

**Communication to the Office of the Prosecutor of the International Criminal Court**  
Under Article 15 of the Rome Statute

**The Situation in Greece:  
Systematic human rights abuses against refugees on Greek territory and at reception and  
identification centres on the Aegean islands**

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## Executive Summary

This communication calls upon the Office of the Prosecutor (“OTP”) of the International Criminal Court (“ICC”) to launch an investigation into crimes against humanity which may have been committed against refugees at the Greek-Turkish border and at reception and identification centres on the Aegean islands in Greece.

This communication was authored by the **Syria Justice and Accountability Centre (“SJAC”)**, a non-governmental organization documenting atrocity crimes surrounding the Syrian conflict since 2011 and engaging in transitional justice efforts worldwide. It was supported by individuals who wish to remain anonymous for fear of reprisals and includes reference to witness interviews and documentary evidence collected from crime sites in Greece. The communication analyses nearly five years of policies and practices established and maintained by the Greek government that result in crimes against refugees as well as asylees and migrants. Over this time, more than a million people made the dangerous journey from Turkey to Greece to escape persecution. A significant proportion of these refugees include Syrians who fled their war-torn country, only to be met by despair, degradation and dehumanization in Greece. Although the trauma imposed on Syrians was the impetus for this communication, SJAC stands in solidarity with victims from across the globe who found themselves in Greece, and who only ask for their basic human rights to be respected. They include victims from Afghanistan, Iraq, Yemen, Palestine, the Democratic Republic of the Congo, Cameroon and others. Their victimization must be acknowledged and the perpetrators held to account.

The compiled evidence provides a reasonable basis for the Prosecutor to find that Greek government officials and their agents, in addition to Frontex officials and their agents, have perpetrated a widespread and systematic attack against refugees since the European Union-Turkey Deal (“EU-Turkey Deal”) was entered into force in March 2016. The perpetrators have carried out a well-documented policy of deterring individuals with a well-founded fear of persecution from seeking asylum in Europe. The policy is implemented through a series of legislative, executive and judicial practices aimed at stripping victims of their rights, increasing their misery and likelihood of death. Such practices include the regular performance of state-sanctioned pushbacks in violation of the right to *non-refoulement*, as well as the intentional deprivation of humanitarian aid, leaving refugees to suffer under inhuman conditions in reception and identification centres. Taken together, the policies and practices may amount to crimes against humanity under Article 7 of the Rome Statute, including the crimes of: deportation and forcible transfer of a population, persecution, inhumane acts for the deprivation of humanitarian aid, sexual violence, and torture.

Despite international condemnation, the circumstances surrounding the situation preclude the possibility of prosecution before national courts. Greece is unable or unwilling to try individuals for the commission of the alleged crimes because the treatment forms part of a deliberate national policy that is supported by the EU. Additionally, qualitative and quantitative factors indicate that the gravity of the situation is so severe as to warrant an investigation by the Prosecutor.

The situation presents the Prosecutor with an opportunity to expand the ICC’s geographic sphere of influence, and to hold perpetrators of the world’s most egregious crimes accountable for their actions, including those from Europe. In doing so, the ICC can prove its commitment to equitable judicial procedures and rebuild the trust many victims have lost in the Court.

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## 1. Factual allegations

1. Greek government officials and their agents have deported, persecuted and subjected to inhumane treatment thousands of bona-fide refugees after they entered Greek territory or Greek territorial waters. Nearly one million refugees made the perilous journey across the Mediterranean Sea in 2015.<sup>1</sup> As boats launched from the Turkish coast to the Greek Islands, European leaders formulated a set of policies to address the social, political, and economic issues associated with the influx of people fleeing war-torn countries. Meanwhile, Turkey received a refugee population of roughly 3 million, including 2.8 million Syrians.<sup>2</sup>
2. In response, the European Union and Turkey established the EU-Turkey Deal in March 2016.<sup>3</sup> EU Member States agreed to take one Syrian refugee from Turkey for every Syrian returned from the Greek islands.<sup>4</sup> In exchange, the EU promised Turkey €3 billion to provide for its growing refugee population.<sup>5</sup> The practical and legal impact of the EU-Turkey Deal has been the subversion of the rights of refugees who are fleeing persecution in their home countries.
3. Five years later, there are now more than 121,000 refugees in Greece: around 94,000 on the mainland and 28,000 on the Aegean islands.<sup>6</sup> The majority of the current population on the islands is from Afghanistan (47%), Syria (19%) and the DRC (7%).<sup>7</sup> Most people who arrive irregularly in Greece are fleeing conflict, persecution and human rights violations. They are in need of international protection and are entitled to prompt access to asylum procedures. Yet Greek officials and their agents have engaged in practices that severely deprive refugees of their fundamental

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<sup>1</sup> Amnesty International, [A Blueprint for Despair: Human Rights Impact of the EU-Turkey Deal](#), p. 5 (2017).

<sup>2</sup> *Id.* at p. 6.

<sup>3</sup> European Council, [Press Release 144/16](#) (18 March 2016).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> UNHCR, *Factsheet: Greece* (22 September 2020) [[“UNHCR August 2020 Factsheet”](#)] (covering the period of 1 August - 31 August 2020). See The Associated Press, [3 years on, what's become of the EU-Turkey migration deal?](#) (20 March 2019) (noting that “[m]ore than 1.2 million people registered for asylum in EU member states in 2015 and again in 2016, at the height of the crisis. That number fell by half the following year, with just over 654,000 new asylum applications in 2017 and even fewer — just over 580,000 — in 2018, according to the EU’s statistics office Eurostat. Germany continues to be the most popular country for those seeking refugee status, followed by France and Greece. The main countries of origin of the applicants are Syria, Afghanistan and Iraq”).

<sup>7</sup> [UNHCR August 2020 Factsheet](#).

rights, and imposes on them inhumane conditions calculated to expel them from Greece and subject them to treatment that puts their lives at risk.<sup>8</sup>

**A. Greek government officials, Frontex officials and their agents have engaged in a policy of unlawful pushbacks of refugees at sea and from Greek territory since the commencement of the EU-Turkey Deal**

4. Pushbacks are “a set of state measures by which refugees and migrants are forced over a border—generally immediately after they crossed it—without consideration of their individual circumstances and without any possibility to apply for asylum or to put forward arguments against the measures taken.”<sup>9</sup> In an effort to control the number of individuals seeking asylum in Greece, Greek government officials and their agents have engaged in unlawful pushbacks at sea and land borders with Turkey since the commencement of the EU-Turkey Deal.

*1. Unlawful pushbacks of refugees at sea*

5. The Hellenic Coast Guard regularly performs pushbacks in the Aegean Sea using two predominant methods. The first method is performed against individuals who already stepped foot on Greek soil. The Hellenic Coast Guard, oftentimes accompanied by unidentified masked men, puts refugees on life rafts which are towed to the maritime border between Greece and Turkey. They are then abandoned at sea until they drift back to Turkish waters with the hope that they will be rescued by the Turkish Coast Guard.<sup>10</sup> According to an investigation by the *New York Times*, more

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<sup>8</sup> See Refugees International, *Blocked at Every Pass: How Greece’s Policy of Exclusion Harms Asylum Seekers and Refugees* (24 November 2020) [[“Refugees International 2020 Report”](#)] (“[d]ata on decisions made in the first half of 2020 show that 69 percent resulted in grants of refugee status or a lesser form of ‘subsidiary protection.’ This data suggests that most people arriving in Greece do have claims to international protection, despite the Greek government’s arguments to the contrary. Authorities assert that most are ‘economic migrants’ or have come from countries that are safe to return to. Greece---as well as the EU---uses this premise to build asylum processes that prioritize returning people or simply keeping them out. But the data show that these assertions are inconsistent with the lived reality of people fleeing their homes”).

<sup>9</sup> ECCHR, [Glossary: Push-Back](#) (explaining that “[p]ush-backs are a set of state measures by which refugees and migrants are forced back over a border – generally immediately after they crossed it – without consideration of their individual circumstances and without any possibility to apply for asylum or to put forward arguments against the measures taken. Push-backs violate – among other laws – the prohibition of collective expulsions stipulated in the European Convention on Human Rights”). See also Border Violence Monitoring Network, [Pushbacks and Police Violence – Legal Framework](#) (“[t]he term ‘pushback’ itself is a definition that came to initially describe the unfolding events along the EU borders of Hungary and Croatia with Serbia in 2016, after the closure of the Balkan route. The practice is now a hallmark of border externalisation which reaches from the Greek-Turkish border, all the way to the Slovenian-Italian border”).

<sup>10</sup> Exhibits 023-024; Exhibit A, pp.145-148.

than 1,072 people were left adrift in the Aegean Sea by Greek officials in at least 31 separate incidents between March and August 2020.<sup>11</sup>

6. Another method employed by the Hellenic Coast Guard is to use dangerous manoeuvres to force boats in Greek territorial waters back into Turkish waters of the Aegean Sea. Manoeuvres include: (1) using metal poles to break engines, then leaving boats adrift,<sup>12</sup> (2) attaching ropes to boats, then towing them toward Turkish waters<sup>13</sup> and (3) speeding past refugee boats to create waves which push them back into Turkish waters.<sup>14</sup> In one illustrative example, on 15 August 2020, a Syrian woman was on an overcrowded dinghy close to the shore of Lesbos within Greek territorial waters. Greek officials took the dinghy's gasoline and destroyed its engine.<sup>15</sup> Masked Greek border guards boarded the dinghy and forced people at gunpoint to tie their boat to a speedboat. The border guards then towed the dinghy toward Turkey.<sup>16</sup>
7. Frontex, the European Union's border agency, is also responsible for performing pushbacks. The agency has deployed hundreds of border guards to the Aegean Sea, as well as ships, drones, and aircraft.<sup>17</sup> To avoid detection, the agency's air and sea units often switch off their transponders that report their positions to public trackers.<sup>18</sup> However, humanitarian organizations have obtained evidence of Frontex's involvement in pushbacks, documenting photographic and video evidence of its complicity. Further, recent investigations documented clear instances when Frontex was

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<sup>11</sup> The New York Times, [Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea](#) (14 August 2020) (based on interviews with survivors from five of the pushbacks, and photographic or video evidence from 31).

<sup>12</sup> Exhibit A, pp. 98, 132. Poles with spikes are also used by the HCG to destroy dinghies. *See e.g.*, Exhibit 063.

<sup>13</sup> Exhibit 033.

<sup>14</sup> Speeding boats creating waves: Exhibits 012, 025, 032, 049. Often, a combination of these methods is used, *see* Exhibit A pp. 97-100, 103-105. *See also* Human Rights Watch, [Greece: Investigate Pushbacks, Collective Expulsions](#) (16 July 2020). *See also* Open Democracy, [No Limits to Brutality: Deaths at the Greece-Turkey Borders](#) (19 May 2014) (“...twelve refugees (nine children and three women) drowned during a push-back operation in the Aegean Sea. Survivors said their boat was near the Greek Island of Farmakonisi when coastguards intercepted it. The boat capsized when the coastguards towed it at high speed toward the Turkish coast. Rather than save the drowning refugees, however, the coastguards beat them so that they would not leave the sinking boat”).

<sup>15</sup> Der Spiegel, [EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign](#) (23 October 2020) [[“Der Spiegel Pushback Report”](#)].

<sup>16</sup> *See e.g.*, Aegean Boat Report, [3 People Drowned After They Were Forced in Life Rafts by the Hellenic Coast Guard](#) (24 December 2020) (“34 people was forced into three life raft, but shortly after one of the rafts ‘exploded’ one of the survivors stated, five people disappeared in the dark, only two of them w[ere] found alive. Three dead bodies w[ere] taken onboard the Hellenic coast guard vessel ΛΣ 050, before they left them drifting [...]”).

<sup>17</sup> [Der Spiegel Pushback Report](#).

<sup>18</sup> *Id.*

directly involved in pushbacks.<sup>19</sup> For example, an incident on 8 June 2020 involved the pushback of 47 asylum seekers off the coast of Lesbos.<sup>20</sup> The investigators used visual evidence and tracked the data of the vessel in order to reconstruct how a Frontex vessel created waves, dangerously interfering with the navigation of the craft. The Hellenic Coast Guard then approached the migrants' dinghy and pushed it into Turkish waters.<sup>21</sup>

8. Furthermore, Frontex officials have refused to rescue boats in distress. The agency's surveillance planes typically have a standard MX-15 camera with an infrared sensor, as well as a sensor for lighting conditions.<sup>22</sup> These sensors are capable of detecting small objects in the water, even at night.<sup>23</sup> Camera images are live-streamed to Frontex's headquarters in Poland where a group of experts, including maritime surveillance experts, analyse images and make an initial assessment as to whether a search and rescue mission should commence. Frontex planes have repeatedly identified distressed dinghies and refused to provide assistance despite the life-threatening situation.<sup>24</sup>
9. Several private corporations are equally responsible for pushbacks at sea through their contracts with the EU linked to Frontex's actions in the Aegean Sea. This past October, Frontex awarded two notable contracts: one to a European multinational aerospace corporation (Airbus), and another to an Israeli defence electronics company (Elbit Systems Ltd).<sup>25</sup> The original tender was for maritime aerial surveillance services and drones to monitor "every sea craft involved in any form of irregular or illegal activities at sea."<sup>26</sup> This follows the completion of other contracts

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<sup>19</sup> *Id.* See also The Guardian, *EU Border Force 'Complicit' in Illegal Campaign to Stop Refugees Landing* (24 October 2020) [["The Guardian Pushback Report"](#)]; Bellingcat, *Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks* (23 October 2020) [["Bellingcat Pushback Report"](#)]. For a non-exhaustive compilation of applicable pushbacks in 2020, see Refugee Support Aegean, *Pushbacks and Violations of Human Rights at Sea: A Timeline* (29 December 2020). See also Border Violence Monitoring Network, *The Black Book of Pushbacks – Volume I* (December 2020).

<sup>20</sup> [The Guardian Pushback Report](#).

<sup>21</sup> A similar incident on 19 August 2020 was described by asylum seekers who said that a vessel with an EU flag was involved in a pushback at sea, together with the HCG. See Exhibit A, pp. 152-154.

<sup>22</sup> [Der Spiegel Pushback Report](#); [Bellingcat Pushback Report](#).

<sup>23</sup> [Der Spiegel Pushback Report](#).

<sup>24</sup> *Id.*

<sup>25</sup> European Union, Frontex, [Contract Award Notice: 2020/S 196-473315](#) (8 October 2020) (contract for remotely piloted aircraft systems for medium altitude long endurance maritime aerial surveillance).

<sup>26</sup> European Union, [Corrigendum to Contract Award Notice: 2019/S 216-528930](#) (8 November 2019) (contract for remotely piloted aircraft systems for medium altitude long endurance maritime aerial surveillance).

awarded to private military companies for drone services since the end of 2018.<sup>27</sup> Additionally, the American consulting agency, McKinsey & Company, contracted with the European Asylum Support Office (“EASO”) in 2017 to design border procedures focused on “targeted strategies,” a “streamlined end-to-end asylum process” and “maximizing productivity” with little mention of refugee and asylum seekers’ rights.<sup>28</sup>

10. The international community has repeatedly called for an end to pushbacks at sea. Recently, a group of 29 human rights and humanitarian non-governmental organizations submitted an open letter to members of the Hellenic Parliament calling for an investigation into border abuses.<sup>29</sup> The letter is the culmination of years of fruitless advocacy by humanitarian organizations calling for an end to pushbacks. It details “very serious human rights violations such as arbitrary deprivation of liberty, grave breaches of the prohibition on inhuman and degrading treatment, and failure to respect and protect the right to life” stemming from illegal acts performed by the Hellenic Coast Guard, police and army personnel, “sometimes in close coordination with uniformed masked men dressed in black or commando-like uniforms.”<sup>30</sup> The letter further details “unlawful returns or other acts that put the lives and safety of displaced people at risk.”<sup>31</sup>
11. In spite of international pressure, the Greek government has consistently dismissed claims of illegal pushbacks as “fake news” and “Turkish propaganda.”<sup>32</sup> Yet the facts show that state-sanctioned pushbacks have been performed in Greek territorial waters and across international

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<sup>27</sup> See Refugee Support Aegean, *Frontex: The Making of a ‘Super Agency’* (December 2019); The Guardian, *Once migrants on Mediterranean were saved by naval patrols. Now they have to watch as drones fly over* (4 August 2019).

<sup>28</sup> Legal Center Lesvos, *While Europe Struggles with Second Wave of Covid-19 Infections, Greece Rushes Asylum Seekers Through Procedures in Lesvos* (25 November 2020) (“[LCL Report on Asylum Procedures During COVID-19](#)”).

<sup>29</sup> *Open letter to Members of the Hellenic Parliament calling for an investigation into border abuses* (6 October 2020) (submitted by Human Rights Watch, ActionAid Hellas, Amnesty International, ARSIS – Association for the Social Support of Youth, Danish Refugee Council, Equal Rights Beyond Borders, Fenix – Humanitarian Legal Aid, Greek Council for Refugees, Greek Forum of Refugees, Greek Helsinki Monitor, Hellenic League for Human Rights, Help Refugees, HIAS Greece, HumanRights360, International Rescue Committee, INTERSOS Hellas, Josoor, Legal Centre Lesvos, Lesvos Solidarity, Medecins Du Monde – Greece, Mobile Info Team, Network for Children’s Rights, PRAKSIS, Refugee Legal Support, Refugee Rights Europe, Refugees International, Refugee Support Aegean, SolidarityNow, and Terre des hommes Hellas).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> EU Observer, *Revealed: Official Greek Order to Illegally Pushback Migrants* (18 November 2020) [“[EU Observer Report](#)”].

borders for years in a manner that is continuous, uninterrupted, and methodical.<sup>33</sup> The bureaucratization and institutionalization of state-sanctioned pushbacks was recently displayed in a redacted email chain provided by Frontex to the EU Observer through a freedom of information request.<sup>34</sup> Dated March 2020, the incriminating emails pertain to a specific incident in which the Hellenic Coast Guard ordered the Danish Coast Guard to force a small boat of refugees near the Greek coastline back to Turkey. They state that “HCG [Hellenic Coast Guard] Liaison Officer – Technical Equipment (LO-TE) informed a crew about an order from his authority to transfer the migrants back to the rubber boat and escort / transport them into TUR territorial waters (TTW).”<sup>35</sup> In response to the emails’ release, Frontex claimed that its refusal of Greek orders is a sign that it “is fully committed to upholding the highest standards of border control and the respect of fundamental rights within [its] operation.”<sup>36</sup> However, other evidence suggests that its refusal was not, in fact, an isolated incident. Frontex has been aware of regular instances of pushbacks carried out by the Hellenic Coast Guard without taking remedial action or attempting to rescue the distressed victims.<sup>37</sup>

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<sup>33</sup> See [Refugee Rights Europe Report](#) ([s]ince 2012, testimonies collected by civil society actors have consistently shown that pushbacks and human rights violations are carried out systematically at the land border between Greece and Turkey. The vast amounts of Evros pushback testimonies collated “substantiate a continuous and uninterrupted use of the illegal practice of push-backs”); Pro Asyl, *Pushed Back: Systematic Human Rights Violations Against Refugees in the Aegean Sea and at the Greek-Turkish Land Border* (7 November 2013) (“[p]ush-backs take place from Greek territorial waters, the Greek islands and from the land border. The majority of the victims are refugees from Syria – men, women, children, babies, and people suffering from severe illness. While the EU publicly repeats its commitment to stand by Syrian refugees, their fundamental human rights are being ignored and violated at the European border. This report accuses the Greek government, the border police and the coastguard of these practices, and raises the question of wider European complicity. The entire Greek asylum and migration system relies on considerable support and funding from the EU for its operation, and Frontex has been deployed in the country for years, yet the responsible decision makers in Berlin, Vienna and the rest of Europe remain silent on the issue of human rights violations”); [EU Observer Report](#).

<sup>34</sup> [EU Observer Report](#).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See [Der Spiegel Pushback Report](#); [Bellingcat Pushback Report](#); [Refugee Rights Europe Report](#). See also The New York Times, [E.U. Border Agency Accused of Covering Up Migrant Pushback in Greece](#) (26 November 2020) (describing an incident in April 2020 witnessed by Frontex aerial crew when “[a] dinghy was detected by the Greek authorities and approximately 20 migrants were rescued and put on board a Greek Coast Guard vessel shortly after midnight, their empty dinghy towed by the Coast Guard toward the island. But instead of being taken to shore, at 2:45 a.m., the migrants were put back on their dinghy and tugged to Turkish waters by the Greek Coast Guard, the Frontex aerial crew reported. As events unfolded, the Greek command center twice asked the Frontex aircraft to change its flight path, directing it away from the incident. ‘At 03:21 Frontex Surveillance Aircraft communicates that the rubber boat has no engine and it is adrift. Greek assets are departing the area leaving the rubber boat adrift,’ the document said. The internal Frontex report detailing this incident and categorizing it as a fundamental-rights violation was ‘dismissed,’ the document shows”); Der Spiegel, *German Federal Police Officers Involved in Illegal Pushback* (28

12. Greece's deportation policy is propagated through legal strategies that criminalize the very act of seeking asylum. In November 2020, authorities filed unprecedented charges against a 25-year-old Afghan man whose six-year-old son drowned when their dinghy capsized off the coast of Samos.<sup>38</sup> The boat made a distress call to the Hellenic Coast Guard, but it went unanswered.<sup>39</sup> He eventually made it to land and his son's body washed ashore the following day.<sup>40</sup> He faces a six-year prison sentence if found guilty of child endangerment.<sup>41</sup> More generally, prosecutors have brought criminal charges against refugees under Law 3386/2005 which stipulates that "[t]hird country nationals...who enter or attempt to enter Greece without legal formalities shall be punished by imprisonment of at least three months and a fine of at least one thousand five hundred EUR (€1,500)."<sup>42</sup> In a 12-day period, 103 refugees were sentenced to prison by a single-member court for this misdemeanour crime.<sup>43</sup> The cases were processed within 24 hours of people's apprehension.<sup>44</sup> In one case, an Afghan father was sentenced to three years and six months on the same day that he was arrested with his family.<sup>45</sup> He was also given a €4,000 fine. The man's wife faced a suspended sentence of three years which allowed her to stay with her children in a detention facility, as well as a €5,000 fine. According to the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

[i]n these cases there was poor interpretation (at times undertaken by other migrants), lack of legal aid, an inability for migrants to present their cases and intimidation and bias by the Court. However, the CPT is particularly concerned over the Article 3 ECHR implications

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November 2020) (explaining how federal police on board the German patrol boat BP62 reached an overloaded inflatable boat inside Greek waters on the morning of August 10. Instead of immediately rescuing some 40 persons on board, the patrol boat blocked the occupants' route to the adjacent Greek island of Samos and waited half an hour until the Greek coast guard "took over" the incident. A photo taken two hours later showed Turkish coast guard ships rescuing the 40 occupants, suggesting their Greek counterparts had towed their inflatable back into Turkish waters).

<sup>38</sup> The BBC, *Greece Migrants: Afghan Father Charged Over Son's Drowning Death* (16 November 2020) [["BBC Report on Charged Father"](#)].

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* For information regarding detention conditions, see [Working Group on Arbitrary Detention](#) ("[t]he Working Group visited ten facilities in which asylum seekers may be or are deprived of their liberty...It identified serious problems that may lead to the arbitrary and prolonged deprivation of liberty, including the inadequate individual assessment of the appropriateness and necessity of detention; detention exceeding in practice the maximum three-month period provided by law for asylum seekers due to the delays in registration of asylum applications, and detention in inappropriate facilities such as police stations that are not suitable for the long-term detention, including of asylum seekers").

<sup>42</sup> Article 83(1) of Greek Law 3386/2005, 'Entry, Residence and Social Inclusion of Third Country Nationals in the Greek Territory'.

<sup>43</sup> [Council of Europe 2020 Report](#), para. 17.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* para. 18.

of these sentences, including the fact that many of the sentenced men were sent to Komotini Prison, an establishment that has been operating at nearly 200% of its capacity for several years. The deliberate separation of the family unit was another consequence.<sup>46</sup>

13. Despite multiple European Court of Human Rights rulings finding these practices to be illegal, Greece has continued with these policies and continued to subvert the rights of refugees.<sup>47</sup>

2. *Unlawful pushbacks of refugees from Greek territory*

14. On 28 February 2020, President Recep Tayyip Erdogan declared that Turkey's border to Greece was open for migrants to cross into Europe. He reasoned that Turkey could no longer handle the number of refugees fleeing the war in Syria.<sup>48</sup> Soon after, thousands of people flocked to the Turkish/Greek border near the Evros River.<sup>49</sup> Many arrived on free bus rides organized by Turkish officials.<sup>50</sup> In some instances, Turkish police transported refugees to border villages and showed them where to cross over to Greece.<sup>51</sup> This was the case for numerous individuals detained in immigration removal centres who were threatened if they refused to be transported.<sup>52</sup> By 29 February 2020, around 4,000 refugees were pressed against the Turkish side of the border, and another 500 people were trapped between two border posts on the Turkish side.<sup>53</sup>
15. In response, Greece waged a violent crackdown during which Prime Minister Kyriakos Mitsotakis increased "the level of deterrence at [Greece's] borders to the maximum."<sup>54</sup> He warned people,

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<sup>46</sup> *Id.*

<sup>47</sup> See e.g. ECtHR, *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, 13 June 2019, App. No. 14165/16 (holding that Greece breached Article 3 of the Convention because of detention conditions in Greek police stations and living conditions in Idomeni Camp for five unaccompanied children. A further violation under Article 5 § 1 was found regarding the protective custody of unaccompanied children in police stations); *M.S.S. v. Belgium & Greece*.

<sup>48</sup> The BBC, *Syria War: Turkey says thousands of migrants have crossed to EU* (29 February 2020).

<sup>49</sup> *Council of Europe 2020 Report*, para. 5.

<sup>50</sup> The New York Times, *Turkey, Pressing E.U. for Help in Syria, Threatens to Open Borders to Refugees* (28 February 2020) (explaining that "[i]nternal legal restrictions on migrants' movements seemed to have been temporarily rescinded, as taxi drivers and private car owners were allowed to drive Syrians and other foreigners directly to the border, in full view of the police").

<sup>51</sup> Human Rights Watch, *Greece: Violence Against Asylum Seekers at Border* (17 March 2020) [[HRW Greece Border Report 2020](#)].

<sup>52</sup> *Id.*

<sup>53</sup> The New York Times, *Erdogan Says, 'We Opened the Doors,' and Clashes Erupt as Migrants Head for Europe* (29 February 2020) (noting that "[t]he frontier is heavily militarized on both sides, and is closed off with barbed wire only for about seven miles. It runs through fields, valleys and forests, and is partly demarcated by the Evros River and its delta, where migrants have long died because of choppy waters").

<sup>54</sup> The BBC, *Greece Suspends Asylum Applications as Migrants Seek to Leave Turkey* (1 March 2020) [["BBC Report on Suspension of Asylum Procedures"](#)].

“[o]nce more, do not attempt to enter Greece illegally - you will be turned back.”<sup>55</sup> Police, army, and security forces used teargas, rubber bullets, and live fire on anyone who approached the border, including women, children, and the elderly.

16. Individuals who made it across the border into Greece were subsequently detained, assaulted (including sexual assault), robbed, and stripped of their clothing before being forced back to Turkey by Greek authorities and unidentified armed men.<sup>56</sup> Victims were passed between Greek authorities and the unidentified men, indicating a coordinated plan.<sup>57</sup> In interviews with Human Rights Watch, refugees and migrants stated that:

within hours after they crossed in boats or waded through the river, armed men wearing various law enforcement uniforms or in civilian clothes, including all in black with balaclavas, intercepted everyone in their group. All said the men detained them in official or informal detention centers, or on the roadside, and stole their money, mobile phones, and bags before summarily pushing them back to Turkey. Seventeen described how the men assaulted them and others, including women and children, through electric shocks, beating with wooden or metal rods, prolonged beating of the soles of feet, punching, kicking, and stomping.<sup>58</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> See Amnesty International, *Greece/Turkey: Asylum-seekers and migrants killed and abused at borders* (3 April 2020) [[“AI April 2020 Report”](#)] (stating that “[i]n the midst of violence at the Greek-Turkish border, at least two men were killed and a woman remains missing after Greek border forces reportedly fired live ammunition and tear gas against asylum-seekers and migrants...Greek authorities repressed the movement of people attempting to cross by bolstering border control, sending in police and army forces who used tear gas, water cannons, plastic bullets and live ammunition”). See also The New York Times, *‘We Are Like Animals’: Inside Greece’s Secret Site for Migrants* (10 March 2020) [[“NYT Report on Greece Black Sites”](#)] (reporting that “[t]he Greek government is detaining migrants incommunicado at a secret extrajudicial location before expelling them to Turkey without due process”); Council of Europe, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020*, para. 24 (19 November 2020) [[“Council of Europe 2020 Report”](#)] (noting that the delegation received “a number of allegations by migrants that they had been subjected to slaps to the head and kicks and truncheon blows to the body by members of the Hellenic Police and Coast Guard. In a few cases, those allegations were supported by medical evidence. In addition, several allegations of abusive language were received at the Filakio pre-departure centre concerning certain police officers addressing the migrants through the bars of the cells as ‘animals’...[f]urther, another police officer on duty on certain nights at this same facility allegedly slapped a number of men and children, reportedly for making a noise. In one instance, a child explained to the delegation that he had been slapped after he had had an anxiety attack which had caused him to scream out”).

<sup>57</sup> [AI April 2020 Report](#). See also Border Violence Monitoring Network, [Frontex Ignore Human Rights Violations at the Evros Border](#) (10 December 2020). See further Exhibit A, pp. 16f., 25, 42, 62, 70 (refugees describe pushbacks at the Evros River and how they were taken to the river bank in dark vans/busses. Small boats navigated by unidentified men carried 8-10 people on each ride. This repeated procedure indicates a coordinated plan); Border Violence Monitoring Network, [The Black Book of Pushbacks Vol. I, 2020](#) (18 December 2020), pp. 534f., 539f., 542.

<sup>58</sup> [HRW Greece Border Report 2020](#).

17. A Syrian man who travelled with his wife and children described how Greek security forces searched his wife, touched her breasts, then took off her headscarf and trousers.<sup>59</sup> “When I tried to stop them, they beat me really badly with their fists, feet, a heavy plastic rod, and a metal stick. They hit my 2-year-old daughter with a heavy plastic stick on the head so that she still has a bruise.”<sup>60</sup>
18. These actions form part of a systematic and multi-year Greek policy to return refugees over land.<sup>61</sup> Forensic Architecture, a research agency based out of the University of London, investigates pushbacks using *situated technology* by which 3D models of scenes are used to interview and gather testimony from traumatised witnesses.<sup>62</sup> Through its work, Forensic Architecture has documented pushbacks dating back to 2016. One such incident occurred in 2016 when a 26-year-old Syrian man with asylum in Germany searched Evros for his 11-year-old brother who disappeared in transit to Europe.<sup>63</sup> The Greek police took his identification papers, strip-searched him, and placed him in a single cell with 50 other people, including women and children. During the night, he was taken to the Evros River and was instructed to go to Turkey on a small boat. It

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Refugee Rights Europe, *Pushbacks and Rights Violations at Europe’s Borders: The state of play in 2020*, at 34 (11 November 2020) [[“Refugee Rights Europe Report”](#)] (“[a]fter nearly a decade of evidence and reporting by civil society and human rights bodies, pushbacks in the Evros region at the land border between Greece and Turkey have not only continued, but also intensified and expanded during the last few years. This border is 180 kilometres long and runs from the south of Bulgaria down to the Aegean Sea. The Evros River, which largely overlaps with the land border, has become increasingly militarised over the years and ‘incorporated into a broader ecosystem of border defence.’ This militarised zone around the river restricts the movement of civilians, including monitoring actors, and holds a number of detention centres and border guard stations. It also consists of a 12.5 kilometres-long barbed wire and concrete fence built in 2012, which will supposedly be extended until mid-2021”); [Refugees International 2020 Report](#) (“[t]hese developments cannot be seen as isolated incidents. The Greek government’s responses were hasty but not unwitting. Rather, they are consistent with a years-long effort to deter, deny, and disregard asylum seekers and refugees”). See Eur. Union, Council of Europe, [Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) which visited Greece from 10 to 19 April 2018](#), para. 24 (1 June 2018) (noting that the Committee received “several consistent and credible allegations of pushbacks by boat from Greece to Turkey at the Evros River border by masked Greek police and border guards or (para-) military commandos”); Council of Europe, [Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović Following Her Visit to Greece from 25 to 29 June 2018](#), para. 64 (6 November 2018) (stating that “[t]he Commissioner is deeply concerned about persistent and documented allegations of summary returns to Turkey, often accompanied by the use of violence...the Commissioner urges the Greek authorities to put an end to push-backs and to investigate any allegations of ill-treatment perpetrated by members of Greek security forces in the context of such operations”).

<sup>62</sup> Forensic Architecture, [Methodology: Situated Technology](#).

<sup>63</sup> The Guardian, [Greece Faces Legal Action Over Alleged Expulsion of Syrian to Turkey](#) (17 November 2020) [[“Guardian Report on Syrian/German Asylee”](#)]; The Global Legal Action Network, [Press Release: International Complaint Against Greece’s Violent Pushbacks at the Evros Border](#) (17 November 2020); Forensic Architecture, [The Case of Fady](#).

took three years for the man's papers to be reissued by Germany. During that time, he re-entered Greek territory 11 times, but was repeatedly pushed back. He is now in Germany, but his brother remains missing.<sup>64</sup>

## **B. Intentional deprivation of humanitarian assistance to refugees on the Aegean islands since the commencement of the EU-Turkey Deal**

*“There are two types of war: one with guns, like in Syria, where you are waiting for a bomb at any moment. And the other is here, a psychological war.” - Syrian mother in Lesbos<sup>65</sup>*

19. Refugees face dire humanitarian circumstances in Greece. Thousands of people are trapped in “hotspot” reception and identification centres on the Aegean islands because of rigid containment policies and legalized geographical restrictions. The “hotspot approach” was established by the European Commission in 2015<sup>66</sup> purportedly to assist affected Member States, namely Greece and Italy, so they could “fulfil their obligations under EU law,” register migrants and “channel asylum seekers into asylum procedures.”<sup>67</sup> There is reason to believe, however, that refugees are intentionally deprived of meaningful humanitarian aid in order to force them to return to the places from which they fled persecution.
20. The first designated hotspot was the Greek island of Lesbos, infamous for Moria Reception Centre where the mistreatment of bona fide refugees is on stark display.<sup>68</sup> More than 40,000 people were stuck on the Greek islands in 2019, making it the peak population number since the EU-Turkey Deal was established in 2016.<sup>69</sup> The situation was particularly dire in Moria where 18,000 people faced horrifying conditions as they were crammed into a space with a maximum capacity of 2,840 individuals.<sup>70</sup> Most people set up tents on pallets in an olive grove surrounding the main camp.

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<sup>64</sup> [Guardian Report on Syrian/German Asylee](#) (noting that “[t]he man’s story is ‘an emblematic and aggravated example of Greece’s clandestine deportation apparatus’ because ‘[e]ven his EU asylum status, which Germany had granted him, couldn’t protect him’”).

<sup>65</sup> Euro-Mediterranean Human Rights Monitor, [Moria 2.0: Migrants Who Escaped Fire Now Live in Another Hell](#) (30 October 2020) [[“Eur-Med HR Monitor Report”](#)].

<sup>66</sup> Eur. Union, Eur. Comm’n, [The Hotspot Approach to Managing Exceptional Migratory Flows](#) (2015).

<sup>67</sup> *Id.*

<sup>68</sup> The Greek Reporter, [First Migrant Hotspot Opens in Lesbos](#) (16 October 2015).

<sup>69</sup> Info Migrants, [Number of Migrants on Greek Islands Peak at More than 40,000](#) (10 December 2019).

<sup>70</sup> UNHCR, [UNHCR Chief Urges Action over Conditions for Asylum-seekers on Greek Island](#) (28 November 2019). See Solomon, [Moria’s Missing Migrants](#) (7 December 2020) (speaking anonymously, an official from an international organization explained that “...the government says that ‘Moria 2.0’ has a capacity of 10,000 people. How is that capacity calculated? Is it according to the number of tents or to the site’s size? Nobody exactly knows how capacity

There was no electricity, insufficient water, inadequate food, one bathroom for every 275 people, and limited access to medical and psychosocial support.<sup>71</sup> Sexual and gender-based violence led many women to wear diapers at night for relief so they could avoid going to public bathrooms.<sup>72</sup> Various reports over this time detail the number of children in “hotspots” who are self-harming and attempting suicide.<sup>73</sup>

21. On 9 September 2020, Moria was burned to the ground.<sup>74</sup> Around 7,500 of the 13,000 occupants were moved to a new camp on an old military shooting range where canvas tents sit on bullet and shell casings.<sup>75</sup> Despite promises from European Union commissioners that there will be “no more Morias,”<sup>76</sup> the new camp has been labelled “Moria 2.0.”<sup>77</sup> Flimsy tents were placed only 20 meters from the sea and were submerged in flood water before the winter season even began, leaving refugees feeling helpless, and living “worse than animals.”<sup>78</sup> People receive one bottle of water a day—though some reports suggest that only four bottles are given to groups of 10 single males—

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is counted in this or in other camps.’ The article further states that ‘besides the asylum seekers that were managing to secretly leave the camp, in the past months it became known that every day around 20-30 of the former residents transferred to the mainland were returning to Moria, as they had no other realistic options for settling down. The numbers presented by the Greek authorities on the camps’ populations could be described with a well-known, two-word phrase known from the past years, the official added: ‘Greek statistics’”). See also European Council on Refugees and Exiles, [Asylum Information Database: Reception and Identification Procedure](#).

<sup>71</sup> See The Guardian, [A Doctor’s Story: Inside the ‘Living Hell’ of Moria Refugee Camp](#) (9 February 2020) (noting that Moria housed 20,000 men, women, and children in February 2020 and that it was “a place of violence, deprivation, suffering and despair”). Overcrowded camps like Moria also lack any waste disposal, causing piles of rubbish in the middle of the camp, see e.g. Exhibit p015.

<sup>72</sup> See The Guardian, [Oxfam Condemns EU Over ‘Inhumane’ Lesbos Refugee Camp](#) (8 January 2019) (“[t]he EU has been strongly criticised over conditions in Greece’s largest refugee camp, where Oxfam reported women are wearing nappies at night for fear of leaving their tents to go to the toilet”).

<sup>73</sup> Médecins Sans Frontières, [Self-harm and Attempted Suicides Increasing for Child Refugees in Lesbos](#) (17 September 2018).

<sup>74</sup> The BBC, [Moria Migrants: Fire Destroys Greek Camp Leaving 13,000 Without Shelter](#) (9 September 2020).

<sup>75</sup> [Eur-Med HR Monitor Report](#) (“[t]oxicology experts have warned these objects could still pose a serious health risk due to invisible residue”); Aljazeera, [Lead Poisoning Fears at Greek Refugee Camp Built on Military Site](#) (2 October 2020); Human Rights Watch, [Greece: Lead Poisoning Concerns in New Migrant Camp](#) (8 December 2020).

<sup>76</sup> The New Humanitarian, [‘No More Morias’: New EU Migration Policy Met with Skepticism](#) (23 September 2020) (quoting HRW’s Europe and Central Asia Division Deputy Director: “[m]aybe the humanity is in the fine print... The Pact is premised on the same deterrence model that has driven EU migration and asylum policy for years now, and the same magical thinking about quick and fair border procedures and quick returns that inspired the clearly failed EU-Turkey deal and containment of asylum seekers on Greek islands... [It’s] unlikely to work, but very likely to produce more suffering”).

<sup>77</sup> The Guardian, [‘Moria 2.0’: Refugees Who Escaped Fire Now Living in ‘Worse’ Conditions](#) (7 October 2020); Oxfam, [Lesbos Bulletin: Update on the EU ‘Hotspot’ Moria 2.0 by the Greek Council for Refugees & Oxfam](#) (21 October 2020).

<sup>78</sup> Info Migrants, [Moria 2.0: The New Lesbos Refugee Camp](#) (12 October 2020). Improvised camps were also erected on supermarket parking lots, see Exhibit 053; next to roads, see Exhibit 054; and in olive grows, see Exhibit 064. The Greek police tried to violently evacuate refugees using tear gas and by beating people. For more on the flooded camps, see Exhibits p018, p020 – p022.

and must wait in a distribution line that averages three-hours. Food is distributed once a day by Greek authorities. It is insufficient and of poor quality, “so much so that in the first days, different women and children fainted from hunger.”<sup>79</sup> One aid worker stated:

[w]hen we arrive, people run to the trucks, grabbing whatever they can. But there are some who get nothing – mothers alone with young children who can’t just leave their babies to run to the truck, and older [people] and people with disabilities. I am sure that not everyone is getting food and water, and we have been hearing from [other] aid groups numerous cases of people suffering from dehydration because they haven’t had anything to drink in days.<sup>80</sup>

22. Parents wash themselves and their children in the sea because showers are unavailable, and the limited number of chemical toilets raises privacy concerns for women.<sup>81</sup> Moreover, only certain people are allowed to leave between 8AM and 8PM. Additionally, members of different nationalities live together despite ethnic and religious tensions that have led to murder.<sup>82</sup> People protesting the new camp have been attacked by Greek security forces using tear gas and stun grenades.
23. Lack of financial resources does not explain why refugees are being deprived of basic humanitarian needs. The conditions persist, despite the additional €350 million given to Greece in March 2020 by the European Commission to “support increased reception capacity, voluntary returns and all the infrastructure needed to carry out screening procedures for health and security.”<sup>83</sup> This raises questions as to why refugees are being denied humanitarian assistance.
24. Furthermore, the Greek Migration Ministry has openly stated that homeless individuals must agree to enter and register their asylum claim at the new camp in order for their claims to be considered.<sup>84</sup>

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<sup>79</sup> [Eur-Med HR Monitor Report](#).

<sup>80</sup> Human Rights Watch, *Greece/EU: Bring Moria homeless to safety* (16 September 2020) [[“HRW Report on Moria 2.0”](#)].

<sup>81</sup> Médecins Sans Frontières, [EU Must Stop Trapping People in Miserable Conditions on the Greek Islands](#) (8 October 2020). [Eur-Med HR Monitor Report](#) (“[t]he lack of running water leads many residents to wash in the sea, with the risk of drowning, particularly for children, and of being infected by contamination from wastewater from the camp, as there is no drainage and sewage system. A female camp resident said, “[m]any of the women are forced to go to the sea during the night to have a bath, as during the day there are many men around and they want to avoid indiscreet gazes”).

<sup>82</sup> See e.g., Exhibit 003.

<sup>83</sup> European Commission, [Press Remarks by Vice-President Schinas on Immediate Actions to Support Greece](#) (4 March 2020).

<sup>84</sup> [HRW Report on Moria 2.0](#). See Aljazeera, [Refugees in Greece Wary of Entering New Camp After Moria Fire](#) (16 September 2020).

Individuals who refuse will not have their claims reviewed. This rule is an extension of Greece’s containment policy by which Greece has repeatedly stopped transfers from the islands to the mainland. It should also be noted that, in response to Turkey’s open-border policy earlier in 2020, Greece temporarily suspended registration of asylum claims and said it would deport “illegal” entrants to their country of origin or transit without examining their cases. This decision was made despite there being no legal basis in European or international law for the suspension of asylum applications. It was also made in violation of the principle of *non-refoulement* whereby it is prohibited to return asylum-seekers to a country where they have a well-founded fear of persecution.

25. Making matters worse, Greek authorities have done little to prevent the spread of COVID-19 in government-operated reception centres and camps.<sup>85</sup> In fact, prior to the fire that destroyed Moria in September, Greek authorities imposed fines and threatened criminal charges (based on urban planning regulations) on *Médecins Sans Frontières* (“MSF”) which operated the only isolation centre available to Moria’s residents who displayed COVID-19 symptoms.<sup>86</sup> Yet the centre had provided urgent care to individuals living in conditions “more cramped and densely populated than the Diamond Princess – the cruise ship where transmission of the virus was four times faster than in Wuhan at the peak of the outbreak.”<sup>87</sup> The new camp provides limited access to soap and water, and the cramped conditions render physical distancing impossible. When COVID-19 was first diagnosed in Moria, the Regional Asylum Service and EASO partially suspended asylum procedures.<sup>88</sup> As a result, asylum seekers are now unable to submit appeals or subsequent applications. Individuals outside of asylum procedures—*e.g.*, people who received a first-instance rejection and seek to appeal—are thus not considered *asylum seekers* by Greece or UNHCR.

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<sup>85</sup> One source stated that “it was only up to NGOs [to prepare for COVID] and we had difficulties. There are 400 quarantined in new camp. Now they are being tested, but originally it was only NGOs and with difficulties. Also, EASO has pressure to conduct interviews in person at a fast pace which sends a signal about the political priorities versus containing the disease.”

<sup>86</sup> Médecins Sans Frontières, *MSF Forced to Close COVID-19 Centre on Lesbos* [[“MSF in Moria”](#)] (30 July 2020).

<sup>87</sup> International Rescue Committee, [Press Release: New IRC Analysis Reveals Risk that Coronavirus Transmission Rates in Moria, Al Hol and Cox's Bazar Refugee Camps Could Outpace Those Seen on the Diamond Princess Cruise Ship](#) (1 April 2020).

<sup>88</sup> [LCL Report on Asylum Procedures During COVID-19](#).

Consequently, they are “stuck in limbo without legal status” and unable to receive assistance, including UNHCR’s monthly cash assistance.<sup>89</sup>

26. A notebook belonging to IOM staff discovered amongst the burnt remains of Moria sheds light on the devastating impact of Greece’s policies on one of the most vulnerable subsets of the refugee population: unaccompanied minors.<sup>90</sup> One employee wrote, “[w]e will keep informing and working in unprecedented and unacceptable conditions [...] In the least, it is problematic to see mothers with babies, unaccompanied young boys and criminal elements, even persons holding knives and makeshift weapons, living together for months in the same place.”<sup>91</sup> In an entry on Christmas day, a teenage girl approached IOM staff with a piece of paper on which she wrote the name of her abuser.<sup>92</sup> Staff recorded that “[i]t’s someone who beat her outside of the safe zone while he was drunk.” The same day, a man approached the unaccompanied minors’ section and accused the same girl of stealing money from him. While complaining, he also noted that he paid the girl on many occasions “in exchange for things that can’t be described...” The girl attempted to harm herself in the shower with a razor a few weeks earlier, resulting in a deep wound.<sup>93</sup>

27. In addition, a report of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Greece from 13 to 17 March 2020 details the comprehensive and organized nature of crimes committed against refugees.<sup>94</sup> The CPT found that the conditions facing refugees in certain detention facilities could “easily be considered as amounting to inhuman and degrading treatment.”<sup>95</sup> The CPT explained that “[a] belief apparently remains that harsh conditions will deter migrants from arriving in Greece, without taking into consideration the push factors driving people to risk their lives to enter the country.”<sup>96</sup> It continued that:

even in this challenging situation, foreign nationals deprived of their liberty by the Greek authorities must be treated both with humanity and with dignity. Further, their systematic

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<sup>89</sup> *Id.*

<sup>90</sup> Solomon, [The Logbook of Moria](#) (1 November 2020).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> [Council of Europe 2020 Report](#). Residents of reception and identification centres are not the only actors who have committed rape and other forms of sexual violence against refugees. Police officers have reportedly purchased underage boys and girls who are sold into prostitution, including children aged 14 years-old. *See e.g.*, Exhibit A\_02.

<sup>95</sup> *Id.*, para. 32.

<sup>96</sup> *Id.*, para. 12.

detention cannot be the immediate response to this challenge. Moreover, Greece cannot be so ill-prepared to receive new migrants that it has to hold them in inhuman and degrading conditions such as those witnessed on the island of Samos. The influx of migrants is not new and yet each time numbers surge, improvised places such as buses and a vessel are used to detain them.<sup>97</sup>

[...]

migrants were held for several hours at Soufli Police and Border Station in the back of a disused or confiscated truck parked just inside the back entrance to the station. Migrants met claimed that it was still night-time when they had been placed in the sealed container and that it was extremely cold and dark once the doors were closed. A few blankets had been left lying on the floor of the container but they were wet and reeked of urine. Only one of the migrants interviewed had wrapped a blanket around himself to ward off the cold and he ended up a few days later having to be isolated from all other persons at the Filakio pre-departure centre due to scabies. When the delegation visited the facility, the container was easily accessible and the inside (windowless and with no lighting) smelled of urine and still contained some signs of having been occupied. The delegation also found strewn on the ground around the back doors of the container the cut off remains of the plastic cuffs used to restrain migrants and a pile of belts and clothes as well as an empty wallet. A couple of plastic bottles filled with urine also lay under the truck.<sup>98</sup>

28. As with pushbacks, the cruelty of Greece's treatment of refugees follows legislative, executive, and judicial decisions in furtherance of a policy to deprive refugees of their basic human rights under international law. One example of such a decision is to normalize the criminalization of humanitarian aid by accusing human rights defenders of baseless crimes. In January 2016, Salam Kamal-Aldeen and his crew were detained by Greek authorities and charged with attempted smuggling after they rescued 64 refugees.<sup>99</sup> Mr. Kamal-Aldeen's rescue vessel was confiscated and he was kept in custody for 48 hours, during which time it was suggested that he sign a document offered to him in Greek confessing to being a smuggler.<sup>100</sup> After a two-and-a-half-year long legal battle, Mr. Kamal-Aldeen was cleared of all charges by a court in Lesbos.<sup>101</sup> He has since faced further legal threats.<sup>102</sup> Similarly, Sara Mardini arrived on Greek shores in 2015 as a

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<sup>97</sup> *Id.*, para. 13.

<sup>98</sup> *Id.*, para. 36.

<sup>99</sup> Frontline Defenders, [Migrant Rights Defender Salam Kamal-Aldeen Banned from Entering Greece](#).

<sup>100</sup> *Id.*

<sup>101</sup> The New York Times, *Volunteers Who Rescued Migrants Are Cleared of Criminal Charges in Greece* (7 May 2018).

<sup>102</sup> Global Legal Action Network, [Greece's Crackdown on Humanitarian Organisations](#) (in April 2019, Mr. Aldeen submitted an application to the European Court of Human Rights challenging Greece's crackdown on NGOs rescuing refugees at sea. However, the Court deemed the application inadmissible without reasoning in a "single-judge formation").

refugee from Syria, then returned as a humanitarian to rescue people from boats and tend to their basic needs.<sup>103</sup> Greek authorities arrested her and colleagues on human-smuggling charges in August 2018. They spent more than 100 days in jail before being released on bail. Ms. Mardini now faces up to 25 years in prison if convicted. In September 2020, Greece opened a felony file against 33 people from four NGOs and two “third country nationals” on crimes including espionage, violation of state secrets, creation of and participation in a criminal organization and violations of the migration law. The police statement claimed that the individuals “under the guise of humanitarian action, provided confidential information [...] to refugee flows from Turkey via closed groups and internet applications.”<sup>104</sup>

29. As a result of Greece’s crackdown on humanitarians, a multitude of NGOs who provide critical services to refugees have suspended operations due to fears for the safety of their staff and volunteers.<sup>105</sup> Additionally, the Greek government, which already limited access of NGOs to camps, enacted a law in December 2020 which prevents NGO workers, volunteers and civil servants from talking about “abuse, neglect, or deprivation” inside camps.<sup>106</sup> The law also provides that government employees can only report criminal acts to their superior and no others. The enactment of such draconian measures is a blatant attempt by the Greek government to shut down any dissent to its criminal actions.

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<sup>103</sup> Amnesty International, [Demand the Charges Against Sarah and Seán are Dropped](#); The Guardian, [Syrian Aid Worker Who Swam Refugees to Safety Freed from Greek Jail](#) (5 December 2018).

<sup>104</sup> Associated Press, [Greek Police Accuse 33 People of Helping Migrant Smuggling](#) (28 September 2020) (Greece has not released the names of the NGOs or the nationalities of individuals under investigation, but reports have pointed to the founder of Josoor International Solidarity and staff members of Alarm Phone, a hotline to support rescue operations). See Alarm Phone, [Press Release: The Real Crimes are Push-backs and Human Rights Violations by the Greek Government](#) (1 October 2020).

<sup>105</sup> See e.g. Refugee Rescue, [Statement: Suspension of Operations](#) (29 August 2020) (explaining that “[t]he deteriorating situation on the North Shore has made it impossible for us to continue our efforts to assist those in distress at sea at this time. Unacceptably, the rising criminalization of humanitarian organizations in Lesbos and growing hostilities now pose an irrefutable threat to our staff, assets, and work – and we cannot in good conscience continue to operate if we cannot guarantee the safety of our team. Additionally, the unchecked impunity with which authorities now work has created a situation where we no longer trust that they will allow us to launch our independent rescue boat, Mo Chara”); [Refugees International 2020 Report](#) (“[o]n October 30, 2020, the government defied calls from NGOs and evicted residents of PIKPA, a self-organized, award-winning facility that has provided essential services and support to vulnerable asylum seekers in Lesbos since 2012. Authorities had earlier agreed to postpone the facility’s closure, but reversed their decision without notice. The move is another example of the cruelty of Greece’s approach—the government fails to adequately provide for asylum seekers but also undermines independent efforts to fill the gaps its leaves”).

<sup>106</sup> Forbes, [Greece has Intensified its Crackdown on Refugee NGOs with a New Confidentiality Law](#) (9 December 2020).

30. The conditions in reception centres—in addition to asylum procedures that limit access to legal aid, deny rights of appeal, and legalize detention based on nationality, age, and gender—have led to an asylum system that deprives people of humanitarian aid and deports them, rather than offering basic help and safety.

## 2. Alleged offenses

31. It is submitted that the combined treatment of refugees in Greece by Greek government officials and their agents, in conjunction with Frontex officials and their agents, since the EU-Turkey Deal's entry into force in March 2016, constitutes a widespread and systematic attack against an identifiable civilian population for the purpose of deterring vulnerable individuals from seeking asylum in Europe, and amounts to crimes against humanity under Article 7 of the Rome Statute.

32. Per Article 7(1) of the Statute, individuals commit a crime against humanity if they knowingly perform a specified act “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”

33. *Attack* refers to a “course of conduct involving the multiple commissions of acts” under Article 7(1) or other grounds that are universally recognized as impermissible under international law. Attacks constituting Article 7 crimes do not need to be linked to an armed conflict, nor do they need to target a specific group.<sup>107</sup> Rather, they can occur in peacetime. The ICTY has explained that “[i]t is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way ... that the attack was in fact directed against a civilian ‘population’, rather than against a limited and randomly selected number of individuals.” Additionally, legislative and executive acts may constitute prohibited acts, and they can also

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<sup>107</sup> Otto Triffterer & Kai Ambos, *The Rome Statute of the International Criminal Court*, ‘Article 7’ [“Triffterer & Ambos”], pp. 165-166. See ICTY, Trial Chamber, *The Prosecutor v. Kunarac*, Judgment, 22 February 2001, IT-96-23-T, para. 419 [“*Prosecutor v. Kunarac*”] (“[i]t is sufficient to show that the act took place in the context of an accumulation of acts of violence which, individually, may vary greatly in nature and gravity”); ICTR, Chamber I, *Prosecutor v. Jean-Paul Akayesu*, Judgment, 2 September 1998, ICTR-96-4-T, para. 581 [“*Prosecutor v. Akayesu*”] (“[a]n attack may also be non-violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner”).

facilitate prohibited acts. Any civilian population, regardless of its affiliation or identity can be considered a victim of an attack under Article 7.<sup>108</sup>

34. When determining whether an attack is *widespread*, the Prosecutor looks at the number of victims, the multiplicity of victims, and the scale of the attack.<sup>109</sup> *Systematic* refers to “the organised nature of the acts of violence and the improbability of their random occurrence.”<sup>110</sup> Systematic acts under Article 7 are committed in furtherance of a State or organizational policy to commit an attack.<sup>111</sup> It is not necessary to prove that there is an overall specific intent.<sup>112</sup> The plan or policy does not need to be explicitly stated or adopted. Rather, it can be inferred from the totality of the circumstances.<sup>113</sup> It is sufficient to prove a simple intent to commit the act.<sup>114</sup>
35. In the case at hand, Greek and Frontex officials and their agents have waged an attack on refugees through policies and practices meant to deter individuals with a well-founded fear of persecution from seeking asylum in Europe.<sup>115</sup> Taken together, the policies and practices may amount to crimes

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<sup>108</sup> Triffterer & Ambos, at 165-166.

<sup>109</sup> ICTR, Trial Chamber II, *Prosecutor v. Kayishema & Ruzindana*, [Judgment](#), 21 May 1999, ICTR-95-A-T, para. 123 (holding that “[an] attack must contain one of the alternative conditions of being widespread or systematic. A widespread attack is one that is directed against a multiplicity of victims. A systematic attack means an attack carried out pursuant to a preconceived policy or plan. Either of these conditions will serve to exclude isolated or random inhumane acts committed for purely personal reasons”), citing International Law Commission, [Draft Code of Crimes Against the Peace and Security of Mankind](#) (explaining that *large scale* means that acts are “directed against a multiplicity of victims,” and that *systematic* is “pursuant to a preconceived plan or policy” that results “in the repeated or continuous commission of inhumane acts”). See also ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09, paras 95-96 [[“Kenya Authorization Decision”](#)] (noting that “[t]he assessment is neither exclusively quantitative nor geographical, but must be carried out on the basis of the individual facts. Accordingly, a widespread attack may be the ‘cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude’”).

<sup>110</sup> ICTY, Appeals Chamber, [Prosecutor v. Kordic & Cerkez](#), Judgment, 17 December 2004, Case No. IT-95-14/2-A, para. 94; ICC, Pre-Trial Chamber I, *Prosecutor v. Harun & Kushayb*, Decision on the Prosecution Application Under Article 58(7) of the Statute (2), 27 April 2007, ICC-02/05-01/07-1-Corr, para. 62 [[“Prosecutor v. Harun & Kushayb”](#)].

<sup>111</sup> ICTY, Appeals Chamber, [Prosecutor v. Kunarac et al.](#), Judgment, 12 June 2002, Case No. IT-96-23 & IT-96-23/1-A, para. 98; [Prosecutor v. Harun & Kushayb](#), para. 62 (“[t]he Chamber is also of the view that the existence of a State or organisational policy is an element from which the systematic nature of an attack may be inferred”).

<sup>112</sup> Triffterer & Ambos, at 165-166.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> See Ioannis Kalpouzos & Itamar Mann, [Banal Crimes Against Humanity: The case of asylum seekers in Greece](#), 16 Melbourne Journal of International Law 1, p. 11 (4 May 2015) (“...in order to see the state’s detention policy as (containing) an ‘attack’ it is not necessary that every single aspect of it and every individual act associated with it is a prohibited act. It is sufficient to identify IDT and denial of detention review as inherent and systematic features of said detention policy, as the ECtHR, indeed, repeatedly has. The fact that this line of conduct constitutes and is contained in what is prima facie a state’s overall right to manage immigration flows does not preclude it of the character of attack, even though it contributes to its perception as ‘banal’”).

against humanity under Article 7 of the Rome Statute, including: deportation and forcible transfer of a population, persecution, inhumane acts for the deprivation of humanitarian aid, sexual violence, and torture. Such state-sanctioned decisions are bureaucratized and institutionalized in a manner that has been continuously, uninterruptedly, and methodically imposed since the EU-Turkey Deal's ratification.<sup>116</sup>

36. Greek officials and their agents' attack on refugees is widespread. The large scale of the number of victims since the start of the EU-Turkey Deal amounts to hundreds of thousands of people originating from a multitude of countries who lawfully entered Greek territory, even before the EU-Turkey Deal was implemented in 2016. Many of these people are no longer in Greece; they have been left alone to cope with the trauma associated with their arduous journeys from war-torn countries to new lives in Europe. But thousands more continue to live in deplorable conditions on the Greek islands and on the mainland. For these people, the large scale of Greece's attack on refugees—which impacts every aspect of their lives—equates Europe with despair, desperation, and dehumanization. The collective suffering of this sizeable group, in conjunction with the fact that Greece will remain one of the only pathways to Europe, exemplifies the widespread nature of Greece's attack and the dire need for the Prosecutor to initiate an investigation.

37. Moreover, the totality of the circumstances shows that the attack is systematic. Greece's migration policies are not simply a reaction to migration flows; they constitute a concerted effort to deter refugees from coming to Europe or to flee back to situations of persecution. This is seen through the organized manner in which Greek officials and their agents have implemented their attack. It involves a series of legislative, executive, and judicial decisions that work symbiotically to subvert the rights of refugees, and to deter others from coming to Europe, which include the performance of unlawful pushbacks and the intentional failure to adequately respond to a humanitarian emergency—despite financial support from the EU. Given the widespread and systematic nature of the attack, in conjunction with continued global conflicts that create refugee populations, there is a high probability that more refugees will be exposed to inhumane and degrading treatment in violation of Article 7 of the Rome Statute. Consequently, the impact of the attack on refugees goes

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<sup>116</sup> See *id.* p. 12 (“[t]he ascription of responsibility for inflicting IDT to Greece by the ECtHR, and the finding in *MSS* that the infliction of IDT on asylum seekers in Greece is generalised to the extent that it justifies a blanket ban on deportation to Greece, clearly suggests that such a course of action consists of a multiplicity of acts united by a thread and is attributable, as policy, to the state and its agents”).

beyond the denial of basic human rights enshrined in international law. Rather, it knowingly and systematically degrades vulnerable people in the cruellest of ways.

38. Accordingly, the following acts performed by Greek government officials and their agents, as well as Frontex officials and their agents, implicate the perpetrators of crimes against humanity: deportation and forcible transfer of a population through physical expulsion and the use of coercive methods; persecution by severely depriving refugees of their fundamental rights; inhumane acts for the deprivation of humanitarian aid and the purposeful exacerbation of dire living conditions; sexual violence, such as regular strip searches involving inappropriate and aggressive touching; and torture by conduct and by treatment.

**A. Greek government officials, Frontex officials and their agents are responsible for the crimes against humanity of deportation and forcible transfer of the population through pushbacks of refugees in violation of Article 7(1)(d) of the Rome Statute.**

39. Under Articles 7(1)(d) and 7(2)(d) of the Statute, the crime of deportation occurs when civilians are forcibly displaced “by expulsion or other coercive acts from an area in which they were lawfully present, without grounds permitted under international law.” The Pre-Trial Chamber has clarified that “the victims’ behaviour or response as a consequence of coercive environment” must be shown in order to establish that the crime was completed. “If the victims refused to leave the area despite the coercive environment or they did not cross an international border, it would constitute forcible transfer or an attempt to commit the crime of deportation.”<sup>117</sup> The Pre-Trial Chamber has acknowledged that “deportation of a State’s nationals as well as the arbitrary or collective expulsion of aliens is generally prohibited” under international law, but that displacement is permitted in specific situations in which “the security of the population or imperative military reasons so require.”<sup>118</sup> However, the Pre-Trial Chamber has also noted that

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<sup>117</sup> ICC, Pre-Trial Chamber III, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019, ICC-01/19-27, para. 52 [[“Situation in Bangladesh”](#)].

<sup>118</sup> *Id.*, para. 98. See ICTY, Appeals Chamber, *Prosecutor v. Vlastimir Dordević*, [Judgment](#), 27 January 2014, IT-05-87/1-A, para. 705) (explaining that it is for the Prosecutor to prove that the forcible displacement of individuals occurred without grounds permitted under international law). See also U.N.G.A., Articles 12(3) and 13 of the International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 17955 [[“ICCPR”](#)]; Organization of American States, Article 22 of the [American Convention on Human Rights](#), 22 November 1969, 1144 U.N.T.S. 17955; Organization of African Unity, Article 12 of the [African Charter on Human and Peoples’ Rights](#), 10

“this is not the case where the humanitarian crisis that caused the displacement is the result of an unlawful activity.”<sup>119</sup> Further, widespread and systematic implementation of policies and practices in breach of the *non-refoulement* principle could also constitute the crime of deportation.<sup>120</sup> To be sure, where the egregious violation of the international protection principle – one of the most widely accepted norms in international law (*jus cogens*) – has the intended effect of forcing bona-fide refugees across an international border, the criminal elements of deportation may be established.<sup>121</sup>

40. *Refugee* is a legal title given to people recognized to have fled their country because of a well-founded fear of persecution related to their race, religion, nationality, membership of a particular social group, political opinion or conscientious objection.<sup>122</sup> Because their government is unable or unwilling to protect them from danger, refugees have no other choice but to leave their home.<sup>123</sup> They have a right to international protection which goes beyond physical safety. Rather, refugees are entitled to the same rights as foreign legal residents, including: freedom of thought, freedom

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June 1998; Eur. Union, Council of Eur., Articles 2, 3 and 4 of the [Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms](#), 22 November 1969, E.T.S. No. 46; U.N.G.A., Article 22 of the [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#), 18 December 1990, A/RES/45/158; U.N. Int’l Human Rights Instruments, [Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies](#), HRI/GEN/1/Rev.9 (vol. I), p. 191, para. 10 (27 May 2008).

<sup>119</sup> *Id.* See ICTY, Appeals Chamber, [Prosecutor v. Milomir Stakić](#), Judgment, 22 March 2006, IT-97-24-A, paras 284-287 (“[a]lthough displacement for humanitarian reasons is justifiable in certain situations, the Appeals Chamber agrees with the Prosecution that it is not justifiable where the humanitarian crisis that caused the displacement is itself the result of the accused’s own unlawful activity”).

<sup>120</sup> See e.g., ECtHR, Grand Chamber, [Case of M.S.S. v. Belgium and Greece](#), Judgment, 21 January 2011, Application No. 30696/09 [[“M.S.S. v. Belgium & Greece”](#)] (the Court described the various aspects of Greece’s policies and practices which worked together to subvert the applicant’s right to *non-refoulement*, including: providing insufficient information about asylum procedures, not ensuring reliable communication system, maintaining a shortage of interpreters, hindering access to legal aid, excessively delaying decision, inhumane duration and conditions of detention, etc.).

<sup>121</sup> See Jean Allain, [The jus cogens Nature of non-refoulement](#), 13 International Journal of Refugee Law 4, pp. 533-558 (1 October 2001); Cathryn Costello & Michelle Foster, [Non-refoulement as custom and jus cogens? Putting the prohibition to the test](#), Netherlands Yearbook of International Law, pp. 273-327 (Springer 2016).

<sup>122</sup> UNHCR, Article 1(A) of the [Convention and Protocol Relating to the Status of Refugees](#), 28 July 1951 [[“Refugee Convention”](#)]. Similarly, *asylum seeker* is a title given to individuals who left their country because of a well-founded fear of persecution. They are in the process of seeking protection through an asylum claim, but are not yet legally recognized as refugees. See UNHCR, [Asylum-Seekers](#) (“[n]ational asylum systems are in place to determine who qualifies for international protection. However, during mass movements of refugees, usually as a result of conflict or violence, it is not always possible or necessary to conduct individual interviews with every asylum seeker who crosses a border. These groups are often called ‘prima facie’ refugees”). U.N.G.A., Article 14(1) of the Universal Declaration of Human Rights, 10 December 1948 [[“UDHR”](#)] (“[e]veryone has the right to seek and to enjoy in other countries asylum from persecution”).

<sup>123</sup> *Id.*, at Art. 1(A)(2).

of movement, freedom from torture and degrading treatment, economic rights, social rights, access to medical care, access to education and the right to work.<sup>124</sup> In sum, refugees are lawfully present in the state of refuge.

41. In the case at hand, a large proportion of the victims are refugees from States including Syria, Afghanistan and the Democratic Republic of the Congo. They left their countries because of a well-founded fear of persecution. They faced dangers perpetrated by both state and non-state actors, and they had no reasonable alternative for securing their safety within their own country. They were thus forced to flee and were lawfully present on Greek territory under international law which entitles them to a right of asylum. While lawfully on Greek territory, they were forcibly displaced back to Turkey by Greek and Frontex agents both by physical expulsion and the use of coercive methods.
42. Greek agents physically expelled refugees on land by arresting them and physically returning them to Turkey.<sup>125</sup> Victims were passed between Greek agents and unidentified men who robbed them, assaulted them, and subjected them to electric shocks, as well as prolonged beatings, in an effort to force them out of Greece and into Turkey across an international border. These physical expulsions constitute the crime against humanity of deportation.
43. These conclusions apply with equal force to deportations perpetrated at sea. The forcible transfer of refugees from Greek territorial waters to Turkish territorial waters or the High Seas constitutes a violation of international refugee law. A preeminent scholar on the international law of the sea has expressed the issue as follows: “Unless individual refugee status determinations are conducted, interdiction followed by either involuntary repatriation or simply turning boats back risks breaching the [Refugee] Protocol. To give effect to their *non-refoulement* obligations parties to the Protocol should, at a minimum, conduct some form of individual refugee screening process at sea in such cases.”<sup>126</sup> He concludes unequivocally that: “Maritime interdiction of irregular migrants without providing some form of refugee screening process is strictly incompatible with the Refugee Convention and Protocol.”<sup>127</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> *See supra.* para. 16.

<sup>126</sup> Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* (Cambridge 2009), p. 223.

<sup>127</sup> *Id.* at 225.

44. Moreover, the United Nations Convention on the Law of the Sea (UNCLOS) to which Greece is a state party, requires that every state require the master of a ship “to proceed with all possible speed to rescue persons in distress.”<sup>128</sup> The Greek and Frontex authorities have done precisely the opposite of what UNCLOS requires. When they have encountered refugees in Greek territorial waters, they have created dangerous conditions that put at risk the lives of the refugees.<sup>129</sup> They have used metal poles to break engines leaving boats adrift, physically kicked boats, and created waves by speeding past to push them back into Turkish waters or the High Seas. There are no grounds under international law that permit this egregious conduct.
45. Deportations on land were further perpetrated through coercive measures such as: beatings; psychological violence; insults; threats; stealing of personal property; kicking; electrical shocks; detention in inhumane and degrading conditions; forced undressing; water immersion and; baton attacks. These conditions and mistreatment created a coercive environment with the express purpose of forcing refugees to withdraw their asylum claims and to return to states where they suffered persecution. Refugees do not threaten the safety of the Greek population, nor does Greece have a military imperative for its violent acts. Accordingly, pushbacks performed by Greek and Frontex agents constitute the crime of deportation.
46. The cruelty of these actions is consistent with other legislative, executive, and judicial decisions that support a broader deterrence policy.<sup>130</sup> In effect, inhumane state-sanctioned pushbacks are just one aspect of Greece’s broader migration policy meant to stop vulnerable people from entering Europe, which they are lawfully entitled to do under international refugee law. Taken together, the

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<sup>128</sup> United Nations, Article 98 of the [Convention on the Law of the Sea](#), 10 December 1982, 1833 U.N.T.S. 397.

<sup>129</sup> *See supra*, paras 6-7.

<sup>130</sup> *See e.g.* Greek Law No. 4636/2019 which installed restrictive procedures that question the legal principle that asylum seekers should only be detained under exceptional circumstances, and when provided for by law to achieve a legitimate purpose. Additionally, under Article 46 of Greek Law No. 4636/2019, individuals applying for international protection can be detained, regardless of whether they apply for asylum while in detention or not. The law also extends the maximum detention period from three to 18 months, but can extend to 36 months if added to immigration detention. UNHCHR, *Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece (2 - 13 December 2019)* [[“Working Group on Arbitrary Detention”](#)]; [Refugees International 2020 Report](#) (“[s]ince the IPA took effect, a series of policy changes and ministerial directives have continued to alter the legal framework. One NGO representative told Refugees International that it felt nearly impossible to keep up with the pace of changes. He warned of the destabilizing effect of the resulting legal uncertainty. Moreover, the changes have taken a negative direction--- in May 2020, the government passed amendments to the IPA that actually exacerbated rather than reformed many of its adverse provisions”).

actions of Greek officials and their agents violate Article 7(1)(d) of the Rome Statute and constitute the crime against humanity of deportation.

**B. Greek government officials, Frontex officials and their agents are responsible for the crime against humanity of persecution.**

47. According to Article 7(1)(h), *persecution* refers to “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.” A claim of persecution must show: (1) severe deprivation of fundamental rights in contradiction to international law, (2) victims were targeted because of their group identity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are impermissible under international law, (3) the conduct was committed in connection with other prohibited acts, and (4) the perpetrators knew that their conduct was part of, or intended to be part of, a widespread or systematic attack directed toward a civilian population.<sup>131</sup>
48. Greek government officials and their agents commit persecutory acts against refugees by virtue of their belonging to a collectivity. More specifically, individual victims at the border are treated discriminatorily because of their identity as refugees, while the entire collectivity of refugees is treated discriminatorily at reception and identification centres. In either situation, the victims hold different nationalities, ethnicities, and religions, but are bound together by their belonging to an identifiable group. The members of this group share a common identity—they were forced to flee their homes due to a well-founded fear of persecution, and returning home could lead to their death. Inherently, their decision to flee was rooted in survival, not choice. Yet, but for their identities as refugees and the shared circumstances surrounding their suffering, Greek authorities would not have mistreated them.
49. At the border, Greek government officials and its agents persecute refugees by denying them their right to asylum in connection to the performance of unlawful pushbacks and in furtherance of their attack on refugees. Moreover, Greece’s deprivation of rights at the border goes beyond the pushbacks themselves; it encompasses a coordinated effort to deny *all* refugees of their fundamental rights. Refugees are denied their right to life, liberty and personal security, in addition

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<sup>131</sup> *Elements of Crimes*, art. 7(1)(h). See generally [ICCPR](#) (explaining that persecutory acts may include administrative acts that create a system of inhumane and discriminatory treatment. Torture and cruel, inhuman or degrading treatment also constitute deprivation of fundamental rights).

to their freedom from arbitrary arrest when they are assaulted (including sexually assaulted), robbed, and stripped of their clothing before being detained in extrajudicial black sites where they are often refused food and water, and then forcibly deported.<sup>132</sup> This conduct inherently denies refugees their right to recognition before the law, thus subverting their right to asylum and *non-refoulement*.<sup>133</sup> Accordingly, the actions of Greek government officials and its agents in support of their deterrence policy at the border constitute severe deprivation of refugees' fundamental rights and amount to persecution.

50. An integral part of the attack on refugees in reception and identification centres is to intentionally deny them their fundamental human rights in order for their lives to be so miserable that refugees would rather remove themselves from Greece than continue to live in such inhumane, degrading and humiliating conditions.<sup>134</sup> Some of the rights denied to the victims in reception and identification centres are: liberty and security of persons; freedom from inhumane or degrading treatment; right to recognition as a person before the law; right to equal protection under law; freedom from arbitrary arrest or detention; freedom of movement; right to enjoyment in other countries asylum from persecution; freedom from arbitrary deprivation of property; freedom of peaceful assembly; right to a standard of living adequate for the health and well-being of himself and of his family, such as food, clothing, housing and medical care and necessary social services; right to security in circumstances beyond his control; right to special care and assistance for motherhood and childhood; and right to education. Taken together, Greece's actions amount to persecution under Article 7(1)(h) of the Rome Statute.

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<sup>132</sup> See *supra* paras 15-17.

<sup>133</sup> See e.g., *M.S.S. v. Belgium & Greece*, para. 300 (“[t]he Court observes...that for a number of years the UNHCR and the Council of Europe Commissioner for Human Rights, as well as many international non-governmental organisations, have revealed repeatedly and consistently that Greece’s legislation is not being applied in practice and that the asylum procedure is marked by such major structural deficiencies that asylum-seekers have very little chance of having their applications and their complaints under the Convention seriously examined by the Greek authorities, and that in the absence of an effective remedy, at the end of the day they are not protected against arbitrary removal back to their countries of origin”).

<sup>134</sup> The rights and freedoms enshrined in the [UDHR](#) which are denied to refugees by Greece include: liberty and security of persons; freedom from inhumane or degrading treatment; right to recognition as a person before the law; right to equal protection under law; freedom from arbitrary arrest or detention; freedom of movement; right to enjoyment in other countries asylum from persecution; freedom from arbitrary deprivation of property; freedom of peaceful assembly; right to a standard of living adequate for the health and well-being of himself and of his family, such as food, clothing, housing and medical care and necessary social services; right to security in circumstances beyond his control; right to special care and assistance for motherhood and childhood; and right to education.

**C. Greek government officials and its agents are responsible for the crime against humanity of other inhumane acts for the deprivation of humanitarian aid.**

51. The residual category of crimes against humanity refers to “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”<sup>135</sup> The act must inflict great suffering or serious mental or physical injury; the act must be similar in gravity to other inhumane acts; and the perpetrator must be aware of the factual circumstances that establish the character or gravity of the act.<sup>136</sup> The deprivation of humanitarian aid constitutes the crime against humanity of other inhumane acts. For example, the ICTY has found that the intentional blocking of aid convoys to constitute other inhumane acts as they were used to create “a humanitarian crisis as a prelude to the forcible transfer of the Bosnian Muslim civilians.”<sup>137</sup> Moreover, denying individuals *en masse* their right to refugee status and protections under international law is an “inhumane” act insofar as it violates the right to *non-refoulement*.<sup>138</sup>
52. At the border, Greek government officials and its agents are well aware of the dire conditions that threaten the lives of refugees because Greek authorities purposely exacerbated these conditions. Rather than abiding by international law and facilitating the dispersal of humanitarian aid to victims, the perpetrators circumvent their obligations in order to cause serious mental and physical harm. For example, the Hellenic Coast Guard regularly ignores the calls of boats in distress.<sup>139</sup> On the rare occasions when physical tactics are not being used to create dangerous conditions for refugees on battered dinghies, the Hellenic Coast Guard watches nearby as individuals, including pregnant women and infant children, are at risk of drowning and in need of food and water. Yet the Hellenic Coast Guard refuses to provide humanitarian aid or to help boats reach safety. Instead, they choose to cruelly watch vulnerable people suffer and perpetuate a humanitarian crisis at sea. Additionally, by denying the presence of extrajudicial black sites at which refugees are refused

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<sup>135</sup> Article 7(1)(k) of the Rome Statute; Article 7(1)(k) of the *Elements of Crimes*.

<sup>136</sup> Article 7(1)(k) of the Rome Statute; Article 7(1)(k) of the *Elements of Crimes*; ICC, Pre-Trial Chamber, *Prosecutor v. Katanga*, [Decision on the Confirmation of Charges](#), 30 September 2008, ICC-01/04-01/07-717, para. 454.

<sup>137</sup> See e.g., ICTY, Trial Chamber, *Prosecutor v. Tolimir*, [Judgment](#), 12 December 2012, Case No. IT-05-88/2, paras 806, 809, 1015, 1021; ICTY, Trial Chamber, *Prosecutor v. Vujadin Popovic et al.*, [Judgment](#), 10 June 2010, Case No. IT-05-88-T, para. 766; ICTY, Trial Chamber, *Prosecutor v. Ratko Mladić*, [Judgment](#), 22 November 2017, Case No. IT-09-92, para. 4601; ICTY, Trial Chamber, *Prosecutor v. Radovan Karadžić*, [Judgment](#), 24 March 2016, Case No. IT-95-5/18, paras 5624.

<sup>138</sup> [Situation in Bangladesh](#), para. 111 (“...the Chamber stresses that the Prosecutor is not restricted to investigating only the events mentioned in her Request, much less their provisional legal characterization”); *supra* paras 38-45.

<sup>139</sup> See e.g., *supra* paras 12, 42-43.

basic necessities and are unreachable by NGOs, the Greek government further deprives refugees of humanitarian aid.<sup>140</sup>

53. Greek government officials and its agents also deprive humanitarian aid to refugees in reception and identification centres. This is despite substantial financial support given to Greece by the European Union specifically to improve humanitarian conditions. Instead, the perpetrators make life miserable for refugees by: providing them with insufficient housing, unsanitary conditions, and inadequate food; limiting access of NGOs to reception centres and shutting down volunteer-run housing facilities; limiting medical and psychosocial support, *even during a pandemic*; limiting access to legal aid and prohibiting dissemination of legal information and; criminalizing humanitarian work. Greek government officials and its agents act with impunity in furtherance of their attack on the victims. Their policies and practices amount to crimes under Articles 7(1)(h), 7(1)(k) and 7(2)(g) of the Statute and should be investigated by the Prosecutor.

**D. Greek government officials and its agents are responsible for the crime against humanity of sexual violence.**

54. Article 7(1)(g) punishes crimes against humanity of sexual violence committed as part of a widespread or systematic attack directed against a civilian population in which the perpetrator committed an act of a sexual nature, or caused the victim to engage in an act of a sexual nature, through the threats of force or coercion, namely: violence, duress, detention, psychological pressure, abuse of power, or other acts of penetration that take advantage of a coercive environment.<sup>141</sup> To constitute a crime against humanity of sexual violence, the conduct should be comparable to other Article 7(1)(g) offences.<sup>142</sup> Moreover, the perpetrator must have been aware of the factual circumstances that established the gravity of the conduct and that the conduct was part of, or intended the conduct to be part of, the widespread or systematic attack directed against the civilian population.<sup>143</sup>

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<sup>140</sup> See [NYT Report on Greece Black Sites](#).

<sup>141</sup> Article 7(1)(g)-6 of the *Elements of Crimes*.

<sup>142</sup> Article 7(1)(g) of the Rome Statute governs the crime against humanity of rape. It punishes acts of penetration committed as part of a widespread or systematic attack directed against a civilian population under the threat of force or coercion, namely: violence, duress, detention, psychological pressure, abuse of power, or other acts of penetration that take advantage of a coercive environment.

<sup>143</sup> *Id.* See also [Akayesu](#), para. 688 (noting that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact”).

55. In reception and identification centres, Greek government officials and its agents have preyed on vulnerable refugees who reside in unstable environments where rape is commonplace. Rather than protecting the physical security of refugees, some police officers are known to purchase underage boys and girls sold into prostitution, including children aged 14 years-old.<sup>144</sup> Their actions constitute an egregious abuse of power against a population already exposed to unimaginable trauma.
56. At the border, Greek government officials, Frontex officials and their agents conduct acts of a sexual nature as a regular practice when carrying out their attack on refugees. This is particularly the case when groups of individuals, including women and children, are forced to strip naked and are physically violated through inappropriate and aggressive touching under the guise of searches.<sup>145</sup> During these instances, refugees are also subjected to verbal abuse, severe beatings, and then forcibly deported to Turkey.<sup>146</sup> Such actions exemplify the way in which Greek government officials, Frontex officials and their agents exert their authority over refugees using sexual violence in furtherance of their broader goal of deterrence.

**E. Greek government officials and its agents are responsible for the crime against humanity of torture.**

57. Torture is the “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”<sup>147</sup> The “in the custody or under the control” element could apply where a victim is held in a prison camps or detention facility.<sup>148</sup> Unlike the war crime of torture, the crime of torture as a CAH does not

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<sup>144</sup> See *supra* fn. 92; Exhibit A\_02. Coercion may be inherent in certain situations when the perpetrator takes advantage of an environment. As such, evidence of physical force is unnecessary to establish coercion. See ICC, Trial Chamber VI, *Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06, paras 934-35 [[“Ntaganda Judgment”](#)]; ICC, Trial Chamber II, *Prosecutor v. Germain Katanga*, Judgment Pursuant to Article 74 of the Statute, 7 March 2014, ICC-01/04-01/07, para. 965 [[“Katanga Article 74 Judgment”](#)]; ICTR, Trial Chamber I, *Prosecutor v. Jean-Paul Akayesu*, Judgment, 2 September 1998, Case No. ICTR-96-4-T, para. 688 [[“Akayesu”](#)].

<sup>145</sup> See *supra* paras 15-16.

<sup>146</sup> *Id.*

<sup>147</sup> Article 7(1)(f) of the Rome Statute; Article 7(1)(f) of the *Elements of Crimes*. See also UNHCR, A/AC.96/951, para. 16 (13 September 2001) (noting that “...international human rights law has established non-refoulement as a fundamental component of the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment”).

<sup>148</sup> Article 7(1)(f) of the *Elements of Crimes*.

require the additional element of a specific purpose (*i.e.* to obtain information or for a discriminatory purpose).<sup>149</sup>

58. Greek government officials and their agents commit two forms of torture: (i) *torture by conduct* consisting of physical mistreatment and (ii) *torture by treatment* consisting of deplorable living conditions to which they subject refugees. Conditions in certain detention facilities are meant to intentionally inflict refugees with severe physical pain and mental suffering based on an apparent belief that harsh treatment will deter people from coming to Greece.<sup>150</sup> As part of this systematic detention scheme, the Greek government subjects detained refugees in inhumane and degrading conditions of an unacceptably carceral nature. Detainees, including small children and babies, are held in facilities where they are verbally abused, physically abused (including sexually assaulted), face racist behaviour by Greek government agents, and are regularly threatened with ill-treatment.<sup>151</sup> Refugees have been sent to domestic black sites where former detainees report that they were treated “like animals,” beaten, and refused food and water before being refouled to Turkey.<sup>152</sup> Moreover, Greek authorities have placed detainees in sealed containers for hours on end with no light, no possibility to go to the toilet and no way to stay warm.<sup>153</sup> These actions constitute the crime against humanity of torture.

### 3. Elements for preliminary assessment by the Prosecutor

59. Article 15 of the Rome Statute enables the Prosecutor to “initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.”<sup>154</sup> Article 15(3) states that, “[i]f the Prosecutor concludes that there is a **reasonable basis** to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation,

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<sup>149</sup> ICC, Pre-Trial Chamber II, *Prosecutor v. Bemba*, [Decision Pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo](#), 15 June 2009, ICC-01/05-01/08, para. 195.

<sup>150</sup> See [Council of Europe 2020 Report](#), para. 12 (“[a] belief apparently remains that harsh conditions will deter migrants from arriving in Greece, without taking into consideration the push factors driving people to risk their lives to enter the country. The European Union’s determination to seal its external borders has resulted in severe difficulties for Greece since 2015; however, the punitive approach pursued by the Greek authorities throughout that time has done nothing to resolve the underlying issues”).

<sup>151</sup> See *supra*, para. 15.

<sup>152</sup> See [NYT Report on Greece Black Sites](#).

<sup>153</sup> See *supra*, para. 26.

<sup>154</sup> Article 15(1) of the Rome Statute.

together with any supporting material collected.”<sup>155</sup> The *reasonable basis* threshold is the lowest evidentiary standard in the Rome Statute. It simply requires “a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court has been or is being committed.”<sup>156</sup> When deciding whether there is a sensible or reasonable justification, the Prosecutor must find that the crime: (i) falls within the category of an Article 5 crime (jurisdiction *ratione materiae*), (ii) meets the temporal conditions specified in Article 11 (jurisdiction *ratione temporis*), and (iii) satisfies one of the two requirements under Article 12(2) (jurisdiction *ratione loci* or *ratione personae*).<sup>157</sup>

60. In the situation at hand, Greece is a State Party to the ICC. Generally, the Court has territorial jurisdiction over Article 5 crimes that occurred on Greek territory pursuant to Articles 12(1), 12(2) and 13(c).<sup>158</sup> When determining whether the Court may exercise jurisdiction over crimes that occurred partially on the territory of a State Party and partially on the territory of a non-State Party, the Pre-Trial Chamber may exercise territorial jurisdiction within the limits prescribed by customary international law when part of the unlawful conduct takes place within the territory of a State Party.<sup>159</sup> As such, the Court has territorial jurisdiction here because the alleged crimes occurred, at least partially, on Greek territory. The Court’s jurisdiction also encompasses “[t]he State of which the person accused of the crime is a national,” and at least some of the perpetrators are Greek nationals.<sup>160</sup>

61. Additionally, the Court has temporal jurisdiction insofar as the crimes occurred after Greece ratified the Rome Statute on 15 May 2002 (entered into force on 1 August 2002).<sup>161</sup> Similarly, the

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<sup>155</sup> Article 15(3) of the Rome Statute (emphasis added).

<sup>156</sup> ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi’, 9 November 2017, ICC-01/17-9-Red, para. 30 [[“Burundi Article 15 Decision”](#)].

<sup>157</sup> [Burundi Article 15 Decision](#), para. 31; [Kenya Authorization Decision](#), para. 39; *See also* [Situation in Bangladesh](#), para. 40.

<sup>158</sup> *See generally* [Situation in Bangladesh](#), paras 43, 58 (noting that “the Court may exercise jurisdiction over crimes when *part of the criminal conduct* takes place on the territory of a State Party”) (emphasis added).

<sup>159</sup> *Id.*, para. 60 (“...since the States Parties did not explicitly restrict their delegation of the territoriality principle, they must be presumed to have transferred to the Court the same territorial jurisdiction as they have under international law”).

<sup>160</sup> Article 12(2)(b) of the Rome Statute.

<sup>161</sup> Article 11 of the Rome Statute.

principle of retroactivity under Article 11 is respected because the practices and policies were implemented after the Rome Statute was entered into force.<sup>162</sup>

62. The Court has subject matter jurisdiction over the crimes insofar as the ICC is the only permanent international court to hear the most serious international crimes, including Article 7 crimes.

### **A. Complementarity**

63. As a court of last resort, the ICC exercises its jurisdiction over crimes that are ignored, or disingenuously responded to, by domestic courts.<sup>163</sup> When assessing whether the complementarity requirement is satisfied, the Prosecutor determines “whether any State is exercising its jurisdiction in relation to the same person for substantially the same conduct as that alleged before the Court, and if so, whether the national proceedings concerned are vitiated by an unwillingness or inability to investigate or prosecute genuinely.”<sup>164</sup>

64. There are several reasons for which the complementarity test under Article 17 of the Rome Statute is satisfied, rendering this situation admissible before the ICC. The circumstances in which these crimes were committed preclude the possibility of prosecution before national courts, as Greece is either unwilling or unable to independently try individuals for the commission of the alleged crimes. This conclusion emanates from several facts. First, Greek officials and its agents (*e.g.*, Hellenic Coast Guard, police, military) are perpetrators of the unlawful practices and policies that are implemented in a widespread manner, often codified by law. Accordingly, individuals at the highest echelons of power in Greece and the European Union may ultimately be found responsible for knowingly authorizing such practices and policies. Second, the European Union has failed to discipline Greece for engaging in unlawful actions. Rather, the European Union, through Frontex officials and agents, participates in unlawful pushbacks. Third, both Greece and Frontex have denied their involvement in furtherance of the aforementioned policies and practice, despite calls from NGOs to perform independent and impartial investigations and prosecutions. Fourth, the Greek government continues to enact legislation that subverts the rights of refugees and asylum-seekers including by temporarily suspending the right to asylum, shortening the deadline for appeal

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<sup>162</sup> *Id.*

<sup>163</sup> *See* Articles 17(1)(a)-(c) of the Rome Statute.

<sup>164</sup> ICC, Office of the Prosecutor, *Policy Paper on Case Selection and Prioritisation*, 15 September 2016, [[“OTP Policy Paper”](#)].

in asylum cases, and lengthening the allowed period of detention. Bearing all this in mind, there is no political will to allow for independent and impartial investigations and prosecutions to take place in Greece.

65. Furthermore, regional remedies have been ineffective. The European Court of Human Rights has repeatedly ruled against Greece's unlawful migration practices and policies.<sup>165</sup> Despite these rulings, Greece has enacted more laws which subvert the rights of refugees. European human rights bodies have also tried to intervene, only for their credible observations to be denied or their recommendations to be circumvented.<sup>166</sup> In brief, all available remedies have been exhausted.

## **B. Gravity**

66. When deciding whether to investigate a situation, the Prosecutor views the gravity of a crime “against the backdrop of the likely set of cases or potential cases” that could stem from the investigation.<sup>167</sup> The Prosecutor makes a gravity assessment based on a flexible test that considers the qualitative and quantitative elements of the crime, as well as who bears the greatest responsibility.<sup>168</sup> “[I]t is not the number of victims that matter but rather the existence of some aggravating or qualitative factors attached to the commission of crimes, which makes it grave.”<sup>169</sup> The test should not be “overly restrictive” nor should it “hamper the preventive, or deterrent, role

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<sup>165</sup> See e.g. ECtHR, *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, 13 June 2019, App. No. 14165/16 (holding that Greece breached Article 3 of the Convention because of detention conditions in Greek police stations and living conditions in Idomeni Camp for five unaccompanied children. A further violation under Article 5 § 1 was found regarding the protective custody of unaccompanied children in police stations); *M.S.S. v. Belgium & Greece*.

<sup>166</sup> [Council of Europe 2020 Report](#); Eur. Union, Council of Eur., *Response of the Greek Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Greece from 13 to 17 March 2020*, (19 November 2020).

<sup>167</sup> [Kenya Authorization Decision](#), paras 57-58 (“the Chamber considers that although an examination of the gravity threshold must be conducted, it is not feasible that at the stage of the preliminary examination it be done with regard to a concrete ‘case.’... The Chamber has defined the parameters of a potential case by way of reference to: (i) the groups of persons involved that are likely to be the object of an investigation for the purpose of shaping the future case(s); and (ii) the crimes within the jurisdiction of the Court allegedly committed during the incidents that are likely to be the focus of an investigation for the purpose of shaping the future case(s)”).

<sup>168</sup> *Id.*; ICC, Pre-Trial Chamber I, *Prosecutor v. Abu Garda*, [Decision on the Confirmation of Charges](#), 8 February 2010, ICC-02/05-02/09, paras 30-32 (“[f]urther, the gravity of a given case should not be assessed only from a quantitative perspective, i.e. by considering the number of victims; rather, the qualitative dimension of the crime should also be taken into consideration when assessing the gravity of a given case”); [OTP Policy Paper](#), para. 32.

<sup>169</sup> [Kenya Authorization Decision](#), para. 62.

of the Court...”<sup>170</sup> It should, however, prevent the court from adjudicating “peripheral” or “insignificant” cases.<sup>171</sup> Further, the Appeals Chamber has confirmed that the drafters of the Rome Statute explicitly rejected a requirement that crimes under the jurisdiction of the Court constitute large-scale conduct. This suggests that the gravity threshold should only exclude *de minimis* conduct.

67. Here, the facts demonstrate that the gravity threshold is met through a series of qualitative and quantitative factors. These factors are part of Greece’s widespread and systematic attack against refugees, specifically since the establishment of the EU-Turkey Deal. Such factors include, but are not limited to, the magnitude of the attacks which impact hundreds of thousands of refugees, as well as the seriousness of the conduct, including the following acts as a matter of governmental policy: physically beating civilians until they retreated back to Turkey<sup>172</sup>; physically beating civilians who protested conditions in reception centres and camps<sup>173</sup>; arbitrarily detaining civilians in black sites on the basis of nationality and gender<sup>174</sup>; suspending registration of asylum claims<sup>175</sup>; placing conditions on the review of asylum claims<sup>176</sup>; deporting civilians without examining their asylum claims; denying civilians their right to appeal asylum decisions in a legal venue; not providing basic humanitarian aid, such as food, water, and shelter; blocking humanitarian organizations from distributing desperately needed aid, including medical care for COVID-19<sup>177</sup>

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<sup>170</sup> ICC, Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor’s Appeal Against the Decision of Pre-Trial Chamber I entitled ‘Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58’, 13 July 2006, ICC-01/04, paras 69-79 [[“Congo Application for Warrants of Arrest”](#)]; [OTP Policy Paper](#), para. 32.

<sup>171</sup> [Kenya Authorization Decision](#), para. 56; [Congo Application for Warrants of Arrest](#), at para. 40 (“[w]hich cases are unworthy of consideration by the International Criminal Court?...Both, the inception and the consequences of the crime must be negligible. In those circumstances the Court need not concern itself with the crime nor will it assume jurisdiction for the trial of such an offence, when national courts fail to do so”).

<sup>172</sup> [“Council of Europe 2020 Report”](#) (noting that the delegation received “a number of allegations by migrants that they had been subjected to slaps to the head and kicks and truncheon blows to the body by members of the Hellenic Police and Coast Guard”); [AI April 2020 Report](#), (“[i]n the midst of violence at the Greek-Turkish border, at least two men were killed and a woman remains missing after Greek border forces reportedly fired live ammunition and tear gas against asylum-seekers and migrants”).

<sup>173</sup> Aljazeera, [Refugee Children Amid Crowds of Protesters Tear Gassed on Lesbos](#) (4 February 2020). See also Greek Council of Refugees, [End the Illegal Practice of Detaining Recognized Refugees Immediately](#) (2020). See further, Exhibit 004.

<sup>174</sup> [NYT Report on Greece Black Sites](#).

<sup>175</sup> [BBC Report on Suspension of Asylum Procedures](#).

<sup>176</sup> [HRW Report on Moria 2.0](#).

<sup>177</sup> [MSF in Moria](#).

and; failing to prevent the spread of COVID-19 in government-operated reception centres and camps.

68. The aforementioned factors meet the gravity threshold prescribed by Articles 17(1)(d) and 53 of the Statute for the following reasons.
69. First, having exhausted state and regional remedies, **the ICC is the only viable avenue for redress**. The current government in Greece does not have the political will to effectively initiate appropriate criminal actions, nor does the European Commission which is complicit in the aforementioned violations. Moreover, decisions by the European Court of Human Rights, as well as recommendations by regional and international bodies, have been ignored by Greece.
70. Second, the situation facing refugees and asylum-seekers in Greece has **serious international repercussions**. In *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber I ruled that the conduct in question must undergo a gravity assessment which “depends upon subjective and contingent reactions to crimes rather than upon their objective gravity.”<sup>178</sup> In the situation at hand, Greece’s unlawful practices and policies toward refugees and migrants is widely condemned by inter-governmental actors, non-governmental organizations, and other civil society groups, such as: the UN General Assembly, the UN Office of the High Commission for Human Rights, the UN High Commissioner for Refugees, Médecins Sans Frontières, Human Rights Watch, Amnesty International, the International Rescue Committee, and many more. If continued, these actions risk eroding the international legal principle of *non-refoulement*.
71. Third, Greece’s practices and policies toward refugees reflect the **wider context of global conflicts**, namely the situation in Syria which has led to unprecedented levels of suffering, and created more than 5.6 million refugees and 6 million internally displaced persons. The United Nations and the international community have condemned the conflict for its brutality and high degree of destruction. The nature of the conflict led the UN General Assembly to adopt resolution 71/248 which established the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011. The Human Rights

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<sup>178</sup> [Congo Application for Warrants of Arrest](#), para. 72.

Council also created the Independent International Commission of Inquiry on the Syrian Arab Republic. Further, Greece's deliberate attempt to stop migration by intentionally depriving refugees and migrants of their right to asylum perpetuates their suffering and (both directly and indirectly) escalates conflict among other States, including Turkey and Syria.

72. Fourth, the actions of Greek officials and its agents are a manifestation of practices and policies codified by law with the intent to forcibly dissuade refugees and asylum-seekers from crossing its land or sea borders. Such actions are **deliberate and planned** by the Greek government and its agencies.
73. Fifth, the **number of victims** meets the gravity threshold. UNHCR statistics show that there are more than 121,000 refugees and asylum-seekers currently in Greece, around 28,000 of whom are on the Aegean islands. Although the total number of pushbacks by sea is unknown, pictures and videos from victims and witnesses suggest that the Greek Coast Guard has knowingly risked the lives of thousands of individuals at sea. The number of refugees who were violently pushed back to Turkey at Greece's northern land border in 2020 is estimated to be around 4,000 people.
74. Bearing all this in mind, the situation in Greece sufficiently meets the gravity threshold stipulated under Article 17(1)(d) of the Rome Statute.

#### **4. Conclusion**

75. We therefore urge the Prosecutor to open an investigation into a widespread and systematic attack on refugees on the Aegean islands and in Greek territory along the Greek/Turkish border since the commencement of the EU-Turkey Deal in March 2016 to present. The attack is evident through unlawful pushbacks performed by Greek government officials and their agents, Frontex officials and their agents, and any other third-party contractors hired by Greece or the European Union in furtherance of pushbacks. The attack is also carried out by Greek government officials and their agents who persecute refugees, deprive them of humanitarian aid, commit acts of sexual violence against them, and torture them. These policies and practices support Greece's broader goal of suppressing refugees and deterring them from coming to Europe. Consequently, they may amount to crimes against humanity under Article 7 of the Rome Statute.

76. These crimes were, and continue to be committed, on the territory of a State Party by individuals who are nationals of the State Party. The commission of the crimes are of serious concern to the international community and fall within the jurisdiction of the ICC. Additionally, the preconditions to the exercise of the Court's jurisdiction are satisfied. Independent, impartial and good faith investigations and prosecutions have not and cannot be carried out in Greece, and qualitative and quantitative elements of the crimes point to the situation's gravity.
77. The Rome Statute provides for a presumption in favour of investigations and prosecutions of international crimes of concern to the international community. Here, a consideration of the facts and circumstances leads to the conclusion that the interest of justice stipulated in Article 53 will only be served if the Prosecutor proceeds with an investigation. In doing so, the Prosecutor will grant victims their rightful chance to obtain justice for the crimes committed against them. It will also set an important precedent that individuals cannot escape accountability for their crimes under the jurisdiction of the International Criminal Court simply because they are European.