

## Legal Centre Lesbos: June 2018 Report on Human Rights Violations in Lesbos

In the two years since the implementation of the EU-Turkey Statement, conditions in Lesbos are untenable. Europe continues to measure success of the EU-Turkey Statement in terms of curbing the total number of arrivals to Europe, but in effect this means that more individuals are stuck in unsafe and inhumane situations on the frontier of Europe in “hotspots” like Lesbos where human rights violations widespread and systematic, but in even greater numbers in border nations such as Turkey and Lybia where rights violations are rampant against citizens and foreign nationals alike.

The violations we have observed since we began working in Lesbos in June of 2016 are egregious. The European Union continues to claim that Greece is responsible for the conditions in the hotspots, however, inhumane treatment of asylum seekers and violation of human rights are ensured so long as movement from the Greek islands to mainland Greece and the rest of Europe is prohibited – something that has been enforced for most asylum seekers since the EU-Turkey Statement in March 2016.

### I. Reception Conditions Violate Basic Human Rights

The current reception conditions in Lesbos, in Moria Camp, are in abject violation of the right to adequate housing, health care, and life, as has been reported by medical actors such as Medecins Sans Frontier (MSF). Moria Camp is now operating at three times its capacity with multiple families and dozens of individuals living together in shared tents and containers. In the past several months, we have documented cases of pregnant women sleeping in tents with no mattresses, women who have recently given birth being returned to live in Moria Camp with their newborn babies, and individuals released from the hospital after surgery directly to Moria Camp. There is a lack of access to adequate and clean water and hygienic sanitation, general health care, and psychological support, particularly for children. The list of violations in Moria Camp could continue, and have already been widely reported.

These conditions violate basic human rights, and the provisions of the Recast Reception Conditions Directive 2013/33/EU, Recital 11 of which demands “*Standards for the reception of applicants that will suffice to ensure them a dignified standard of living*”, and Article 17(2) of which mandates that:

“Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.”

In the face of the deplorable violation of these requirements that current conditions constitute, **removing geographical restrictions amounts to a binding legal obligation under Article 7(1) of the Reception Conditions Directive** since the assigned area of Lesbos does not allow sufficient scope for guaranteeing access to all benefits under the Directive:

“Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable

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sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.”

“Vulnerability” under Greek law has thus far been used as one criteria to lift geographic restrictions. However, procedures are now so delayed that even individuals who are recognized as vulnerable, and whose cases should be prioritized under Article 51 of Greek Law 4375, are being scheduled for their interviews nearly a year after their arrival.

*Some of these vulnerable individuals who have consulted the Legal Centre arrived in April of 2018, have been scheduled for their first interview on their asylum claim in Lesbos in February of 2019. This includes Kurdish individuals from Afrin, Syria, who who faced persecution in both Syria and Turkey because of their ethnicity. Other individuals have had their cases delayed for over a year due to lack of interpreters for languages such as Tamil or Ashanti. These individuals, and many others, are prohibited from leaving Lesbos at least until after they complete their first interview. While bureaucratic delays are to be expected, these individuals freedom of movement should not be restricted just because the Greek Asylum Service is delayed in the processing of their claims.*

Additionally, bureaucratic hurdles placed by the police and Regional Asylum Service delay for months the lifting of geographic restrictions for individuals who urgently need medical treatment outside of Lesbos. For example, in one such case, an eleven year old child has a serious, undiagnosed digestive condition that causes her constant pain and seizures. Because they have been unable to diagnose her illness, the hospital in Mytilene has referred her for testing and treatment in Athens. Even the Mytilene police department has recommended that geographic restrictions be temporarily lifted so that she can travel to Athens for further tests and treatment, but the Regional Asylum Office has denied this request without an appointment in the Athens hospital, which will likely be scheduled in several months time. Her family is now in a constant state of fear that given her critical condition, their daughter will be unable to receive emergency medical care when needed, given the lack of testing and treatment for her on the island. Already once, when she had seizures and attempted to get treatment at the hospital in Lesbos, she was not admitted because they do not have means to treat her.

Furthermore, as we have documented in many cases, non-visible vulnerabilities such as psychological problems and trauma frequently go unrecognised, despite being indicators of vulnerability under Greek Law 4375, Article 14(8).

Moreover, while vulnerable asylum seekers are guaranteed certain safeguards and protections under Greek law, those found not-vulnerable also possess a significant bundle of rights which are currently being violated, and of course everyone is guaranteed that their human rights be respected regardless of their vulnerability or legal status. Everyone has the right to adequate housing, to apply for asylum with a fair process, and to freedom of movement – all of which is being routinely violated in Lesbos, and in particular for those living in Moria Refugee Camp.

Given these reception conditions, we are concerned that several European States have begun returning asylum seekers and recognized refugees to Greece under the Dublin Regulation, which

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provides that the first European member state an asylum seeker enters is responsible for the examination of her application for international protection. The 2011 decisions of the European Court of Human Rights and the Court of Justice of the European Union holding that returns to Greece would amount to violations of the prohibition of inhuman or degrading treatment or punishment (Article 3 ECHR, Article 4 European Charter) in combination with the right to an effective remedy (Article 13 ECHR, Article 47 EC), due to systematic deficiencies in asylum procedures and reception conditions remain relevant. As systematic violations of these standards continue and conditions deteriorate not only in Lesbos but throughout Greece, any European country returning refugees to Greece will risk acting in violation of non-derogable human rights.

In addition to ending all returns from European States to Greece, the Legal Centre Lesbos also calls on Greek and EU authorities to immediately remove geographical restrictions placed on applicants for international protection and permit free movement to mainland Greece, where other European states must respect relocation programs so that the minimum reception conditions required to safeguard human dignity can be met.

### II. Containment Policy Must End to Guarantee Freedom of Movement Right

In addition to denying basic human rights, the containment policy in place since the implementation of the EU-Turkey Statement also violates individuals freedom of movement rights. **There are now individuals who have now been restricted to the island of Lesbos for over two years, and are prohibited from leaving the island as their asylum application has not been adjudicated.** Freedom of movement rights are guaranteed under Article 12(1) of the International Convention of Civil and Political Rights and Article 2 of Protocol 4 to the European Convention on Human Rights. Both of which are ratified by Greece and provide that:

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

In light of this, it should be noted that, firstly, applicants for international protection in Greece are lawfully within the territory of the Greek state as per Article 37(1) of Greek Law 4375:

*Applicants shall be allowed to remain in the country until the conclusion of the administrative procedure of the examination of their application and they shall not be removed in any way.*

Secondly, as a fundamental freedom and right under international law, the right to freedom of movement should not be interpreted restrictively and its provisions should prevail over contrary provisions from the time they are ratified in accordance with Article 28(1) of the Greek Constitution.

For all of the above reasons, the containment policy and geographic restrictions are in violation of asylum seekers' free movement rights under Greek, EU and international law and must therefore be lifted.

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## III. Right to Fair Asylum Process Denied

The lack of procedural safeguards and access to a fair asylum process continue to result in violation of asylum seekers rights in Lesbos. Many individuals claims are rejected on credibility, in many cases after being interviewed by a European Asylum Support Office (EASO) “expert”. In theory, EASO does not make decisions, but issues an opinion after the interview(s) which, along with the interview transcript, forms the basis of the Greek Asylum Service decision. This is particularly concerning when it comes to determinations of credibility. Often, minor inconsistencies and a detached manner of recalling events are used to find individuals non-credible – when these are the very symptoms that a survivor of trauma might express.

**While individuals have the right to appeal, this right is jeopardized by various institutionalized and systematic obstacles, including lack of legal aid, Appeals Committees that do not adequately review claims, prohibitively expensive court fees, and coercive policies that encourage individuals to give up the right to appeal.**

The Greek government continues to violate the right to a fair process by denying access to legal aid on appeal. Article 44 of Greek Law provides that “in procedures before the Appeals Authority, applicants shall be provided with free legal assistance”, transposing Articles 19-23 of the 2013/32/EU ‘Procedures Directive’, which requires the same. However, as was the case during June and July of 2017, again starting in June of 2018, several individuals who have consulted the Legal Centre have been informed that there are no lawyers available to represent them on appeal after they have had their asylum claim rejected.

Unfortunately, rejection on appeal is not limited to individuals without a lawyer and the Appeals Committee have served mainly to rubber stamp the initial decision made by the Greek Asylum Service. Last year's the European Commission report on implementation of the EU-Turkey Statement shows that only 1 % of denials of international protection were reversed on appeal in cases made by non-Syrians from the Greek islands.<sup>1</sup> This lack of effective remedy is a clear violation of asylum seekers right to access justice.

Given the large number of inconsistencies reported regarding interviews conducted and decisions made in Lesbos, these statistics are alarming and have tragic consequences for the individuals are seeking asylum in Europe, only to be returned (via Turkey) to the countries where their lives may be at risk.

Prohibitively expensive court fees (over 1000 Euros) and lack of sufficient legal aid actors on Lesbos has meant that asylum seekers are unable to challenge these routine violations in court and there has been no effective remedy or redress for violation of their rights.

The right to a fair process is further limited by the International Organization for Migration's (IOM) Assisted Voluntary Return and Reintegration (AVRR) programme, implemented since 2017, which requires asylum seekers to chose between their right to appeal their case if rejected, or forego their right to appeal and benefit from the programme.

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<sup>1</sup> [http://europa.eu/rapid/press-release\\_AGENDA-17-3064\\_en.htm](http://europa.eu/rapid/press-release_AGENDA-17-3064_en.htm)

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To ensure access to justice and to a fair process, EASO's role must be reviewed, access to legal aid must be ensured, and access to a fair appeal procedure must be guaranteed.

### **IV. Arbitrary Detention of Asylum Seekers**

Since at least June of 2017, The Greek State has detained throughout the asylum procedure individuals from low recognition rate countries. This policy is in violation of international human rights law: amounting to discrimination on the basis of nationality, arbitrary deprivation of liberty, and precluding the right to effective access to procedures and effective remedy. Under Greek and international law, asylum seekers cannot be detained simply because “he/she entered irregularly and/or stays in the country without a legal residence permit,” and detention should be enforced “exceptionally and if this is considered necessary after an individual assessment under the condition that no alternative measures” can be applied under Greek Law 4375, Article 46.

Additionally, Greece continues the practice of detaining individuals who have requested “voluntary” return to their home countries. Many individuals spend months in detention after they make the difficult decision to give up on their hope of receiving protection in Europe, and judicial review of this detention is practically impossible given lack of legal aid and access to courts.

While we condemn the containment policy as a violation of individuals’ right to freedom of movement, when most asylum seekers in Lesbos are in any case prohibited from leaving, there is no legal justification for keeping individuals in detention upon arrival on the closed island of Lesbos, or when they are coerced into returning to their home countries. The disturbing assumptions underlying this manifestly unlawful policy should be evident from the fact that a police circular describing the policy on 18th June 2016 termed people from “low rate of recognition” nationalities as “economic profile”, as opposed to “refugee profile” applicants.

Further frustrating judicial review of the detention, individuals are often detained without a written comprehensive order from the Police Director or Regional Asylum Authority, stating “complete and comprehensive reasoning” for the detention, as required by Greek Law 4375, Article 46(3). The lack of such an order makes it difficult for individuals and lawyers alike to legally challenge the decision in court.

The Legal Centre recommends immediately ending the illegal practice of detention based on nationality without individualized assessment and of detaining individuals who have signed for voluntary departure.

### **V. Lack of Access to Justice for Detained Asylum Seekers**

The practice of keeping individuals in detention throughout the processing of their applications for international protection have horrifying consequences for the individuals detained, and due to limited access to detainees it is difficult to monitor the extent of violations taking place. In addition to arbitrary and illegal detention, detainees in Lesbos are also denied access to justice in the processing of their asylum claims. Detainees lack basic information about their rights – such as the right to appeal, and to information about their application in a language they understand. Detained individuals do not have access to effective legal aid as police limit the amount of time

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detained individuals have to consult lawyers and often interrupt confidential consultations. There have been several reports of self harm and suicide attempts by individuals detained in Moria Camp.

In the May and June of 2018, since the conclusion of the Moria 35 trial (discussed in more detail below), we closely followed the administrative process related to the detention and processing of the asylum claims of these 35 individuals, to ensure that Greek authorities comply by their own laws and respect the rights of these asylum seekers. Despite the fact that the UNHCR, the Ombudsman's Office, and the Legal Centre were closely monitoring their cases, there have been rampant violation of their rights at every step of their procedures. The violations we have observed in the individual cases of these 35 men highlight the lack of procedural safeguards to protect the rights of asylum seekers, particularly those who are being detained.

Some of the observed violations of Moria 35 defendants' rights as asylum seekers:

- Two individuals whose cases were rejected were denied the representation of a lawyer on appeal. The appeal of a rejected asylum claim is the one stage in the asylum procedure where asylum seekers have the right to a lawyer, under Article 44(3) of Law 4375. Although both requested the representation of a lawyer, the examination of their case on appeal occurred without them having been assigned an attorney.
- Another individual signed for voluntary departure, but then changed his mind and decided to continue his claim for international protection. He requested that his case be reopened. While that request was being processed, he was placed by police on the list to be deported on the 1 June 2018. It was only after advocacy from the Legal Centre that he was removed from the deportation list. He remains in detention, despite the lack of legal grounds to hold him there.
- Another individual was held for over a month in detention, after transfer to Lesbos following the trial in Chios. There was no recommendation for his continued detention from the Regional Asylum Office, as required by Article 46(3) of Law 4375. After daily follow up from the Legal Centre, eventually the police admitted that they were holding him by mistake and he was released.
- Two additional individuals had their asylum cases rejected, but were unable to appeal because they were detained. With advocacy from UNHCR and Legal Centre lawyers, one of the individuals was able to lodge his appeal. However, he remains in detention, and it is not clear if the Appeals Committee will review his case on the merits or deny the appeal as untimely filed.

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- **The second individual was deported on the morning of 13 June 2018. This was despite the fact that for days he had been expressing to the police his desire to appeal the rejection of his asylum claim.** Lawyers from HIAS and the Legal Centre also spoke with the Mytilene police department the day before he was deported and informed the police that they would be filing an appeal on his behalf. On the morning of 13 June 2018, he was deported to Turkey. This individual, a Guinean national, claims that he was a victim of torture, and will be subject to persecution if returned to his country. Regardless of whether his claim is credible, he has the right to appeal the rejection of his claim. Even though untimely, it is not the police who have the authority to accept or reject his appeal, but the Asylum Service. **His right to appeal was clearly denied, and his deportation was illegal as police were aware that he would be appealing the denial of his claim and they proceeded with the deportation in any case.**
- A second Moria 35 defendant was also deported on the 13 June 2018. His case had been rejected in the second instance. In 2017 this Ghanaian national had been rejected and scheduled for deportation, but he lodged a subsequent application. It was the denial of this subsequent application that led to his deportation. While the Regional Asylum Service again scheduled for him to file a subsequent application on 14 June 2018, on 11 June 2018, we were informed that they would not accept a second subsequent application, since he had already submitted a subsequent application in 2017. However, he still had the option of appealing the denial of his claim in administrative court. **Less than two days after being informed that he could not file a subsequent application, he was deported to Turkey.** This individual has recently received original documents from Ghana that were not previously submitted to the Asylum Office. These documents corroborate his claim that he will be imprisoned 10-15 years if returned to Ghana. Prison conditions in Ghana according to human rights reports are “generally harsh and sometimes life threatening due to physical abuse, food shortages, overcrowding, and inadequate sanitary conditions and medical care” meaning he should be eligible for subsidiary protection, if not refugee status. Both individuals that were deported on the 13 June 2018 are also eligible for humanitarian protection as important witnesses to a serious crime that is still being investigated in Greece (the brutal police attack against the 35 arrestees on 18 July 2017). **The swift move of the police to deport these individuals show that while procedures to grant protection and ensure that refugee rights are respected are constantly delayed, the State is able to mobilize and act swiftly to deny these same rights.**

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The trampling of the rights of these individuals by the Greek State has followed their brutally violent arrest, their unjust prosecution, and lengthy imprisonment in the case of the Moria 35.

It is clear that there is a lack of sufficient transparency, oversight, and monitoring of detention and deportation practices in Lesbos. We call on the immediate release of all asylum seekers in Lesbos who are currently being arbitrarily detained.

### VI. EU and Greece Must be Held Accountable for Violation of Deportees' Rights

We have long condemned the EU for returning refugees and migrants to Turkey, where violation of the human rights of foreign nationals is systematic. However, FRONTEX continues to quietly return individuals to Turkey on a weekly basis. The individuals forcibly returned to Turkey include those whose applications for international protection are rejected in Greece, and individuals who have “voluntarily” withdrawn their application after months of uncertainty, detention on the Greek islands, and inhumane living conditions. The future that awaits them in Turkey is dire, where non-Syrians are routinely held in detention where their basic human rights are denied, as they are denied access to health care, education, and legal assistance. Greece and the European Union must be held accountable for knowingly sending individuals to this fate. Syrian nationals rights are also routinely violated in Turkey where their rights to mobility, health care, and protection from defaulement are breached. Regardless of their legal status in Greece and Europe, the EU and Greece must be held accountable for failing to respect these individuals' human rights.

### VII. Criminalization of Foreign Nationals and Right to Fair Trial Denied

The criminalization of migrants and refugees and denial of access to a fair trial was illustrated through the arrest and prosecution in the case of the Moria 35.<sup>2</sup> The Legal Centre provided representation during the criminal proceedings to eleven of the defendants and assisted in coordinating the defense team for the 35.

On 18 July 2017, police violently raided Moria Camp, arbitrarily arresting and brutally beating 35 individuals – the vast majority of African-origin or descent. This was in response to what started as a peaceful protest earlier that day by asylum seekers of all nationalities for freedom of movement and against inhumane camp conditions, which was also met by police brutality, outside the European Asylum Support Office (EASO).

To highlight the seriousness of this case and the extent of police violence, Amnesty International called on Greek authorities to immediately investigate excessive use of force amounting to possible torture. An investigation has now been opened into dangerous bodily harm committed by unknown police officers against 12 of the 35 arrested.

We are convinced, as a Legal Centre that had the benefit of having legal observers present

<sup>2</sup> <https://www.ecre.org/moria-35-trial-at-the-gates-of-fortress-europe/>

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and filming the events as they unfolded, that the criminal charges brought against the Moria 35 were baseless. Nevertheless, all the 35 defendants were charged with 4 identical offenses: damage to property, use or threat of violence against a public official, dangerous bodily harm and arson with intent to endanger life.

Despite the Greek Criminal Procedure Code describing pre-trial detention as a 'measure of last resort', 30 of the 35 defendants were detained since their arrest on 18 July 2017, within four different prisons spread across Greece. This is despite the weakness of the evidence against the defendants; well documented concerns regarding their physical and mental wellbeing; the near impossibility of their leaving Lesbos; the absence of previous convictions; and the absence of any evidence suggesting they would abscond or commit offences whilst awaiting trial. This case exemplifies the disproportionate overuse in Greece of pre-trial detention against detainees of foreign nationality.

**After nine months, the 35 were brought to trial on the island of Chios, where 32 were found guilty. This inherently unsafe verdict, reached despite an overwhelming lack of evidence, followed a week long trial which continuously violated fundamental principles of a fair trial under Article 6 of the European Convention of Human Rights and brings into serious question the impartiality of both the Judges and Prosecutor in the case.**

32 of the 35 defendants were found guilty of injury to public officials, but acquitted on all other charges. The three individuals detained by a firefighter outside Moria Camp were acquitted of all charges; the testimony against them discredited as inconsistent and lacking credibility as the firefighter misidentified the defendants in court.

While the evidence against the remaining 32 defendants was similarly inconsistent, the mixed jury court of three judges and four jurors unanimously found the 32 guilty. This ruling was reached without the prosecutor proving the necessary elements of the crime: there was only evidence of superficial injuries to one police officer, and there was no credible evidence identifying any of the 32 as having assaulted any police officer. Police witnesses testified that all 32 defendants arrested inside Moria Camp were guilty simply because they were present in the African section of the camp *after* clashes between some migrants and riot police had ended. Confirmation by the court that guilt can be implied by race and location near to where alleged crimes took place sets an extremely dangerous precedent for arrests following riots and protests.

The defense witnesses included residents from Mytilene and Moria Camp, who confirmed that Moria Camp was never evacuated, that people freely entered and exited the camp throughout the afternoon through back entrances and that the camp was calm for roughly an hour before the arrests took place. Many defendants testified about their participation in the protest calling for freedom of movement from Lesbos to mainland Greece, an end to unjust asylum procedures on the island, and against deplorable conditions in Moria. They explained that police responded violently, dispersing the protestors with excessive use of tear gas. Others testified that they entered Moria camp

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after it was calm, only to find themselves violently arrested during the police raid. The excessive police violence was confirmed in the trial through medical documentation of injuries to defendants, video evidence of the arrests, and the testimony of several witnesses and defendants.

The trial in Chios was fraught with serious procedural problems, including an absence of interpretation for the majority of the trial and the severely limited time the defendants and defence witnesses were given to present their side of the story. An international delegation of legal observers were present throughout the trial and will be publishing a report regarding their assessment regarding its fairness in due course.

Unfortunately, the arrest and prosecution of the 35 is not unique. There have been several instances of foreign nationals being arrested in Lesbos and being transferred to prisons throughout Greece awaiting trial in pre-trial detention, before their families, friends, let alone lawyers learn of their arrest. For example, the ruling in the case of the Moria 35 came only four days after the 23 April 2018 arrests and criminal charges brought against 122 individuals – mostly Afghan – who had been peacefully protesting in Mytilene and were viciously attacked by fascist militant thugs before being arrested by the police.

The apparently indiscriminate nature of the arrests, charges, and pre-trial detention orders, coupled with dawn-raids that sporadically take place in Moria camp, provide reason to believe that authorities are deploying a policy of intimidation intended to instill fear in the camps and prevent organising and protests against the realities of structural violence and dehumanizing reception conditions in Lesbos. We are extremely concerned that the decision of the Chios Court in the case of the Moria 35 will further encourage the State to continue these policies which criminalize and terrorize foreign nationals.

We demand accountability for the excessive force, arbitrary raids and arrests, exaggerated criminal charges, lack of access to a fair trial, and punitive pre-trial detention on the part of state actors, all of which violate basic principles of human rights law.

*The Legal Centre Lesbos, operating since August of 2016, works on the expertise of an international and Greek team of professionals and volunteer lawyers, interpreters, and law students. Hosted in the Mosaik Refugee Support Centre in Lesbos, we provide free and individual legal support to all foreign nationals who seek our assistance. We also work to document rights violations and advance the rights of migrants and refugees on the Greek island of Lesbos. We are a not for profit, non-governmental association, registered under Prism the Gift Fund Charity in the UK.*