

Producing and Using Images in an Ethical Way

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Guidelines for MSF staff

This document is has been created by MSF's Photo Ethics Working Group and should be seen as work in progress. It is intended to stimulate debate throughout the MSF movement about the use of images and to help MSF staff use images in a truthful way that protects the rights and dignity of the subjects. The topics discussed and highlighted in this document are elements of what could be considered as 'good practice' for photographers as well as editors. Proper use of visual material is a difficult and naturally subjective one, and the Working Group is unable to provide clear answers to all cases. The group does aim, however, to encourage further thought and discussion around these issues.

The words photo, photographers are used in the document but also refer to moving images and camera crews.

There is need for a set of guidelines covering all necessary steps in the production of photos. This will be useful for those who have no experience on working with or producing images. Others will develop these separately in the Working Group.

The Working Group welcomes feedback on this document.

Comments on the guidelines should be sent to

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The members of the Working Group would like to thank all the MSF staff, photographers, lawyers and academics that have offered assistance in the producing these guidelines.

September 2007

List of Contents

- 1. Introduction**
- 2. Obtaining Images**
 - a) Different relationships with photographers**
 - b) Preparation of field teams and photographers**
 - c) Safety and security considerations**
 - d) Good practice**
 - e) Obtaining proper consent**
 - f) The field staff's responsibilities**
- 3. Distribution of Images within MSF**
- 4. Choice and Use of Images within MSF publications**
 - a) Manipulation of images – colour, cropping, enhancement, anonymity**
 - b) Child protection issues – consent, nudity, vulnerability**
 - c) Taste and decency – position, perspective, distance, obscenity, suffering, stereotypes, accuracy and honesty**
 - d) Appropriate audiences – fundraising, news, medical, internal training**
- 5. Legal Rights and Protections**
 - a) Images of expatriates/employees**
 - b) Images of patients/local populations in HQ/section countries**
 - c) Images of patients/local populations in the country where they were photographed or reside**
 - d) Images of patients in their own countries**
 - e) Images of patients/local populations in international media**
- 6. Annexes**
 - a) Topics for further discussion/debate, for use with Associations/AGMS**
 - b) Example of medical publication patient consent form**
 - c) Proposed 'Photographers' Sensitisation Document'**
 - d) Frequently Asked Questions**
 - e) Suggestions for further reading**
- 7. List of Members of Photo Ethics Working Group**

1. INTRODUCTION

MSF's overall purpose is to save lives and alleviate suffering while protecting human dignity and seeking to restore people's ability to make their own decisions.

Images can help MSF show the reality of a situation, expose neglect and despair, inspire hope and understanding and connect people around the world. At the same time, images (both video and still photographs) can cause great harm and offence if they are too extreme, intrusive, manipulated or used inappropriately.

No set of guidelines can anticipate every situation, and an element of self-regulation and common sense is required. However, the advice given in this document is intended to guide MSF fundraisers and communications staff towards best practice use of images, and to avoid exploitation or offence.

2. OBTAINING IMAGES

a) Different relationships with photographers: various levels of "control"

There are basically three different ways in which MSF works with photographers:

- I. MSF requests a photographer to make a photo report for MSF. In such an agreement, the photographer is given a formal contract for the work and is paid for it by MSF¹
- II. MSF requests a photographer to make a report while he/she is also carrying out work for other client(s) in the same region
- III. MSF helps a free-lance photojournalist make his/her own story by facilitating access to our projects and/or patients. In this type of agreement, MSF's work is simply used to tell part of the story they are following.

When a photographer is under contract with MSF

The photographer should adhere to MSF rules and regulations, and get a full security briefing by the Head of Mission or Project Coordinator. Depending on situation, the photographer will receive an MSF ID card and will perform his/her work while wearing an MSF T-shirt or vest. The agreed work of the assignment must be set out in a Terms of Reference document. Cooperation should be based on mutual goals and agreement.

When MSF has partly-assigned a photographer

The same rules apply as those mentioned above, but only for the period in which the photographer is working on the MSF assignment. At the same time, it must be made clear to the photographer that while he/she will be working for MSF for only part of the visit, he/she will be associated with MSF for the duration of their trip within the same context and therefore the photographer should always respect our basic principles. (For example, this could mean that a photographer should not hook up with Mai Mai rebels in Katanga, DRC after having visited our

¹ When a photographer is to provide material under a formal contract with MSF, you can download and modify the standard template contract from the photo database for your own use.

therapeutic feeding centre in Dubie.) The Head of Mission and Project Coordinator should be very clear with the photographer on the do's and don'ts within specific contexts. Communication department staff should also warn the photographer about these issues in advance of his/her departure for the field.

When MSF is only helping to facilitate a free-lance photographer

The photographer and MSF will work together to get a story out into the public domain where it suits MSF advocacy purposes. This arrangement requires more freedom of movement and interpretation for the photographer in order to report and tell a balanced story. However, the photographer should realise his/her activities can have consequences for MSF. If he/she is biased in the visual interpretation of a situation or MSF's position toward parties involved in a conflict, it could have a negative impact for MSF². These issues should be discussed with the photographer before they begin their work either by staff from the communications department or by the Head of Mission/Project Coordinator. In very precarious situations, it might be advisable to work with photographers who have already worked successfully with MSF.

When MSF staff and volunteers act as a photographer

MSF staff and volunteers should adhere to MSF rules, regulations and the security briefing, as already given by the Head of Mission or Project Coordinator.

MSF staff and volunteers should agree the scope of photographs and ensure that data is collected to accompany them. MSF staff and volunteers who are taking photographs should read the "sensitisation" document to alert them to concerns – ethical and practical - about taking photos of our work and patients.

Protection of the patient is the key factor as well as ensuring good practice and obtaining consent, as outlined below.

b) Preparation of field teams and photographers

- Before an MSF staff member commissions or agrees to help facilitate a photographer, they should always check his/her name and credentials with the manager of the MSF international photo database. MSF maintains an unofficial 'blacklist' of photographers who have behaved badly while working with MSF in the past. It is MSF's practice not to work with these photographers again.
- The Photo Ethics Working Group has written a "sensitisation" document to alert photographers to some of our concerns – ethical and practical - about taking photos of our work and patients. Please ensure that the photographer reads and signs this document to say they have understood it. This document is available as an annex to these guidelines as well as on TUKUL and the MSF photo database.

It is crucial for MSF field and communications teams to discuss, agree in advance, and produce in writing, key points regarding an assignment before the photographer starts to work. A clear agreement or terms of reference helps avoid unpleasant misunderstandings later. In some cases, the Head of Mission may be the best person to have this discussion with the photographer. Often the project

² For instance, MSF had to postpone activities in Bunia, DRC when a photo was published showing MSF bringing medical aid to armed Lendu warriors. The Hema fighters saw the pictures, they accused MSF of showing partiality in the conflict.

coordinator may do this. The actual person may depend on the operational section.

Subjects to be covered with the photographer include, but are not limited to:

- Travel and accommodation: Is the photographer permitted to travel in an MSF vehicle? Will they be hosted in the MSF house? If so, are they expected to contribute payment towards food and drink? If so, how much?
- Photographer's agenda: Find out what story the photographer is pursuing and how the medical/humanitarian angle provided by MSF will fit into this. Check whether they already have agreements to publish their material in any given media or for any other organisations (e.g. human rights organisations).
- The photographer's perceived link with MSF: In some contexts it may be deemed undesirable for a photographer to be seen as 'working for MSF'. In such cases, it might be decided not to let the photographer travel in MSF vehicles or stay in the MSF compound.
- Receiving permission to take images in medical structures run by others. Most medical structures where MSF teams work do not 'belong' to MSF. Please ensure that the photographer gets permission from the necessary authorities before starting to take pictures. Permission may need to be granted from local military commanders as well.
- Overview of medical ethics

c) Safety and security considerations

If there are any doubts about safety and security considerations, communications staff should always double check with their colleagues in operations.

Safety and security issues concerning photographers in the field consist of two levels of risk:

- I. The risk of working in a dangerous area where lives are at stake and a good knowledge of the context is needed to make proper choices concerning safety and security. These risks can easily be discussed during a good briefing and a clear explanation of MSF's operational rules in the field.
- II. The risk of cooperation with a photographer who does not respect or is not aware of MSF's principles of neutrality, impartiality and independence. These risks cannot be ruled out and require good communication between MSF and the photographer. The photographer must be informed if he/she is expected to follow the same security rules as expatriates. They must also clearly understand what types of behaviour will be considered unacceptable, e.g. taking photos of roadblocks, etc.

The different methods of working with photographers call for different approaches:

d) Good Practice

While MSF wants to get good photos of our work, we must be sure that our patients are not treated unethically. The Working Group does not have all the answers, but some points to consider are highlighted below:

Cultural sensitivity: Remember that the way a photographer approaches individuals and communities creates a relationship that can have a lasting impact

on field staff and future travellers. Before travelling to another culture, suggest that they talk to colleagues or consult a guidebook to learn about that culture's views towards photography and the issues the photographer wants to document. Find out if photography is considered rude or sacrilegious. They should show extreme care and sensitivity when photographing taboo practices or stigmatised populations, (e.g., unveiled women in Afghanistan). Photographing patients and other people involved in certain activities (e.g., abortion, prostitution) is sensitive in most societies.

Fair use of photos: MSF must represent patients fairly. If someone were suffering from one disease (e.g. malaria), it would be wrong to use his or her image to illustrate an article about kala azar. If a child is not an AIDS orphan, (e.g., his parents died in a car crash), it would be wrong to describe him as one. MSF needs to make sure we work with photographers who accurately document the conditions of the patients they photograph. At the same time, we need to be sure that the patient is comfortable with this information being collected.

Basic information: All images need to provide basic information: the date, place, name(s) where possible, a description of the situation, any restrictions. The medical condition of a patient is often a vital piece of information (we would not want to describe someone as suffering from TB when actually they had cancer, for example).

e) Obtaining proper consent

Obtaining someone's consent to be pictured is not as simple as you may think at first, especially in an MSF context. The way the consent is going to be asked, the language that is used, the place where this request is taking place, the person who's asking it, the situation of the patient, his/her health status, etc. Numerous elements can influence individual consent. It is important for MSF communications and field staff to be aware of the complexity of the question.

MSF has to underline specific aspects in obtaining consent:

I. Protection of the patient

Obviously, our priority is protection of our patients. The most important thing is that they are given good information about why MSF wants to take their photograph, and that it is their right to refuse to participate.

The quality of their understanding and their freely-given consent is much more important than whether consent is written on paper.

Below are some important factors to consider

- MSF is aware that MSF medical staff and their patients do not have an equal power relationship. When a photographer enters a health facility with MSF medical staff, patients may feel unable to refuse a request to be photographed. Patients may also be worried about upsetting the staff member treating them in case it jeopardises their care. Generally, consent should be requested by the photographer.
- Consent negotiations must be carried out in the subject's native language. If national medical staff are used to translate the discussion on consent, one must realize that the patient may feel pressure to agree.
- In many cultures, family consent is required.

- MSF's patients are often living in difficult situations that may make it hard for them to give meaningful consent to be photographed. Patients who are mentally ill, unconscious, in great pain or distress, in a state of shock and minors all fall into this category. In such cases, a caregiver or close relative should be asked for consent on their behalf.
- The photographer and MSF field staff should explain any possible uses of the photo to the subject. If a patient is concerned, it may be possible for the photographer to take photographs in a way that keeps the patient anonymous. It must be made clear to patients that the photo could be used widely, e.g., on the Internet, internationally and in their home country. No promises should be made about limiting the usage, as MSF cannot guarantee this.

All MSF patients should be made comfortable with the photo process. They should be allowed to keep their anonymity when they desire to do so. And for MSF, it is important, especially in difficult cases to be even more cautious. SGBV programs, mental health programs, AIDS or TB projects are some examples of situations where the risks to the patients are important and could result in doing harm or wrong. For example, patients who have been recently traumatised (sexual violence).

II. Written Consent?

It is true that MSF would have greater legal protection if we were to insist on written consent in all cases. However there are practical and security issues which make this inadequate and often impossible.

1. Many of our patients are illiterate so written consent wouldn't necessarily mean that it was informed consent.

2. In many instances there could be negative security implications for patients if they are seen to have willingly cooperated with MSF advocacy efforts³.

The CASCA (The Canadian Anthropology Society) Statement of Professional Ethics sums up some of the ethical problems of getting signed consent from every subject, saying:

“While obtaining a signed consent form will often serve to verify informed consent, in the study of cross-cultural contexts, illegal activities or politically sensitive settings, it may be difficult, impossible, or culturally inappropriate to obtain knowledgeable and voluntary (let alone written) consent from everyone in the field setting. Sometimes a requirement that one obtain signed consent forms from everyone studied may violate anonymity and actually create risks for some groups of subjects. Therefore, the signed consent form may be inadequate or inadvisable in certain circumstances, in which case the researcher should employ culturally appropriate methods to allow subjects to make ongoing decisions to participate or to withdraw from the research process.”

³ E.g. while discussing the possibility of having a photographer in Chechnya with MSF support, the team in Russia was preparing by assessing all risks involved. The photographer would clearly not be moving around with any link to MSF whilst in Chechnya (MSF can only point out some good local contacts and give non-formal approval of documenting local staff's activities), the main concern was that if he were to collect written consent, then he would be walking around with a bunch of documents holding names and signatures of the patients portrayed. This is highly risky and could get them into trouble if the photographer faced a check by Russian authorities.

There are exceptions to this rule. The first is if one wishes to document the medical condition of a particular patient in order to include his/her case in an article published in a formal medical journal such as *The Lancet*. Such specific consent forms can be requested from your operational section HQ (an example of the *British Medical Journal* consent form is included here in the annex).

The second situation is when a specific individual's case history is being recorded together with their photo – perhaps for an MSF report – in this case formal consent by the subject is highly recommended. However, one should carefully consider any possible security implications for the subject before asking him/her to commit a signature to paper.

We strongly advise obtaining written consent for images that are going to be part of events that are defined in advance (like an exhibition) and for images that are definitely going to be used in the country where they were shot.

III. Verbal consent from the patient

Verbal consent from the patient or the patient's caretaker is considered sufficient, as long as it is informed and freely obtained. Staff are requested not to make any promises about usage of material, as MSF cannot guarantee how the material will be used. It is the quality of the consent gained that is significant, not whether or not it is written on paper, although this can be sometimes useful and requested.

IV. Removal of consent

It is possible that someone can remove consent due to personal reasons. MSF has to respect this and record that consent has been removed. In reality this happens rarely (most recently for Congo exhibition in 2006). However as MSF begins to use these guidelines, this may change.

f) The field staff's responsibilities

It is the duty of MSF's medical staff to protect the best interest of their patients.

MSF staff should consider this responsibility when interacting with photographers and patients in five ways:

- Protecting MSF patients and confidentiality
- Doing good
- Doing no harm
- Negotiating informed consent
- Granting rights of confidentiality and anonymity

As an MSF doctor or nurse in the field, it is your job to step in to protect your patient's interests if you think that they are being unfairly treated by a photographer or cameraman.

Photo information and medical confidentiality

MSF asks photographers collaborating with MSF to provide written information to help us accurately describe the contents of an image. This should (at a minimum)

include: the date, place, a description of the situation, any restrictions on the use of the photo requested by the subject (e.g., not to publish in a given country). Photographers are also requested to record the names of all the patients and others in the picture, not just the expats, (that is, after checking beforehand that the subjects are willing to give them). The medical condition of a patient is often a vital piece of information for the communications staff to use the picture honestly (we would not want to describe someone as suffering from TB when actually they had cancer, for example). However, medical confidentiality about a patient's health should always be paramount so MSF staff should not give out medical and personal information to the photographer if the patient does not agree.

3. DISTRIBUTION OF IMAGES WITHIN MSF

The MSF internal photo database is the primary means to distribute images within MSF.

Accuracy

People providing original images to the database should ensure that all data regarding an image, including any restrictions on the use of a photo, are passed to the database administrator for inclusion on the MSF internal photo database.

People selecting photos for usage must always carefully check the photo database for any special instructions or copyright restrictions related to the use of a photo and follow them to the letter.

Courtesy

Communications staff should remember that it is professional courtesy to provide field/local staffs teams who facilitated the work with copies of images (via the field). This should be done in all cases within a reasonable timescale to ensure a good relationship. Photographers could also provide Polaroid shots to patients as examples.

Where images are supplied without accompanying data, staff should ascertain the origin and the whether it is appropriate to use the image.

Former staff

There are some former staff who are - for different reasons - not welcome to work for MSF anymore or it is inappropriate for their images to be used. Ideally, they need be removed from the international photo database. In some cases this may not be practical e.g. group photos. All Director of communications to advise their Human Resources department to advise Bruno de Cock of any such relevant staff, who will do his best to ensure that relevant photos are updated to record such information. (SEE Q&A SECTION – the details of how this will work in practice still need to be clarified).

4. CHOICE AND USE OF IMAGES WITHIN MSF PUBLICATIONS

Taking the photo is one thing – how we use it is another.

a) Manipulation

Every image MSF has in its photo database or in any other location has undergone some changes at some point. When the original was a slide or a negative, it was scanned and most likely adjusted in hue or colour balance. Even digital images are rarely untouched before they arrive at one of our desks. What can be considered a manipulation of an image is subject to interpretation, but

some points are worth considering no matter one's personal opinion on authorised or non-authorised manipulation.

- I. **Changing colour:** The most common visual elements to get tweaked are colours and the removal of dust and scratches. Colour corrections are required to assure a good rendering of the image in print or web publishing. Conversion to black & white can be necessary when a publication is printed in black and white. All of these things should be done by professionals. Tweaking colours requires a good, calibrated screen + knowledge of the publishing medium (e.g., type of paper, web, poster). Changing colours on a regular MSF screen will most likely ruin the image file.
- II. **Cropping:** Cropping (or cutting out parts of an image for size or other considerations) is common in all media, and this is no different within MSF. It's hard to draw the line on what is acceptable or "good practice" and what is beyond that. Cropping pictures is considered a fundamental right by the editor of a web/printed publication. However, it is a sensitive issue with professional photographers. Many make a point of telling MSF that they do not want their images cropped and they will mention it in the instructions that come with the photos. (Check the database carefully for such advice). It is important to bear in mind the integrity of the photographer's vision and cropping should not damage the context and atmosphere shown in the image. Sometimes there's no other way than to crop a certain page, but one could repeat the picture in its "full" form on another page (e.g., on a website one can announce an article on the homepage using a cropped version and then use the full image on the article's page).
- III. **Enhancement:** Digital photography has opened the door for more "enhancements". It has never been so easy to take out a red-eye effect or facial blemish. However, one must think very carefully before modifying an image to create what might be seen as the "perfect" picture. For example: "How about taking out that fly on this little boy's cheek? Isn't that a bit too much for our donors?", "Can't we take out that military guy with his kalashnikov in the background? It's really ruining this great image". Many will think it's obvious that this is a step too far, but when one is getting desperate to find the right image, the limits of good practice tend to change.

If you simply cannot avoid manipulating an image in this way, make sure every party involved agrees with the intervention and the message behind. The photographer needs to give his approval as the creator. It is important to inform your Photo Editor or other direct line manager in MSF before production. Consider the necessity of manipulating the image. Does MSF need to do this to get a point across? Consider MSF's credibility (and that of the photographer). Photos used to have an aura of evidence, to be proof of something that really happened at a certain time and place. This aura has vanished in the digital era, but MSF still has a certain credibility, and MSF certainly wants to use this credibility when it uses images to show the world what is happening in a certain place or situation. Any digital manipulation will damage the credibility of the images MSF uses.

- IV. **Transposing:** this should not take place as it does not represent the image that was taken.

b) Child protection issues:

Images of children are particularly likely to cause distress or offence and careful thought should go into the selection of such images.

- I. Consent of child and caregiver: Strict regulations regarding privacy in many countries (like the U.S. and U.K.) prohibit the use of images of actual children without authorisation and compliance, and with very strict privacy protections. However, a full examination of various country laws is beyond the scope of the Working Group's remit. These guidelines include formal "consent" forms for a child's caregiver to sign where possible.
- II. Nudity: One issue that needs careful consideration is portraying nudity. While on a practical level, babies are born naked and many of our younger patients (particularly in the developing world), happily run around with no clothes, there is a perception in many countries in the West that it is not appropriate to show a child's naked genitals. Be very careful in using images that might cause problems.
- III. Vulnerability: It is extremely important that images used by MSF do not twist reality. For example, a child's mother should not be cropped out of a picture in order to make a baby look more helpless. A child should not be placed on the ground in order to give the impression that it is abandoned and unloved.

Apply your own moral code on visual portrayal – ask yourself how you would feel if the image was of your children. If in doubt, do not use it.

c) Taste and Decency

Where possible, MSF wants to show dignified human beings, not helpless objects of pity. How people are portrayed may make a difference:

- I. Position of the subject: A malnourished child crawling naked on the ground and photographed from above might evoke the picture of an animal, or reduce the child to an object in the eye of the viewer. If the same malnourished child is seen in its mother's arms, or shown to be taken care of or protected, the impression is completely different.
- II. Perspective: a black person lying on the ground with a white doctor bent over them, taken from above, can enforce the impression of a helpless victim to be looked down upon. Photographed at eye level, the same person seems to be on the same level as the viewer.
- III. Distance: Showing a person in emotional distress in a close up shot might violate his/her privacy, while keeping a certain distance might show more respect.
- IV. Obscenity: Obviously MSF wants to avoid using obscene images. However, whilst this is easy to say, it is not always easy to know what the audience or society would consider obscene. (See section below on appropriate audiences). One must be careful with images that could be seen as reducing women, or children, to objects of desire. MSF should also not use images of patients with medical conditions that appear to reduce the humanity of the patient.
- V. Suffering: MSF works in some terrible places where awful things happen to people. It is right for the organization to alert donors to the truth of what is happening, and how it is affecting the populations with whom we work.

However, one needs to carefully balance images of extreme suffering with action to alleviate it. MSF wishes to avoid simply tugging on donors' heart strings (or wallets!), leaving them with the impression that MSF's patients are helpless without us.

- VI. Stereotypes: One must be careful not to propagate the outdated colonial image of "incapable Africans waiting passively for help from their white saviours" or promoting other stereotypes – for example, showing matchstick-thin, black, child's fingers dwarfed by a benevolent white hand/people holding out bowls of food. Images of victimhood should be avoided where possible, preferring instead a mixture of images including MSF teams (national and expat staff) in action, capable people helping themselves. Images showing what's going on outside the immediate medical environment can also add a positive and different perspective.

Whilst there is no getting away from the fact that our expatriates (many of whom are white) do treat locals in a hands-on way and that this is in fact one of the most powerful elements of the organisation (the proximity to our patients), we should ensure that such images are well balanced with those of the work of our national staff. Hopefully, as the ethnic diversity of our staff continues to grow, this problem will resolve itself (though we will never get away completely from the male photographer's obsession with pretty blonde nurses!)

- VII. Accuracy and honesty: Photos and the contexts in which they are used should avoid:
 - Wrongful attributions (false identification)
 - False information about places and people
 - Misleading juxtapositions
 - Using photographs from an outdated context without making this clear
 - Giving the impression that all work is done by expatriate staff
 - Using appeal/campaign photographs to make false generalisations

d) Appropriate audiences:

Otherwise, MSF accepts that communications and fundraising staff around the network will choose different images according to the audience they are targeting. For example, an image of a bare-breasted woman (even one who is breastfeeding) would not be acceptable in the U.S. or in much of the Islamic world, but would be perfectly acceptable to use in France. Equally, we might choose to use a graphic photo of childbirth in a midwifery magazine, but not in general donor material. MSF trusts its communications and fundraising staff to act as responsible "gate-keepers" for the material.

When visual material is used without accompany context information or text, MSF should be particularly careful as the images will transport the whole message. This is the case for posters, TV spots, and fundraising brochures. ***The most important thing is that we do not distort reality, either to make things appear significantly better, or more dramatic, than our teams on the ground find them.***

- I. General Public (eg fundraising): MSF fundraisers should be careful not to use an image purely for shock value. Careful thought should be given before using images of
 - Extremely emaciated children
 - Extreme medical conditions such as open wounds, ulcers, eczema
 - Large quantities of blood

- People in extreme emotional distress

However it is understood that at times the seriousness of the situation that we are dealing with warrants the use of powerful photos for the general public, even though they may cause people to feel upset.

- II. Medical audience: Pictures of extreme medical conditions may be acceptable for a medical audience.
- III. MSF internal training: The pictures selected should provide an appropriate preparation for the conditions the expat might find. Upsetting pictures might be appropriate to use if the right kind of context information is provided.
- IV. If in doubt, consult medical staff or Health Advisors

3. LEGAL RIGHTS AND PROTECTION

Who is ultimately responsible for the use of images?

The decision to use an image rests within each MSF section and is therefore the responsibility of the Director of Communications who has been delegated this responsibility from their General Director. When a MSF section circulates or uses highly questionable images [difficult to define until complaints are made and we know there are big differences in what is “unsuitable” among the sections] then that section can be held accountable for use of the image by the wider movement.

What is the legal status?

The legal protections afforded to people who object to being used in an image differ from place to place. Most of the legislation the Working Group uncovered relates mainly to the use of images within Europe. Here, it is clearly established that no one can use someone’s image without their consent⁴. In a number of exemplary court cases found by the Working Group⁵, this right is always balanced against freedom of speech and the right to inform. The Working Group has not found any clear example of an NGO being taken to court by patients who were unhappy with images made of them. This general trend to balance the protection of a person’s image against the right to inform is important for MSF, as a part of our mission is to bear witness to what we see. However, determining the clear and defined legal position on acceptable use of images is difficult. It is more a question of interpretation.

Although, everything is international, there are four components we need to consider:

- Using images of expatriates or HQ/sections personnel
- Using images of patients/local populations in HQ/sections countries.
- Using images of patients/local populations in the country where they were photographed (and reside)
- Using images of patients/local populations for an international audience (e.g. websites, international press).

a) Images of expatriates/employees

⁴ Consent must be certain but does not necessarily have to be written, it can be tacit.

⁵ Most relate to famous people attacking tabloids or glossy magazines like *Paris Match* or *OK*.

Does MSF have protection on its use of images of expatriates or even HQ staff? Could people photographed in some way take MSF to court because it has used their image? Most of the time, MSF offices do not request headquarters staff persons' permission to use their image. However, recently, sections have started to take steps to address this gap. For example, MSFB has recently introduced a new internal rule (règlement de travail) that says that every person working at the Brussels headquarters gives MSF the right to use his/her image. If someone does not want to grant this right to MSF, it must be specifically and officially stated. This same rule is stated in the contracts of expatriates going to the field.

b) Images of patients/local populations in HQ/section countries

There is the ultimate risk that a patient could potentially accuse MSF of inappropriate behaviour in use of images. Depending on the individual circumstances, it is likely that MSF would attempt to come to an agreement.

If we follow the guidelines, research suggests that it is very unlikely that MSF could encounter legal problems from using images of patients or members of a local population in HQ or other countries where sections are based. The law protects people against the abusive use of images, but one would have to show that there would be a negative consequence for the person represented in the image before they would have a case to complain. The Working Group has been advised by a legal specialist that this would be very unlikely. However, even if such a complaint were to be made, MSF would have some facts in our defence:

- MSF is not a commercial company
- One of MSF's aims is to advocate on behalf of populations in danger
- MSF can show (through these guidelines and other means) that it has started to consider the ethical problems related to the use of images.

c) Images of patients/local populations in the country where they were photographed or reside

Patients and other people photographed are more likely to experience negative consequences, such as discrimination, from the use of their image in their own country. Very few of them are likely to have the capacity to launch formal legal action against MSF. (Note: this fact should not be taken as impossibility. MSF is often sued in countries where we work, and legal systems differ from place to place. Therefore, it is NOT impossible for an enterprising person to sue the organization). However, the low risk that we will actually be taken to court by a patient or member of a local community should make MSF staff even more aware and careful about the images we use, as people are not always able to seek legal protection. Even if there is no intention to publish locally, it could end up being available locally. Therefore we should be particularly careful not to put people at risk.

d) Images of patients/local populations in international media

The elements are the same as in the point above, but with one additional question: under which jurisdiction would a complainant launch an action against MSF? This uncertainty makes it even more difficult to evaluate the situation.

The use of the internet has had a huge influence in the reproduction of images around the world. Today the internet is a very common tool in many countries. MSF has to be aware of the legal consequences of using images within this medium, even if, once again, it is very unlikely that someone would launch legal action against MSF because of an image used on the internet.

To avoid taking advantage of many people's inability to sue MSF (rather than them not having a possible complaint) –MSF staff should ask

themselves: Would a person in their own country take legal action if she or he or someone of the family was shown in such a situation? If the answer brings about questions, don't use the image.

ANNEXES

Annex A - TOPICS FOR FURTHER DISCUSSION AND DEBATE BY MSF ASSOCIATIONS, FIELD STAFF, AT MINI AG'S ETC

The Photo Ethics Working Group encourages everyone involved in MSF to think about the organization's use of images. Below are some possible "talking points" to stimulate debate.

Medical confidentiality: Strictly speaking, if MSF were to adhere to the standards of medical confidentiality that apply in Europe and North America, the organization would never be able to tell an outside audience what ails a patient without his/her written consent. Whatever the ethics, this is simply not how MSF works in practice. However, MSF does want to approach specific diseases or patients (e.g., those living with HIV/AIDS or rape victims), differently from others. This might seem like an obvious point, but can one always tell what will stigmatise someone (e.g., a man in India showing grief)? How can MSF use images of patients affected by mental illness or by diseases that sometimes affect the brain (e.g., sleeping sickness)? What about images of reproductive health? Is it okay to take photos of a birth? What about death? Is it offensive to take a photo of someone who has died? In practice, MSF does use pictures of malnourished children who are dying or about to die. Can photographers and staff always know how sick someone is?

Expat "angels" treating poor victims: Many development NGOs and sensitive Western commentators express concern about the way negative images from Africa will shape perceptions of that continent among European audiences. The main development agencies are keen to promote images of capable, dignified communities rather than of people in need of help. However, MSF works in emergencies. Does this mean MSF needs to have a completely different approach? Whilst the image of a white aid worker benevolently treating poor black people is a horrible cliché, there is no getting away from the fact that MSF expatriates (many of whom are white) do treat locals in a hands-on way and that this is in fact one of the most powerful elements of the organisation. How should the organization address this?

Dignity: Do we need to ensure that patients and others photographed retain their dignity – even if part of the story being told is how a disease/famine/war has brought a population to its knees? Does dignity always matter? There are not always clear answers to these questions, but a useful "rule of thumb" to apply is: "Would you allow someone else to use this photo if the patient pictured was a member of your family?"

Images of military and arms: Does showing armed people glorify conflict? Is there an MSF policy not to show the military in our images? Would we be able to give an accurate portrayal of our work in a war zone without such images?

Aesthetics and suffering: How do we feel about pictures that beautify in some way misery and suffering? Having beautiful light captured against poor huts can make poverty look exotic and almost romantic. What about pictures that appear to have been staged (that is, that the photographer has set the scene, rather than just documented it). What kind of use is acceptable? What about the highly stylized pictures of raped women in the DRC? How do raped women feel about their suffering being displayed in this way? Does it make rape look harmless?

Annex B – BMJ CONSENT FORM

For patient's consent to publication of material about them in the British Medical Journal

Subject of article or photograph: _____

Date: _____

I give my consent for this material to appear in the BMJ and associated publications. I have seen and read the material to be published.

I understand the following:

(1) The material will be published without my name attached and every attempt will be made to ensure my anonymity. I understand, however, that complete anonymity cannot be guaranteed. It is possible that somebody somewhere - perhaps, for example, somebody who looked after me if I was in hospital or a relative - may identify me.

(2) The material may be published in the weekly BMJ, which has a circulation of around 115,000 and goes worldwide. The journal goes mainly to doctors but is seen by many non-doctors, including journalists.

(3) The material will also be placed on the BMJ's world wide web site. At the moment this site is open to everybody for free.

(4) The material may also be used in local editions of the BMJ, which are published in countries like India, Mexico, and Poland and reach between them some 250,000 doctors worldwide.

(5) The material may also be used by BMJ books.

(6) The material will not be used for advertising or packaging.

Signed: _____

I also give consent for the material to be used in other publications that may approach the BMJ so long as the following criteria are met:

(1) The material will not be used for advertising or packaging.

(2) The material will not be used out of context - for example, a picture will not be used to illustrate an article that is unrelated to the subject of the photograph.

Signed: _____

Annex C – Proposed Photographers’ Sensitisation Document

PHOTOGRAPHER’S SENSITISATION DOCUMENT - DRAFT

Issues for reflection and concern regarding the collection of images portraying MSF’s work and patients

There is no doubt that pictures are important to MSF – they help us raise awareness, témoignage and money to continue our work, they inspire people to come and work with us, they raise awareness about the plight of the people with whom we work (and thus form a core part of our témoignage mandate). But taking, and using, photos of patients, often in distress or pain, brings up ethical questions.

This document is intended to make photographers who will work with MSF teams aware of some of the organisation’s concerns. Please read it carefully before starting your assignment.

Without consent or proper data to accompany images, we may not be able to use your output.

1) As doctors and nurses, we have a privileged relationship with the patients we treat. They put themselves in our care and trust us to try and heal them. It is our responsibility to ensure that they come to no harm in our care. MSF staff on the ground have been told to intervene if they witness a photographer acting in a way which may harm the interests of the patient.

2) Be aware that the subject of a photo may be harmed in different ways: stigmatisation, security, dignity, privacy/confidentiality.

3) MSF is not generally the “owner” of the medical facility in which we work – often the structure belongs to the Ministry of Health or local community authority. To avoid any military issues, it is vital that a photographer gets permission from the necessary authorities running the facility before starting to work.

4) Gaining consent from the subject of the photograph:
We understand that it is extremely difficult to obtain formal written consent from every person photographed in the field. In fact, there may be occasions where it would actually be against the subject’s best interests to sign such a document. We feel firmly that it is the quality of consent obtained that is important, not whether it is documented in writing. Please endeavour to get clear verbal agreement from patients before taking their photograph.

- a) We are aware that MSF medical staff do not have an equal power relationship with the patients in our care. When a photographer enters the hospital together with MSF medical staff, do our patients feel able to refuse, or might they be worried to upset the person treating them in case it jeopardises their care? Consent should be discussed in the exact context with Head of Mission.
- b) Consent negotiations must be carried out in the subject’s native language. Please be aware that if you use national medical staff to translate, the patient may feel under pressure to agree.
- c) MSF’s beneficiaries are often in difficult situations that may make it hard for them to give meaningful consent to be photographed. This includes patients who are mentally ill, unconscious, in great pain or distress, in a

state of shock or minors, for example. In such cases, a caregiver or close relative should be asked for consent on their behalf. Ask MSF medical staff for their advice if you are unsure in such a case.

- d) Please explain any possible uses of the photo. If a subject is very concerned about the impact of being photographed, then don't. It is not realistic or possible for MSF staff to promise patients limited use of the picture, eg not on the internet, not in their home country.
- e) Please work with subjects to make them comfortable with the photo process – allow them to keep their anonymity where they desire to do so.
- f) We will not use manipulated or photographs that look staged.

5) Collecting data to accompany images:

We ask photographers collaborating with MSF to provide written information to help us accurately describe the contents of an image. This should (at a minimum) include: the date, place, a description of situation, any restrictions on the use of the photo requested by the subject (e.g., please don't publish in a given country). Ideally, please also record the names of all the people in the picture, not just the expats, (check beforehand that they are willing to give them).

6) Please be aware that the MSF teams will hope to stay in a location long after you leave. We often have a precarious relationship with the authorities and other political/military actors in the region. Ideally, before you start working in the field, a member of the MSF field team will brief you about local security rules. MSF staff on the ground *will* be concerned about the implications that your behaviour might have on their security. Please be understanding about their concern and try and cooperate. On occasion, we may ask to have a visible arms-length relationship with you.

7) We consider it important to stay in contact with photographers after they return from a field trip in order to be able to make a proper selection of images and clarify any data and possible uses. Please ensure we have up-to-date contact details for you.

ANNEX D

SOME FREQUENTLY ASKED QUESTIONS

Is it right for photographers to wear MSF t-shirts? Some people fear a confusion with medical staff or possible security implications

This decision is for the Head of Mission or responsible field person to make. Generally, if the photographer is under contract with MSF then we consider that for that period, they ARE MSF, as much as, say, a fundraiser is. However there are times when despite a contract, it is better that they should not be 'logo-ed'. On other occasions, it may be better for security purposes that a visiting photographer wear an MSF t-shirt. This is for the field team leader to decide.

What about photos of, or by, an expatriate staff member who been dismissed by MSF for a serious misdemeanour?

We need to work with our colleague in HR departments to see what can be done about this. It is a fairly simple matter for the database administrator to remove all photos taken BY an individual. It is more difficult and time-consuming, but may still be possible, to remove all photos which contain an image OF an individual. However a system would need to be set up with senior HR people to ensure that the person's privacy is maintained (we have concerns about data protection).

How do we ensure that individual patients photographed in a group shot give consent freely?

This is particularly important if the context is a medical one, for example, an image of patients in an MSF sexually transmitted diseases clinic, if there is a particular stigma attached, for example in a rape clinic, or patients are not fully competent, for example within a psychiatric hospital. Both the photographer and the MSF staff member with them need to take extra care that the purpose of the photographer's work is made clear – in the local language - *before* the photographer starts work. Patients MUST be given time and opportunity to cover their faces, or to leave the room beforehand. And of course it must be clearly explained that if they choose to do this, they will not lose their place in the queue to see the doctor. Take care that each individual has the opportunity to decline and is not being bullied. With a bit of thought, and by taking a little extra time, it has been proven that it can work successfully.

If an MSF expat takes a photo whilst on mission, who does that picture belong to?

The copyright will remain the expatriate's, and unless they ask not to, their name will appear next to the photo when published. However we expect expatriates to make their photos from mission available to MSF for 'ALL USES' (as defined on the photodatabase), free of charge. As far as we are aware, there have been no issues over this so far.

What is the responsibility of the medical staff to step in and protect the patient?

The General Medical Council in the UK - the body that represents doctors - has produced a set of guidelines for medical staff involved in photographing, recording or filming their patients. These apply whether it is the medic him/herself doing the filming (perhaps for case study/training purposes), or whether they are simply the patient's doctor whilst filming is done by a third party:

"If you are involved in any way with recording patients for television or other public media, you should satisfy yourself that patients' permission has been

properly obtained, even if you are not responsible for obtaining that permission or do not have control of the recording process.

In addition, you should make sure that patients understand that, once they have agreed to the recording, they may not be able to withhold their consent for its subsequent use. If patients wish to restrict the use of material, they should get agreement in writing from the owners of the recording, before recording begins.

You should be particularly vigilant in recordings of those who are unable to give permission themselves. You should consider whether patients' interests and well-being, and in particular their privacy and dignity, are likely to be compromised by the recording, and whether sufficient account has been taken of these issues by the programme makers. If you believe that the recording is unduly intrusive or damaging to patients' interests, you should raise the issue with the programme makers. If you remain concerned, you should do your best to stop the recording, for example by halting a consultation, and withdraw your co-operation."

7) LIST OF MEMBERS - PHOTO ETHICS WORKING GROUP

Current members

Ann Avril – MSF-F
Barbara Sigge – MSF-G
Bruno De Cock – MSF-B
Evelien Schotsman – MSF-H
Michel Villee – MSF-B
Polly Markandya – MSF- UK

Previous members

Sanjeev Gupta – MSF-H
Lisa Hayes - MSF International & MSF-H
Petter Hveem – MSH Norway

SUGGESTIONS FOR FURTHER READING

<http://www.imaging-famine.org/>

http://www.lightstalkers.org/pdn_article_by_tyler_hicks

Reuters Alertnet Tipsheet: How to portray famine victims with dignity?

<http://www.alertnet.org/thefacts/reliefresources/112669600053.htm>

NGOs still fail standards on appeal images

<http://www.alertnet.org/thefacts/reliefresources/107410342375.htm>

http://www.uk2.msf.org/DiscussionEvenings2007/images_transcript.doc