

***Working with Detained Populations in
Greece and Libya:
A Comparative Study of the Ethical
Challenges Facing The International
Rescue Committee***

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Executive Summary

This study explores the ethical challenges that the International Rescue Committee (IRC) faced in its work with detained migrant and asylum-seeking populations in Greece and Libya over the past 4 years. It is intended not only to examine IRC's engagement with humanitarian principles in those two locations, but to offer a foundation upon which IRC can explore how principled humanitarian action may be pursued in the face of constraints in other operational contexts where the agency works with populations in detention or detention-like circumstances.

IRC's work in Greece and Libya was driven by a sense that the humanitarian imperative necessitated it engage with the populations exhibiting the most severe needs in each location: in both countries detained migrants and asylum seekers were deemed to fall in that category. IRC also felt that it had to have proximity to them to be able to advocate in the most effective way on their behalf, that presence among them was essential to advance larger, global advocacy objectives related to migration management policy change. On the other hand, such desires bumped up against concerns that working within the detention systems could indirectly contribute to the harm of those being served; could legitimize and expand global migration management policies which were deemed harmful in their own right; could expose IRC staff to harm themselves; that the detained populations were only small subsets of much larger underserved communities who also needed assistance and protection; and nagging questions about the quality of care that any interventions could reasonably be expected to achieve under the "inhumane" detention conditions which existed in Greece and Libya.

In both locations the decision to work with detained populations was fraught, challenged certain humanitarian principles¹, and raised tensions between those principles and other organizational objectives. Most if not all of the challenges IRC experienced fall into one of the categories Hugo Slim has identified as the "persistent ethical problems" of humanitarianism.² In the case of Libya, for example, the horrific health conditions in detention centers posed acute risks to IRC medical staff as well as detainees, confronting IRC with the problem of finding the right balance between reaching detainees deemed to have the most severe needs and fulfilling its organizational duty of care to its own employees. Such tensions are not, in themselves, unique to detention or detention-like settings. Yet in some cases it was the context-specific dimensions of each detention environment that provoked or exacerbated the ethical problems IRC faced. For example, the IRC's reluctance to engage in the Moria "hotspot" on Lesbos, Greece, was closely linked to the role that it played within the European Union's (EU) 2016 agreement with Turkey regarding the management of asylum seekers, elements of which were seen as harmful to refugee, migrant and asylum-seeker rights and well-being. In Libya, the extreme forms of harm perpetrated against migrants in detention centers raised particularly discomfoting questions about potential complicity in abuse and exploitation.

¹ Not all the ethical challenges IRC faced can be easily analyzed through the prism of individually discrete humanitarian principles such as humanity, impartiality, independence or neutrality. Yet in order to foster greater organizational familiarity, and capacity to engage, with core humanitarian principles the study attempts to frame the analysis in terms of these specific principles where appropriate and helpful.

² Slim, Hugo, *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster*, Oxford University Press, 2015. See Chapter 11, "Persistent Ethical Problems," pgs. 183-230.

These tensions played out such that IRC's engagement with detained populations in Greece and Libya was consciously kept to a small portion of each country's program portfolio. Judged by most metrics- number of people served; the proportion of the country program budget; the number of staff employed- IRC's work with non-detained populations, be they urban migrants and conflict-affected host country nationals in Libya, or asylum seekers and refugees on Lesbos not residing in Moria or who have been able to leave the islands to the Greek mainland, typically far outstripped its detention focused portfolio in both countries.³⁴

The report is organized as follows: First it analyzes the concept of detention in general terms, introducing a broad understanding that enables potential application in other contexts. It then examines what detention means in both Greece and Libya, acknowledging the terminology employed to describe the ways in which migrants, refugees, and asylum seekers' liberties are restricted is often obscured by the use of euphemisms.⁵ In Greece, for example, the situation populations in "hotspots"-or "Reception and Identification Centers (RICs)"- find themselves approximates detention, even though the term isn't uniformly employed, whereas in Libya, the characterization of the regime in which migrants and refugees are exploited, tortured, and sold as chattel as "detention"- whether "official" or "unofficial"- imputes a degree of formality, legality, control, and purpose which can be argued to be both lacking and misleading. The report then provides a short overview of the IRC's work with detained populations in both countries. It identifies some of the key decisions and actions which provide a basis for further analysis from an principled perspective. It then proceeds to outline the ethical tensions that IRC navigated in its work with detained populations in both countries which fall broadly into eight categories:

- 1) Limits to the quality of care: How far from minimum standards is too far?
- 2) Fears of being, or being perceived to be, complicit in harm;
- 3) Risks of substituting for or absolving duty bearers from their responsibilities;
- 4) Emphasizing advocacy within the overall response despite questions around its efficacy and potential negative impact on field access;
- 5) Constraints on organizational independence, in practice and perception;

³ The relative proportion of IRC's work with detained populations was higher in Greece than Libya. Recent demographic and geographic trends in the asylum seeker and migrant population in Greece, coupled with shifts in IRC's operational footprint in the country, have led to a much larger proportion of the IRC's work in that country being directed to supporting those considered to be detained. As is explained in the ensuing section, however, IRC's work with the subsection of the population residing in the Moria and Vial "hotspots" remains a small portion of the overall response, even though they are increasingly the residence of larger share's of the remaining asylum-seeker and migrant populations in the country.

⁴ In many respects IRC's approach appears to have mirrored MSF's work in Greece's immigration detention centers prior to 2014: "MSF considered activities in immigration detention rather atypical and... such activities have been cautiously resourced and remained very small in absolute and relative volume. This caution is mandated by the recognition of the constraints and ethical challenges inherent in operating in an environment of incarceration...[T]he organization has opted to intervene with a limited timeframe and including, from the outset, *témoignage* (witnessing) and advocacy as core objectives." Kotsioni, Ioanna, Detention of Migrants and Asylum-Seekers: The Challenge for Humanitarian Actors, *Refugee Studies Quarterly*, 35(2), April 2016, pg. 50.

⁵ "A mild or indirect word or expression substituted for one considered to be too harsh or blunt when referring to something unpleasant or embarrassing."
(https://www.google.com/search?q=define+euphemism&rlz=1C1CHBF_enUS807US807&oq=define+euphemism&aqs=chrome..69j57j0l5.4213j1j4&sourceid=chrome&ie=UTF-8)

- 6) Understanding and operationalizing impartiality in terms of the severity and proportional scale of need;
- 7) Balancing a duty of care to staff with the imperative to deliver aid in risky environments; and
- 8) Interrogating the meaning of “humanitarian” action in situations which deny humanity by design or default.

The paper concludes with a reflection on the potential implications of the study for IRC. A summary of them is presented below:

- 1) ***The context within which a detention regime is situated is critical to an understanding of the ethical challenges that await humanitarians that foray into them.*** In both Greece and Libya the role and purpose of detention was intimately linked to and implicated in European migration containment and externalization policy agendas. In Libya it was further entwined with international criminal human trafficking networks. It was these contexts, as much as the specific national immigration and detention policies and practices of each country, that stoked some of the most serious ethical concerns about complicity for IRC.
- 2) ***Semantics matter and can obscure the real purpose or function of detention.*** In both Greece and Libya the semantics of detention obscured their purpose and function. Calling something a “reception and identification center” conveys a sense of welcome and hospitality. Migrants and asylum seekers residing in Moria and Vial experienced little of these. In Libya “detention” doesn’t truly convey the exploitation and commodification that is arguably the foremost purposes of the places where migrants are held. Calling something a “forced labor camp” or “slave market” instead of a “detention center” could engender a different moral evaluation of what is happening within them, and what a humanitarian agency should be saying or doing in response.
- 3) ***Complicity is not the same as moral taint, but there is a fine line between them.*** IRC feared that its engagement in detention systems in Greece and Libya could inadvertently contribute to the harms being perpetrated by the architects and administrators of those systems. It made extensive efforts to mitigate this potential through its pursuit of explicitly harm-reducing interventions and vocal condemnations of the systems and perpetrators of the harms. IRC was not silent and it cannot rightfully be depicted as consenting to the wrongs the systems inflicted on those under its control. It would thus not be right to state that, at present, IRC is complicit in these harms. What IRC seemed to be grappling with is a sense of moral taint, or the potential for its moral integrity and reputation to be polluted, by its association with the detention regimes in both countries. Yet it remains incumbent on IRC to continue all efforts to understand the risks of its engagement, take action and exercise voice to mitigate those risks to prevent a slide into more morally responsible forms of complicity.
- 4) ***The importance of placing limits around risky associations.*** The ICRC, the leading authority on detention, has long recognized that its work in prisons can be criticized for lending undue legitimacy to harsh regimes which exploit the ICRC’s presence to give a false impression that the detention system is good because they are working with the ICRC. In response, one of the ICRC’s criterion for engagement which enables it to live

with the potential accrual of misleading legitimacy afforded by its presence is that it must see signs of improvement in detention. As Slim notes in his review of its work with detainees, “ICRC’s ethical judgement on the rights and wrongs of a dubious association hinged on their operational freedom and practical effectiveness weighed against the risk of... the false legitimacy that ICRC’s presence and association might create.”⁶ The Refugee and Migrant Platform’s recently developed Principled Framework for Intervention in Detention Centers⁷ is a very important step in the evolution of the inter-agency response in Libya. It tackles the risks to principled humanitarian action brought about by association with the detention system head on, setting out limits to engagement based on the conditions which obtain from one detention center to another.

- 5) ***The centrality of advocacy.*** Advocacy played a critical role in IRC’s operations in Greece and Libya. It provided an impetus for IRC to get involved in the provision of direct services to detainees in order to establish a presence among that could amplify IRC’s voice on their behalf. It served as a moral marker, enabling the organization and its staff to provide services without appearing to be complicit in the harms that detention was causing. It helped keep IRC’s moral integrity intact. Advocacy was also a conscious pathway to policy reform that it was hoped, if not fully realized, could expand the scale and impact of the albeit limited services being provided to the relatively small numbers of detained migrants and asylum seekers in both countries.
- 6) ***Balancing proportionality and relative severity of need.*** In both Greece and Libya IRC assessed detained migrants and asylum seekers as populations having some of the most extreme needs in each country. The organizational and personal drive to alleviate suffering where it is most acute pulled IRC, despite grave apprehensions, to work with them. Yet while the severity of their needs was extreme, the scale of need was small compared to other populations that IRC desired to serve. IRC’s work in both countries raises a challenging question for all humanitarians: How does one compare the value of an intervention whose most fundamental impacts may be an unquantifiable expression of solidarity with the most downtrodden, or the amplification of their voices through denunciation of the system causing them harm, with more easily counted material assistance benefits?
- 7) ***Has the IRC pushed itself as far as possible to reach those most in need in Libya?*** The contour of IRC’s detention programming footprint is similar to the rest of the humanitarian community in that all assistance has been directed towards “official” detention centers under Libyan Department for Combatting Illegal Migration (DCIM) control. The reasons advanced by IRC and other humanitarian actors to explain why they are not working in “unofficial” detention centers are comprehensive and sound. But the illicit, illegal, or non-state character of the actors running “unofficial” centers shouldn’t be a barrier, per se, to humanitarian negotiation to try and gain access. The humanitarian imperative should drive attempts to reach those most in need, wherever they may be. Is the humanitarian community displaying risk aversion? Have all best efforts been made to

⁶ Slim, Humanitarian Ethics, pg. 192-3.

⁷ Refugee and Migrant Platform, Principled Framework for Intervention in Detention Centers. Draft shared with author 9 April 2019.

provide aid to those that some believe may be the most needy among the migrant population in Libya?

A note on methodology: The research consisted of a review of secondary literature on humanitarian action with detained populations historically and globally. It also reviewed the specific detention contexts in Greece and Libya. Primary sources supplied by IRC examined for the study included, but were not limited to, Strategy Action Plans; donor funding proposals and reports; assessments; advocacy reports and press releases; and internal email communications. The consultant interviewed approximately 40 members of IRC staff and representatives from peer and partner agencies working in or supporting IRC's work with detained populations. They included regional and country management, program service delivery, advocacy, operations and technical advisory positions. Among these groups were representatives from IRC country programs in Uganda, Iraq, North East Syria, Thailand, Myanmar, and the USA where IRC works with populations in detention or detention-like circumstances. Some interviews were conducted as focus group discussions, others as key informant interviews. Interviews were conducted on a confidential basis. As such quotations are not directly attributed to individually named respondents. All interviews were recorded on Skype with the interviewees' permission. A complete list of interviews is included in Annex 1.

The study is not an audit or performance measurement exercise. While it may raise questions about the extent to which IRC's decisions or actions can be considered to have embodied various humanitarian principles, it does so without passing judgement on the "rightness" of them. Rather it is hoped this analysis will shed light on the thoughtful, deliberate and ethical calculus that IRC employed to navigate these difficult questions: Indeed this analysis demonstrates that achievement of a purity of principle is rarely, if ever, possible.

Conceptualizing Detention

At the heart of legal definitions of detention is the concept of the deprivation of personal liberty.⁸ Detention is a measure that deprives an individual of his or her freedom pursuant to a decision taken by a judicial body for criminal or administrative reasons.⁹ International human rights law prohibits arbitrary detention and specifies numerous safeguards and legal protections to be accorded to detainees.¹⁰

For the purposes of this study there are four main dimensions of a detention regime which surfaced as the most relevant in terms of the impact they had on IRC's understanding of the ethical and operational landscape in each country. The first is the *degree of physical confinement*, or the limits placed on one's freedom of movement. One may envision a continuum ranging from incarceration in a prison cell wherein one is held in an enclosed space with no freedom of movement whatsoever to looser forms of geographical restrictions on movement such as those

⁸ UN Office of the High Commissioner of Human Rights, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly Resolution 43/173, 9 December 1988.

⁹ MSF, The Practical Guide to Humanitarian Law. (<https://guide-humanitarian-law.org/content/article/3/detention-1/>).

¹⁰ Amnesty International, Detention and Imprisonment. (<https://www.amnesty.org/en/what-we-do/detention/>).

often exhibited in protracted refugee settings in countries with encampment policies which restrict travel outside designated areas without prior approval.

The second dimension is the *extent to which the confinement has been undertaken by an “official” authority* legitimately empowered to restrict one’s liberty. As the case of Libya demonstrates, the assessment of an actor as “official” or not is by no means always straightforward, or easy to ascertain. “Official” status may be murky in situations of political and military conflict or as a result of the outsourcing of control of detention spaces from public to private, non-state actors. Previously the exclusive domain of the state, global migration management, for example, is increasingly a public/private partnership. Non-state actors, among them private companies and NGOs, have been observed to be taking on bigger roles as “jailors or service providers for migrants and asylum seekers deprived of their liberty.”¹¹

The third salient dimension of the detention systems under scrutiny is *the justification, or basis, on which one is confined*. For example, immigration detention is a particular subset of the detention universe, distinguished by the reason for one’s restricted liberty (the alleged violation of immigration laws) and the status of the person being detained (a non-citizen or alien of the country in which he or she is detained).¹²

The final relevant dimension is the *extent to which the detention space or system in question is understood to be part of an international effort to restrict global migration*,¹³ particularly from the Global South to the Global North. It has been widely remarked that the practice of immigration detention, for example, has proliferated in recent years to the point it is now a cornerstone of the global migration management policy agenda.¹⁴

Using the four dimensions outlined above to analyze the detention contexts in Greece and Libya, one comes away with the following hypothesis: **In situations in which it was non-citizen asylum seekers, migrants and refugees who were being detained, the GREATER the degree of restriction of freedom of movement, the LESS “official” the authority imposing that restriction, and the CLOSER the integration of the detention space with an international effort to restrict global migration, the GREATER the moral hazard for humanitarian intervention.**

Another aspect of global detention practice that is worthwhile to highlight is that it may frequently not be so labelled by those instituting liberty-restricting practices, nor understood as such by outside observers. Grange’s fascinating study of the language of immigration detention highlights the prevalent use of euphemisms often associated with the hospitality sector- such as “accommodation,” “reception centers” and “temporary homes”- to describe what is in fact the

¹¹ Flynn, Michael, Kidnapped, Trafficked, Detained? The Implications of Non-State Actor Involvement in Immigration Detention, *Journal on Migration and Human Security*, Volume 5, Number 3, 2017, pg. 594.

¹² *Ibid*, pg. 595.

¹³ Evidence from Libya also suggests a case could be made that at least some of the moral quandaries that IRC faced were created by the extent to which some elements of the detention system are part of an international criminal human smuggling effort which facilitates, rather than restricts, global migration.

¹⁴ See Kotsiani, Detention of Migrants and Asylum Seekers; Flynn, Kidnapped, Trafficked, Detained?, or Maiani, Francesco, ‘Regional Disembarkation Platforms’ and ‘Controlled Centres’: Lifting the Drawbridge, Reaching out Across the Mediterranean, or Going Nowhere?” *EU Migration Law Blog*, 18 September 2018 (<http://eumigrationlawblog.eu/regional-disembarkation-platforms-and-controlled-centres-lifting-the-drawbridge-reaching-out-across-the-mediterranean-or-going-nowhere/>)

deprivation of migrant or asylum-seeker liberties in conditions that equate to, or approximate, detention.¹⁵

The IRC works with populations facing different constellations of the four dimensions of detention outlined around the world, not only in Greece and Libya. They include but are not limited to refugees living in protracted camps in countries which restrict movement through encampment policies (i.e. Thailand); stateless groups which have been denied citizenship rights and are confined to what amount to forced internment camps (i.e. Myanmar); citizens and refugees who find themselves imprisoned for civil or criminal reasons (i.e. Uganda); national and foreign families that have alleged affiliations with terrorists who are held in closed camps on national security grounds (i.e. Iraq, North East Syria); and asylum seekers released from custody pending processing of their claims but who are required to wear ankle monitors and/or check in with authorities on a regular basis under various forms of “supervised release” (i.e. USA).

Not all of these situations may qualify as detention in a legal sense.¹⁶ They certainly are not all situations of immigration detention. Yet the interviews conducted for this research signal that commonalities in the ethical landscape do potentially exist across these environments and Greece and Libya, offering further food for thought for IRC as it considers how to pursue principled humanitarian action in those settings. Given the potential for immigration detention’s further expansion, the increasingly prominent role non-state actors such as humanitarian NGOs may assume within this aspect of migration management, and the resonance of the ethical challenges which IRC faced in Greece and Libya with those it seems to face in other situations of restricted liberty, it is both timely and relevant that IRC undertakes this study of its work with detained populations in Greece and Libya.¹⁷

Migrants and Asylum Seekers in Greece: Concentric Circles of Detention

By dint of its geography Greece has long served as a principal entry point for refugees, asylum seekers, and migrants to the European Union.¹⁸ Fleeing civil war in Syria and other conflict affected countries, arrival numbers increased exponentially in 2015, when approximately 1 million people arrived in the EU of which over 850,000 entered through Greece. Most entered from

¹⁵ Grange, Mariette, Smoke Screens: Is There a Correlation between Migration Euphemisms and the Language of Detention? Global Detention Project, Sept 17, 2013.

¹⁶ It is beyond the scope of this study and the technical expertise of the author to undertake a formal assessment whether asylum seekers, refugees and/or migrants facing restrictions on their liberty in Greece, Libya or anywhere else IRC works should be legally defined as detainees in accordance with international and national law.

¹⁷ It was brought to the author’s attention in the course of this project, for example, that IRC is weighing the possibility of taking on an enhanced role working with detained unaccompanied minors in the USA, possibly through direct management of a shelter.

¹⁸ The ensuing analysis is largely based on the Global Detention Project’s Greece Country Profile, updated January 2018 (<https://www.globaldetentionproject.org/countries/europe/greece>); Maiani, Francesco, Hotspots and Relocation Schemes: The Right Therapy for the Common European Asylum System? Ref|Law, University of Michigan Law School, 13 September 2018 (<https://perma.cc/WTL2-6PZC>); and Majcher, Izabella, The EU Hotspot Approach: Blurred Lines between Restriction on and Deprivation of Liberty (Parts I, II, III), April 2018 (<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/eu-hotspot-0>).

Turkey, landing first and foremost on the most proximate Greek islands such as Lesvos. Greece was largely a transit point for these new arrivals who quickly made their way through and out of Greece along what came to be called the “Balkan route” in search of asylum and protection in northern European countries such as Germany and Sweden.

Under existing EU asylum framework provisions, including its Dublin procedure, responsibility for the fingerprinting, receiving, and processing of all asylum claims, as well as the potential long-term hosting and eventual return of failed claimants, fell on the front-line state of first arrival such as Greece. Yet due to the rapid movements of such large numbers of people, Greece’s asylum system was unable to keep pace, leading to the failure to identify and register people moving onward through Europe. EU member states responded unilaterally by erecting border fences, reintroducing border checks, and instituting caps on the number of people that could claim asylum. In response to a mounting political and public backlash against the surge in arrivals, compounded by frequent graphic reporting on the fatally dangerous crossings of the Aegean Sea, the EU undertook concerted efforts to stem arrivals to the European mainland, and further restrict the freedom of movement of asylum seekers once they were there.

The cornerstone of the migration management approach adopted to address this situation was the agreement reached between the EU and Turkey in March 2016, commonly referred to as the EU-Turkey deal (hereafter the “Deal”).¹⁹ At its core the Deal had two mutually supportive elements. On the one hand it was an initiative to help front-line states, i.e. Greece and Italy, fulfill their duties under the Dublin regulation to quickly identify, register and fingerprint incoming migrants with comprehensive support provided by EU agencies. On the other it was twinned with a package of “relocation measures” which aimed to take pressure off front-line first arrival states by allowing for the orderly and equitable hosting of accepted asylum claimants throughout EU member states. Specifically it was agreed that all migrants and asylum seekers who arrived on the Greek islands after 20 March 2016 would be liable to be returned to Turkey. In return, for each asylum seeker returned to Turkey, the EU promised to resettle one Syrian from Turkey. Turkey was also offered six billion Euros, the lifting of visa requirements for its nationals, and the resumption of Turkey’s EU accession process. The Deal was met with vocal and sustained criticism from wide sections of the NGO community-including IRC- as abandoning the European Union’s ostensibly humane values toward the world’s most down-trodden; undermining international, EU and member state asylum laws; externalizing Europe’s borders and shirking its responsibilities for protection and care of asylum-seekers; and contributing to the harm of already traumatized people by returning them to locations that were not safe.²⁰

The EU’s plan to manage the massive increase in migrant and asylum seeker arrivals included the establishment of 10 facilities across Greece and Italy known as “hotspots,” or more officially, “Reception and Identification Centers (RICs).” On Greece they were established on the islands of Lesvos (Moria); Chios (Vial); Samos (Vathy); Leros (Lepida) and Kos. Set up between Oct 2015

¹⁹ European Commission, EU-Turkey Statement: Questions and Answers, Brussels, 19 March 2016 ([http://europa.eu/rapid/press-release MEMO-16-963_en.htm](http://europa.eu/rapid/press-release_MEMO-16-963_en.htm)).

²⁰ See for example: International Rescue Committee, ‘Illogical and unethical’-the EU-Turkey deal will mean more indignity, more disorder, more illegal journeys and more lives lost, London, 19 March 2016 (<https://www.rescue.org/press-release/international-rescue-committee-illogical-and-unethical-eu-turkey-deal-will-mean-more>).

and March 2016, they originally functioned as “open facilities to register, screen and assist arriving migrants and asylum seekers before their swift transfer to the Greek mainland.”²¹

After the Deal, however, their role changed such that the “RICs became the cornerstone of the enforcement of the agreement with Ankara.”²² Under a Greek law adopted in April 2016, the RICs were converted into “closed” facilities wherein newly arrived asylum seekers were subject to new restrictions that prevented them from leaving the RIC premises for up to 25 days while they were being registered and identified. RICs like Moria also became explicit spaces for pre-removal detention for those receiving a decision of return to Turkey and asylum seekers with low recognition rates. Due to civil society pressure and practical difficulties such as extreme overcrowding brought about by excessive delays in asylum claim processing and returns to Turkey, the “closed” nature of the RICs was eased in practice, if not in law. Residents of Moria not explicitly held in the “detention” space, for example, are now permitted to enter and exit the facility during the day.²³

An additional unique feature of the implementation of the hotspot approach in Greece is what is referred to as the “geographic restriction.” Pursuant to this measure, asylum seekers are no longer transferred to the Greek mainland unless they meet specific vulnerability criteria.²⁴ They must therefore remain on the island on which they are originally registered and undergo a fast-track border procedure to determine whether Turkey is a safe country for them to return to. Due to excessive administrative delays, many find themselves in effect stranded on islands like Lesbos or Chios for months if not years.²⁵

At the end of May 2019, UNHCR reported 15,800 refugees and migrants on the Greek islands. An additional 63,700 were reported to be on the Greek mainland.²⁶ As of December, 2018 the population living at Moria RIC had reduced below 5,000 people, but was still at twice its capacity.²⁷ Substandard living conditions have characterized RICs like Moria since 2016, courting sustained condemnation from IRC, other NGOs and the media. Extreme overcrowding, lack of basic services and inappropriate shelter, high degrees of violence, and poor hygiene have been constants.²⁸ As recently as September 2018, The Guardian was referring to Moria as “the world’s

²¹ Majcher, The EU Hotspot Approach, April 5 blog post. Moria, for example, was a former military base that had previously been repurposed in September 2013 as a reception camp for migrants.

²² Ibid.

²³ Ibid, and interview with IRC staff.

²⁴ Examples include people over 65 years of age, unaccompanied minors, people with a serious illness, or victims of human trafficking. For a complete list, refer to “Vulnerability Assessment on the Greek Islands,” on Refugee.info (<https://www.refugee.info/greece/islands-asylum-information--greece/vulnerability-assessment-on-the-greek-islands?language=en>).

²⁵ Global Detention Project Greece Country Profile.

²⁶ UNHCR Greece May 2019 Factsheet (<https://data2.unhcr.org/en/documents/download/70066>).

²⁷ UNHCR Greece March 2019 Factsheet (<https://data2.unhcr.org/en/documents/details/69017>); Pazianou, Anthi, Thousands of asylum-seekers moved off Greek islands, UNHCR, December 27, 2018 (<https://www.unhcr.org/news/latest/2018/12/5c24d1524/thousands-asylum-seekers-moved-greek-islands.html>)

²⁸ See for just one example International Rescue Committee, Greece: Asylum seekers in abysmal conditions on islands, 23 October 2017 (<https://www.rescue-uk.org/press-release/greece-asylum-seekers-abysmal-conditions-islands>).

worst refugee facility.”²⁹ Since that time, substantial efforts have been made by the Greek authorities in partnership with UNHCR and other partners to further decongest Moria, moving more people to the Greek mainland and other more hospitable locations on the island such as Kara Tepe.³⁰

The practical “opening” of Moria has led some IRC staff to question to what extent it now differs if at all, in terms of the restrictions on movement placed on its inhabitants, from other “open” camps on Lesbos such as Kara Tepe where IRC has worked extensively with few of the moral misgivings evident around Moria. A case can now be made that it is the geographic restriction which is the most relevant feature of the detention regime, in effect turning the Greek islands into figurative “prisons” for those who don’t fall into one of the aforementioned vulnerability categories.³¹ As one IRC staff reflected, there was “no need for Moria to remain closed” in order for the EU to achieve its larger goal of deterrence and restriction of onward movement into the rest of Europe, for “the whole island serves this purpose.”

What does continue to distinguish Moria (and Vial, for that matter) from other island based camps, however, is that it remains an officially designated “hotspot” linked to the EU-Turkey Deal, and that the law providing for the detention of its inhabitants remains, even if it is not currently enforced. The linkage of Moria to the Deal has and continues to be a factor influencing IRC’s engagement in Moria, Views on the extent to which Moria’s status as more or less “open” or “closed” have also had direct bearing on the IRC’s ethical analysis and shaped its operational decisions on whether and how to intervene in them. As one staff commented, were Moria to be closed again, it “would signal the clear intention of the state to actually harm asylum seekers” rather than simply deter them or “make their lives difficult.” Under such conditions, the moral calculus for engagement shifted for this employee: “I would have no professional role to play in that situation. My role would be to protest that situation as a citizen.” Both of these elements of the Greek detention context colored, in varying degrees, the IRC’s assessment of the right and proper engagement approach toward extremely needy migrants and asylum-seekers in the RICs.

Migrants and Asylum Seekers in Libya: Beyond Detention

Thanks to its possession of some of the largest oil reserves in the world and its service industry’s historical reliance on migrant labor, Libya has been a magnet for millions of migrants from Africa seeking employment since the 1960s. It has also been a transit country for migrants attempting to cross the Mediterranean to Europe. Concerns about migration from Libya to Europe resulted in several agreements between the EU and its member states and Libya’s former leader, Muammar Gaddafi, which externalized Europe’s borders, greatly restricted opportunities for onward movement from Libya, and led to the development of a widespread system of immigration

²⁹ Leape, Sebastian, Greece has the means to help refugees on Lesbos-but does it have the will?, The Guardian, 13 September 2018 (<https://www.theguardian.com/global-development/2018/sep/13/greece-refugees-lesbos-moria-camp-funding-will>).

³⁰ UNHCR Greece May 2019 Factsheet.

³¹ In her analysis of hotspots in Greece, Majcher argues, for example, that “when applied in a cumulative manner, a series of restrictions, which in themselves would not cross the threshold of the deprivation of liberty, may well amount to detention.” See Majcher, The EU Hotspot Approach, April 4, 2018.

detention throughout the country.³² Changes in Libyan immigration law in 2010 also led to the criminalization of any illegal entry, stay or exit from the country, effectively outlawing any inward migration that was not accompanied by a prior work approval. Libya has no national asylum legislation nor a national asylum system.

The overthrow of Gaddafi in 2011 was followed by a civil war which persists to this day with a UN-recognized government of national unity sitting in Tripoli and an opposition Libyan National Army based in Tobruk. The war's drastic curtailment of oil production and contribution to an economic crisis has curtailed, but not erased, Libya's attraction as an employment destination. But the ensuing lawlessness and ongoing conflict has also reinforced Libya's role as a transit country for migrants seeking to reach Europe, particularly Italy. Whereas the largest number of asylum seekers reaching Europe in 2015 and 2016 entered through Greece, by 2017, thanks in part to the EU Turkey Deal, Italy had become the largest point of entry, almost all arriving after extremely perilous journeys over the Mediterranean Sea from Libya. In the face of horrific and highly publicized deaths of large number of migrants travelling along what was known as the Central Mediterranean Route from sub-Saharan Africa to Libya to Italy, unable to accommodate or manage the numbers of arrivals in Italy, and buffeted by political and public backlash against migrants in Brussels and Italy, the EU took additional measures to externalize its borders to deter and prevent migrants from reaching its shores. Through a series of agreements between the UN recognized Libyan government and the EU and Italy, as well as between Italy and militia forces controlling key migrant routes into and through Libya, Libya's detention and sea interdiction programs were enhanced.³³

The largely lawless, highly fragmented, and conflict-ridden environment that has obtained in Libya since Qaddafi's fall has resulted in a detention system that, with direct support from Europe, has been described as a "human rights crisis" by the UN.³⁴ Armed groups, smugglers, criminal networks, and human traffickers have gained control over much of the flow of migrants into and out of the country, including their incarceration. Described as "one of the most damaging detention systems in the world," Libya's treatment of migrants and asylum seekers has been characterized by the most extreme forms of systematic sexual violence, torture, forced labor, extortion and modern day slavery.³⁵ The detention spaces in which migrants find themselves are routinely referred to as "hell."³⁶ The entire detention process has been characterized as arbitrary, without a firm basis in law or a clear immigration administrative purpose.³⁷ Migrants rescued at sea who are disembarked back in Libya are returned into this detention system.

³² For example, the 2008 Memorandum of Understanding between Italy and Libya, as discussed in Nakache, Delphine, and Losier, Jessica, The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind? E-International Relations, 25 July 2017. (<https://www.e-ir.info/2017/07/25/the-european-union-immigration-agreement-with-libya-out-of-sight-out-of-mind/>).

³³ Ibid.

³⁴ Office of the High Commissioner for Human Rights/United Nations Support Mission in Libya, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 20 Dec 2018.

³⁵ See for example Amnesty International, Libya's Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants, 2017, and Women's Refugee Commission, 'More Than One Million Pains': Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy, March 2019.

³⁶ Hayden, Sally, "Inside Libyan detention 'hell' where refugee burned himself alive," Aljazeera, 12 November 2018 (<https://www.aljazeera.com/news/2018/11/libyan-detention-hell-refugee-burned-alive-181110102329706.html>).

³⁷ Global Detention Project Libya Country Profile, August 2018 update (<https://www.globaldetentionproject.org/countries/africa/libya>).

IOM estimated that there were 666,717 migrants in Libya as of February 2019. The number of migrants in detention is unknown, but it is estimated to be less than 10,000.³⁸ Due to an absence of record keeping and tracking systems, it is impossible to know how many migrants are held in detention, or where they are, at any one time. Furthermore, there is no comprehensive catalogue of places of detention. The Libyan government and international agencies typically refer to “official” detention centers, under the nominal authority of the Department for Combatting Illegal Migration (DCIM), and “unofficial” centers controlled by non-state actors outside the purview of the DCIM. The number of “official” centers has been estimated to be between 17 to 35. Since 2017, IOM has collected data on 25 “official” detention centers under its Displacement Tracking Matrix.³⁹ There is no estimate for the number of “unofficial” centers. Anecdotal evidence suggests that there could be thousands held in them, in conditions worse than those that obtain in “official centers.”

The DCIM’s control oversight, administration, and management of those centers for which it is acknowledged as accountable is tenuous and weak. In fact the distinction between “official” and “unofficial” may be more semantic and illusory than factual. It has been alleged that DCIM detention facilities are often controlled by militia, that members of the DCIM have connections with and may be linked to criminal smuggling and trafficking operations or actors, and there are reports that human rights abuse is prevalent within them. As one commentator remarked about DCIM run detention centers when interviewed by the Global Detention Monitoring Project,

“You say that some of the [facilities] have links to militias. I would push back and say, ‘Which facility does not have a link to a militia?’... It’s impossible today to say that all of these security forces on interim contracts being paid by DCIM who are guarding these facilities are members of a proper security force.”⁴⁰

The use of the term “detention” center to describe the facilities has also been argued to be problematic and misleading. Referring to some of them as “official” further imputes legitimacy and an aura of normality to them that may not be appropriate or accurate. In the absence of rule of law, where the entire practice of confining migrants without administrative basis and devoid of an asylum process renders their confinement arbitrary, and where the system is deeply intertwined, if not partially controlled, by criminal and human trafficking gangs and militias, calling what is being done to migrants in Libya “detention” may obscure the more harmful structures of exploitation that they are constrained within. One IRC staff speaking about Libya’s detention system remarked “while some detention centers are better than others, we are essentially engaging with a criminal network, interested in exploiting and making money, not a state actor.” Another interviewee used the following stronger language to highlight what was seen as the true purpose and intent of migrant confinement:

“Don’t call them detention centers, it normalizes them. Framing them this way should be resisted... It’s important to find another name for them that fits their purpose and nature. It’s more appropriate to use the UN-terminology for unofficial detention centers as ‘forced labor camps.’ They are something sinister and anti-human.”

³⁸ IOM, Displacement Tracking Matrix, Libya, Landing page accessed June 28, 2019 (<https://www.globaldtm.info/libya/>).

³⁹ Ibid.

⁴⁰ Global Detention Project Libya Country Profile, August 2018 update.

As Flynn argues, if it is not the state that is involved in one's deprivation of liberty, "it seems it must follow it must be some kind of illegal activity." If not operating on behalf of the state with legally bound parameters and obligations when confining someone, such activity shouldn't be considered as amounting to immigration detention. In situations of lawlessness, like obtain in Libya, the deprivation of migrant liberty can "change from 'immigration detention' to trafficking, kidnapping, and murder."⁴¹ Rather than interpreting and naming what migrants in Libya are experiencing as "detention," be it "official" or "unofficial," it might be more appropriate to use terms like "forced labor" or "modern day slavery."⁴²

IRC's Work with Detained Populations in Greece and Libya⁴³

Greece:

IRC began work in Greece in July 2015 in response to the large-scale movement of refugees and asylum seekers coming from Turkey. In recognition that most arrivals were landing in and transiting through the island of Lesbos, it was there that the IRC's emergency response team established its first footprint, principally at the northern end of the island closest to where most of the boats were landing. At this time Moria was, as previously noted, an "open" facility which was serving as a registration and interim care space for newly arriving asylum seekers. It's location, in the town of Moria, on the southern end of the island, necessitated newly arriving asylum seekers to journey as much as 50km to reach it.

Based on its assessment that there were larger needs on the island elsewhere and in recognition of the extant presence of other NGO actors in Moria, IRC opted to focus its attention elsewhere. As one of IRC's leaders supporting the intervention at the time stated, Moria was largely a "non-issue." Over the first nine months of the response IRC provided ad hoc, emergency support in Moria including Non Food Item (NFI) distributions when another camp, Kara Tepe, temporarily closed; followed up protection case management clients who transited to Moria from other places where IRC was providing assistance; supported garbage collection in the site via a service contract with the Municipality of Mytilene; and periodically contributed to improvement of the water, sanitation and shelter infrastructure when overcrowding was deemed to create public health risks. IRC also launched a digital information platform, Refugee.info, to help new arrivals identify and access services across the island, and eventually all of Greece. Such services were available to and presumably utilized by residents of Moria who had smartphones. IRC's one sustained programmatic touch point with Moria during this period was its transportation program. In response to the hardships newly arriving asylum seekers faced in their journey, on foot, from their arrival point on the north of the island to Mytilene, coupled with the criminalization of unregistered migrants procuring transport, IRC began a large scale bussing operation from the

⁴¹ Flynn, Kidnapped, Trafficked, Detained?, pg. 604.

⁴² Amnesty International, Libya's Dark Web of Collusion; CNN, People for Sale: Exposing migrant slave auctions in Libya, website accessed 28 June 2019 (<https://www.cnn.com/specials/africa/libya-slave-auctions>).

⁴³ The discussions of IRC operations in Greece and Libya which follow are narrowly focused on actions related to work with detained populations. In the case of Greece, they center on IRC's engagement in hotspots such as Moria. They are not, and are not meant to be, summaries of the full breadth of IRC operations in each country.

North to Mytiline, including Moria. From its inception to suspension in March 2016, IRC provided transportation assistance to almost 128,000 asylum seekers.⁴⁴

The announcement of the EU-Turkey Deal in March 2016, upended humanitarian operations in Greece, the RIC's like Moria most specifically. Over the course of a week major aid actors such as UNHCR, MSF, Oxfam, DRC, and IRC publicly denounced the deal and announced the suspension or termination of their work in or support to the RICs. IRC suspended its transportation program to Moria, issuing a press release on March 23 stating:

“The International Rescue Committee will not transport refugees to the closed facility at Moria, Lesbos...We cannot knowingly participate in the transportation of some of the world's most vulnerable to a place where their freedom of movement is in question.”⁴⁵

The same press-release reaffirmed IRC's intention to continue to work everywhere else in Greece, including Kara Tepe on Lesvos. IRC's default operational footprint going forward was henceforth established: as long as the Deal was in place, as long as Moria or other RICs were part of that Deal, as long as they remained “closed,” they were to be studiously avoided.

The prohibition against work in Moria and the RICs more-or-less guided IRC's thinking from March 2016 to date, although it has not been dogmatically enforced. Between March 2016 and October 2017, IRC provided various forms of one-off material assistance within Moria in response to requests from Greek authorities in reaction to what were deemed to be extraordinary emergencies with life-saving implications. In September 2016, tents and NFIs including mattresses and blankets were provided in the aftermath of a fire. In November 2016, an additional 100 tents and NFIs were donated after another fire in the RIC which killed two residents. In January 2017, IRC donated and installed 48 life shelters- a form of temporary accommodation able to withstand the elements better than tents- in the midst of winter. A request for additional life shelters was also received in October 2017, to prepare for the ensuing winter: IRC assented to the donation but formally expressed grave misgivings about doing so to the Greek authorities. The donation was never actioned.

In each of these instances IRC went to great lengths, both internally and externally, to justify these actions as exceptional, temporary, and reluctantly pursued but for their immediate suffering-reducing effects, and as representative of the failure of duty bearers to uphold their responsibilities to provide dignified living conditions. Illustrative of this is the press-release IRC issued in November 2016 to accompany its tent donation:

“Earlier this week the IRC warned that unless immediate steps are taken to improve the response for refugees stranded in Greece, lives would be lost. It gives us absolutely no pleasure to be shown correct... As a humanitarian it is soul crushing to see events like this happen within the European Union. It is an abdication of our responsibility as global leaders that we, in Europe, refuse to do better for some of the world's most vulnerable.”⁴⁶

⁴⁴ International Rescue Committee Greece, Results, Achievements and Contributions to Date, June 2016.

⁴⁵ International Rescue Committee, The International Rescue Committee will not transport refugees to closed facility at Moria, Lesbos, Greece, 23 March 2016 (<https://www.rescue.org/press-release/international-rescue-committee-will-not-transport-refugees-closed-facility-moria>).

⁴⁶ International Rescue Committee, Moria deaths a ‘damning indictment’ of European leaders’ response to refugee crisis, Greece, 25 November 2016 (<https://www.rescue.org/press-release/moria-deaths-damning-indictment-european-leaders-response-refugee-crisis>).

IRC's intermittent willingness to intervene in Moria in opposition to its principled position of abstinence was also partially justified on the grounds that the camp's "closed" character had softened.⁴⁷

In March 2017, IRC undertook a needs assessment in Northern Greece which included the Greek police detention center at Xanthi. Based on the results, which identified various protection gaps for detainees held there, IRC proposed to launch a short term, relatively small scale, protection monitoring program using its own internal resources. There is no evidence that the program was ever undertaken, and staff feedback indicates that initial efforts to donate humanitarian NFIs to assist detainees were aborted over refusal of the responsible authorities to comply with donation compliance requirements. Even though Xanthi was not one of the specifically identified RICs, it was serving as an immigration detention center for asylum seekers crossing by land into Greece. The decision to work there did provoke concerns similar to those exhibited in debates over Moria, and included questions about whether and how IRC might be constrained in its ability to access detainees and whether it was substituting for accountable state actors.

By September 2017, as IRC embarked on a strategic planning exercise for Greece, IRC's thinking about Moria and the RICs had begun to change. On the one hand, it became less inclined to accede to ad hoc requests for "emergency" infrastructure support. On the other, it became increasingly concerned about the evidently harmful effects camp conditions and continued restrictions to the islands were having on RIC residents. In May 2018, for example, IRC was asked for yet another donation of 40-50 tents for Moria. While IRC considered the potential temporary good that such a donation could have and acknowledged the tents were readily available in storage, IRC ultimately decided against the donation. In IRC's view, they were part of an emergency stockpile, replacing damaged tents in Moria did not constitute an emergency, and it was ultimately the responsibility of the Greek authorities to maintain adequate shelter in the camp.

Towards the end of 2017 IRC and other actors also began to identify the acute mental health needs of RIC residents as a hidden and unaddressed crisis. In effect, prolonged stagnation in poor conditions as existed in Moria were seen to be exacerbating, if not actually provoking, severe psychosocial distress among its residents.⁴⁸ In response IRC proactively commenced operations to meet the mental health needs of RIC residents and to bring those needs to a wider audience through advocacy. Beginning in Jan 2018, IRC started a Mental Health and Psychosocial Support (MHPSS) program targeting clients in both Moria and Vial, the RIC on the island of Chios. Through December 2018 IRC reported having served 285 clients with individual and group counseling sessions.⁴⁹ The program, which also provides case management support, patient referrals to hospital and psychiatrist care, training on MHPSS care for non-medical staff from other agencies at the RICs, and transportation to and from the RICs to IRC counseling centers established outside the RICs, continues at the time of writing. In keeping with persistent concerns about Moria and Vial's roles as RICs within the Deal, and taking advantage of their continuing "open" nature,

⁴⁷ As one IRC staff observed in January 2017, "Moria is not exactly a closed facility-for new arrivals movements are limited, but for most they are now free to move around the island, same as people who are in the Kara Tepe municipal site where we work." IRC internal email communication shared with author.

⁴⁸ MSF Greece, *Confronting the mental health emergency on Samos and Lesbos*, October 2017 (https://reliefweb.int/sites/reliefweb.int/files/resources/2017_10_mental_health_greece_report_final_low.pdf). It was in the last 3 months of 2017 that IRC also developed project proposals specifically aimed at responding to the mental health crisis in the RICs and began actively seeking funding to support them, according to unsolicited concept notes shared with the author.

⁴⁹ IRC annual report to donor funding this work, Feb 2019, shared with author.

IRC explicitly structured the program such that there would be no IRC sustained physical presence or direct client services provided inside the RICs.

Libya:

IRC commenced emergency operations in Libya in mid-2016⁵⁰ in response to the deterioration of the Libyan national health system brought about by the civil war which followed the ouster of its long-time leader, Muhamer Gaddafi. It began by providing direct medical support to the primary healthcare system in Misrata, including the Misrata hospital maternity ward, explicitly targeting displaced and conflict-affected Libyan nationals. By April 2017 the country program had expanded its geographical footprint to Tripoli and Sirte. It also added migrants, refugees and asylum seekers to those served with its health and protection programs focused on the prevention and response to gender based violence against women and adolescent girls. IRC did not yet work with any such populations held in Libya's detention centers.

Being a humanitarian actor in Libya at this time, however, meant that one could not escape the question of whether and how to engage with the detention complex. In April 2017, IRC attended an inter-agency coordination meeting with UN agencies and NGOs working with detained populations in Tunis, Tunisia, convened by the UK's Department for International Development (DFID)'s Humanitarian and Migration teams. The moral quandaries of pursuing humanitarian action in detention were on full, and evidently anguishing, display throughout the meeting. "[E]veryone in the room voiced varying degrees of guilt about working in detention centers," communicated one of the IRC staff that attended the meeting:

"They believe by providing aid to migrants in the centers and begging the government point agency... for access they are perpetuating the detention system itself...[A] general feeling... was expressed that the humanitarian community is reinforcing the corrupt political economy of the detention regime-and probably sowing the seeds for its expansion down the road. This fear about the future was widely felt. If the humanitarian community, and the donors, continue to create the impression in the eyes of the DCIM and militias that detention centers are a vehicle for money and bolstering their political legitimacy (because the centers are a tool to hold back migrants from going to Europe), there will be no incentive to create alternatives to detention. This would be a bad trend to reinforce, of course, because humane alternatives to detention are exactly what the EU, UN, donors and humanitarian community say they want."⁵¹

Such sentiments echoed bilateral feedback from peer agencies working in detention centers in Libya shared with senior IRC leadership as they explored the potential to expand into them. The impression that emerged and has characterized IRC's approach to working with detained migrants in Libya ever since was one of ambivalence, hesitancy and discomfort.

IRC's strategic shift in Libya to explicitly include migrants within its operational purview, continuing reflections on where the greatest unmet needs existed in the country, and its global advocacy goals of reforming and humanizing European asylum policy coalesced, moral ambivalence notwithstanding, in the identification of migrants in detention as a group warranting serious consideration for IRC support. Sustained, damning, international media and NGO coverage of the

⁵⁰ Technically speaking this was a re-entry for IRC. The organization had a short-lived presence from 2011-2012 during the war that overthrew Gaddafi.

⁵¹ IRC internal exchange shared with author.

detention regime through stories like CNN's exposition on the functioning of slave markets for migrants in October 2017,⁵² further focused NGO, donor and UN-recognized Libyan Government attention on this exploited population.

Building off its experience and expertise delivering health services to displaced populations in Libya, its operational footprint in Tripoli (home to a plurality of migrants in the country⁵³), and well documented deficiencies in the quality of and access to health care among detainees, IRC commenced primary preventative and curative health programs for migrants in two detention centers in Tripoli. Work began initially in Janzour, but quickly shifted to Ain Zara and Gaser Ben Ghashien. It further shifted to Tariq Assika at the request of the DCIM in October 2018.

Utilizing a mobile approach based outside of the DCs, IRC medical teams comprised of a general practitioner, gynecologist, nurse, pharmacist and community health workers served 1,173 patients via 2,233 consultations in the initial phase of the project from February-August 2018. In addition to providing clinical care and medication, IRC advocated for and supported 197 referrals out of detention centers to private and government-run health facilities during this period. IRC also provided comprehensive reproductive health care services, including access to contraception, ante natal care, and emergency referrals out of detention to 195 women and girls. A one-time, ad hoc, distribution of dignity kits to women was also undertaken in Tariq Assika. Under terms of a follow-on project commencing May 2018, IRC introduced mental health and psychosocial services (MHPSS) in response to the acute mental health conditions observed among detained migrant populations. While not specifically serving detained migrants, IRC also opened a community development center in downtown Tripoli equipped with a laboratory and consultation rooms that can cater to detainees who are referred outside of the DCs for further care. It was also suggested to the author that IRC was exploring the possibility of introducing very limited material assistance targeting women's and girls' feminine hygiene needs in the future.

IRC initially designed its health program to provide primary health care to detainees in two DCs through regular visits from IRC medical staff 5 days a week. Due to an outbreak of fighting in September 2018 IRC lost access to both Ain Zara and Gaser Ben Ghashien. By the time the fighting ended, the populations had been relocated elsewhere. Beginning in November 2018, however, the intervention approach was redesigned. In the wake of several IRC staff contracting TB in the course of their visits to Tariq Assika, it suspended its activities for several weeks. At the time of writing IRC continues its work in Tariq Assika, but has contracted its service visits to 3 days per week, and further restricted itself to emergency health care.

On April 4, 2019, forces of the Libyan National Army (LNA) under the control of General Haftar launched a full-scale military assault on the UN recognized government and its militia allies in Tripoli. Migrants in detention were caught in the cross-fire of the conflict or abandoned without food or water. Under the auspices of the UN, many such detainees were successfully able to be evacuated to DCs in safer parts of the city or to be removed completely from Libyan detention and evacuated to Niger and Italy. At the time of writing, IRC's reduced medical programs in As Sikka were still operational. As the war progresses in Tripoli, the future of IRC's operations remains fragile and uncertain.

⁵² Elbagir, Nima, Raja Razek, Alex Platt, and Bryony Jones, People for sale: Where lives are auctioned for \$400, CNN, November 14, 2017 (<https://www.cnn.com/specials/africa/libya-slave-auctions>)

⁵³ IRC Libya Strategy Action Plan, July 2018.

IRC's work with detainees in Libya also explicitly included coordination and inter-agency advocacy objectives. Even before it began direct services to detained migrants, IRC was an active part of the now-defunct Libya Mixed Migration Working Group (MMWG). In partnership with UNHCR and IOM, IRC was appointed as the INGO co-lead of the successor Refugee and Migration Platform. One of the principal tasks which IRC has been leading in this capacity is the development of a set of inter-agency operational guidelines for engagement in detention centers in accordance with humanitarian principles. Targeted for completion and endorsement by all actors working with detainees by the end of May 2019, the operational guidelines could be interpreted to lend further justification for an emergent sentiment in favor of a principled withdrawal from detention centers on the part of the humanitarian community, IRC included.⁵⁴

Ethical Tensions in IRC's Work With Detainees in Greece and Libya

The provision of assistance to populations in detention, including immigration detention, is notoriously difficult. It poses particularly acute challenges for humanitarian organizations and their individual employees who aspire to deliver care and protection in accordance with principles such as humanity, impartiality, independence, neutrality.⁵⁵ **Driven by a perceived humanitarian imperative to respond to and alleviate the extreme suffering found among detained migrants and asylum seekers in Greece and Libya, IRC's foray into spaces of detention was and continues to be accompanied by a host of morally perplexing and vexing questions.** For example:

- 1) How removed from minimum quality standards of care is it acceptable to countenance when working with detainees and still justify that one's interventions are having a positive, harm-reducing impact on those served?
- 2) When do one's efforts at alleviating harm contribute, directly or indirectly, to a perpetuation of that harm? How much moral responsibility for that harm is it appropriate to ascribe to humanitarian NGOs working with detainees in Libya and Greece?
- 3) At what point does the provision of humanitarian assistance to detained migrants and asylum seekers risk substituting for or absolving state and other duty bearers from their responsibilities for dignified and humane care of them?
- 4) Having first-hand knowledge of the abuses visited upon migrants and asylum seekers in detention in Greece and Libya, what obligations do humanitarian service providers have for speaking out against them and those that perpetrate them even when such actions may throw into question the organization's neutrality? How far does this obligation go when continued access may be at risk by the exercise of such voice and there is limited expectation for positive policy change?
- 5) What constraints on an agency's real and perceived independence is it reasonable to accept in the interests of accessing and serving migrants and asylum seekers in

⁵⁴ Libya Refugee and Migration Platform, Principled Framework for Intervention in Detention Centers, Draft shared with author 9 April 2019. One IRC staff with whom the author spoke referenced repeated, unsuccessful, efforts to press for improved conditions which as of February 2019 were already leading to considerations of a permanent suspension of services until they were undertaken.

⁵⁵ See for example Kotsioni, Detention of Migrants and Asylum-Seekers; Baoub, Tarak Bach, Burning dilemmas in a simmering conflict, *Ins&Outs*, MSF OCA Staff Magazine, January 2017, pgs. 7-9; or Sanggaran, John-Paul, First, Do No Harm: Why Doctors Should Boycott Working in Australian Detention Centers, *The Guardian*, 4 March 2016 (<https://www.theguardian.com/commentisfree/2016/mar/05/first-do-no-harm-why-doctors-should-boycott-working-in-australian-detention-centres>).

detention? How far can organizations go in subjecting themselves to the same extreme deprivations of liberty that detainees face and still consider their actions as examples of independent “humanitarian” action?

- 6) What does impartiality mean when potentially the most needy segments of the detained population are invisible and out of reach? Given relatively small numbers of migrants and asylum seekers in detention compared with other much larger groups exerting justifiable claims to aid, what does an appropriately proportional humanitarian response look like in Greece and Libya?
- 7) When do the risks to an agency’s staff delivering care to migrants and refugees in detention outweigh the humanitarian imperative to intervene to provide such care?
- 8) When working in contexts that display the most egregious denials of the humanity of those served, how can one conduct, and find the sustenance to continue, “humanitarian” action?

“This Place is an Ongoing Traumatization.”⁵⁶ Constraints on the Quality of Care

In their discussion of IRC’s work with detained migrants and asylum seekers in Greece and Libya, staff repeatedly gave voice to a nagging sense that it was extremely difficult, if not impossible, to achieve the quality standards of care to which they believed their clients were entitled, which IRC believed it should deliver. Some staff questioned what positive impact, if any, IRC’s limited, highly constrained, interventions were having or could ever really have. While this sentiment was most acutely pronounced in discussions about Libya, parallel concerns were present in the Greece operation.

At a certain point the failure to live up to minimum accepted quality standards of medical care can directly contribute to individual or community harm. The inability of IRC staff to follow some TB-infected patients in Libya through their full course of drug treatment, for example, not only undermined the health of the individual patient, but potentially contributes to the expansion of drug resistant TB. The lack of referral options for psychotic or suicidal clients in IRC’s mental health program in Lesvos, Greece, placed them at risk of self-harm. But above and beyond concerns about the potential for sub-standard care to do harm to patients, IRC staff also articulated a nuanced sensitivity that it may just not be possible to do enough good to justify intervention in detention conditions which were understood to be undermining, exacerbating, and at times directly causing the harms that were attempting to be alleviated. While not phrased in such explicit terms, IRC staff echoed the basic contours of Scott-Smith’s analysis of MSF’s detention work as the “truest case of putting a band aid on a malignant tumor.”⁵⁷

The ability, or lack thereof, to achieve positive impact in the health and well-being of detained migrants is critically important in two respects from the perspective of IRC staff. From the perspective of medical ethics and professional integrity, the failure to be able to deliver care in ways that IRC knew was right and best was discomfiting for those staff providing it or those charged with overseeing organizational adherence to technical quality standards. The operating

⁵⁶ Quote by IRC staff used to describe the situation in Moria RIC, Greece.

⁵⁷ Scott-Smith, Tom, Humanitarian Dilemmas in a Mobile World, *Refugee Studies Quarterly*, Vol. 35, 2016, pg. 12. A similar sentiment is evinced by Dubois in his critique of humanitarianism as a response that only seeks to alleviate life saving suffering but do nothing to transform the structures which produce it, a situation that he likens to “when the ambulance team cures your father’s heart attack and then returns him to a house on fire.” Dubois, Marc, *The new humanitarian basics*, HPN Working Paper, May 2018, pg. 8

conditions for IRC in Greece and Libya required programmatic and treatment related accommodations, work arounds, and compromises to quality standards that led some IRC staff to question the “real” impact they were having. From the organizational perspective, an inability to deliver quality care, or a potential lack of meaningful impact, throws into question the logic which guided intervention in the first place. **Recognizing that service provision to detained migrants and asylum seekers in Greece and Libya entails significant ethical and operational risks and carries with it the perceived potential to contribute to harm, the provision of high quality care meeting minimum technical standards becomes one of the principal litmus tests to determine if harm reduction outweighs harm production.** The further the quality of care falls from accepted standards, the lower the overall impact of the intervention, the more the humanitarian imperative can begin to ring hollow as a justification for assuming the risks and compromises otherwise entailed in serving detained migrants and asylum seekers. The intention to do good is necessary but not sufficient to justify humanitarian action. Even if one is not doing harm, per se, not doing enough good, or the most good that one reasonably could, should be cause for reflection. Many IRC staff referenced good that was being done at an individual level: lives saved, patients demonstrating elements of recovery. Against this was balanced, however, questions about the cumulative impact the programs were having as a whole.

When thinking about and questioning what it was possible to achieve from a quality of care standpoint in Greece and Libya, IRC staff identified multiple challenges for their work with detained populations. In both countries, treatment plans for detained migrants and asylum seekers were subject to disruption as patients were moved with little to no warning and often few opportunities for proper follow up or handover. In Greece, for example, the unpredictability of the timeline for legal asylum claim processing led to abrupt relocations from the islands to the mainland if one’s claim was approved. Many of IRC’s MHPSS program clients were suffering from PTSD, which can require long term care to support recovery. Yet, as one staff remarked, IRC was “afraid to do longer term interventions” even though it would be the best therapeutic approach, for fear of clients leaving with no prior notice. While some migrants and asylum seekers in the Moria and Vial RICs ended up being there for a year or more, IRC had to design treatment protocols able to accommodate durations as short as 5-6 sessions.⁵⁸ Meanwhile, in Libya, the entire detention system was plagued with the utter absence of systematic registration and record keeping and routine relocations of detainees from one center to another without advance knowledge or information sharing on their new location. As one IRC staff commented, they could walk into a detention center one morning and find the population had reduced as much as 50% from the day before with no records or information about who was moved, or where. Such extreme volatility and lack of traceability was identified as a severe risk to the proper treatment of communicable diseases such as TB, which was rampant.

Referrals for care which could not be provided in situ, or that required the services of specializations not covered by the IRC health teams, were also noted as highly problematic in both countries. In Libya, for example, IRC was able to eventually negotiate with the authorities of Tariq Assika to allow the referral of sizeable numbers of TB clients to the Ministry of Health’s national TB control program, but it took months to do so. In Greece IRC was systematically

⁵⁸ It was brought to the author’s attention after the first draft of the paper was circulated that IRC has recently changed its treatment practice and moved away from longer-term interventions to modular packages of six to eight sessions which can be extended on a case by case basis. According to this staff, it is possible to achieve meaningful outcomes with shorter duration interventions, and they may be more cost-effective as well.

excluded from the health coordination structures in Vial by the local health authorities and faced difficulty finding adequate referral facilities for the most vulnerable mental health clients. Partly this was due to the extreme shortage of qualified psychiatrists on the islands (Greek nationals also facing the same shortage) limiting the case load those in private practice could handle. But there was also resistance on the part of the municipal hospital in Mytilene, Lesbos, to the admission of suicidal clients requiring in-patient care and medication. As described by one IRC staff, clients at imminent risk of self-harm were forced to go to the police station to get an order of admission from the public prosecutor's office, a procedure that retraumatized patients and was completely unsuited to the cases where such clients were voluntarily seeking help.

While much more egregious in Libya than in Greece, the detention spaces in which migrant and refugees were held were fundamentally flawed from a quality of care perspective as well. IRC staff (as well as most commentators on detention in general) routinely commented upon the almost complete lack of privacy and confidentiality. While efforts were made to enable some element of confidential consultation in the health programs in Libya detention facilities, by removing patients from overcrowded cells to an un-ventilated container, by and large all technical staff consulted raised serious misgivings about this. In Libya too it was impossible to conduct basic triage, with IRC at times forced to conduct consultations working through the bars of the large male detention cell in one center. In Greece, an appreciation for the importance of confidentiality for appropriate mental health treatment was one of the main rationales for location of the consultation space outside of Moria in the IRC center in Mytilene: it was suggested by one IRC stakeholder that if the "open" character of Moria which permitted clients to access this off-site consultation location were not present, it would have raised serious questions about the viability and appropriateness of the whole program intervention.

The very conditions of detention were themselves often highlighted by IRC staff as harmful to detainee health and obstacles to effective treatment and recovery. As observers of detention in Greece and Libya have noted, in many cases it is detention itself that was the primary risk to the health and well being of migrants and asylum seekers.⁵⁹ This is certainly the case from a public health perspective, where communicable disease has been documented to thrive and infection prevention protocols are notoriously difficult to follow: In Libya, an IRC staff stated it was not possible for staff to go into the DCs safely on these grounds.⁶⁰ The terrible conditions and loss of hope that has arisen among detainees in both locations has led to a mental health and suicide crisis.⁶¹ Many if not most of those that find themselves in detention in Libya or Greece have experienced trauma and violence on their journeys, have suffered sexual abuse or torture at some point in their past, or both. Yet instead of finding a safe haven, they find themselves in equally if not more frightening, violent and exploitative situations when they reach Greece or Libya. In the

⁵⁹ MSF, Alarming rates of malnutrition and inhumane conditions in Tripoli detention centre, 20 March 2019 (https://www.msf.org/alarming-rates-malnutrition-and-inhumane-conditions-tripoli-detention-centre-libya?utm_source=Refugees+Deeply&utm_campaign=3c677eab7a-EMAIL_CAMPAIGN_2019_03_22_01_11&utm_medium=email&utm_term=0_8b056c90e2-3c677eab7a-117957249)

⁶⁰ IRC did institute additional safety protocols but not all staff were willing or able to comply with them. At least one staff member was reported to have been re-assigned to a different program as a result.

⁶¹ International Rescue Committee, Unprotected, Unsupported, Uncertain: Recommendations to improve the mental health of asylum seekers on Lesbos, September 2018 (<https://www.rescue.org/sites/default/files/document/3153/unprotectedunsupporteduncertain.pdf>);

case of Moria and Greece, one IRC staff noted that RIC residents' mental health is negatively affected by what was described as a form of crisis of expectations:

“People have experienced trauma in their lives and on their journeys to get to Lesbos. They have used all their resilience to make this journey. When they reach Lesbos they encounter horrible conditions in Europe. It puts a heavy burden on them. Nothing is working as it is expected to do so in a European country.”

The return of clients who have undergone mental health counseling to Moria, where there is “so much noise,” one is “feeling insecurity all the time,” and where one can “never feel relaxed, all the time anxious about their own and their children’s security,” was identified by one IRC staff as directly contrary to the long term recovery goals of the therapeutic interventions it was providing.

Both the RICs in Greece and the DCs in Libya are also places of systemic violence and danger, albeit in differing degrees or with different causality. In Greece the severe overcrowding in Moria has led to riots and fires, the worst of which killed two migrants. The continued failure to provide adequate shelter during the winter led to avoidable deaths as well. In Libya’s DCs, reports of torture, sexual violence, and denial of food and medical care are pervasive, although it should be noted that IRC staff interviewed for this report did not directly indicate they had witnessed the former. The co-location of perpetrators of violence with survivors, some of the former whom are alleged to be the DC authorities in Libya or may be other detainees in the very same cell, makes for a fundamentally unsafe and compromised space. As one IRC staff remarked, “If we can’t have confidential space for rape and torture survivors, the risk of reprisal to those that report is high. The ultimate goal of case management is recovery and people thriving.... [this] is not possible in this environment.” As a result, IRC determined that traditional case management and protection programming targeting survivors of gender-based violence, at risk children, or torture survivors are not appropriate or possible to implement in these locations without potentially exposing clients to greater harm.

Understanding how one’s clients feel about and value the services a humanitarian NGO provides is an essential part of quality program implementation and a basic element of accountability to those one serves. In situations of detention it can be extremely challenging, if not impossible, to meaningfully capture and monitor client feedback for many of the reasons identified above including the lack of privacy, confidentiality, anonymity, or restrictions on use of digital devices. In the face of the limitations on and questions about program quality it is even more imperative that an agency like IRC attempt to gauge client satisfaction. In Libya, IRC’s detainee health program design explicitly included the aspiration that a client feedback mechanism be established, albeit with limited expectations. Efforts to implement elements of it were, however, blocked by the authorities at the DCs where IRC worked.⁶² IRC did, however, receive ad hoc feedback communicated through a third-party journalist which raised disturbing questions about the migrants’ views on IRC service delivery at one DC. Tweets allegedly from the migrants stating things like “we don’t see IRC,” and “IRC is killing us” were shared with IRC leadership, prompting an investigation. By contrast in Greece the “openness” of the RICs and clients’ access to smartphones enabled IRC to implement systematic client end of service surveys. They, along with feedback provided by IRC staff, seemed to indicate high degrees of client satisfaction with

⁶² IRC faced a language barrier between the detained African migrants and the largely Libyan medical staff. In order to foster client feedback, IRC employed translators from the migrant communities who were not detained, but they were not permitted entry to the DCs.

the mental health services IRC was providing.⁶³ While client feedback data on its own-especially when it may be so limited- is not a sufficient basis to make strategic operational decisions such as whether to continue or stop program services that can have real impact on the lives of those served, it is essential to consider these voices in the organization's ethical calculus.

“It’s Unsettling to be a Part of This Ecosystem:”⁶⁴ The Specter of Complicity, or Moral Taint

Concerns about the possibility of personal and organizational responsibility for harm ran through discussions with IRC stakeholders working with or supporting operations with detained populations in Greece and Libya. While the potential that humanitarian action in these contexts could be the direct cause of harm sometimes surfaced, as in discussions around quality of care, questions about moral responsibility most frequently manifested themselves for IRC as a pervasive fear that engagement in spaces of detention, and association with the authorities that controlled or supported them, would or could be understood as indirectly contributing to the harms being caused by them. The specter of complicity haunted IRC's engagement, creating varying levels of moral distress, discomfort and unease for those working in, or supporting, detention focused operations in Greece and Libya. IRC's operational and advocacy decisions were calibrated against and in dialogue with its desire to mitigate potential complicity with systems perceived to be harmful to the health, well-being, and rights of migrants and asylum seekers in both locations. IRC saw itself as navigating between ameliorating the harms of systems that it opposed and becoming a part of those systems themselves.

Before analyzing IRC's encounter with complicity in Greece and Libya it may be worth reflecting on the utility of the term to capture the phenomena that IRC was grappling with. In his work *Humanitarian Ethics*, Slim introduces the “myth of humanitarian responsibility,” or the “exaggeration of the moral responsibility of humanitarian agencies while simultaneously discounting the moral responsibility of more powerful actors.” He goes on to situate complicity directly at the heart of this myth:

“[T]he charge of ‘complicity’ is the laziest moral label that is used to over-emphasize humanitarian responsibility in situations that are ruthlessly controlled by others. [H]umanitarian agencies can seem especially morally responsible in situations which are not of their making and in which primary responsibility belongs to others...⁶⁵ When working in the midst of wrongs it is an ethical requirement to have a good sense of one's place and rationale within them, and set appropriate strategies of prevention, mitigation, and remedy to one's contributions. It is, however, foolish to overstate one's contribution because it allows the parties who are truly responsible to take cover behind a smokescreen of blame that circulates around humanitarian scapegoats rather than themselves.”⁶⁶

Rather than being a binary distinction in which one simply is or is not complicit, Slim and other scholars of complicity such as Mellema introduce the concept as a continuum with gradations of moral responsibility increasing or decreasing depending on factors such as the degree of shared

⁶³ IRC, Unprotected, Unsupported, Uncertain.

⁶⁴ IRC staff quote discussing work in Libya detention centers.

⁶⁵ Slim, *Humanitarian Ethics*, pg. 186.

⁶⁶ Slim, *Humanitarian Ethics*, pg. 206.

intent to cause harm, the centrality of ones contributing acts to the actual causing of the harm, the efforts one takes to denounce the harm, and the actual capacity one has to prevent or obstruct the harm from happening or continuing. These frameworks for assessing moral responsibility also explicitly acknowledge and account for the possibility that one may knowingly contribute to the wrongdoing of others in the pursuit of a different or greater good and that one can find oneself coerced or forced into contributing to the harm.⁶⁷ Complicity, as a concept, has also been shown to be of limited decision-making value for humanitarian agencies facing a multiplicity of factors influencing strategic decisions such as whether to enter or exit an operation.⁶⁸

When examining IRC's work with detained populations in Greece and Libya from these vantage points this author finds Mellema's concept of "moral taint,"⁶⁹ or Slim's discussion of moral "pollution" as being more helpful to describe the situation in which IRC finds itself. As explained by Slim,

"[O]ne is polluted or tainted due to being associated with something that is bad or wrong, and yet in which one is not even complicit... [I]n many situations, it seems to be a sense of pollution rather than a strict ethical logic of association that influences people's attitudes to humanitarian agencies' association with political powers of various kinds."⁷⁰

Re-characterizing the discussion of complicity as it surfaces in IRC's work in Greece and Libya towards moral taint in no way diminishes the discomfort that IRC staff felt about being associated with detention systems that they felt were wrong and harmful. Nor does it insulate the organization from potential negative repercussions that could arise as a result of a tarnished moral reputation brought about by continued association with these systems and its controlling actors. It also does not remove the need for IRC to continuously examine and structure its work to guard against the risk that its actions and words (or silence) don't move up the scale of moral responsibility into the realm of complicity.

To date IRC's cautious, limited, outspoken interventions within detention regimes in Greece and Libya aimed at alleviating as much harm as possible demonstrate exactly the type of preventative and mitigating efforts that Slim identifies as essential to reducing the degree of moral responsibility a humanitarian agency should be ascribed for the wrongs perpetrated by others. **A heavy weight of fear of complicity rightfully featured in IRC's work with detained populations in Greece and Libya. But it should not allow itself, or others, to equate that fear and the efforts to mitigate it with an judgement that IRC, at present, is complicit in the harming of detained migrants and asylum seekers in those countries.**

IRC's concerns about moral taint were articulated in a variety of ways, in reference to different actors and different potential harms to which the agency was anxious to avoid contributing. At the

⁶⁷ Slim, *Humanitarian Ethics*, pgs. 196-200; Mellema, Gregory, *Complicity and Moral Accountability*, University of Notre Dame Press, 2016.

⁶⁸ MSF, *He who helps the guilty shares the crime? INGOs, moral narcissism and complicity in wrongdoing*. Draft circulated as part of KUNO (Dutch Humanitarian Knowledge Network) meeting with Hugo Slim, Feb 2019, shared with author March 2019.

⁶⁹ Mellema, *Complicity and Moral Accountability*, Ch. 2. Moral taint, for Mellema, can be brought about when one's proximity to, or association with, a principal actor causing harm-even when one is not directly or indirectly contributing to that harm- rubs off on them to damage their moral reputation and sense of moral self-worth.

⁷⁰ Slim, *Humanitarian Ethics*, pg. 196.

most macro, level, IRC feared that its association with and provision of support within the detention systems in Greece and Libya could contribute to the legitimization of the European Union's migration management efforts to further externalize its borders. Such efforts were deemed to undermine European, international and EU member state asylum laws, represent an abdication of European "values," and support a global proliferation of migration laws that increasingly criminalized migrants and migration. In Libya this amounted to forced returns to a glaringly unsafe country only to be arbitrarily detained and subjected to the same harm that they had just attempted to flee. NGO association with Libya's detention regime, according to one IRC staff, could be understood as an "explicit push by the Italians to make detention look better, sustainable, conditions improved... We are there as a fig leaf, and a band aid for interdiction." In Greece too close an association with the RICs was viewed as running the risk of legitimizing the EU Turkey deal, its components which were critiqued as fostering collective expulsions, refoulement and the commodification of asylum seekers in the larger political contest between Turkey and the EU. **In the eyes of IRC, Europe's migration management approach, of which the detention complexes in both Greece and Libya were integral aspects, were not an attempt to find a solution to the problem of migration, per se, but "an extreme defeat for human rights."**⁷¹

IRC also perceived a risk in the potential legitimization of authorities in control of detention centers, or the approach to detention being taken in each country (distinct from but intimately connected with the EU's migration management policies). **In Libya, there was a fear that the DCIM and its militia allies (as well as their Italian or EU sponsors) could use the presence of a humanitarian NGO like IRC working in a detention center as a de facto sign that it was of "good standard," they were reputable partners, or that it was evidence in and of itself of improvements in the conditions of detention.** IRC was thus wary, although it didn't use this terminology, of conferring a "seal of approval" to the specific detention centers it worked in, and the Libyan approach to arbitrary detention writ large, due to its willingness to engage with DC authorities and provide services to detainees.⁷² Another IRC staff subtly commented upon the way in which it was felt that journalists covering the situation in Libya inadvertently promoted a perspective that IRC, or NGOs in general, were supportive spokespeople for detention: Journalists "always want to speak with the Country Director... [I]n this age of public shaming, we could be lumped in with the Ministry of the Interior as an enabler, an acceptor" of this situation. This same respondent indicated that it was thus all the more important that every interview IRC give ensure that the shortcomings of and opposition to the conditions of detention in Libya were clearly communicated lest one be confused as a detention apologist. These concerns were not as pronounced in IRC staff discussions about Greece, but still surfaced in relation to Moria. The principal line of concern was that because Moria was administered by the Greek Ministry of Migration Policy (MoMP) (as compared with other spaces like Kara Tepe which were under Lesbos municipal control), had local and EU security actors on site, and was a place where vulnerable asylum seekers such as

⁷¹ For an exhaustive critique of the EU's policies in this regard, see International Rescue Committee, Pushing the boundaries: Insights into the EU's response to mixed migration on the Central Mediterranean Route, July 2018 (<https://www.rescue.org/sites/default/files/document/2933/ircpushingtheboundariesfinaljuly2018.pdf>).

⁷² No IRC staff explicitly referenced a case in which IRC's presence had been so explicitly manipulated. But private correspondence between the author and a leading academic of humanitarianism who has also studied Libyan detention stated that this did happen with another NGO working with detained populations there.

unaccompanied children were at times detained, IRC association with that facility and such actors could similarly confer a sense of approval or endorsement to the way the space was being administered.

Beyond questions about legitimization of policies and actors deemed to be causing harm, IRC's concerns about complicity most frequently embodied a fear that engagement could directly or indirectly contribute to the expansion or institutionalization of the detention regime in each country. This often took the form of modifications to and restrictions placed upon the program designs IRC chose such that they didn't support the "infrastructure" of detention.⁷³ In both Greece (after the EU Turkey deal) and Libya, IRC has studiously desisted from intervening in ways that could expand, or beautify, the physical spaces of detention or otherwise improve the underlying utilities. IRC, like many other humanitarian actors in Greece and Libya, felt the provision of "services to people" that they could directly consume (i.e. health care) were at the boundary of what was acceptable without crossing into direct support to the workings of the detention system, and the centers, themselves. As one respondent noted, the provision of services like mental health support or legal aid were aimed at "helping people to be informed about their rights, helping them to have the best chance to get the protection they need," as opposed to being "part of the system supporting the functioning of the facilities of detention." As we have seen in earlier sections of the paper, IRC in Greece did make several in-kind contributions of tents, life shelters, and supporting NFIs, which slightly compromised on this position. But in each case the contributions were accompanied by strong private or public denunciations of the conditions which provoked such a request, and were seen to be meeting extremely urgent needs. More recent requests for similar material assistance were rebuffed, as were a number of requests for IRC rehabilitation and management of the water and sanitation facilities in Moria. In Libya, as noted, there was a feminine hygiene NFI distribution undertaken by IRC in one detention center, and future distributions are being considered. But in its written materials and as communicated by a former leader of the IRC response in Libya, IRC demonstrates acute awareness of and reservations about the high potential for diversion of such assistance to the DC authorities. Such diversion is noted as particularly worrisome as it would equate to "giving direct support to the perpetrators of human rights violations" in some instances.

The complexity of the Libyan detention context provided yet another, very discomfiting, prism through which IRC staff interpreted the potential harm that could come through association with it and those that controlled it. The detention of migrants and asylum seekers in Libya at the moment is arguably not only, or even primarily, about the management of migration within the country and to Europe. It is equally if not more a criminal enterprise linked to human trafficking, managed by non- or quasi-state actors, for personal or community financial gain. Participation in detention in Libya thus runs the additional risks that one is legitimizing criminality, extortion, and exploitation, or aiding in the expansion of a system which commodifies migrants in forms of modern-day slavery. IRC was wary in the extreme about being inadvertently caught in this nefarious web, and like most other members of the humanitarian community strove to limit their associational linkages by restricting their work to "official" detention centers under the alleged control of the DCIM. Yet it was widely acknowledged in IRC literature and in interviews conducted for this research that the line between "official" and "unofficial" detention was at best blurry. Under

⁷³ In Greece the reluctance to engage in infrastructure-related interventions in Moria was also driven by concerns that adding any more facilities to what was an already extremely overcrowded space would further reduce the quality of life for its residents.

such conditions working in “official” DCs only was unable to fully extinguish nagging feelings that somehow IRC, and the humanitarian community, was still subject to potential manipulation for these more sinister purposes.

“It’s Not Our Responsibility to Provide Shelter, It’s the Government’s.”⁷⁴ Holding Duty Bearers to Account

IRC’s concerns about complicity were intertwined with an awareness that humanitarian action in detention could inadvertently substitute for, or absolve, principal duty bearers from their responsibilities. Several IRC staff expressed wariness that its actions could inappropriately subsidize the failures of state, multilateral or non-state actors that bore the first and foremost accountability for providing dignified care and asylum in accordance with accepted national and international law for those under their control. As Flynn has observed, the involvement of non-state actors in immigration detention “can complicate the accountability and responsibility” of state authorities, putting humanitarian NGOs in a problematic position of deflecting criticism away from duty bearers. Put more bluntly, the “involvement of NGOs in detention service provision risks providing the state with normative cover for its detention activities.”⁷⁵ In many of the conversations held for this project, IRC staff expressed frustration that those they perceived as holding the principal duty to offer humane protection and assistance were unable, or unwilling, to live up to those obligations.

In the case of Greece, sentiments about Greek governmental responsibility appear to have shifted over time. At the outset of the IRC response in 2015 Greece was understood, and often depicted, with great sympathy. In the midst of a crippling financial crisis and forced to shoulder the responsibility for the massive inflow of over 800,000 migrants and asylum seekers almost on its own given common EU asylum system breakdown, it was the EU that was the principal target of calls for increased accountability by IRC and other NGOs. As one IRC staff described the organization’s advocacy, it was not a “refugee crisis” but an EU “manufactured humanitarian crisis” the produced the “shameful situation on the [Greek] islands.” IRC messaging has consistently called upon Europe to help Greece in upholding Europe’s, and Greece’s, responsibilities to protect asylum seekers and migrants on their territory. Such support was viewed to entail, among other things, redistributing successful asylum seekers throughout EU member states so that Greece didn’t have to shoulder the burden all by itself; provision of financial assistance to manage and improve the asylum process; and provision of technical assistance and manpower from specialized EU agencies to Greece to expedite and professionalize all aspects of asylum management.

As the years wore on conditions in places like Moria not only were not seen to be getting much better, by some accounts, things got worse. Yet in the intervening period huge sums of money and technical resources from the EU were poured into Greece. What was previously perceived as an excusable lack of capacity began to slide into questions about how much longer it was appropriate to consider the lack of winterized housing in Moria an “emergency” to which an NGO response was warranted. Lack of preparedness for known seasonal weather variations had become the “status quo.” Under such conditions, it became harder and harder for IRC staff to justify in their minds involvement in what should be considered one of the core duties of the

⁷⁴ Quote from IRC staff discussing the provision of shelters for Moria, Greece.

⁷⁵ Flynn, *Kidnapped, Trafficked, Detained?*, pg. 595.

responsible authorities, the provision of safe, appropriately weather resistant, accommodation. In a particularly astute reflection on the history of IRC's donations of shelter supplies to Moria, one IRC leader intimately familiar with the decisions noted that with each one IRC "needed to be careful about crossing the line in fixing what should be fixed by the Greek or EU authorities." When IRC's explicit reservations and concerns about the inadequate housing continued to go unheeded, and deaths ensued one winter, IRC embarked on a "twitter campaign" denouncing the EU and Greek authorities. It was hoped that such an approach would instill a greater sense of responsibility in the Greek authorities, but this staff acknowledged this "didn't really work" as requests for similar and even more direct assistance followed. IRC's evolving reluctance to agree to such requests was not without consequence: IRC staff were berated by Greek government officials at one public forum in September 2018, accused of complaining about substandard conditions in Moria but being unwilling to do anything to help improve them.

Regarding Libya, IRC's advocacy has routinely called for EU and Libyan authorities to fully assume their responsibilities to provide alternatives to detention, end the arbitrary detention of migrants, and improve conditions in detention.⁷⁶ EU and member state funding to Libyan actors, such as the DCIM and Coast Guard, has been recommended to be made contingent on tangible progress on these and other points, albeit to little or no avail. One of the most compelling and powerful examples of an effort to instill and hold accountable the DCIM and individual DC authorities, while mitigating the risk that NGOs like IRC would enable them to escape their duties through their assistance, is the almost finalized "Principled Framework for Intervention in Detention Centers"⁷⁷ being produced, under IRC's leadership, by the Refugee and Migrant Platform. The very first of its general principles reads as follows:

"The provision of humanitarian assistance in detention centers is not sustainable in the long term and must not substitute itself to the legal obligations of the Government. As such, humanitarian actors should always first advocate with the authorities on the fulfillment of their obligations and should consider the provision of assistance as a last-resort measure that solely responds to the humanitarian imperative and not to other considerations, including political agendas of external stakeholders."

As communicated by one IRC staff, IRC was considering suspension of its health services in As Sikka DC in early 2019 if the DC authorities failed to take steps to improve conditions and access in line with the recommendations and red lines later encapsulated in the Principled Framework.

"That's How You Sleep at Night:"⁷⁸ The Centrality of Advocacy

In the literature on humanitarian ethics, advocacy, or speaking out about or against human rights abuse or other harms, is often treated as having the potential to conflict with an organization's neutrality. Humanitarian "speech" can be interpreted as a political act on the part of the agency "speaking out" which redounds favorably or unfavorably on powerful actors pursuing non-humanitarian objectives. Staying silent, a form of speech defined by its omission, can also be taken to imply support for such harms. Both forms of speech, advocacy and silence, have a

⁷⁶ Raikes, Elinor, 'Humanitarian Crisis' cries out for EU values in Libya, euobserver, 12 July 2018 (<https://euobserver.com/opinion/142360>); IRC, Pushing the boundaries.

⁷⁷ Draft shared with author by IRC in April 2019.

⁷⁸ Quote from IRC staff discussing the role that advocacy plays in work with detained populations in Greece and Libya.

potential bearing on the degree to which one may be judged complicit, and hence morally responsible, for harms committed by others. Speaking out against harm, denouncing it, even while being associated with it, can and should soften the accountability that the one speaking out bears for the harms. Staying silent, in contrast, may give the impression that one condones the actions causing harm, legitimizing them as appropriate or beyond reproach, thereby enhancing the moral responsibility for the harms the other is causing. Yet as humanitarians know all too well, the decision to speak out, or not, is often directly influenced by an assessment of the potential reprisals that can be visited upon them for taking either action. These reprisals can be “brutal and fatal”⁷⁹ and include not just direct harm to those speaking out, but the risk of denials of access or the closure of programs with direct effects on those being served. Given speaking out or staying silent in a given situation has both risks and opportunities, it is also relevant to consider the potential success such action can have. As Slim notes, speaking out can feel like the right thing to do in itself, but if it puts other goals at risk “and there is no reasonable certainty of a positive effect from doing so, then speaking may be reckless and silence may be wiser.”⁸⁰ IRC grappled with questions about if, how, and how much it should speak out about the detention regimes in Greece and Libya, what the potential effects of that speech could be, and assessed the relative chance of success that speaking out about certain topics could have in actually making a positive change.

Advocacy was a central, one might argue essential, feature of IRC’s responses to detention in Greece and Libya in several ways. First, as the quote which titles this section suggests, speaking out about the terrible conditions and violations of rights that migrants and asylum seekers were subject to served as a form of “moral marker”⁸¹ that helped individual employees, or the agency as a whole, balance their moral discomfort about working within the detention systems in each country.⁸² In similar fashion, denunciation of various aspects of the detention systems as well as the particular effects of them was an integral part of IRC’s strategy (perhaps unconsciously) to mitigate the organization’s moral responsibility for harms in which it feared it could be complicit. Advocacy, to the extent that it could affect positive policy change at national or European scale, was also considered a tangible way in which IRC could achieve the greatest good for the greatest number of people in detention.⁸³ It was also a driving justification for IRC direct service engagement with detained migrants and asylum seekers in Greece and Libya: Over and above the direct benefits that could accrue to individual detainees via IRC’s direct program implementation, having an operational presence in and among spaces of detention in Greece and Libya was valued in its own right as it was deemed to enhance the credibility, and authority, of IRC’s global and European advocacy goals related to European migration and asylum policy.

⁷⁹ Slim, Humanitarian Ethics, pg. 208.

⁸⁰ See Slim’s treatment of silence and speaking out in Humanitarian Ethics, pg. 208-210, which informs much of the thinking in this paragraph.

⁸¹ Slim, Humanitarian Ethics, pg. 208.

⁸² “I have never been all that comfortable working in detention centers, but we can’t walk away if we can succeed in advocacy” one IRC staff working on Libya remarked.

⁸³ As one IRC concept note from November 2018 shared with the author argued, “It is worth noting that the data obtained from this proposed mental health program also has the potential to powerfully impact IRC’s advocacy efforts, and therefore influence the conditions in Moria and Vial... If through advocacy the IRC can contribute to improved conditions in these camps and accelerate transfers to mainland Greece, then all asylum seekers in the Mori and Vial camps (a total of approximately 9,710 people) would indirectly benefit from this program.”

The symbiotic relationship between advocacy and operational service delivery for detained migrants and asylum seekers played itself out similarly, but not identically, in Greece and Libya. In Greece IRC's principled stance to abstain from working in or supporting RICs such as Moria taken after the Deal came into force was partly bolstered by the assessment that this abstention was itself a powerful form of speech. As one IRC leader put it, against the backdrop of IRC being one if not the largest NGO actors on Lesbos, "IRC not doing something says a lot." Abstention, an act of omission, was characterized by this leader as a way to demonstrate and signal the extreme displeasure IRC had with the Deal and its impact on the lives of migrants and asylum seekers in Greece. IRC was also hesitant about getting operationally engaged in Moria for fear that doing so could damage IRC's "credibility" by somehow conveying a sense of approval for the system they were criticizing, which would "undermine our ability to be an effective advocate for our clients." IRC was also concerned that if it began programming in Moria its presence could effectively be co-opted and captured, i.e. "held hostage", by the Greek authorities which could potentially retard or silence what IRC might feel necessary to say about the conditions, harms and who was perceived to be perpetrating them. In such initial thinking, IRC's European advocacy goals, which included denunciation of the Deal and vocal calls for improvements in European and Greek asylum practice,⁸⁴ were important enough in their own right to influence IRC's operational decision making in Greece vis a vis work in the RICs.

In Libya, by contrast, IRC's European and global advocacy goals were deemed best advanced by the establishment, albeit on a limited scale, of direct IRC proximity to detention. "All the media want to talk about is migrants in detention" one senior IRC leader shared. Access to spaces of detention was understood, and in part pursued, to enable IRC to speak with enhanced authority and credibility about the horrific conditions that migrants and asylum seekers faced. "We [the humanitarian community] are really the only ones here seeing this, our main job is seeing this," expressed one IRC staff supporting IRC advocacy. Being able to bring home, first-hand, the horrors of Libyan detention to policy makers in Europe was seen as a way to highlight the real negative and harmful consequences of the EU's asylum externalization agenda, and to prompt the EU into taking responsibility for what was happening as a result of its asylum policies beyond Europe's shores. "Our bottom line is calling on the EU to feel responsibility for people the Libyan Coast Guard is pushing back to Libya" was how one IRC staff described this interplay between operational presence and advocacy. In the broadest sense, presence among the detained in Libya was also a way to enhance IRC's legitimacy as a trusted voice on the full trajectory of mixed migratory journeys from Africa to Europe. Working in countries of migrant origin, such as Cote D'Ivoire or Nigeria, in key nodes of transit, such as Niger, and throughout Europe in places like Italy, Greece and Germany, IRC's ability to speak convincingly about migratory dynamics and hardships in Libya was a way for IRC to complete its arc of presence from start to end of a migrants journey.⁸⁵

⁸⁴ International Rescue Committee, Greece: Asylum seekers in abysmal conditions on islands, 23 October 2017 (<https://www.rescue-uk.org/press-release/greece-asylum-seekers-abysmal-conditions-islands>); International Rescue Committee, et. al., Transitioning to a Government-run Refugee and Migrant Response in Greece: A joint NGO roadmap for more fair and humane policies, December 2017 (<https://www.rescue-uk.org/sites/default/files/document/1597/jointngoroadmap12122017.pdf>).

⁸⁵ A similar logic was at play in IRC's short-lived foray into migrant search and rescue operations on the Mediterranean Sea in 2018, which is outside the scope of this report.

It would not have been surprising for there to have been tension between global advocates and field based staff, as this often arises within an operational agency that both desires to speak out and provide direct services, but by and large this didn't seem to arise in IRC regarding its advocacy around detention in Greece and Libya. There clearly could be hard local repercussions, though, for agencies criticizing detention in either country. In Greece, for example, a recent high-profile celebrity visit to Moria organized by IRC after which the visitor made public comments deemed derogatory of the Greek authorities resulted in the subsequent denial of approval for a planned mental health program intervention.⁸⁶ In Libya, in August 2017, the now-defunct Mixed Migration Working Group felt it was too risky to publicly air its extreme concerns about the detention regime for fear of local reprisal that it opted for quiet, behind the scenes, engagement with donors and the diplomatic community only.⁸⁷

IRC's approach to advocacy evolved over the course of its engagement with detained populations in both countries, but from its inception was pursued in what one IRC staff called a "pragmatic" approach. One staff described this as "solutions-oriented, not naming and shaming," another as attempting to ensure that its messaging not take on a "shouty" or "outraged" tone (particularly with EU institutions who were seen as allies in the policy reform agenda vis a vis EU member states, or regarding UN actors in Libya who were seen to be struggling under the same operational and ethical constraints that IRC was).

In keeping with its "pragmatic" strain, subtle shifts in IRC's advocacy over time seemed to accord, somewhat, with changing perceptions of the potential for success in effecting substantive change in the detention systems in Greece and Libya. Whereas IRC maintains a foundational opposition to arbitrary detention in Libya and remains concerned about the effects of the EU Turkey Deal in Greece, it has seemingly come to accept that little, if anything, can reasonably be expected to change on those fronts. Continued denunciations of the EU Turkey deal are "tired, [they] don't give us any credibility" anymore remarked one staff. "There is a zero chance of overturning the EU Turkey deal, it's the one area of agreement within the EU on asylum," remarked another. After years of vocal denunciations of Libya's arbitrary detention and exploitation of migrants and asylum seekers, "things are just not getting better" claimed another. Continued denunciations of policies which are seen as widely successful, in the sense that they largely stopped migration to Europe, also now run the risk of backfiring. The creation of an image that the situation at Europe's border is still chaotic and asylum policy remains dysfunctional, of large numbers of people huddled in camps like Moria or waiting to cross the Mediterranean to Italy from Libya, could be seen to play into the hands of Europe's anti-immigrant far right.

Rather than continue to expend scarce organizational capital, human resources, and reputation on shouting into the wind, so to speak, IRC's advocacy has been recalibrated to focus on improving conditions in detention and finding alternatives to detentions for the most vulnerable migrants and asylum seekers, however they may be so defined in each location. It has also shifted towards trying to slow the seemingly inexorable advance of Europe's externalization policies to other locations. The poor conditions which have persisted for years in Moria, even with acknowledged recent improvements, are now held up as a warning to those that are proposing

⁸⁶ Headey, Lena, 'Game of Thrones' Star Lena Headey Pleads for "Solution" to Heartbreaking Mental Health Crisis Among Refugees," The Hollywood Reporter, 15 March 2019 (<https://www.hollywoodreporter.com/amp/news/game-thrones-star-lena-headey-mental-health-crisis-refugees-guest-column-1193989>).

⁸⁷ Draft position paper shared with author April 2019.

the introduction of new “closed centers” and “regional disembarkation platforms” across Europe and North Africa. Rather than being cause for optimism, the practical experience of the RICs in Greece illustrates there is little hope that such new nodes of EU migration containment would be any better at upholding asylum seeker rights, treating them in dignified fashion, or accomplishing the goals of rapid processing and onward movement within Europe, back home, or to a third country.⁸⁸ Local efforts to advocate for improvements that enhance the lives and protection of detainees remains a crucial component of IRC’s work: helping to identify and refer clients who may meet vulnerability criteria enabling extraction from Moria for alternative accommodation on Lesbos or the mainland, as opposed to seeking the overthrow of the geographic restriction; or convincing the Libyan Ministry of Health to create a department focused on migrant health to enhance their access to the national health system and reduce the public perception of migrants as a threat, as opposed to evacuating all migrants from spaces of detention, are examples of local advocacy success in this regard.

There is, however, a different reading of the current situation which suggest a different approach to advocacy in its wake. It was voiced by a few IRC staff, in explicit or implicit terms, and brings advocacy’s role as a moral marker, as opposed to instrumental tool for policy change, to the fore. It hinges upon a question of intent. What if the harms of the current detention systems in Greece and Libya are being pursued by design, rather than being byproducts of faulty policy which could be improved with the right combination of resources and technical capacity and pressure? Does it make a difference if the harms produced by those systems are willful, or simply the result of negligence? What if the intent of policy makers, locally and at the EU level, is to create a purposely “hostile environment” for migrants and asylum seekers in Libya and Greece, to crib a phrase from the UK’s immigration policy debate? There is some evidence that indeed this is the case in Europe, including Greece.⁸⁹ When looking at the seemingly persistent immunity of the detention systems in both Greece and Libya to humane reform coupled with the continuation of or deterioration in the detention conditions themselves, a few of those interviewed have begun to wonder if this does not necessitate a more robust form of advocacy in order for IRC to keep its moral integrity intact. In Libya, for example, frustration with the reportedly timid approach taken by the now defunct Mixed Migration Working Group has led the successor Refugee and Migration Platform to constitute itself on “more principled lines,” which one IRC respondent characterized in terms of its advocacy approach with Libyan detention authorities as “[w]e won’t embarrass them, but will be more public in our statements.” Another IRC employee reflecting on the current situation in Greece opined

“the system has now become more and more entrenched. I find Greece more depressing now than Libya. It’s 2019, people are still living in shanties and tents since 2015. Basic protections like segregated toilets are absent. These camps are going to be here forever and we helped build them.”

In their most extreme versions, such sentiments challenge IRC to rethink the terms of their engagement in detention all together. When thinking about the role of advocacy in the IRC responses in Greece and Libya, one respondent asked:

⁸⁸ Maiani, ‘Regional Disembarkation Platforms’ and ‘Controlled Centres.’

⁸⁹ Kreichauf, René, From forced migration to forced arrival: the campization of refugee accommodation in European cities, *Comparative Migration Studies*, 6(1), 2018 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5874268/>)

“What is the timeline for positive change? Initially it was a chaotic response, but now, three to five years later, there is no longer an excuse. Our tolerance shouldn’t be the same as in our initial response. As it goes from emergency to ‘situation normal’ is our commitment to humanity the same on day 365 as it was on day one?”

In specific reference to Libya’s detention centers, another respondent with personal experience of them, went even farther:

“They are part of a cynical, racist, xenophobic criminal network where Africans are at risk of being sucked into a system in which they are arbitrarily detained, exploited, extorted and tortured. The system has been professionalized and institutionalized due to the migration policies of Europe. The only right policy is to evacuate and rescue people from them. They are being treated much worse than cattle. Don’t improve detention centers, rescue people from there.”

In accordance with sentiments expressed above, intent matters, and IRC’s advocacy is right to calibrate itself in consideration of this. When the intent to harm is perceived to be so explicit, when duty bearers prove to be systematically recalcitrant, it becomes less morally satisfactory for advocacy to operate on the periphery, tweaking the edges. As Slim notes, in some extreme circumstances, “sometimes, regardless of impact, it is morally necessary to make public note of extreme wrongs” even if it has no immediate effect.⁹⁰ A debate about whether IRC has reached this point may be emerging.

“We Don’t Want to Become the Furniture:”⁹¹ Demonstrating and Preserving Independence

The ability to act autonomously from external parties in accordance with humanitarian principles in pursuit of its ultimate goal of providing life-saving assistance is severely constricted when working with detained populations. As those familiar with detention settings such as in Libya will attest, it is an almost complete lack of autonomy that characterizes them. They can be spaces of almost totalitarian control, where, as one IRC staff remarked, others determine “literally when and what to eat and if you can exercise your bodily functions.” While by no means as extreme, when a humanitarian NGO attempts to deliver services to those so detained, they can and do become subject to many of the same elements of intimate control over their operations as those which exert total control over detainees themselves.

First and foremost, access to many detention facilities, and individual detainees specifically, is often cumbersome, delayed, or denied. In Libya, accessing detention centers was dependent on negotiating at times highly arbitrary permissions on a daily basis. This burden was further exacerbated by the high degree of turnover among detention center authorities and the lack of transparent lines of management authority between and among individual detention centers and the DCIM itself. As one IRC noted, it took months for IRC to get approval to conduct TB screening despite having identified this highly communicable disease risk in the DC. While more pronounced in Libya, where the DCs were truly “closed” facilities, IRC was also subject to extensive and at times arbitrary access constraints in Greek RICs. Entry into Vial, on Chios, requires that one be

⁹⁰ Slim, *Humanitarian Ethics*, pg. 208.

⁹¹ Quote from IRC staff not working in Greece or Libya when describing the risk of instrumentalization in detention settings.

“searched by police in front of everyone on first entry.” Routine, previously approved, mental health training activities planned to be conducted in Moria have been prevented at the discretion of the RIC authorities with little to no notice. Access to individual patients in Libyan detention centers is highly restricted, often requiring the administration of consultation and treatment through the bars of a cell in cases where approval for private consultation is not granted. IRC medical staff in Libya have as well been denied entry or access to patients, such as when they desired to conduct reproductive health awareness sessions with female detainees or sought to have community health workers from the non-detained migrant community participate in health education sessions for detainees.

IRC designed its programs in part in an attempt to mitigate these controls, in an effort to maximize their independence. In both Greece and Libya, IRC opted not to establish any kind of “permanent presence” such as an office or supply storage facility in the RICs or DCs, relying instead on intermittent visits from outside. Both also strove to locate as much of their service provision infrastructure, such as safe consultation spaces or laboratory, outside of the detention facilities. The “open” nature of Moria made this easier to undertake than in Libya, where the extraction of detainees for the purpose of treatment or referral remained subject to rigorous control on the part of DC authorities.

The principle of independence also encapsulates an expectation that humanitarian agencies strive to avoid instrumentalization by foreign governments, that one’s purposes do not serve the non-humanitarian political interests of others. A typical way in which NGOs often operationalize this dimension of the independence principal is through their funding decisions.⁹² A review of IRC’s funding for its work with detainees in Greece and Libya suggests some consideration of its potential impact on the independence of the agency, and its decisions support an assessment that funding streams were at least partially considered in light of their potential impact on IRC’s real or perceived independence (as well as their ability to contribute to a perception of complicity). In Greece all of IRC’s current MHPSS work with clients from Moria and Vial RICs has been undertaken with private, i.e. non-governmental, resources. At the time it was considering work in Xanthi police detention facility, IRC also appears to have explicitly discussed and decided that it was only appropriate to do so with internal, unrestricted (again non-governmental) sources. However subsequent investigation identified an attempt to donate surplus NFI stocks from a grant from the European Commission Humanitarian Office (ECHO) in Xanthi, and it was confirmed that the in-kind contributions of life shelters, and potentially tents, that IRC made to Moria from 2016 onward were also from ECHO or other European donor stocks. IRC’s other work in Greece, such as in Kara Tepe, is supported in part with funding from the EU. While the work with RIC inhabitants being conducted with only private funds could be argued to enhance IRC’s independence,⁹³ it is not clear that such a position was taken for such a specifically principled reason (as opposed to there not being other governmental donor funds available to support this MHPSS work at the time).

⁹² For an explanation of the financial dimensions of the humanitarian principle of independence, see Schenkenberg van Mierop, Ed, Coming clean on neutrality and independence: The need to assess the application of humanitarian principles, International Review of the Red Cross, Vol 97 (897/898), 2016, pgs. 312-316.

⁹³ See Schenkenberg, Coming clean on neutrality and independence, for an argument that unrestricted funding enhances an organization’s independence.

IRC's approach to funding assistance for detained migrants and asylum seekers in Libya also demonstrates some evidence that its choices were informed by an appreciation of their potential impact on the organization's perceived independence. For example, IRC's current work with detainees is financed by the Swedish International Development Agency (SIDA) under a Humanitarian Framework Agreement with IRC. Although it is a member state of the EU, whose migration management policies have been deemed complicit in the harms being perpetrated against migrants and asylum seekers in Libya, in general terms it is seen as a more "principled" donor that respects its implementing partners' autonomy and is in effect one step removed from the EU as the more potentially problematic association. In contrast, IRC has avoided Italian Cooperation, or Italian Embassy in Libya, funding. As one of the key architects of Libya's role in Europe's externalized borders and major bilateral donors to the authorities and militias controlling the interdiction, return, and detention apparatuses in Libya, the acceptance of funding from Italy was deemed to run a high risk of conveying a sense that IRC was a more direct implementation arm, and hence supporter, of the detention regime than it wished to be so considered.

It should be noted that discussions about funding and independence can sometimes make assumptions about the compromise to independence entailed by accepting certain donor funds. Schenkenberg has argued in turn that the relationship between funding and independence should be treated as an empirical question and investigated in each case.⁹⁴ In the case of IRC's work in Greece and Libya, for example, there is no clear indication that its funding choices materially constrained IRC action or advocacy. How it resourced its detention programs was at times, however, understood to have the potential to convey the impression of closer association with the EU's migration management policies, thereby heightening the discomfort IRC staff felt about potentially tainting the agency's moral reputation.

“You Don't Know What You Don't Know:”⁹⁵ Operationalizing Impartiality

Working with detainees in Greece and Libya meant working within discriminatory contexts in which it was often factors other than need which dictated one's life and asylum options. In Libya only 7 nationalities were officially recognized as eligible for international protection as refugees, offering them much greater, albeit still highly limited, options for exit from detention if they could be so identified. Whether one was captive in an “official” or “unofficial” detention center dramatically increased the chance of one receiving humanitarian aid. In Greece, the asylum process after the implementation of the Deal created in effect a two-tier system of admissions and access to alternatives to detention based on one's nationality, first instance admissibility rates in the EU, or vulnerability criteria. Those that didn't meet such criteria or possess the right nationality faced extended, potentially indefinite, stays in RICs and on the Greek islands.

The attempt to direct its services to those with the most extreme needs ran through IRC's work in Greece and Libya. Throughout IRC operations there was consistent and focused attention on what were considered the most-needy sub-populations of detained migrants and asylum seekers—unaccompanied children; pregnant women; survivors of sexual violence. Improvements in their conditions and more humane alternatives to detention were pursued wherever possible for them. Yet in the course of its efforts to operationalize an impartial response at a country level, through

⁹⁴ Ibid.

⁹⁵ IRC staff comment describing the situation in Libya detention centers.

the identification of and direction of aid towards those it deemed in greatest need, it had to grapple with several challenges. It was not always possible to know who was, or serve those deemed, in greatest need within the detained population; the needs of migrants and asylum seekers in detention were extreme, but there were other needy claimants on IRC aid in both countries which IRC also felt compelled to serve; and there was a potential disjuncture between the priority needs of detainees and the ability of IRC to address them.

In Libya several factors coalesced to preclude IRC, and the humanitarian community, from fully understanding the need profile of detainees in those DCs where they worked. There was an almost complete lack of recordkeeping, tracking and registration of migrants, it was impossible to conduct meaningful needs assessments among detainees, and humanitarian NGOs did not have full access to all spaces, or people, in detention centers. IRC respondents openly acknowledged that they only had access to male and female holding areas in some DCs, that there “were allegations of torture” taking place in the basement, to which they had no access. The overall situation was best summarized by the quote that titles this section: IRC, like many others working with detainees in Libya, didn’t know what they didn’t know. Who in the detention centers were not visible to external eyes? Who among the detainee population was being denied access and treatment? How many people were being detained in the facility?

The challenge to impartiality experienced at the individual DC level as a result of lack of knowledge of detainee needs existed at a national level too. As all analysis of Libyan detention has highlighted, the actual number of detention centers throughout the country is unknown. Estimates of the number of “official” DCs under DCIM responsibility and nominal control can and do fluctuate. The number and location of “unofficial” DCs remains extremely obscure in the extreme. It is thus not even possible to estimate the numbers of detainees held in those spaces. Anecdotal evidence has pointed to the possibility that there are more migrants detained in “unofficial” spaces, but this is contested, even within IRC. One respondent claimed that the numbers in such spaces have “decreased dramatically” recently, in part justifying why IRC is not working in such places. Yet another claimed that “formal DCs are the minority.” It may be impossible to know what cannot be known in this case. But one can nonetheless propose that achievement of a fully impartial response, based on known and reasonably assessed need, is not currently possible. In fact the current humanitarian community response, of which IRC is a part, may be quite partial: as one IRC staff reflected, “if conditions in formal DCs are so bad, by logic conditions in the informal ones must be much worse.”

In both Greece and Libya IRC’s decisions about working with migrants and asylum seekers in detention were also informed and influenced by considerations of need at a national level. In its operational calculus IRC navigated between two dimensions of impartiality: severity of need, on the one hand, and scope, or proportionality, of need on the other.⁹⁶ One IRC staff commenting on the organization’s decision to work with detainees put it thusly: “we have a strategic interest in supporting non-Libyans. It’s hard not be involved on the detention side, while smaller, is still a significant part of the problem... It keeps us engaged and apprised on wider issues. These are the most vulnerable people.”

⁹⁶ See Labbé, Jérémie, and Daudin, Pascal, Applying the humanitarian principles: Reflecting on the experience of the International Committee of the Red Cross, International Review of the Red Cross, Vol 97 (897/898), 2016, pg. 187, for reference to both severity of need and proportionality as dimensions of the principle of impartiality.

In both Greece and Libya migrants and asylum seekers in detention were assessed to be among, if not the, most needy populations in each country. If their absolute needs were without question extreme, their relative numbers compared with other non-detained migrants or other population groups that fall within IRC's mission to serve were, however, relatively small. According to IRC's Strategy Action Plan for Libya, updated in July 2018, there were an estimated 1.1 million people in Libya, representing 17% of the entire country population, in need of protection and assistance as a result of the conflict. There were 662,248 migrants reported in the country. 5,200 were indicated as detained as of May 2017.⁹⁷ According to the Global Detention Project's Libya Country Profile, the number of migrants in detention in mid-2018 was estimated at approximately 10,000, in recognition of an increase in the number of disembarked returns.⁹⁸ IRC's Strategy Action Plan for Greece, updated in June 2018, indicated that only 25% of the refugee and asylum seeking caseload in the country was on the islands, of which approximately 13,000 were living in RICs.⁹⁹

IRC's limited engagement in the RICs in Greece and detention centers in Libya is partially explained by considerations of proportionality and scale. In Libya, a strategic assessment of need at a national level has driven the organization to concentrate its work with Libyan conflict affected and internally displaced populations. It expanded from that base in recognition of the broadly unmet needs of the migrant population. In an ironic twist, heavy media and humanitarian community attention to the relatively very few numbers of detained migrants in extreme conditions has rendered the acute needs of un-detained migrants virtually invisible. One IRC leader, when describing the populations IRC has chosen to serve in Libya, referred to the unmet, invisible needs of urban un-detained migrants as Libya's true "hidden crisis." It is there, and to the needs of Libyans, that IRC's attention has focused: A "minimal level of engagement... [with detained migrants] is at my comfort level" one IRC senior leader explained. In Greece as well IRC has sought to serve the greatest number of vulnerable people where they can throughout the country, historically working in Athens, in the North, and throughout Lesbos with the larger populations of refugees and asylum seekers not resident in the RICs. Given changing refugee and asylum seeker patterns over time within the country, it now so happens that the majority of migrants and asylum seekers on islands like Lesbos and Chios are, in fact, resident in the RICs. From the twin vantage points of greatest need and scale the RICs now offer a more compelling basis for intervention when viewed through an impartiality lens.

The final way in which impartiality arose as a topic among IRC staff was when considering the extent to which detained migrant and asylum seeker needs were really able to be met by IRC interventions. This is not a question of achieving acceptable minimum quality standards of care, which was discussed earlier. It is rather whether the highest priority needs of detainees, as articulated by detainees, were within IRC's capacity to address. The disjuncture between what a humanitarian agency can offer to a detainee and what he or she truly wants has been highlighted as a recurrent challenge for those working in spaces of detention and a source of moral distress for those providing aid.¹⁰⁰ In Libya, for example, it is the release from detention that might be their greatest desire. In Greece, it could be securing a positive decision on their asylum application or the opportunity to join their family in another part of Europe. Neither, per se, were or are in IRC's power to confer. Faced with such a situation, one IRC staff familiar with Greece explained how

⁹⁷ IRC Libya Strategy Action Plan, July 2018.

⁹⁸Global Detention Monitoring Project Libya Country Profile (<https://www.globaldetentionproject.org/countries/africa/libya>).

⁹⁹ IRC Greece Strategy Action Plan, June 2018.

¹⁰⁰ Kostioni, Detention of Migrants and Asylum-Seekers.

important it was to be proactively forthright and transparent in one's dealings with detainees about the limits of IRC's power: when the mental health team is faced with patient requests for housing, or assistance to get off the island, IRC's very specific role is explained and offers to refer to actors that have power over those decisions are made. While perhaps not fully satisfying, this staff noted that patients were "still thankful for having a place to go where they were treated with respect and can be heard without being judged."

"It's a Hard Intervention:"¹⁰¹ The Duty of Care to Staff

Working with detained populations, in detention spaces, poses potential risks to the staff of humanitarian agencies. Humanitarian organizations have to weigh their duty of care to their own employees with the imperative that they feel to serve what have been identified as some of the most needy and forgotten populations. Staff of humanitarian agencies do not face such a tension only when working with detainees, of course, but the risks can be quite acute and must be considered as part of an agencies decisions on whether to intervene and how to structure its engagement in such a way that maximizes staff safety and well-being. The two principal ways in which duty of care concerns arose in IRC's operations with detainees in Greece and Libya were related to physical and mental health risks.

In Libyan detention centers, not unlike other prisons, the risk of communicable disease is rampant. Infection prevention and control can be difficult, if not impossible, to implement. In the course of implementing its health programs treating detainees in one Libyan DC, several IRC staff were exposed to and subsequently became infected with TB. Lacking the power to improve conditions to meaningfully eliminate this public health risk, IRC took the difficult decision to restrict staff access and curtail its health programs. IRC management assessed the situation and determined that "we can not go in safely," any further. This public health risk to its staff, and IRC's attendant prioritization of its duty of care to them, was a central factor in IRC's decision to restrict and restructure its health programs in Libyan detention centers after November 2018, even after the introduction of enhanced safety protocols.

The mental stress that IRC staff working in detention focused programs experienced was extremely high in both Greece and Libya. There appears to be a mutually reinforcing logic at work that negatively impacts on the psychosocial well-being of some staff. At any time, in any context, it can be very emotionally taxing for health, mental health, and case management staff to work with highly traumatized populations such as survivors of torture, human trafficking, or sexual violence on a daily basis. The levels of violence perpetrated against some detainees in Libya, however, is mind-boggling.¹⁰² In both Greece and Libya, these strains were exacerbated by feelings of powerlessness to materially improve the situations in which their clients found themselves. Not only as we have seen was it often impossible to find safe spaces for those suffering violence, years of advocacy to improve conditions and redress abuses have had limited success. As one IRC staff commented about work in Libya, "It's hard to be exposed to that level of risk without being able to do anything about it." Another reflected "staff want to help, but just feel like they are picking up pieces but nothing is going to change" when talking about the strains on IRC staff on Lesvos. As if this were not enough, staff are also exposed to and forced to resist extortive demands from DC authorities in Libya in the course of their work. Staff in Greece find themselves having to continually justify to their own families and local community why they are

¹⁰¹ IRC staff describing work in Libyan detention centers.

¹⁰² Women's Refugee Commission, 'More Than One Million Pains.'

even working with migrants and asylum seekers at all in an environment of anti-immigrant, anti-NGO public sentiment.¹⁰³ It is not surprising that IRC's staff are themselves "traumatized," as one working in Libya stated, nor that high staff turnover due to stress was identified as an operational challenge for IRC in one of its most recent Libya proposals. In both Greece and Libya it was reported that staff are taking advantage of the IRC's confidential employee assistance program to seek counseling support. "Leadership needs to be mindful of the psychological support staff will need" one staff commented, encouraging the agency to ensure its duty of care obligations are properly understood and balanced against the compelling desire to help those detained in Greece and Libya.

"We Are a Small Heaven:"¹⁰⁴ Bringing Humanity to Hell

Immigration detention has been described as "a system that inherently limits efforts to alleviate suffering."¹⁰⁵ At its foundation, its practices are based on the denial of and assault on the dignity of those detained, a "negation of their most fundamental identity, that of a human."¹⁰⁶ It is no coincidence that one of the most frequently used terms to describe the conditions and abuses detained migrants and asylum seekers face in Libya and Greece is "inhumane." Humanitarians are used to working in some of the most inhumane places on earth, but there is something about the detention centers of Libya and RICs of Greece that have the power to shock and dismay even the most seasoned professionals. One IRC staff with deep and long experience described their visit to a Libyan DC as the "worst" situation they had ever seen. Another, echoing a familiar trope, referred to the conditions in Moria as "hellish." An IRC leader summed it up this way when articulating their view of the single greatest ethical challenge of working with detainees in Libya:

"Humanity is the key thing. When I visit detainees, its such a heartbreaking situation. Of all the peoples we serve, these have been the most affected, they are so hopeless. Hopelessness is one of the things that really gets us."

As we have seen, it can be extremely stressful and demoralizing to work under such conditions. In response, IRC staff found moral sustenance in small victories that signaled their work made a difference in individual lives. The IRC Libya team's ability to successfully secure the release of more than 25 migrant TB patients from detention and convince the national TB control program under the Ministry of Health to make treatment spaces available for them was heralded by several staff as an example of "why we do this." Regarding Greece, one staff suggested there was a transformational power to the most mundane of acts under conditions of such extreme dehumanization: "we are friendly and professional" in our dealings with our mental health clients, they remarked, our clinic is "a small heaven" for them.

While not phrased in such terms, it was evident from IRC staff remarks that the desire to support and uphold the dignity of detainees was a valid basis on which to justify working in detention spaces, was an implicit objective of that work, and was one of the most important ways some individuals motivated themselves to continue with it in the face of challenges and hardships. The term *témoignage*, per se, was never used by any IRC staff consulted for this research. But some of its constituent principles clearly resonated throughout the agency. Being present, among and

¹⁰³ The degree of stress this may place on staff should not be underestimated. Anti-NGO sentiment can often take violent forms, such as when the Oxfam office in Athens was ransacked in May 2018.

¹⁰⁴ IRC staff describing the value of IRC's mental health work with residents of Moria.

¹⁰⁵ Kostioni, *Detention of Migrants and Asylum-Seekers*, pg. 41.

¹⁰⁶ *Ibid* pg. 49.

within, such an oppressed group, was considered necessary to enable IRC to speak out as best they could about their plight and to advocate for solutions, no matter how unlikely they might be to come to fruition. This physical proximity, the demonstration of solidarity with the most needy wherever they happen to be, is one of the truest forms of expression of the principle of humanity. Feedback from clients from Moria receiving mental health services from IRC suggests proximity and presence were valued. “We [the humanitarian community] are probably the only ones seeing them as human beings,” one interviewed for this project observed. “Maybe this is the most important part of the intervention.”

But as much as solidarity brought some relief to those who were detained, being within and among them also had beneficial impact on IRC staff, expanding their senses of humanity. For one IRC staff, the residents of Moria were “very vulnerable people, but they are very resilient and strong. You see very fast results which usually takes a long time. This feels really good.” For another also working with populations from Moria, “seeing how they try and fight... they don’t give up... is changing my view of life. It makes me want to help them more and more. I am like a student and they are my teachers.” It may be impossible to quantify, or to compare with the hard metrics of mental health consultations performed or TB cases cured, but the importation of small doses of dignity into these most inhumane of environments should be treated as a critically important result of IRC’s work with detainees in Greece and Libya.

Concluding Remarks and Emergent Questions

The IRC faced significant ethical challenges in its work with detained migrant and asylum seeker populations in Greece and Libya which forced the organization to make trade offs and compromises in its efforts to deliver assistance in line with humanitarian principles. Attempting to provide humanitarian aid in such inhumane contexts provoked nagging questions about the organization’s moral integrity and the potential it could be doing more harm than good. It surfaced tension between a perceived humanitarian imperative to be with and among those it considered the most vulnerable and an acknowledgement that it might not actually know exactly who or where they were, nor whether they could reach them. **At its most fundamental level, IRC sought to find a morally acceptable way of working that would allow it to operate within detention systems it opposed without becoming a part of those systems. Attempting to do so created moral distress for many of those so involved.**

A reflection on IRC’s experience working with detained migrants and asylum seekers in Greece and Libya raises a number of potential lessons and further questions that the agency might consider as it grapples with similar issues in its work with other populations facing restrictions on their liberty, up to and including detention or forced captivity.

- 1) ***The context within which a detention regime is situated is critical to an understanding of the ethical challenges that await humanitarians that foray into them***

In both Greece and Libya the role and purpose of the detention of migrants and asylum seekers was intimately linked to and implicated in European migration containment and externalization policy agendas. In Libya it was further entwined with international criminal human trafficking networks. It was these contexts, as much as the specific national immigration and detention policies and practices of each country, that stoked some of the most serious ethical concerns about complicity for IRC. When examining other contexts in which IRC works with people detained or facing severe constraints on their liberty, it is important to unpack as much as possible the

larger objectives, if any, of such confinement. In Myanmar, for example, detention of Rohingya in internment camps is a component of the systematic discrimination and segregation of one of its minority populations, whose alleged intention may be ethnic cleansing. In Iraq and North East Syria, by contrast, detention is applied as a form of collective punishment to some deemed guilty by association with terrorist fighters. While IRC might face concerns about complicity in each case, the nuances of the moral discomfort, and the mitigation strategies it pursues, might well appropriately differ.

2) Semantics matter and can obscure the real purpose or function of detention

In both Greece and Libya the semantics of detention were problematic. Calling something a “reception and identification center” conveys a sense of welcome and hospitality. Migrants and asylum seekers residing in Moria and Vial experienced none of these. IRC remained aware throughout its work in Greece that despite its “open” state, Moria still was a critical node in the EU’s efforts to deter, contain, and control asylum seekers. In Libya the use of the term “detention center” itself is the problem. “Detention” doesn’t begin to truly convey the exploitation and commodification that is arguably the foremost purposes of the places where migrants are held. The line between “official” and “unofficial” detention centers itself is at best a convenient, operationally useful fiction. Calling something a “forced labor camp” or “slave market” instead of a “detention center” should engender a different moral evaluation of what is happening within them, and what a humanitarian agency rightly should be saying or doing in response. Similar euphemisms exist in other contexts where IRC is working, with highly charged political implications. In Iraq, for example, places where families with alleged terrorist affiliations are kept are referred to as “closed camps” rather than other terms such as “internment” or “detention” sites which while they may be more accurate, are off bounds. In Myanmar one finds Rohingya in “IDP camps,” which may soon be converted into “villages,” benign and normalized terms for what is the systematic segregation and control of this population.

3) Complicity is not the same as moral taint, but there is a fine line between them

IRC’s concerns that its engagement with detention in Greece and Libya could equate to complicity in the harm being done to migrants and asylum seekers ran deep and wide throughout the agency. These concerns caused moral distress for many staff. It was right that IRC fear that its engagement in this work could cause inadvertent harm. It was right that it took extensive efforts to mitigate this potential through its pursuit of explicitly harm-reducing interventions and vocal condemnations of the systems and perpetrators of the harms. Could more have been done on the latter, perhaps, but IRC was clearly not silent, nor can it be depicted as consenting. When examined from more robust philosophical treatments of the concept of complicity, however, it would not be right to state that IRC is complicit in these harms. Moral responsibility for the harms which IRC is seeking to alleviate should remain properly where it belongs, with the principal actors in Europe, Greece and Libya themselves who are the architects and implementors of them. What IRC seems to be most grappling with is a sense of moral taint, or the real potential for its moral integrity and reputation to be polluted, by its association with the detention regimes in both countries. And it may be impossible to erase, fully, the noisome smell of the detention regimes that rub off on IRC through its work. It remains incumbent on IRC to continue all efforts to understand the risks of its engagement and to take action and exercise voice to mitigate those risks to prevent a slide into more morally responsible forms of complicity. While IRC has been able to achieve this to date in Greece and Libya, it may not be possible in all locations where the

opportunities for advocacy are more limited and the purposes to which detention is employed are as or more sinister than they are in Libya at the moment.

4) *The importance of placing limits around risky associations*

While some IRC respondents consulted for this study felt they should have been developed much earlier in the Libya response, the Refugee and Migrant Platform's Principled Framework for Intervention in Detention Centers was recognized as a very important step in the evolution of the inter-agency response in Libya. As a way to help organizations manage risky associations and navigate the ethical morass that is Libya's detention system, the Framework is not unlike other likeminded efforts in other countries where IRC works with detained populations. Similar operational frameworks based on humanitarian principles have been produced in Myanmar¹⁰⁷, Iraq,¹⁰⁸ and North East Syria.¹⁰⁹ Such initiatives are very welcome, and needed, when working with detainees. The ICRC, the leading authority on detention, has long recognized that its work in prisons can be criticized for lending undue legitimacy to harsh regimes which exploit the ICRC's presence to give a false impression that the detention system is good because they are working with the ICRC. In response, one of the ICRC's criterion for engagement which enables it to live with the potential accrual of misleading legitimacy afforded by its presence is that it must see signs of improvement in detention. As Slim notes in his review of its work with detainees, "ICRC's ethical judgement on the rights and wrongs of a dubious association hinged on their operational freedom and practical effectiveness weighed against the risk of... the false legitimacy that ICRC's presence and association might create."¹¹⁰ At the heart of the Libyan Principled Framework sit questions about operational independence. IRC is asking itself hard questions about the extent to which its programs and advocacy are "practically effective." Following the approach above, the of lack of improvement in conditions in detention should be cause for concern for IRC in Greece and Libya, factoring into its consideration of its continued presence.

5) *The centrality of advocacy*

In Kotsioni's review of MSF's immigration detention work in Greece she emphasized the importance of advocacy as follows: "Advocacy was not only complementary to the provision of direct assistance but a prerequisite for operations."¹¹¹ While perhaps not a prerequisite for IRC, there can be no doubt that advocacy played a critical role in IRC's operations in Greece and Libya. It provided an impetus for IRC to get involved in the provision of direct services to detainees in order to establish a presence among that could amplify IRC's voice on their behalf. It served as a moral marker and functioned as a moral salve, enabling the organization and its staff to provide services without appearing to be complicit and approving of the harms that detention was causing. It helped keep IRC's moral integrity intact. Advocacy was also a conscious pathway to policy reform that it was hoped, if not fully realized, could expand the scale and impact of the albeit limited services being provided to small numbers of detained migrants and asylum seekers in both countries. In situations where such robust advocacy cannot be undertaken, it may be more

¹⁰⁷ IRC Myanmar, *Navigating the Nexus: Principled Engagement in Adverse Conditions*, October 2018.

¹⁰⁸ IRC Iraq, *Country Program Internal Guidance: Operating in de facto detention camps*, draft shared with author April 2019.

¹⁰⁹ ICRC/UN OCHA, *Operating principles guiding the humanitarian response in Al-Hol camp*, 13 March 2019.

¹¹⁰ Slim, *Humanitarian Ethics*, pgs. 192-3. All the discussion of ICRC's approach in this paragraph is taken from Slim.

¹¹¹ Kotsioni, *Detention of Migrants and Asylum-Seekers*, pg. 53.

difficult to avoid the feeling and perception of complicity and it may generate even greater moral distress among staff.

6) *The humanitarian imperative will continue to pull humanitarians like IRC into detention spaces, forcing tough questions about proportionality and relative need.*

In both Greece and Libya IRC assessed detained migrants and asylum seekers as populations having some of the most extreme needs in the country. The organizational and personal drive to alleviate suffering where it is most acute pulled it, despite grave apprehensions, to work with them. Yet while the severity of their needs was extreme, the scale of need was small compared to other populations that IRC served.¹¹² Working with detained populations forced several challenging questions for IRC in this regard. How does one weigh the extreme severity of need of a relative very small number of people who may command high levels of public visibility against the perhaps less extreme but still severe needs of many more outside the spotlight? How does one compare the value of an intervention whose most fundamental impacts may be an unquantifiable expression of solidarity with the most downtrodden or the amplification of their voices through denunciation of the system causing them harm with more easily counted material assistance benefits? The way IRC navigated these tensions in Greece and Libya seems both reasonable and appropriate given the challenges and moral qualms associated with work with detainees. It did not put all its eggs in the detention basket by any stretch, striving to situate that work within its wider country and global strategic objectives.

7) *Has the IRC pushed itself as far as possible to reach those most in need in Libya?*

The contour of IRC's detention programming footprint is similar to the rest of the humanitarian community in that all assistance has been directed towards "official" detention centers under DCIM control. The reasons advanced by IRC and other humanitarian actors to explain why they are not working in "unofficial" detention centers are comprehensive and sound. They include, among other things, a lack of knowledge about where those facilities are; their suspected location in remote or difficult to access parts of the country; unknown numbers of detainees held within them; serious concerns about the security in and around the locations and centers themselves; the complete absence of monitoring or oversight by any central authority or international agency; their control by non-state "illicit" or "illegal" armed militias, criminal human smuggling gangs, or both; and the potential for humanitarian engagement to legitimize or be co-opted by this criminal enterprise. Some UN agencies might have the additional understandable constraint of only being able to work with the UN recognized side of the conflict, of which the DCIM is an arm.

All of these factors create justifiable grounds for abstention. But to what extent may this also be a manifestation of reportedly increasing risk aversion on the part of the humanitarian sector?¹¹³ The illicit, illegal, or non-state character of the actors running "unofficial" centers shouldn't be a barrier in their own right to humanitarian negotiation to try and gain access. Humanitarians are called upon to engage with all forms of authorities, including non-state armed groups or terrorist organizations, that control territory and access to populations in need. IRC itself has ongoing experience working among human smuggling networks or amidst structural organized crime in

¹¹² As noted in prior discussions on Greece, recent demographic and geographic changes in the migrant and asylum seeker population render this statement less true than at the start of IRC's work in the country.

¹¹³ Stoddard, Abby, Haver, Katherine, and Czwarno, Monica, NGOs and Risk: How International Humanitarian Actors Manage Uncertainty, Humanitarian Outcomes/InterAction, February 2016; MSF, Where is Everyone? Responding to Emergencies in the Most Difficult Places, July 2014.

other locations, such as Agadez, Niger, and El Salvador. At an earlier period in its organizational history, IRC provided assistance to Rohingya refugees from Myanmar held captive in human trafficking camps in southern Thailand. In the end the outcome may be the same, but have all best efforts been made to provide aid to those that some believe may be the most needy among the migrant population in Libya?

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|--------------------|-------|------------------------------------------------------------|---------------|
| Darren Hertz | IRC | Country Director-Thailand | 17 April 2019 |
| Atchara Chan-O-Kul | IRC | Legal Assistance Coordinator-Thailand | 17 April 2019 |
| Chakkrid Chansang | IRC | Protection Coordinator-Thailand | 17 April 2019 |
| Saw Khu | IRC | Partnership Manager | 17 April 2019 |
| Elinor Raikes | IRC | Regional Vice President-Europe/North Africa | 26 April 2019 |
| Justin Kufakweimba | IRC | Deputy Director Programs-NE Syria | 9 May 2019 |
| Azad Murad | IRC | Field Coordinator, NE Syria | 9 May 2019 |
| Dukas Protogyros | IRC | Psychologist, Greece | 10 May 2019 |
| Thanasis Andronis | IRC | Psychologist, Greece | 14 May 2019 |
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| Arjan Hehenkamp | SV | Deputy Director | 12 April 2019 |
| Anne Marinussen | SV | Policy and Advocacy Officer | 12 April 2019 |
| Amanuel Mehari | IOM | Migrant and Refugee Platform Coordinator-Libya | 2 May 2019 |
| Insaf Mounadi | IOM | Protection Officer-Alternatives to Detention Project-Libya | 2 May 2019 |
| Renata Rendon | Oxfam | Head of Mission-Greece | 8 May 2019 |