

**Supplementary Submission to the
Communiqué 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

As submitted in SJAC's communiqué to the Office of the Prosecutor (OTP) in January 2021, the combined treatment of bona fide refugees in Greece by Greek government officials and their agents, along 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 to deter vulnerable individuals from seeking asylum in Europe. The attack amounts to crimes against humanity under Article 7 of the Rome Statute, including the crimes of: deportation and forcible transfer of a population, persecution, other inhumane acts for the deprivation of humanitarian aid, sexual violence, and torture.

The perpetrators have waged their attack through policies and practices meant to deter individuals with a well-founded fear of persecution from seeking asylum in Europe. As a result, the scope of victimhood includes hundreds of thousands of individuals who fled their country of origin in search of safety, only to be subjected to inhumane and degrading treatment at the hands of Greek and Frontex agents acting on official orders. This supplementary submission, supported by reliable new evidence, shows that international crimes continued to be perpetrated throughout 2021, in the hope that the OTP will hear the voices of victims who have bravely carried their trauma across continents in search of sanctuary.

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1. Additional Factual Allegations

1. Throughout 2021, Greek government officials and their agents have intensified the codification and implementation of their plan to stop bona fide refugees from seeking asylum in Europe through the commission of crimes against humanity. Refugees have continued to embark on the arduous journey to Europe from Turkey to seek asylum. While the overall number of arrivals is lower than in previous years, the number is the highest it has been since the start of the Coronavirus pandemic, owing to the shifting nature of conflicts, particularly in Afghanistan, and worsening conditions for refugees in Turkey. Greek efforts to stop refugees from exercising their rights are a continuation of policies and practices enforced since the start of the EU-Turkey Deal, and they amount to crimes against humanity under Article 7 of the Rome Statute. The crimes include: deportation and forcible transfer of a population, persecution, other inhumane acts for the deprivation of humanitarian aid, sexual violence, and torture.

A. Greek and Frontex authorities have engaged in a policy of unlawful pushbacks of refugees at sea and from Greek territory since the commencement of the EU-Turkey Deal.

“It was like what happened when George Floyd was killed. The officers put their knees on the children’s necks.”¹

2. Since the start of the year, Greek government officials and their agents have escalated their policy of performing unlawful pushbacks at sea on a massive scale with the support of Frontex.² Hundreds of recent pushbacks involved victims who stepped foot on Greek

¹ Border Violence Monitoring Network, *“It Was Like What Happened When George Floyd Was Killed, the Officers Put Their Knees on the Children’s Necks”* (27 May 2021) [[“BVMN 27/05/21”](#)].

² European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum*, pp. 3-4, (29 September 2021) (noting that “[t]he COVID-19 pandemic significantly affected migratory arrivals in 2020, both legal and irregular, and created several new challenges for migration management” and that “[o]n the Eastern Mediterranean route, the overall figure in 2021 is lower than last year, with a significant decrease of 58% of arrivals to Greece in 2021 so far”). The New Humanitarian, *Greece Says Migration Crisis Over; Refugees Beg to Differ* (5 October 2021) [[“The New Humanitarian 05/10/21”](#)] (stating that “[t]he pushbacks have been thoroughly documented by human rights watchdogs and journalists, but Greece denies it is engaging in such practices, which are illegal under international law. At the same time, a series of government policies have made it: more difficult for people who do manage to enter the country to receive refugee status; easier for rejected asylum seekers to be deported; and harder for people who are granted protection to access accommodation, financial support, and services such as healthcare and education”).

territory and were captured by masked police or border agents.³ Victims were then beaten, detained, and dragged out to sea in dinghy boats where they were left adrift near Turkish waters. Often, this occurred in the dead of night in hazardous sea conditions. The consistent methods employed by the perpetrators display their coordinated policies, as well as the widespread and systematic nature of their attack on victims, the gravity of which amounts to crimes against humanity under Article 7 of the Rome Statute.

1. Greek and Frontex authorities continue to perform unlawful pushbacks of refugees at sea since the commencement of the EU-Turkey Deal.

3. On the afternoon of 5 September 2021, a sailboat with over 80 refugees reached the Greek island of Folegandros after being distressed at sea because of engine problems.⁴ It was met by a Lambro 57 patrol vessel belonging to the Hellenic Coast Guard which towed the boat to an inaccessible part of the island, shortly after several refugees jumped off it and swam ashore.⁵ The victims were then transferred to a Stan Patrol 5509 offshore patrol vessel, identified as *ΑΣ 090 Gavdos*, and taken out to sea.⁶ The next day, the Turkish Coast Guard rescued them from four life rafts drifting near Kusadasi.⁷ Footage of the rescue operation released by the Turkish Coast Guard shows members of the Hellenic Coast Guard forcing the victims off the Stan Patrol 5509 and onto four life rafts, then leaving the refugees to drift into Turkish waters.⁸
4. Similar instances have occurred throughout 2021. They illustrate the brazenness of Greek pushbacks that often involve members of the Hellenic Coast Guard viciously beating victims with sticks and shooting bullets into the water, dangerously close to victims' rubber

³ Independent, *Revealed: The EU-funded Pushback Operations Violently Forcing Asylum Seekers Across Borders* (7 October 2021) [[Independent 07/10/21](#)] (describing an investigation by Lighthouse Reports, Der Spiegel, SRF Rundschau and ARD of publicly available video footage of 635 alleged pushback incidents carried out by Greek border officers in the Aegean since March 2020 – 15 of which involved masked men). Ex. 66.

⁴ Aegean Boat Report, *The Folegandros "Mystery"* (13 September 2021) [[ABR 13/09/21](#)"].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* (explaining that, when questioned where the sailboat was taken, coast guard officials replied that they were ordered not to reveal information. The Hellenic Coast Guard also told a member of parliament, Nikos Syrmalenios, that it had no knowledge of any such incident. The same answer was provided by the Ministry of Migration. Yet footage taken by onlookers showed that a Lambro 57 patrol vessel belonging to the Hellenic Coast Guard was at the scene alongside the sailboat, as was a Stan Patrol 5509 offshore patrol vessel, identified as *ΑΣ 090 Gavdos*. Locals also reported that a helicopter circled the area). See also EFSYN, *The "Mystery" of Folegandros* (9 September 2021).

dinghies.⁹ One such incident involved 25 victims near the island of Kos. Their dinghy was blocked from moving forward by the Hellenic Coast Guard, shots were fired into the water nearby, and victims were beaten with a long pole by coast guard members aboard an official vessel.¹⁰ The group was later picked up by the Turkish Coast Guard. One woman described her experience being forcibly transferred in June:

I got on a boat at 9:00AM and we set sail. There were about thirty other people with me in the boat. [...] About four hours after our departure, we arrived very close to the Greek island of Samos. But, before we could dock, a Greek ship approached us. I was very afraid. The Greek military ordered us to get into their boat. There, they threw all our belongings and our phones into the water. Some passengers still managed to keep theirs, but they forced me to throw everything I had.

We were then divided into two groups of about 15 people. They pushed us into what they called “dinghies,” small inflatable boats, without motors. Some people protested and said they would not get on. But then the Greeks threatened us with their guns. So, we had no choice. [...] They circled around us, which made big waves to frighten us. I screamed because I was very afraid that our boat would tip over. It was moving a lot. Fortunately, no one fell into the water. After a long time, the Greek soldiers abandoned us there.

One of the passengers, who had managed to hide his phone, called someone from [UNHCR], but he could not get help. So, he contacted the rescue services in Turkey. We waited for a long time in the sun. We didn’t know if they would come. At 5:00PM, we saw a Turkish boat coming towards us. We climbed on board and it took us back to Bodrum. I was placed in a centre there for a few days before being released.

This crossing traumatized me. Since then, I have been in hospital in Izmir. They give me medicine because I have a very bad stomach pain. And I am very anxious. I am still afraid.¹¹

5. Frustrated by the number of rescue operations they have had to perform, the Turkish Coast Guard invited journalists to witness an operation first-hand.¹² The operation involved

⁹ See e.g., Aegean Boat Report, *Pushback Nr. 451* (6 June 2021) [[“ABR 06/06/21”](#)]; Aegean Boat Report, *We Were Crying and Swimming and Crying and Swimming* (27 January 2021) (providing the testimony of a Palestinian man from Gaza and his friend who arrived to Viale RIC on Chios where they informed UNHCR of their desire to seek asylum. Despite their declaration, the two men were detained by Greek police, then taken to a port by masked men dressed in black. They were driven by boat to water near an uninhabited island and given life jackets, then told to jump into the water and swim to the island. They were on the island for three days before they were rescued by the Turkish Coast Guard).

¹⁰ [Independent 07/10/21](#). See also Ex. 89.

¹¹ Info Migrants, *Aegean Pushbacks: “They threw all our belongings and phones into the sea”* (21 July 2021).

¹² Republic of Turkey, Ministry of Foreign Affairs, *No: 78, 28 February 2021, Press Release Regarding the Push-Backs of Asylum-Seekers by Greece*. See also Ex. 82, 90.

twenty Afghans who were inland on Lesbos the day before.¹³ They were found in a forest by Greek police officers who repeatedly kicked them and confiscated their money, documents, and mobile phones. The victims were then placed on leaky, overcrowded life rafts, ferried out to sea, and abandoned.¹⁴ Soon after, the Turkish Coast Guard received an email from its Greek counterpart informing it that the victims were adrift.¹⁵ Four hours passed before the Turkish Coast Guard reached the rafts. Among the survivors was a seven-year-old girl who “shivered uncontrollably as she [sat] down on the deck [of the Turkish Coast Guard vessel]” and “an older woman who retched into a plastic bag.”¹⁶

6. Despite thorough documentation, Greek authorities continue to deny the occurrence of pushbacks. When pressured by civil society and members of parliament to reveal the whereabouts of the victims who went missing in September, the Hellenic Coast Guard denied that the incident occurred.¹⁷ The same response was given by the Ministry of Migration and Asylum, in line with Minister Notis Mitarachi’s claims that “[n]umerous cases [of pushbacks] have been investigated...and reports have found no evidence of any breach of E.U. fundamental rights.”¹⁸ But the accounts of witnesses on Folegandros, the testimonies of survivors, and the footage released by the Turkish Coast Guard verify that the pushback indeed happened.
7. Meanwhile, inter-governmental bodies have expressed their on-going concern over pushbacks at sea. In May, the Council of Europe’s Human Rights Commissioner, Ylva Johansson, sent a letter to Greek ministers on the “numerous credible allegations” of pushbacks dismissed by Athens.¹⁹ In response, Greece said that it investigated the

¹³ The New York Time, ‘*They Just Left Us*’: *Greece Is Accused of Setting Migrants Adrift at Sea* (18 July 2021) [[“NYT 18/07/21”](#)].

¹⁴ *Id.* See also Exs 69-72, 74-76, 78-80.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ [ABR 13/09/21](#), supra note 4.

¹⁸ [NYT 18/07/21](#), supra note 13. See also Aljazeera, [EU Official Calls Greece to Further Probe Asylum Seeker Pushbacks](#) (29 March 2021) (quoting Minister Mirarachi “[Greece] strongly den[ies] that the Greek coastguard has ever been involved in pushbacks. We understand we are causing a loss of tens of millions of euros to smuggling networks, and that could have played a role in the kind of fake news we hear about the Greek coastguard”).

¹⁹ Council of Europe, Commissioner for Human Rights, [Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions](#) (12 May 2021). Reuters, [Council of Europe Accuses Greece of Migrant Pushbacks, Says They Must Stop](#) (12 May 2021) [[“Reuters 12/05/21”](#)].

allegations and found them to be “largely unsubstantiated” and that “the actions taken by the Greek authorities at [its] sea borders are being carried out in full compliance with the country’s international obligations.”²⁰ Moreover, the Minister responsible for the Hellenic Coast Guard, Ioannis Plakiotakis, met Johansson and requested an additional €15.8 million to monitor the EU’s borders more intensively.²¹ Johansson has since urged Greece to end its practice of pushbacks and investigate relevant allegations, as well as other forms of mistreatment used against refugees by members of security forces. She noted that additional payments to the Hellenic Coast Guard would be granted only if a mechanism was established to monitor fundamental rights.²² Even so, Minister Mitarakis has outright refused to create the mechanism, citing an invasion of Greece’s national sovereignty.²³

8. Despite Johansson’s rebuke of Greece’s actions, the European Commission is itself facing criticism for the role Frontex plays in the performance of pushbacks, particularly because Frontex is the E.U.’s largest and highest funded agency.²⁴ In July, members of the European Parliament’s Frontex Scrutiny Working Group released their final report.²⁵ It details how the head of Frontex, Fabrice Leggeri, ordered his fundamental rights officer to

²⁰ Greek Ministers of Citizen Protection, Migration & Asylum, and Maritime Affairs & Insular Policy, [Letter to the Commissioner for Human Rights](#) (11 May 2021).

²¹ Der Spiegel, [EU Commission Blocks Payments to the Greek Coast Guard](#) (29 August 2021) [[“Der Spiegel 29/08/21”](#)].

²² *Id.* (noting that “[s]ince 2015, the EU has paid Greece more than €643 million to deal with the refugee crisis. Some of the money goes directly to the Greek coast guard. For example, from 2016 to 2017, the border guards received 15 million euros in emergency aid to cover their running costs”).

²³ Iefimerida, [There is No Proposal of the European Commission for a Border Control Mechanism](#) (29 September 2021); European Council on Refugees and Exiles, [Greece: Mitarakis Rejects Border Monitor Mechanism as New Reports of Abuse Emerge – Greek Facilities Empty Out while People Move Onwards](#) (1 October 2021) [[“ECRC 1/10/21”](#)] (“Minister Notis Mitarakis has disregarded the need for any such mechanism. According to the Minister, this would jeopardise Greece’s national sovereignty... The Minister does not comment on the fact that a human rights monitoring mechanism is a precondition for the release of migration management funding requested by Greece from the European Commission. The EU has supplied Greece with 3.3 billion [Euros] in funds since the peak of arrivals in 2015”); Ekathimerini, [Migration Minister Refutes Allegations of Migrant Pushback in Messinia](#) (11 October 2021) (quoting Minister Mitarakis: “Our country is facing an orchestrated attack by the industry of illicit rings that smuggle illegal immigrants. There is an organized propaganda against her. It is self-evident that Greece guards its borders, with absolute respect for the international and European context”).

²⁴ Human Rights Watch, [Frontex Turns a Blind Eye to Greece’s Border Abuses](#) (10 March 2021). *See also* Imerodromos, [Coast Guard Officer Arrested as ‘Brain’ of Drug Trafficking Ring](#) (1 October 2021) (describing the arrest of member of the Hellenic Coast Guard who was a liaison with Frontex and five individuals for trafficking drugs and weapons).

²⁵ European Parliament, Frontex Scrutiny Working Group, [Working Document on Report on the Fact-finding Investigation on Frontex Concerning Alleged Fundamental Rights Violations](#) (14 July 2021).

“remove all information gathered” on a Category Four Serious Incidents report.²⁶ The removed information pertained to a pushback that occurred in April 2020 during which 30 victims were dragged from Greek waters into Turkish waters by border agents during the night.²⁷ A Frontex reconnaissance aircraft observed the process from the air near Lesbos.²⁸ Why Leggeri destroyed the incriminating evidence of an illegal pushback by the Hellenic Coast Guard remains unclear, considering that he mentioned the incident in a debate before the European Parliament and because Frontex’s involvement in the incident was well-documented.²⁹

9. International organizations have also expressed their continued concern over pushbacks at sea. In March, the United Nations High Commissioner for Refugees (“UNHCR”) noted that it observed “several hundred cases” of suspected pushbacks since the beginning of 2020 during which: (i) boats were pushed into Turkish waters from Greek waters (ii) boats known by the Hellenic Coast Guard to be in unsafe conditions were left adrift near Turkish waters, and (iii) refugees who touched foot on Greek soil were placed on rafts and towed out to sea, then pushed into Turkish waters or left adrift near the nautical border.³⁰ One such pushback occurred on 17 February when 13 asylum seekers landed on Lesbos, only to be dragged back to sea by hooded men.³¹ Organizations like Amnesty International and Human Rights Watch also released damning reports that further illuminate the common thread of violations and the sequence of events involved in pushbacks, both at sea and on land, which regularly involve arbitrary detention and torture.³² Further, they detail how

²⁶ *Id.* at p. 14. (also noting that Category Four refers to fundamental right violations).

²⁷ See Der Spiegel, [How Frontex Boss Leggeri has Deceived the Public](#) (26 November 2020).

²⁸ *Id.*

²⁹ Human Rights Watch, *Frontex Failing to Protect People at EU Borders* (23 June 2021) [[“HRW Frontex Report”](#)] (in November 2020, the Frontex Management Board created a Working Group that consisted of 8 country representatives and the European Commission “to investigate 13 reported incidents in the Aegean Sea maritime border with Turkey. The group reported in March 2021 that there had been no wrongdoing by Greece or Frontex, despite clear evidence to the contrary. It also failed to look into other abuses by Greek authorities in areas where Frontex is operating, including violent pushbacks at Greece’s land border with Turkey”).

³⁰ See Info Migrants, *UNHCR Reprimands Greece Over More Reports of Pushbacks at Sea* (29 March 2021) [[“Info Migrants 29/03/21”](#)]; UNHCR, [Greece Highlights](#) (May 2021).

³¹ [Info Migrants 29/03/21](#), *supra* note 30.

³² Amnesty International, *Greece: Violence, lies, and pushbacks – Refugees and migrants still denied safety and asylum at Europe’s borders* [[“Amnesty International: Violence, Lies, and Pushbacks”](#)] (23 June 2021).

Frontex has failed to “credibly investigate or take steps to mitigate against migrants at E.U. external borders, even in the face of clear evidence of rights abuses.”³³

10. Taken together, the forcible transfer of refugees from Greek territorial waters to Turkish territorial waters or the High Seas violates international refugee law, as well as the United Nations Convention on the Law of the Sea to which Greece is a state party. The cruelty of these actions mirrors other legislative, executive, and judicial decisions that support a broader deterrence policy meant to prevent vulnerable individuals from exercising their right to asylum to which they are entitled. The gravity of pushbacks at sea, along with the exhaustion of all available remedies, amounts to the crime against humanity of deportation and forcible transfer of a population through physical expulsion and the use of coercive methods.

2. *Greek and Frontex authorities continue to perform unlawful pushbacks of refugees from Greek territory since the commencement of the EU-Turkey Deal.*

11. Pushbacks remain the de facto strategy of Greek security forces for denying bona fide refugees their right to seek asylum at Greece’s land border with Turkey.³⁴ In 2021, survivors of land pushbacks have consistently described extremely violent scenes—much like those that occurred in 2020—in which victims were detained, stripped, and removed of their belongings, including their money, mobile phones, and documents. They were then detained before being taken back to the Greek-Turkish border and intentionally left on small islands in the Evros River where they were instructed to cross into Turkey. Often,

³³ [HRW Frontex Report](#), *supra* note 29; Working Group on Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea, [Final Report of the Frontex Management Board Working Group](#) (1 March 2021).

³⁴ Legal Centre Lesvos, *Legal Centre Lesvos Quarterly Newsletter: April – June 2021 (13 August 2021)* [[“LCL Quarterly Newsletter”](#)], p. 12 (noting that LCL submitted its fifth complaint before the ECtHR regarding pushbacks in the Aegean Sea performed by the Hellenic Coast Guard on 12 April 2021. The complaint was submitted on behalf of 11 Syrians who were part of a group of 180-200 people who were pushed back to Turkey in October 2020. The group included at least 40 children and a pregnant woman. LCL argues that the group was collectively expelled in a “violent and massive coordinated operation carried out for more than 24 hours in the Mediterranean Sea, and involving multiple vessels of the Hellenic Coast Guard including one Search and Rescue vessel”; The Guardian, [Greece Accused of ‘Shocking’ Illegal Pushback Against Refugees at Sea](#) (26 April 2021).

perpetrators were masked, plain clothed members of the national police who wore no insignia.³⁵

12. A Syrian victim recalled how he was detained for two days without food and water: “[i]n the toilet, there was water. I didn’t know where that water came from, but I drank it because I was thirsty.”³⁶ Around 11PM on the second day, he was escorted into a military truck by four officers in black uniforms and balaclavas, then driven to a wooded area near the Evros River.³⁷ There were 140 people with him, including women. Upon their arrival, they were unloaded by the same officers who slapped and punched them. The victims repeatedly asked for asylum, but were told “fuck you and fuck the camp.”³⁸ The officers then loaded ten people at a time onto a blue plastic motorboat that went to an island in the middle of the river. From there, the victims waded into the Turkish side of the river.³⁹
13. On another occasion, victims were loaded onto military trucks and driven to a wooded area near the Evros River. One person described how officers wearing green camouflage uniforms with balaclavas “kept beating everyone [with a metal baton], even the women. They even beat the pregnant woman. I saw the blood come out from her leg. They searched us again to take what was left after the first search.”⁴⁰ When he asked for asylum, an officer told him, “Fuck you and fuck asylum.” The man also asked for a bottle of water, at which point an officer “emptied the bottle in front of me and hit me with it.”⁴¹
14. Women and children are not spared from the violence. A twenty-year-old Iraqi woman explained how she was pushed from Bulgaria to Greece to Turkey, along with her husband and two-year-old daughter.⁴² While detained in Greece, she was held for 24 hours without

³⁵ [Independent 07/10/21](#), *supra* note 3 (“[a]lthough their clothing bears no insignia, these masked men are members of national police units which receive funding from the EU to patrol borders, according to the investigation, produced in partnership with [Lighthouse Reports,] Der Spiegel, SRF Rundschau and ARD”).

³⁶ Border Violence Monitoring Network, “*They Screamed and Told One of Us ‘Fuck You and Fuck Camp’*” (7 July 2021) [[BVMN 07/07/21](#)].

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ For other examples of objects used to beat victims, *see e.g.*, Border Violence Monitoring Network, “*They Left the Two Women in Pygamas and Beat Them with a Tree*” (17 May 2021).

⁴¹ [BVMN 07/07/21](#), *supra* note 36.

⁴² Border Violence Monitoring Network, “*They Just Ordered Us To Jump in the Middle of the River. They Don’t Care if You’re Holding a Baby or Not*” (10 March 2021) [[BVMN 10/03/21](#)]. *See also* [BVMN 27/05/21](#), *supra* note 1 (noting that “[Greek border agents] were hitting women and children the same [as the men]”).

food, water, or a toilet.⁴³ Three other women and several children were also in her cell.⁴⁴ At night, they were driven to the Evros River where they were met by six officers in green uniforms and balaclavas who carried guns.⁴⁵

[The officers] started hitting us and when [the officer] was searching me, he was touching my body and he was clearly harassing me and they beat everybody—even my husband. Then they put us all in the boat and took us to the Turkish side of the river. But before that, they gathered us in a line and they checked us and took the rest of our money. And they hit everybody: women and men.

[...]

They ordered us to jump in the middle of the river. They don't care if you're holding a baby or not.⁴⁶

Similarly, around 6:00AM on 2 July 2021, several women arrived at a detention site where they were taken by Greek border agents. They were subsequently forced to remove all their clothing and stood completely naked while they endured searches by male officers. One woman was punched in the face during the process.⁴⁷

15. These are not isolated incidents. Innumerable testimonies from victims illuminate Greece's well-defined policy of pushing back bona fide refugees at its land border to Turkey.⁴⁸ This policy is implemented through Greek border agents who consistently use the same methods to carry out their orders and coerce vulnerable refugees to become informants. These methods involve: (i) detaining victims in crowded conditions without food, water, or toilet access, (ii) beating victims with batons and tree branches, (iii) performing aggressive strip searches, including by male agents on female victims, (iv) taking personal belongings and

⁴³ [BVMN 10/03/21](#), supra note 42.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Border Violence Monitoring Network, [“They Just Ordered Us To Jump in the Middle of the River. They Don't Care if You're Holding a Baby or Not”](#) (10 March 2021).

⁴⁷ Border Violence Monitoring Network, [“Female Members of The Group Were Totally Naked and Searched by Male Officers and the Officers Beat the Children”](#) (2 July 2021).

⁴⁸ See Greek Council for Refugees & Oxfam, *Lesbos Bulletin* (17 June 2021) [[“GCR/Oxfam Bulletin”](#)] (“[a]mongst others concerns, the Ombudsperson's report notes the ‘constantly repeated patterns’ in the hundreds or thousands of pushback allegations that saw the public limelight since 2017, as well the failure of the Greek authorities to ‘address those concerns, through a comprehensive investigation’, particularly in cases where ‘official documents’ record that the victims had first contacted the Greek authorities, before being pushed back to Turkey. Importantly, in the report, the Ombudsperson stresses that Greek law has not provided the independent authority (*i.e.*, Ombudsperson) with ‘the necessary statutory tools and means’ to effectively investigate the incidents or form a judgement about the Greek government's actions”).

money, (v) driving individuals to the Evros River in military vehicles, and (vi) sending groups of victims on motorboats to islands in the Evros River from which point individuals are instructed to enter Turkish waters.⁴⁹ Some victims reported that they were stranded on islands for days, either because of unsafe water levels or because Greek and Turkish border agents with firearms simultaneously prevented them from moving.⁵⁰ In those cases, victims were left without food, water, shelter, or medical care.⁵¹

16. Most recently, Greece has worked to prevent a wave of Afghan refugees from entering its territory.⁵² Shortly after the Taliban took control of the Afghan government, Greek Civil Protection Minister, Michalis Chrisochoidis, stated that Greek borders would remain “inviolable” and that Greece would not “wait passively for the possible impact.”⁵³ The country is thus expediting its plans to keep militarizing its borders, including by installing a metal wall, barbed wire, drones, cameras, and radars that can see up to 15km into Turkey.⁵⁴ The Greek police have also stockpiled tear gas and flash grenades to be used by

⁴⁹ See e.g., Border Violence Monitoring Network, [“We Want the International Community To Know What They Are Doing to Us and We Hope That We Can Go Somewhere Else. Anywhere Where It’s Peaceful. If It’s Somalia, I Don’t Care. We Just Want Peace”](#) (9 May 2021) (several testimonies noted that some Afghan and Syrian refugees work for Greek border agents for three months in exchange for a “khartia” (temporary residence permit) that allows them to travel through Greece without being pushed back. They can then attempt to cross into Albania).

⁵⁰ See [Amnesty International: Violence, Lies, and Pushbacks](#), *supra* note 32, at p. 35. See also DW, [Greece Tightens Its Border with Turkey Amid ‘Tough but Fair Migration Policy’](#) (17 September 2021) (explaining how the area near the Evros River is a military exclusion zone and is mostly inaccessible to the public, including humanitarian organizations and journalists. Attempts to film in the area or investigate activities at the border viewed as espionage and may result in criminal charges).

⁵¹ [Amnesty International: Violence, Lies, and Pushbacks](#), *supra* note 32, at p. 35.

⁵² Aljazeera, [Anticipating Afghan Migration, Greece Moves to Fortify Borders](#) (26 August 2011) [[“Aljazeera 26/08/21”](#)]. See also Info Migrants, [More Afghans Seeking Asylum in the European Union](#) (17 September 2021); ANSA, [Greek Lawmakers Introduce Tough New Legislation on Migration](#) (31 August 2021) (“Greece is pressing ahead with new legislation tabled in parliament by the migration ministry that will seek to accelerate deportations of migrants. In view of recent developments in Afghanistan, Europe is expecting a new wave of migration. Under the proposed legislation, grace periods are to be slashed, while police will be granted additional powers in some procedures that are currently under the authority of the migration and asylum authorities...Specifically...the police will be able to order the deportation of migrants caught crossing into Greece through irregular channels and without proper papers if they do not apply for asylum or if their application for protection is rejected. Additionally, undocumented migrants may also be held in custody prior to deportation if they are considered a flight risk or a threat to public order”); Border Violence Monitoring Network, [Illegal Push-Backs and Border Violence Networks](#) (August 2021) (providing “statistical data on the experience of Afghan people-on-the-move since 2017, charting the longstanding patterns of border violence targeting them among other groups...the publication looks at the situation for Afghans arriving in Turkey, the challenges they face in accessing asylum and support, and the risks faced in crossing into Eastern Turkey from Iran...updates also come from the border of Turkey with Greece, where further additions were made to the border wall which prevents people from accessing the territory”).

⁵³ [Aljazeera 26/08/21](#), *supra* note 52.

⁵⁴ United Nations, Human Rights Council, [Report on Means to Address the Human Rights Impact of Pushbacks of Migrants on Land and at Sea](#), A/HRC/47/30 (12 May 2021) [[“A/HRC/47/30”](#)].

border patrol agents whose presence will increase.⁵⁵ These efforts have “effectively resulted in preventing entry and in the summary and collective expulsion of tens of thousands of migrants and asylum seekers.”⁵⁶ They will be combined with a media campaign launched to block “illegal migration flows,” the ultimate goal of which is to prevent a repeat of the 2015 refugee crisis.⁵⁷

17. Meanwhile, the Greek Ombudsman released an interim report on its investigation into alleged pushbacks to Turkey that occurred near the Evros River.⁵⁸ It noted that it “has not been equipped by law with the necessary statutory tools and means to investigate effectively and comprehensively the factual basis of the complaints.”⁵⁹ The Ombudsman had asked Greek police for information on the allegations, but responses by directorates all stated that “no evidence or indications emerged to confirm the allegations or to provide at least the necessary basis for a formal internal investigation for human rights.”⁶⁰ The Ombudsman said that the alleged pushbacks appear to follow “a standard practice involving an indefinite number of victims who are nevertheless counted in several thousands.”⁶¹ The Greek Ombudsman described the standard practice as follows:

[foreign nationals] are intercepted by the police and have their mobile phones and identification documents removed. Then the foreign nationals are handed over to unidentified men usually in blue uniforms. They are then forced to embark unidentified vehicles, almost always white vans. They are driven to an unidentified building, bearing no signs, where they are locked in large rooms together with other detained foreign nationals. No communication with state services or civil society organisations is permitted, no information is provided, no food or water. Some hours later, other unidentified men, this time wearing black uniforms, take them to the Greek bank of Evros river. They are forced to get on board dinghies and they are taken to the Turkish bank. The whole procedure is fast and, usually, the foreign nationals have been pushed back to Turkey within 24 hours after they are intercepted.⁶²

⁵⁵ [Aljazeera 26/08/21](#), *supra* note 52.

⁵⁶ [A/HRC/47/30](#), *supra* note 54.

⁵⁷ ANSA, [Greece Set to Launch New Media Campaign on Migration](#) (22 September 2021).

⁵⁸ The Greek Ombudsman, [Alleged Pushbacks to Turkey of Foreign Nationals Who Had Arrived in Greece Seeking International Protection](#), p. 20 (28 April 2021).

⁵⁹ *Id.* At p. 20.

⁶⁰ *Id.* at 21 (footnote 38 notes that “only few cases were formally investigated and the findings did not offer any different conclusions”).

⁶¹ *Id.* at 20-21.

⁶² *Id.*

The Ombudsman called on the Greek police to formally investigate allegations of pushbacks, develop an operational plan to address the possibility of private groups or militias engaged in illegal pushbacks, and protect foreign nationals who enter Greece, by any means, to seek international protection.⁶³

18. Ultimately, pushbacks on land involve victims who were 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 deported back to Turkey by Greek and Frontex agents through physical expulsion and the use of coercive methods. These actions mirror other legislative, executive, and judicial decisions that support a broader deterrence policy meant to prevent vulnerable individuals from exercising their right to asylum to which they are entitled. The gravity of pushbacks, along with the exhaustion of all available remedies required to meet the Court’s complementarity standard, amounts to the crime against humanity under Articles 7(1)(d)(f)(g)(h)(k) of the Rome Statute.

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

*“In the night, a shadow comes for me. I am broken from inside...
Lesvos is ‘dying without ending.’ – Mohammad, Afghanistan⁶⁴*

19. More than a year after the infamous Moria Reception Centre on the island of Lesbos burned to the ground, promises by European and Greek leaders to create dignified conditions for refugees have gone unfulfilled.⁶⁵ This is particularly the case on the Aegean islands, which housed around 15,500 refugees at the end of August 2021.⁶⁶ The population mainly consists of Afghans (48%), Syrians (14%), and Somalis (9%).⁶⁷ While the number of refugees on the islands is lower than in 2020, conditions have worsened as a result of systemic

⁶³ *Id.* at 23-24.

⁶⁴ Médecins Sans Frontières, *Constructing Crisis at Europe’s Borders* (June 2021) [[“MSF 06/21”](#)].

⁶⁵ Associated Press, [Aid Groups Decry Migrant Camp Conditions a Year After Fire](#) (9 September 2021) [[“AP 09/09/21”](#)]; BBC, [Crossing Continents: Moria—After the Fire](#) (2 September 2021) (interviewing refugees who survived the Moria fire).

⁶⁶ UNHCR, [Aegean Islands: Weekly Snapshot](#) (26 August 2021).

⁶⁷ *Id.*

shortcoming in protection meant to strip refugees of their humanity. These shortcomings are part of an organized plan to intentionally deprive refugees of humanitarian aid.

20. Following the fire, around 6,000 people were moved to a reception and identification centre, known as “Mavrovouni Temporary Reception and Identification Centre” or “Moria 2.0,” where they are “caught between the sea on one side and the barbed wire and the police on the other” on a former military field.⁶⁸ The appalling living conditions are characterised by overcrowded tents, limited medical care, and police brutality.⁶⁹ Residents of the camp describe eating rotten or expired food in crowded tents situated near toilets where the smell is “unbearable.”⁷⁰ Toilets are so dirty that victims fear catching infections.⁷¹ Similar conditions are found in other RICs on the Aegean Islands, including on Chios where a 28-year-old Somali man died this year of a pulmonary condition and whose body was marked by rat bites.⁷²
21. Insufficient sanitation combined with insecurity have meant that “women and children stop drinking at 6 p.m. just so they don’t have to go to the toilet at night, because they simply don’t feel safe” as they fear being sexual assaulted. A Congolese woman described:

the light doesn’t always work: we can only use it from 9 to 10 am, then from 1 to 3 pm, and from 5 pm to 4 am. The toilets we have been given are so dirty that we are afraid of catching infections. So we relieve ourselves in a bucket, behind the tent, sometimes in front of men passing by. Then we wrap it up [in bags] and throw it in the garbage. Also, there is no supervision and we are sometimes tormented by men who come in here... It’s as if we are being mentally tortured.⁷³

Insecurity is not limited to the evenings, however; MSF previously treated a child who was sexually abused in the toilet during the day.⁷⁴ Dependents also face increased risks when

⁶⁸ Info Migrants, *A Year After Moria Fire, Migrants Lose Hope of Better Conditions* (10 September 2021) [[“Info Migrants 10/09/21”](#)].

⁶⁹ Mare Liberum, *Police Brutality in the Quarantine Section of Moria 2.0* (25 May 2021); Aljazeera, *Refugees Forced to Uproot Again as Greece Closes ‘Safe’ Camp* (30 April 2021) (Greek authorities abruptly shut down Kara Tepe Camp, described by rights groups as one of the only safe places for families. Its 1,000 residents were moved to Moria 2.0);

⁷⁰ [Info Migrants 10/09/21](#), *supra* note 68.

⁷¹ Info Migrants, *‘It’s Mental Torture’: Daily Life in the Women’s Section of the Kara Tepe Camp in Greece* (5 April 2021) [[“Info Migrants 05/04/21”](#)] (referring to Moria 2.0 and quoting a Congolese woman).

⁷² [Reuters 12/05/21](#), *supra* note 19.

⁷³ *Id.*

⁷⁴ [MSF 06/21](#), *supra* note 64.

they are left alone as their guardians stand in hours-long queues for food.⁷⁵ All the while, only 1 in 7 children was able to attend school in 2020.⁷⁶

22. Furthermore, the camp’s location is dangerously close to the seashore, subjecting its residents to the mercy of nature.⁷⁷ During the winter, which is quickly approaching, the camp is flooded, tents are destroyed, and portable toilets tip over. Residents stay in wet clothes, resulting in pruned skin for days at a time.⁷⁸ Greek authorities pile highly flammable and unheated containers close to each other “with no regard for the health, safety or lives of the people forced to live there.”⁷⁹ In the summer, “the overwhelming heat that has built up during the day in the tents and containers dissipates, only to be replaced by the cold wind at night.”⁸⁰

Mavrovouni’s neatly aligned rows of nearly 500 UNHCR-branded tents, containers, and rub-halls might appear, at first glance, better organised than the olive groves that sprawled around the former Moria RIC. But this image, satisfactory only for politicians’ brief visits or organisations’ promotional videos, belies a fundamentally different reality: the effective detention of migrants in shelters battered by extreme weather conditions, with scarce and inaccessible sanitation facilities, and under ever-increasing police surveillance – yet facing chronic insecurity.⁸¹

23. These conditions have been the subject of various European Court of Human Rights (“ECtHR”) rulings in 2021, through which the Court has repeatedly called on Greek authorities to end the degrading circumstances that put vulnerable individuals at “imminent

⁷⁵ *Id.*

⁷⁶ Human Rights Watch, [Greece: Stop Denying Refugee Children an Education](#) (29 July 2021) (calling on Greek authorities to “immediately hire teachers, arrange for school transportation, and lift measures that block asylum-seeking children from school under the pretext of the Covid-19 pandemic”).

⁷⁷ See e.g., EU Observer, [Asylum Seekers Dread New EU Camps on Greek Islands](#) (8 September 2021).

⁷⁸ See e.g., [Refugee Support Aegean, Moria 2.0: Trapped Refugees at the Mercy of Winter](#) (1 December 2020).

⁷⁹ Legal Centre Lesbos, [There is Nothing More Permanent than the Temporary](#) (14 September 2021) [[“LCL 14/09/21”](#)].

⁸⁰ [Info Migrants 10/09/21](#), *supra* note 68.

⁸¹ [LCL 14/09/21](#), *supra* note 79 (“[t]he fact that the land was purchased more than five years ago calls into question the temporariness of the situation”); Greek Ministry of Migration, [Reference Number 11352](#), (14 September 2020) (concerning the lease of land in the Kara Tepe area of the municipality of Mytilene, for the financial benefits 2021, 2022, 2023, 2024 and 2025); Greek Ministry of Migration, [Reference Number 2149](#) (11 February 2021) [c]oncerning the withdrawal and commitment of credit €550.000 for the lease of land plots in the Kara Tepe area of the municipality of Mytilene for the creation of a structure for hosting asylum seekers). Greek Ministry of Migration, [Reference Number 16125](#) (31 December 2020) (a land lease contract at the location concerning Kara Tepe for the installation of a temporary accommodation structure for citizens of third countries).

risk of irreparable harm.”⁸² More specifically, the Court’s rulings have sought to protect victims with severe medical conditions, including war-wounded persons, pregnant women, victims of torture, and children with epilepsy or autism. Decisions were rendered considering the prohibition on torture, inhuman, and degrading treatment under Article 3 of the European Convention on Human Rights.⁸³

24. What is more, conditions have become nearly unbearable because of COVID-19 and the minimal effort made by Greek authorities to curtail the pandemic’s spread in densely populated RICs. This is despite the millions of euros recently given to Greece by the European Union.⁸⁴ Self-isolation is impossible in cramped quarters that are drastically over capacity, practicing physical distancing is futile in long lines for aid, and taking sanitary precautions is inconceivable given the nonexistence of clean lavatories and hot water.⁸⁵ After an increase of COVID cases in May, Greek authorities established an area isolation zone for individuals who tested positive and their contacts.⁸⁶ Those who were negative when they entered the zone quickly contracted the virus when they were detained.

For approximately 56,000 refugees and asylum seekers in Reception and Identification Centers (RICs) and Reception Sites (RS) in Greece, living in severely substandard living conditions, prevention measures have been impossible with limited provision in terms of routine testing, surveillance, and access to healthcare. These migrant populations have experienced prolonged lockdowns and restricted movement since the pandemic began.⁸⁷

25. Although the Greek government claimed that Moria 2.0 was a temporary solution, it has yet to begin construction on a new facility promised to have “decent” living conditions. But plans for the new camp already reveal the brutal way in which Greece will enforce its policy of making refugees so miserable that they leave. The closed facility will be built

⁸² Legal Centre Lesbos, *Greek Government Instructed by European Court of Human Rights to Guarantee Rights of 3 LCL Clients: An indictment of reception conditions in Lesbos* (17 March 2021) [[“LCL 17/03/21”](#)].

⁸³ [LCL 14/09/21](#), *supra* note 79.

⁸⁴ The Guardian, [EU Announces Five New Refugee Camps on Greek Islands](#) (29 March 2021) (reporting that the EU agreed to provide €250m of funding for five new structures on the islands of Lesbos, Samos, Chios, Kos and Leros).

⁸⁵ Info Migrants, [More Than 30 COVID Cases in Lesbos Migrant Camp](#) (11 May 2021); [LCL Quarterly Newsletter](#), *supra* note 34.

⁸⁶ [LCL Quarterly Newsletter](#), *supra* note 34 (“[i]n May, there was an increase in people who tested positive for COVID-19 in the camp and on the island. 550 positive COVID-19 cases were reported in Lesbos, 227 of which were found amongst the residents of Mavrovouni camp”).

⁸⁷ The Lancet, *The Impact of the COVID-19 Pandemic on Refugees and Asylum Seekers in Greece: A retrospective analysis of national surveillance data from 2020* (1 July 2021).

next to an active landfill emitting an overwhelming stench and harbouring disease in an isolated location twenty miles north of the port city of Mytilene.⁸⁸ Reaching the camp will require driving through unmarked dirt roads to the forested area. Likened to a detention facility, the new camp will be far from crucial aid only available in Mytilene. In Minister Mitarakis' words, "the goal of the creation of the new structures was to not be in urban centres. Not to be in the main towns, as is Mavrovouni camp [on Lesbos] today ... A location was chosen that has a substantial distance from large settlements [heavily populated areas]."⁸⁹ By isolating the facility, the already limited access to refugees that remains for individuals and organizations who document human rights violations will be cut off entirely. Four other reception and identification centres of a similar nature are also being built on other islands.⁹⁰

26. The dire conditions have a devastating impact on victims' mental health.⁹¹ A June report from MSF explains how structural violence on the Aegean islands in the form of indefinite containment, appalling reception conditions, and violent border control is meant to intentionally inflict misery, imperil lives, and "serve as a deterrent to those who seek safety in Europe."⁹² MSF's research has also shown that asylum interviews may exacerbate post-

⁸⁸ The World, [‘This Island is a Prison’: Migrants say plan for a refugee camp on Lesbos is too isolating](#) (6 April 2021) (“[o]n this part of the island, bounded by untouched forest and a landfill, seagulls feed on the trash, and the stench is overwhelming”).

⁸⁹ *Id.*

⁹⁰ DW, [Greece Opens First Refugee Holding Camp on Samos Island](#) (20 September 2021) (describing how “[t]he new camp is installed with barbed-wire fencing, surveillance cameras, x-ray scanners and magnetic doors, prompting migrant groups to complain it looks like a prison” and quoting from MSF that “[a]ll of this [is] to detain people whose only ‘crime’ is seeking safety and stability. In addition to the mass rejections of asylum applications, this new centre is another symbol of the complete rejection of refugees and of their right to seek asylum”). DW, [Greece: Major Fire Breaks Out at Soon-To-Be-Closed Migrant Camp](#) (20 September 2021) (the night before refugees were transferred to the new “closed” facility on Samos, Vathy RIC was overtaken by a major fire. Vathy was infamous for its poor conditions).

⁹¹ See e.g., International Rescue Committee, [One Month After the Moria Fire, the Mental Health of Refugees Continues to Suffer](#) (10 October 2020) (a psychologist with IRC explained: “[t]he pandemic has meant that we are unable to meet our clients in person, carrying out therapy sessions over the phone instead. Refugees inside Moria were subject to strict lockdown measures... This has been detrimental to their mental health, and our work has become more vital. But it became nearly impossible to bridge the physical distance—and the emotional distance—between our clients and us... it has been incredibly hard to provide people with the same level of support as we did before).

⁹² [MSF 06/21](#), *supra* note 64 (“[b]etween 2019 and 2020, MSF mental health projects on Chios, Lesbos and Samos treated 1,369 patients, of which one-third (465) were children and 5 per cent were under the age of five. The youngest was only one year old. More than 40 percent of patients were female. Most of the patients who sought out mental health services from MSF were from Afghanistan, Democratic Republic of Congo, Cameroon and Syria”).

traumatic symptoms, “especially among asylum seekers who received no preparation or psychological support during their procedure.”⁹³

Major stressors for patients’ mental health included navigating daily life in poor living conditions and unclear administrative procedures, exposure to violence and insecurity, unaddressed medical needs, and fear of deportation. Many require treatment for post-traumatic stress disorder, moderate to severe depression, reactive psychosis, and anxiety, all of which are serious mental health conditions that demand long-term specialised care often inaccessible on the islands. MSF has treated hundreds of survivors of violence, ill-treatment, and torture, who have not been identified by the authorities and have not received any support. Instead, they have been placed in conditions that are not only unsafe but re-traumatising.⁹⁴

27. The report specifically addresses the mental health challenges facing children who live in unhealthy and unsafe reception and identification centres. These children often display classic symptoms of stress. For example, some never become potty-trained or begin to wet the bed again, including teenagers up to age 16 years.⁹⁵ The report notes the alarmingly high rates of self-harm and suicidal acts displayed by children as young as six-years-old, as well as the trauma and fear-induced symptoms triggered by their environment in Greece.⁹⁶ An Afghan mother told MSF:

my daughter says she does not feel safe. After a fire in the camp, she was traumatised a lot. My daughter is six years old. When we arrived here, her weight was 24 kilos, and now she is 16 kilos. She does not eat and has changed so much, she was a calm girl, but now she is always afraid. She is even afraid of the sound of raindrops when she is inside the tent. The hardest part for me is I see my girl getting worse day by day, and I cannot do anything. All I want is a safe and secure place for my child to have a future like other children.⁹⁷

28. Despite the crucial services provided by NGOs like MSF to refugees, they continue to be scapegoated by the Greek government at its highest levels, including by Minister Mitarachi who claims that “according to testimonies and cross-referenced information, NGOs are

⁹³ *Id.* (“[t]he International Protection Act, passed by the Greek government in 2019, limited the vulnerabilities that they are required to provide additional protections and support for during asylum procedures. The new law removed PTSD and survivors of shipwrecks from the list of vulnerabilities (art. 58). This change in the law follows several years of attempts by authorities to reduce the number of vulnerable people identified in the RICs. The arbitrary removal of PTSD disregards the seriousness of this mental health condition and reduces the likelihood of early intervention and protection for vulnerable traumatised people”).

⁹⁴ *Id.*

⁹⁵ *Id.* See also [Info Migrants 10/09/21](#), *supra* note 68 (quoting an MSF staff member”).

⁹⁶ [MSF 06/21](#), *supra* note 64

⁹⁷ *Id.* at p. 11.

footing the bill for visas and travel to Turkey, using flights to Istanbul. Then, the [asylum seekers] are transported to the Turkish coast, where smugglers, again with NGO assistance, help them to enter the European Union illegally.”⁹⁸ Most recently, a bill before the Greek parliament introduced restrictions and conditions on the activities of civil society groups whose work overlaps with the Hellenic Coast Guard.⁹⁹ Violations would result in heavy sanctions and fines, and would “seriously hinder life-saving work.”¹⁰⁰ For all the effort that Greek authorities have allocated towards criminalising human rights defenders, however, they have failed to investigate the specific allegations of pushbacks, deprivation of humanitarian aid, and other violations that have consistently been reported. To date, “there hasn’t been an investigation at the judiciary level or the level of an independent authority involving specific allegations and depositions.”¹⁰¹

29. Rather than investigate the claims made by human rights defenders, in June, the Greek government went a step further in limiting its protection of bona fide refugees by declaring Turkey a safe third country for nationals from five countries, including Afghanistan and Syria.¹⁰² As a result, Syrian and Afghan asylum applicants who enter Greece via Turkey are generally inadmissible based on the assumption that Turkey could offer them sufficient protection, even though Turkey has declined to re-accept them.¹⁰³ Citizens of these two countries comprise more than two-thirds of asylum applicants in Greece.¹⁰⁴ Yet, “the

⁹⁸ Aljazeera, [Refugee Pushbacks: Greece prepares to indict whistle blowers](#) (14 April 2021). See also PBS News Hour, [Greek Authorities Crackdown on Critical Nonprofits Amid Backlash for Refugee Pushback](#) (26 July 2021) [[“Aljazeera 14/04/21”](#)] (“[p]olice in Greece’s most eastern islands have launched a human-trafficking prosecution against non-profits that help asylum seekers try to avoid being pushed back at sea to Turkey. The move is being seen as part of a wider effort by some European countries to criminalize humanitarian organizations as the Greek coast guard defends its pushback efforts”).

⁹⁹ ANSA, [Greece’s Government Still Faces Criticism After Moria Fire](#) (13 September 2021).

¹⁰⁰ [AP 09/09/21](#), *supra* note 65.

¹⁰¹ [Aljazeera 14/04/21](#), *supra* note 98. The Greek Ombudsman, [Alleged Pushbacks to Turkey of Foreign Nationals Who Had Arrived in Greece Seeking International Protection](#), p. 20 (28 April 2021) (explaining how Greek law has not provided the independent Ombudsperson with “the necessary statutory tools and means” to effectively investigate the incidents or form a judgement about the Greek government’s actions).

¹⁰² Greek Ministry of Migration and Asylum, [Greek Legislation Designates Turkey as a Safe Third Country, for the First Time. This Decision Is for Asylum Seekers from Syria, Afghanistan, Pakistan, Bangladesh and Somalia](#) (7 June 2021).

¹⁰³ EU Observer, [EU Sends Mixed Message on Turkey as ‘Safe’ Haven](#) (9 June 2021).

¹⁰⁴ UNHCR, [UNHCR’s Position and Recommendations on the Safe Third Country Declaration by Greece](#) (2 August 2021) (“[t]he designation of a safe third country needs to be based on reliable, objective and up to date information from a range of sources. Also, the process of adding or removing a country from a list of designated ‘safe third countries’ must be transparent, open to legal challenge, and reviewable in light of changing circumstances. This

concept of a safe third country presupposes the provision of a level of protection in accordance with the Geneva Convention on Refugees by the third country, the existence of an essential link between the asylum seeker and that country and the consent of the third country. In the case of Turkey, none of the above is the case.”¹⁰⁵ The devastating impact of this policy was detailed by Legal Centre Lesbos who recalled the situation of a family from Syria with three teenage children and an adult son who has extreme mental health conditions and does not speak.

They were among those forced to pack up their belongings at six in the morning and move to Mavrovouni Camp. The mother is his sole caretaker, and he relies on her support in all of his daily tasks; she, however, suffers from her own urgent medical problems, including a cyst in her brain and kidney stones, which require urgent treatment in Athens. Although the family’s geographical restrictions to the island had been lifted to allow for needed medical treatment, their asylum claim was rejected on appeal—on the basis that Turkey is a country from which they could have sought protection, and as a result, they are again restricted to the island. This family has now been trapped in Lesbos since November 2019—approaching two years—unable to access the asylum procedure and unable to obtain needed medical treatment.¹⁰⁶

30. For refugees sent from Greece to Turkey, deportation to their country of origin is more than a threat. It is a bleak reality in which victims are recklessly refouled to war-torn states that are no longer their homes—sometimes at gunpoint.¹⁰⁷ This is particularly the case for Syrians. Meanwhile, individuals stuck in Syria and frantic to flee violence are trapped along the Syrian-Turkish border. Those who attempt to cross into Turkey risk their lives. SJAC’s documentation team has recorded the names of over 100 people shot dead by

requires of the State declaring a STC, here Greece, a thorough assessment and monitoring of respective protection safeguards in law and practice prior and throughout the implementation of an eventual arrangement”).

¹⁰⁵ Syria Justice and Accountability Centre, [Refuge No More: The Danger of Forced Return to Syria](#) (22 June 2021). European Council on Refugees and Exiles, [Greece: While the Designation of Turkey as Safe Country and Pushbacks Undermine Protection in Greece, the Country is Criticised for not Preventing Secondary Movement](#) (11 June 2021). European Council on Refugees and Exiles, [AIDA 2020 Update: Turkey](#) (28 May 2021). Associate Press, [Refugees in Fear as Sentiment Turns Against Them in Turkey](#) (25 September 2021); Amnesty International, [“You’re Going to Your Death” Violations Against Syrian Refugees Returning to Syria](#) (7 September 2021).

¹⁰⁶ [LCL Quarterly Newsletter](#), *supra* note 34.

¹⁰⁷ Info Migrants, [UNHCR Reprimands Greece Over More Reports of Pushbacks at Sea](#) (29 March 2021) (explaining that anti-refugee sentiment is high in Turkey and the bureaucracy of registration as a refugee in Turkey has many pitfalls, and that [t]his form of pushback on part of Turkish authorities is also sometimes an extension of the problem at the Aegean Sea and along the Evros river: many of those migrants often have no way to secure their long-term safety and well-being other than by sneaking back into Turkey unnoticed by authorities, and then making their way into Europe”).

Turkish officials at the border in 2021. Syrians who make it to Turkey face a host of violations, much like the defendant before a Mytilene court who, in April, was convicted of illegal entry and facilitating illegal entry, sentenced to 52 years imprisonment, and given a €242,000 fine.¹⁰⁸ He was shot in Syria, then fled to Turkey with his family where he was imprisoned and tortured because he refused to join Turkish military operations in Libya.

31. Furthermore, discriminatory asylum procedures continue to propagate an asylum system that is both inefficient and subversive of refugees' fundamental rights, including their right to access courts, travel documents, and freedom of movement.¹⁰⁹ On 24 September, a cargo ship rescued 152 people off the Peloponnese coast.¹¹⁰ The group included 81 men, 23 women, and 48 children. They were from Iraq, Iran, Pakistan, and Afghanistan.¹¹¹ Their wooden boat was enroute to Italy from Turkey when it started to fill with water.¹¹² As victims were transferred from the wooden boat onto the cargo ship, a pregnant women fell in the water and drowned to death.¹¹³ Those who made it aboard faced repeated interrogations by Greek police.¹¹⁴ When the ship reached Crete, the police detained the victims in isolation at a childcare facility where they were denied interpreters, legal procedures, and information on what will happen to them.¹¹⁵
32. A recent issue on Lesbos has been that new arrivals are detained in a quarantine camp, then have their asylum procedure rushed without access to legal aid. "Efforts to distribute the contact information of legal actors were denied by UNHCR and the Greek authorities controlling the camp."¹¹⁶ Another issue has been that state-appointed counsel for individuals lodging first-instance appeals have not provided effective assistance.¹¹⁷ According to Legal Centre Lesbos ("LCL"), clients "have reported difficulties or

¹⁰⁸ See e.g., [LCL Quarterly Newsletter](#), *supra* note 34 (on 23 April 2021, "[t]his disproportionate and scandalous sentence follows state violence inflicted upon K.S. and his family in Syria, Turkey and now Greece." Lawyers with LCL noted procedural irregularities, the lack of convincing evidence, and the lack of recognition of mitigating circumstances].

¹⁰⁹ *Id.*

¹¹⁰ Ekathimerini, [Tanker Rescues Around 150 Migrants off Greece's South](#) (24 September 2021).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ [ECRC 1/10/21](#), *supra* note 23.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ [LCL Quarterly Newsletter](#), *supra* note 34.

¹¹⁷ *Id.*

impossibilities in contacting their state-appointed lawyers.”¹¹⁸ In some cases, individuals were not “informed of all the reasons for their rejection and [were] not provided with a translation of the Greek decision.”¹¹⁹ Thus, they cannot provide information or evidence in support of their asylum claims. LCL has also noted the prevalence of rejections of asylum claims without individualized assessments:

within the negative decisions reviewed by the Legal Centre Lesvos team, there have been gross procedural irregularities, including “copy-paste” decisions issued by the Greek Asylum Service and the European Asylum Support Office (EASO), for instance indicating that Afghan nationals could “return to (their) country of origin, Turkey,” or that an Iraqi national could “return to (his) country of origin, Afghanistan.”¹²⁰

33. Specific procedural failings have severe consequences for unaccompanied minors. In June, age assessment procedures resumed after a five-month suspension attributed to the training of the Greek National Health services.¹²¹ As a result of the suspension, minors who arrived during this period could not correct their birthdates that were incorrectly registered unless they had their original documents from their country of origin.¹²² For this reason, they were denied protections specifically guaranteed to them, such as housing that is separate from unrelated adults, public education, and reunification with family members in other European states under the Dublin III regulations.¹²³ This practice contravenes Greece’s assessment procedure which stipulates that an individual “should be treated as a child until proven otherwise.”¹²⁴

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* See also Refugee Support Aegean, [The Greek Asylum in the First Half of 2021: The Asylum Procedure in Numbers](#) (30 August 2021) (noting that only 8.2% of negative asylum decisions were overturned on appeal in the first half of 2021).

¹²¹ [LCL Quarterly Newsletter](#), *supra* note 34 at p. 11.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

34. Discriminatory procedures targeting refugees are not limited to the asylum system; Greece's criminal system is also unconscionably prejudiced, as seen through procedural irregularities and low evidentiary standards for conviction.¹²⁵ In June 2021,

four Afghans were sentenced to ten years imprisonment without recognition of any mitigating circumstances, and without their appeal having a suspensive effect. The conviction of the erroneous defendants was solely on a single witness, whose written testimony was read aloud in court, against the objection of defense counsel that this violated the defendants' right to cross-examination. Other major procedural violations were documented, including: or incomplete interpretation; insults to and harassment of defence witnesses; violations of the rights of the defence witnesses; and violations of the right of the defendants to make a statement. The court refused to recognise their young age, despite the fact that the Greek state had already recognised this vulnerability by incarcerating them in a specific juvenile prison.¹²⁶

35. Without avenues for legal recourse available in Greece, organizations like LCL have filed countless applications before the ECtHR. Between June and August 2021, LCL submitted eight applications for interim measures to the ECtHR requesting the urgent transfer of nine individuals and their families out of Mavrovouni RIC to safer accommodation, along with urgent access to health care on the mainland.¹²⁷ The ECtHR granted an interim measure within 48 hours of submission on seven of the cases. As a result, Greece was instructed to ensure that the applicants' living conditions were compatible with Article 3 of the European Convention on Human Rights.¹²⁸ The eighth case was dismissed because authorities scheduled the individual to be transferred to Athens prior to the application's submission.¹²⁹ Persons for whom interim measures were granted included:

- a woman who suffers from severe, frequent and treatment-resistant epileptic seizures as a result of a major head trauma following an airstrike and had been living for 21 months first in Moria and then in Mavrovouni, during which her

¹²⁵ See e.g., [LCL Quarterly Newsletter](#), *supra* note 34 (on 23 April 2021, "[t]his disproportionate and scandalous sentence follows state violence inflicted upon K.S. and his family in Syria, Turkey and now Greece." Lawyers with LCL noted).

¹²⁶ *Id.*

¹²⁷ Legal Centre Lesbos, [European Court of Human Rights Recognises Greek Authorities' Persistent Disregard for Migrants' Health and Lives in Mavrovouni Camp](#) (26 August 2021).

¹²⁸ *Id.* See also Article 3 of the European Convention on Human Rights ("no one shall be subjected to torture or to inhuman or degrading treatment or punishment").

¹²⁹ [LCL Quarterly Newsletter](#), *supra* note 34.

health deteriorated to the point that she became dependent on the care of her brother;¹³⁰

- a heavily pregnant woman at that time who suffers from a degenerative condition in her shoulders, chronic asthma and, owing to her living conditions, inflammation, and a lung infection. She and her family were forced to reside in Moria and then Mavrovouni for 17 months;¹³¹
- a four-year-old child who suffers from severe epilepsy (the result of various head traumas), plagiocephaly and undiagnosed developmental and neurological complexities. She and her family were confined to Lesvos for 16 months;¹³²
- a woman who suffers from a lump in her breast, for which she received no proper diagnosis or treatment on Lesvos, resulting in inflammation and severe pain. Her daughter suffers from arteriovenous dysplasia of the spinal cord, resulting in acute mobility issues. Together with their relatives, both the mother and the daughter were held in quarantine for two months upon arrival and after that spent around 10 months in Mavrovouni;¹³³
- a seven-months pregnant woman with a history of premature and traumatic embryo births and who spent 12 months in Mavrovouni with her family. She suffers from acute psychological issues and her young son also suffers from psychological issues apart from seizures, severe sleep disturbances and psychosomatic symptoms of anxiety;¹³⁴
- a man who suffers from several chronic conditions as a result of airstrike and gunshot injuries, on top of other illnesses, including rectal bleeding, haemorrhoids, abdominal pain, and bladder stones. He and his family have been in Lesvos for 20 months. His minor son also suffers from severe medical issues including ‘attacks’ during which he experiences seizures, loses his vision and hearing, and falls. The Court refused the interim measure for the son, while granting that of his father;¹³⁵
- a man who suffers from Hepatitis B, a potentially life-threatening condition for which he has received no treatment on Lesvos. He experiences severe symptoms and is at heightened risk of severe illness from the COVID-19 virus. Yet he spent 19 months in Moria and then Mavrovouni.¹³⁶

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

36. These cases followed three successful applications submitted by LCL in March and “months of inaction by the Greek authorities and fruitless communication” among UNHCR, the Head of Mavrovouni, and the Vulnerability Focal Point of Mavrovouni.¹³⁷ The ECtHR’s swift response to these applications underlines the severity of conditions facing individuals on the islands, as well as Greece’s unwillingness to abide by its human rights obligations under European and international law.
37. Moreover, other members of the European Union have vocalized their concern over conditions facing refugees in Greece. According to a letter sent to the European Commission by the interior ministers of Germany, France, and four other states, “Greece is not ensuring that these persons are given suitable accommodation and provided with a minimum level of physical subsistence.”¹³⁸ Further, courts in both Germany and the Netherlands have halted deportations to Greece for individuals who first applied there for asylum. Their decisions presumed that refugees returned to Greece would face a “serious risk of inhumane and degrading treatment.”¹³⁹

2. Conclusion

38. The OTP should investigate 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 other third-party contractors hired by Greece and the European Union to facilitate pushbacks. It 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 obtaining sanctuary in Europe. The facts also demonstrate that the complementarity test under Article 17 is satisfied and the gravity

¹³⁷ [LCL 17/03/21](#), *supra* note 82 (persons for whom interim measures were granted include: (i) a heavily pregnant woman with shrapnel injuries causing seizures, numbness, immobility and pain; (ii) an elderly, physically disabled woman unable to walk and suffering from multiple comorbidities; (iii) a survivor of war with facial paralysis and is also in a state of deteriorating physical and mental health).

¹³⁸ [The New Humanitarian 05/10/21](#), *supra* note 2 (explaining that “[b]etween July 2020 and July 2021, 17,000 people with international protection in Greece applied for asylum again in Germany”).

¹³⁹ *Id.*

threshold is met, as explained in SJAC's initial communiqué. For these reasons, the alleged crimes may amount to crimes against humanity under Article 7 of the Rome Statute.

39. Ultimately, the OTP should expeditiously proceed with an investigation in the interest of justice. As illustrated by this supplemental submission and accompanying evidence, failing to do so impacts the safety of victims whose lives are currently at risk, and it leaves thousands of survivors to cope with their trauma without reparative healing that can only be experienced by holding their perpetrators accountable. Should the OTP seek to uphold its mandate to impartially select situations for investigation—no matter the continent on which the alleged crimes occur(ed) or the influence of the benefactors of such crimes—then it will investigate crimes against humanity committed in Greece.