detention felt affected by the injustice of the system, which in several cases was considered to be constructed so as to deliberately undermine migrants' human dignity and de-legitimise not only immigration but also the persons who have travelled irregularly. The supporters of this position argued that limiting MSF's criticism on detention conditions, and arguing for amelioration rather than questioning the very existence of the detention system, could be interpreted as indirectly supporting this highly harmful set of policies.

The difference of opinions within MSF demonstrates that the perception of humanitarian principles within an organisation is not only influenced by the organisation's values and culture but also by the individual sense of moral responsibility. It also highlights the tension between "traditional" humanitarian principles and a more rights-based approach. Some MSF workers felt a greater sense of moral responsibility to speak out, because advocacy was targeted towards their so-called "home" societies in Europe. Others were motivated by their daily contact with migrants in detention. The debate also reflected a difference of opinions about the very decision to intervene in immigration detention settings, which ran through the organisation: those in support of intervening considered the restoration of detained migrants' dignity a valid objective alongside the "traditional" objectives of reducing morbidity and mortality, but others in the MSF movement have remained reluctant to invest in such projects, due to inherent operational constraints linked with working in an environment of incarceration and the difficulty of making an impact.

7. CONCLUSION

MSF's experience in Greek immigration detention centres demonstrates the challenges and dilemmas that an independent medical organisation is faced with when trying to help people who are suffering as a result of the deprivation of personal freedom and of their migratory status. These challenges and dilemmas relate to ensuring independent access to people in need, offering meaningful help while addressing health needs caused by incarceration, and working under the restrictions imposed by the detention authorities. Humanitarian organisations have a significant role to play in providing direct assistance in an independent and ethically acceptable way, and bearing witness to the suffering of these people by reporting on their findings and advocating for change. The experience of detention for migrants and refugees in contemporary Europe throws the possibilities and limitations of this vision into stark relief.