

CRIMES AGAINST HUMANITY IN THE AEGEAN

LEGAL CENTRE LESVOS - 1 FEBRUARY 2021



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WHO WE ARE

The Legal Centre Lesbos AMKE, is a civil non profit organization, registered in Mytilene, Greece, operating since May 2019. Between 2016 and 2019, the Legal Centre operated as “Legal Centre Lesbos,” a grassroots organisation registered under Prism the Gift Fund Charity in the UK.

The organisation provides free and individual legal support to migrants and advocates for human rights and for equal access to legal and safe routes of migration in Lesbos, Greece and globally. We also work to document rights violations and advance the rights of migrants and refugees on the Greek island of Lesbos, and throughout Greece.

INTRODUCTION

COLLECTIVE EXPULSIONS AS AN ONGOING AND SYSTEMATIC PRACTICE

Greek authorities are continuously and systematically conducting collective expulsions at Greece's land and sea borders, putting migrants' lives at grave risk and violating their rights, including the right to seek asylum.

In addition to the incidents documented in the Legal Centre Lesvos' (LCL) first report on collective expulsions in the Aegean between March and June 2020,¹ growing press coverage,² civil society reports³ and other investigations⁴ have documented dozens of further collective expulsions in recent months. These investigations have also revealed that Frontex, the European Border and Coast Guard Agency, and assets belonging to the North Atlantic Treaty Organisation (NATO) have been in the vicinity of, aware of, or potentially direct participants in collective expulsions.⁵

¹ Legal Centre Lesvos, 'Collective Expulsions Documented in the Aegean Sea: March - June 2020', 13 July 2020, available at: <http://legalcentresvos.org/wp-content/uploads/2020/07/Collective-Expulsions-in-the-Aegean-July-2020-LCL.pdf>.

² See, for example:

Patrick Kingsley and Karam Shoumali, 'Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea', *The New York Times*, 14 August 2020, available at: <https://www.nytimes.com/2020/08/14/world/europe/greece-migrants-abandoning-sea.html>;

Border Violence Monitoring Network (BVMN), 'BVMN Visual Investigation: Analysis of video footage showing involvement in Hellenic Coast Guard in maritime pushback', 21 August 2020, available at:

<https://www.borderviolence.eu/bvmn-investigations-analysis-of-video-footage-showing-involvement-of-hellenic-coast-guard-in-maritime-pushback/>;

Henrique Valadares, 'UN, rights groups accuse Greece of using pandemic to 'step up' migration restrictions', *France 24*, 23 August 2020, available at:

<https://www.france24.com/en/20200823-un-rights-groups-accuse-greece-of-using-pandemic-to-step-up-migration-restrictions>.

³ See, for example: Oxfam, WeMove Europe, 'Complaint to the European Commission concerning infringements of EU law by Greece', 22 September 2020, available at:

<https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/wemove-oxfam-complaint-to-ec-asylum-greece-eu.pdf>;

Human Rights Watch, et al (including LCL), 'Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses', 6 October 2020, available at:

https://www.gcr.gr/media/k2/attachments/20201006_letter_en.pdf.

⁴ Refugee Support Aegean, 'Push backs and violations of human rights at sea: a timeline', 29 December 2020, available at:

<https://rsaegaeon.org/en/push-backs-and-violations-of-human-rights-at-sea-a-timeline/>.

⁵ See, for example: Katy Fallon, 'EU border force 'complicit' in illegal campaign to stop refugees landing', *The Guardian*, 24 October 2020, available at:

<https://www.theguardian.com/global-development/2020/oct/24/eu-border-force-complicit-in-campaign-to-stop-refugees-landing>;

Giorgos Christides et al, 'EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign', *Spiegel International*, available at: <https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7>;

Nick Waters et al, 'Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks', *bellingcat*, 23 October 2020, available at:

<https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>;

Das Erste, 'Video: Frontex complicit in push-back campaign', 27 October, 2020, available at:

<https://www.daserste.de/information/politik-weltgeschehen/fakt/videosextern/frontex-complicit-in-push-back-campaign-100.html>.

The present report contributes to this growing body of evidence both to serve as a resource for survivors of collective expulsions and solidarity actors, and to demonstrate the **consistent and systematic nature of this practice over the last year**. It is based on recent additional evidence shared with LCL by survivors of collective expulsions, and analyses the violations committed by the Greek authorities in their commission of collective expulsions. It identifies the **consistent modus operandi of collective expulsions at the Aegean sea border**, which evidences both the **widespread and systematic nature of ‘push-backs’ as an attack** against migrants, and the **policy** pursuant to and in furtherance of which this attack is carried out: amounting to **crimes against humanity committed by Greek authorities** in accordance with the criteria of Article 7 of the Rome Statute of the International Criminal Court (Rome Statute). It should also be reminded however, that it does not capture **the years of systematic pushback practices carried out by Greece at both its land and sea border with Turkey**.⁶ For years, EU institutions and EU agencies have remained unacceptably silent in the face of the accumulating evidence of egregious violations against migrants.

In this report we use the terms “collective expulsion” and “pushbacks” interchangeably. The European Court of Human Rights defines collective expulsion as **any measure compelling aliens, as a group, to leave a country, without a reasonable and objective examination of the particular case of *each individual alien of the group***.⁷

The current Special Rapporteur on Human Rights of Migrants, Felipe González Morales, describes “pushbacks” as **“various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement.”**⁸

⁶ See, e.g. Amnesty International, ‘FRONTIER EUROPE: Human Rights abuses on Greece’s border with Turkey’, July 2013, available at <https://www.amnesty.org/download/Documents/12000/eur250082013en.pdf>; ProAsyl, ‘Pushed back: systematic human rights violations against refugees in the Aegean sea and the Greek–Turkish land border’, November 2013, available at:

<https://www.proasyl.de/en/material/pushed-back-systematic-human-rights-violations-against-refugees-in-the-aegean-sea-and-the-greek-turkish-land-border/>; Human Rights Watch, ‘Greece: Attacks on Boats Risk Migrant Lives’, 22 October 2015, available at

<https://www.hrw.org/news/2015/10/22/greece-attacks-boats-risk-migrant-lives#>; Human Rights Watch, ‘Greece: Violent Pushbacks at Turkey Border – Summary Returns, Unchecked Violence’, 18 December 2018, available at:

<https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>; Greek Council for Refugees, ARSIS-Association for the Social Support of Youth, ‘The New Normality: Continuous Push-backs of Third Country Nationals on the Evros River’,

HumanRights360, available at:

<https://www.humanrights360.org/the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river/>; Mobile Info Team. ‘Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum’, 15 November 2019, available at:

<https://www.mobileinfoteam.org/pushbacks>.

Forensic Architecture, ‘Pushbacks Across The Evros/ Meriç River: The Case Of *Ayşe Erdoğan*’, available at:

<https://forensic-architecture.org/investigation/pushbacks-across-the-evros-meric-river-the-case-of-ayse-erdogan>,

⁷ See, for example: *Khlaifia and Others v. Italy* [GC], no. 16483/12, ECHR 2016, § 237; *Georgia v. Russia (I)* [GC], no. 13255/07 ECHR 2014, § 167; *Çonka v. Belgium*, no. 51564/99 ECHR 2002-I, § 59.

⁸ Special Rapporteur on the human rights of migrants, ‘Call for inputs for the Special Rapporteur’s report on pushback practices and their impact on the human rights of migrants’, available at:

<https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Pushback-practices.aspx>.

“Missing arrivals” since March 2020

Since March 2020, while the number of testimonies and evidence about illegal “push-backs” of migrants to Turkey has continuously grown, the official number of migrants’ arrival to Greece by sea has drastically dropped. The United Nations High Commissioner for Refugees (UNHCR) reported that just over 9,600 migrants reached Greece by sea in all 2020, which is a decrease of 85% as compared to 2019⁹ – and equivalent to the number of arrivals on the Greek islands in the month of November 2019 alone (see Figure 1).

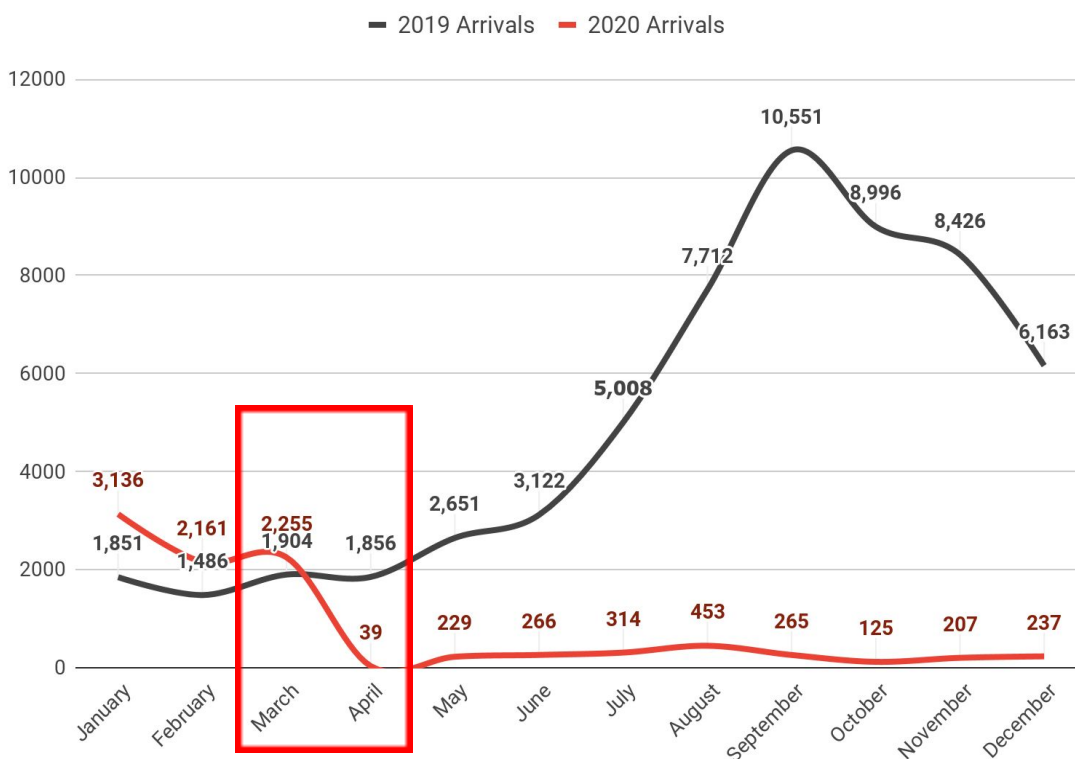


Figure 1. Number of “official” arrivals to the Greek islands according to UNHCR data in 2019 (grey line) and 2020 (red line)¹⁰.

The UNHCR’s data, however, relies on the official registration of migrants’ arrivals and fails to capture the number of migrants who, over the same period of time, have reached Greece and were collectively expelled from Greek jurisdiction (whether on land or at sea) without being able to seek asylum. In response to what it describes as “a continuous stream of reports of some European states restricting access to asylum, returning people after they have reached territory or territorial waters, and using violence against them at borders”, the UNHCR has called for “national independent monitoring mechanisms to be set up to ensure access to asylum, to prevent rights violations at borders, and to ensure accountability”.¹¹

⁹ In 2019, 59,726 migrants reached Greece by sea. UNHCR Operational Portal, ‘Mediterranean Situation’, available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

¹⁰ Figure based on UNHCR data, *Ibid.* n. 9.

¹¹ UNHCR, ‘UNHCR warns asylum under attack at Europe’s borders, urges end to push backs and violence against refugees’, 28 January 2021, available at:

While the official number of migrants' arrivals to Greece has significantly dropped in 2020, the number of deaths and missing is higher than in the previous year.¹² More migrants died in the Eastern Mediterranean the first three months of 2020 than in any other year apart from 2016, when migrant arrivals in Greece peaked.¹³ **This shows that the crossing between Turkey and Greece has become even more dangerous and hazardous for migrants in 2020.** On 2 March 2020, a four year old child¹⁴ and a fifteen day old baby died¹⁵ off the coast of Lesbos after Greek authorities reportedly menaced their dinghy, creating large and dangerous waves before eventually rescuing the survivors.

These tragic incidents are not isolated or chance occurrences: they form part of a Greek and European necropolitics of border fortification at any cost. The means to this end include death as deterrence and systematic, violent collective expulsions in the Aegean, as described in parts 1 and 2 below.

<https://www.unhcr.org/news/press/2021/1/601121344/unhcr-warns-asylum-under-attack-europes-borders-urges-end-pushbacks-violence.html>; see further:

UNHCR, 'UNHCR concerned by pushback reports, calls for protection of refugees and asylum-seekers', 21 August 2020, available at: <https://www.unhcr.org/gr/en/16207-unhcr-concerned-by-pushback-reports-calls-for-protection-of-refugees-and-asylum-seekers.html>; UNHCR, 'UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey', 12 June 2020, available at: <https://www.unhcr.org/news/briefing/2020/6/5ee33a6f4/unhcr-calls-greece-investigate-pushbacks-sea-land-borders-turkey.html>.

¹² There were 102 individuals reported dead and missing in 2020, whereas in 2019 there were 71, per UNHCR data, *Ibid* n. 9

¹³ Arthur Scott-Geddes, 'Migrant deaths rise in Eastern Mediterranean as EU readies new patrols', *The National News*, 30 March 2020, available at:

<https://www.thenationalnews.com/world/europe/migrant-deaths-rise-in-eastern-mediterranean-as-eu-readies-new-patrols-1.999286>.

¹⁴ Helena Smith, 'Child dies off Lesbos in first fatality since Turkey opened border', *The Guardian*, 2 March 2020, available at:

<https://www.theguardian.com/world/2020/mar/02/child-dies-as-boat-carrying-migrants-capsizes-off-lesbos>.

¹⁵ Legal Centre Lesbos, 'Iraqi infant's death at sea off coast of Lesbos unreported by Greek authorities, exposed by Al Jazeera', post on Facebook, 9 April 2020, available at: <https://fb.watch/35eE5p43EI/>.

PART 1: CASE STUDIES

Since March 2020, the Legal Centre Lesvos has been in contact with over fifty survivors of seventeen collective expulsions. Nine of these collective expulsions were reported to LCL by survivors since the publication of its last report in July 2020.¹⁶ All of the collective expulsions carried out at the sea border ultimately resulted in **Greek authorities gravely endangering the lives of migrants by abandoning them in the middle of the Aegean sea.**

Several survivors explained that they had experienced multiple collective expulsions, whether at the land or sea border. The Greek authorities' regular confiscation of mobile phones in collective expulsions removes people's time and date record; as does the fact that survivors tend to be held in detention in Turkey, often without access to mobile phones,¹⁷ for varying periods of time following pushbacks. Given this, only the expulsions for which we have confirmed dates and locations are included in our analysis.

The following case studies are based on testimonies and evidence from survivors of collective expulsions, which were shared with the LCL. The survivors have given their informed consent to have their experiences publicised; in some cases, LCL is representing them in legal proceedings. All documentation and videos cited herein were received directly from the respective individuals, or other individuals subject to the same collective expulsion.

1.1 Collective expulsion of 3 September 2020 near Lesvos

On 3 September 2020, in the early hours of the morning, at approximately 2 am, a group of approximately 55 migrants, including people of Somali and Syrian nationalities, and at least twelve children, arrived to Greek territorial waters near Lesvos island, Greece, on a nine-metre rubber dinghy with a small engine. Some survivors who were on board explained to LCL that the island of Lesvos was visible in the distance, and migrants on board saw from their GPS location that their dinghy was in Greek territorial waters.

A survivor testified to LCL that, at approximately 2:30 am, he saw a medium-sized grey Hellenic Coast Guard (HCG) vessel in the distance, at an estimated 100 meters from their boat. He could see a Greek flag on the vessel. A speedboat was deployed from the HCG's vessel, which was grey, plastic, and had two engines. It drove towards the dinghy, and proceeded to circle the dinghy before stopping alongside it. The survivor reported that there were four masked men on board, wearing dark blue uniforms.

One of the masked men jumped onto the dinghy, next to the engine; the other three men used torches to blind the migrants on board. The masked man kicked the survivor, who was seated next to the engine, in the stomach and legs. The masked man then took a knife from a pocket on his right trouser leg, which he used to cut the electricity cables next to the engine. The masked man then used a small metal tool to disable the engine, and then removed the gasoline tank from the dinghy and threw it towards the men on board the jet boat. The masked man was on board for approximately two minutes.

The HCG's speedboat maneuvered around the dinghy while the masked man was on board. The speedboat collided with the back of the dinghy, with force, causing damage to the dinghy. While the two boats were close, the masked man jumped back on the HCG's speedboat.

¹⁶ *Ibid* n.1.

¹⁷ Asylum Information Database (AIDA), 'Country report: Turkey, 2018 Update', pp. 31 and 40, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/aida_tr_2018update.pdf.

The HCG then left the scene, abandoning the migrants on their now-disabled dinghy. The migrants shouted after the HCG, calling for “help” in English. Water was entering the dinghy, and the migrants were increasingly afraid. Their GPS location, later published by Consolidated Rescue Group, shows they were in the sea between Lesvos and Turkey (Image 1). The Turkish Coast Guard arrived shortly afterwards and rescued the group. One of the survivors identified himself on the picture of the dinghy taken by the TCG during the rescue operation (Image 2).



Image 1. (Left) Screenshot of the GPS location where the survivors were rescued by the Turkish Coast Guard, published by Consolidated Rescue Group.¹⁸

Image 2. (Right) Picture of the survivors’ dinghy published by the Turkish Coast Guard.¹⁹

¹⁸ Consolidated Rescue Group, Facebook post on 09/09/20, available at: <https://www.facebook.com/UnifiedRescue/posts/1000890707035075>.

¹⁹ See Turkish Coast Guard Command, Search and Rescue Operations of 21 October 2020, available at: <https://en.sg.gov.tr/current-operation-04-06-september-2020>

1.2 Collective expulsion of 21 October 2020 near Crete

In this incident, which was also reported by other NGOs,²⁰ a group of 180 to 200 people, including at least 40 children and a number of infants, travelling on an old fishing boat, was pushed back from the Greek territorial waters near Crete island to Turkey on 21 October 2020. The group was composed of individuals of various nationalities, including Syrians, stateless Kurds from Kurdistan Syria (Rojava) and Kurdistan Iraq (Bashur), Somalians, Afghans, Palestinians, Lebanese, Iranian and Russian Chechens. Of all the pushback incidents reported to the LCL by survivors, this incident involved the highest number of people collectively expelled at the same time. In expelling this group of nearly 200 people, the Greek authorities carried out two simultaneous pushback operations, involving at least one rescue boat, four Hellenic Coast Guard boats and two speedboats.

The pushback survivors explained to LCL that they had been navigating from Turkey towards Italy, where they intended to apply for asylum. Due to severe stormy weather conditions, which started **at around 12 pm, on 20 October**, their boat got into difficulty at sea and could not continue its route. Since the group's boat was close to Crete island at that time, they called the Hellenic Coast Guard and requested help. However, instead of being rescued, the group was instructed by the Hellenic Coast Guard to make their way towards Greek territorial waters nearer to the coast of Crete island. The group managed to reach Greek territorial waters, and were then approached by the Greek authorities at sea - first by a Hellenic rescue boat and then by the Hellenic Coast Guard - which prevented them from continuing their journey to Italy, as well as from reaching Crete island. The Greek authorities misled the group by reassuring them on several occasions that they should wait until 9pm as a bigger boat would then come to bring them to Italy.

The group did not trust the information that was given to them by the Greek authorities but were unable to continue their way due to the ongoing storm. **At around 4:30 pm**, some of the people on board the boat shared their location with relatives, confirming that they were between 5 to 10 kilometers away from Crete island shores, which is to say that the boat was unequivocally in Greek territorial waters, near the region of Ierapetra (Image 3).

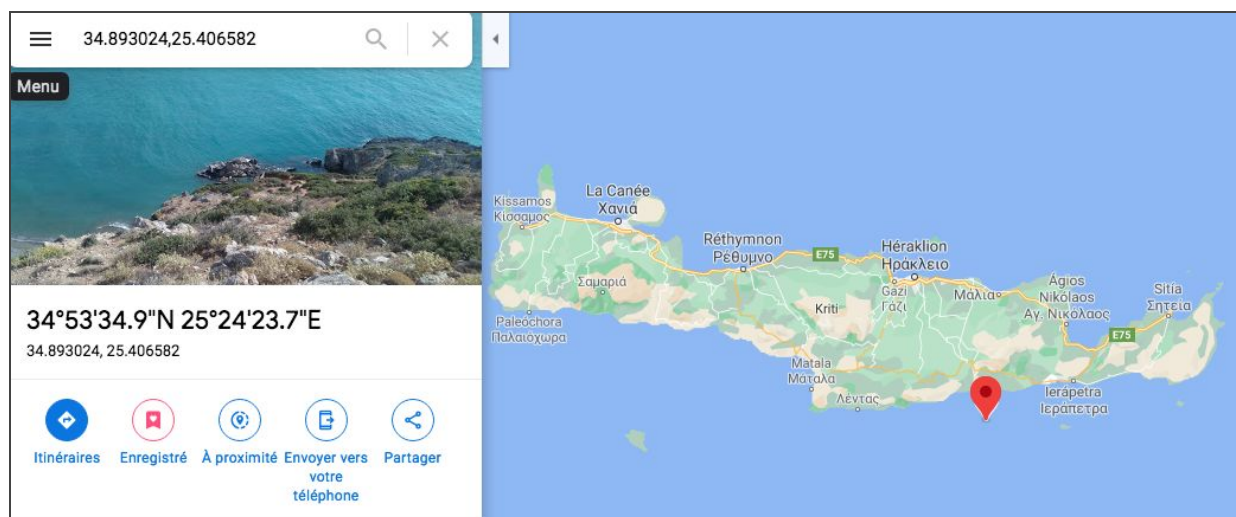


Image 3. Screenshot of the GPS location, shared by one of the survivors to his/her relatives on 21 October 2020 at 4:23 pm, 34°53'34.9"N 25°24'23.7"E (South Cretan Sea or “Notio Kritiko Pelagos”, Greece).

²⁰ Aegean Boat Report (ABR), Facebook post on 23/10/2020, available at: <https://www.facebook.com/AegeanBoatReport/posts/951612422028529> and Alarm Phone, ‘197 People Pushed Back 200 Nautical Miles from Crete to Turkey’, 27 November 2020, available at: <https://alarmphone.org/en/2020/11/27/197-people-pushed-back-to-turkey/>.

At approximately 9 pm, an unidentified black speed boat approached the group’s boat and 4 to 6 masked and armed men wearing black uniforms* jumped onto the group’s boat. Various members of the group explained to the Legal Centre that they were “surprised” by the commando, who arrived very suddenly and jumped onto their boat “in a matter of seconds”. Once they were on the boat, the commando used flashing lights to blind the group and shouted at them, instructing them to kneel down and face the floor.

A short video of this raid was recorded by one of the survivors. The short video which was taken from the upper deck of the fishing boat, where the driver’s cabin was situated. It shows a man on his knees, bowing down with his head facing the floor, and some flashing lights moving behind him. (Image 4).

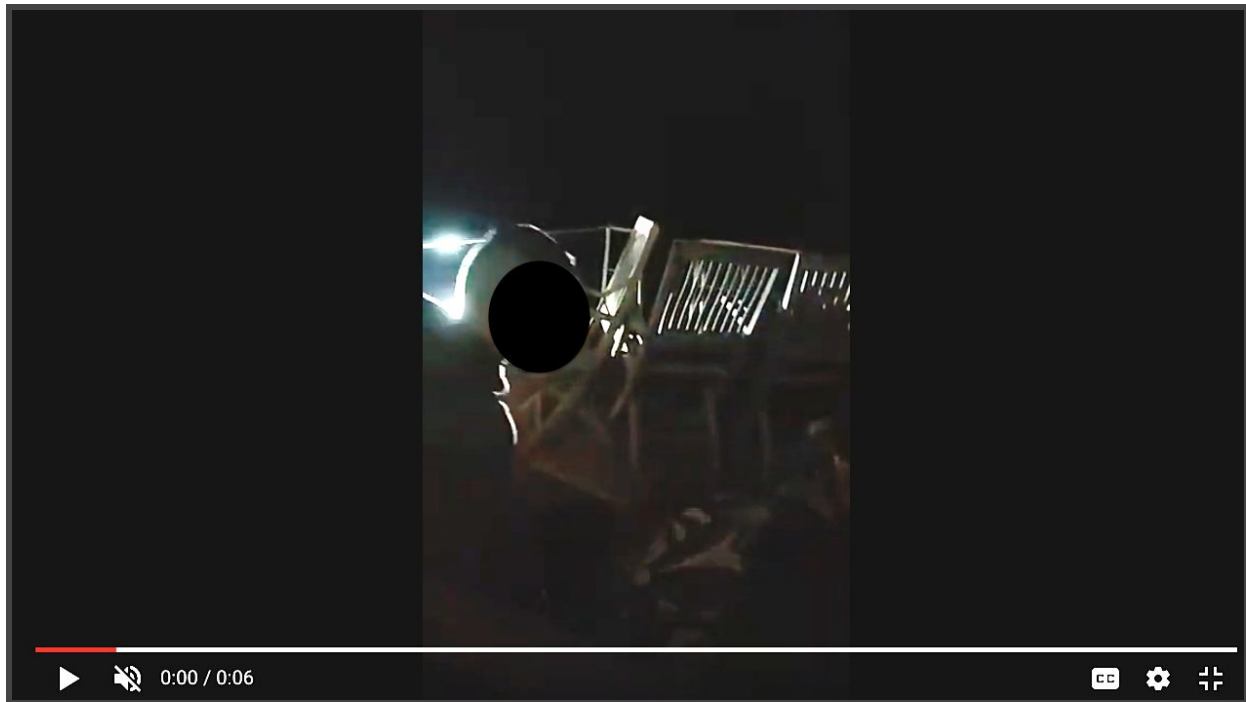


Image 4. Screenshot of the video taken by a survivor showing a man bowing his head down towards the floor.

A few seconds later, a man can be heard shouting “Eh paidia . . .” (Hey, guys. . .) in Greek and another one can be seen and heard climbing the steps of the metallic ladder leading to the upper deck of the boat, where the video was taken.

* Reference to “commandos” is made due to the way the group of armed and masked men were described by survivors. However, it is likely that they had State support, due to their close cooperation with State authorities, their access to equipment such as weapons and HCG boats, and their actions, which indicated that they are highly trained for the use of force in maritime settings.

Screenshots of the video reveal the outline of what seems to be a masked man wearing a balaclava and dark coloured military clothing arriving on the upper deck of the fishing boat. His right hand is evidently reaching into the right side of his belt, as though he is taking out a baton or another weapon (Images 5.1 and 5.2).

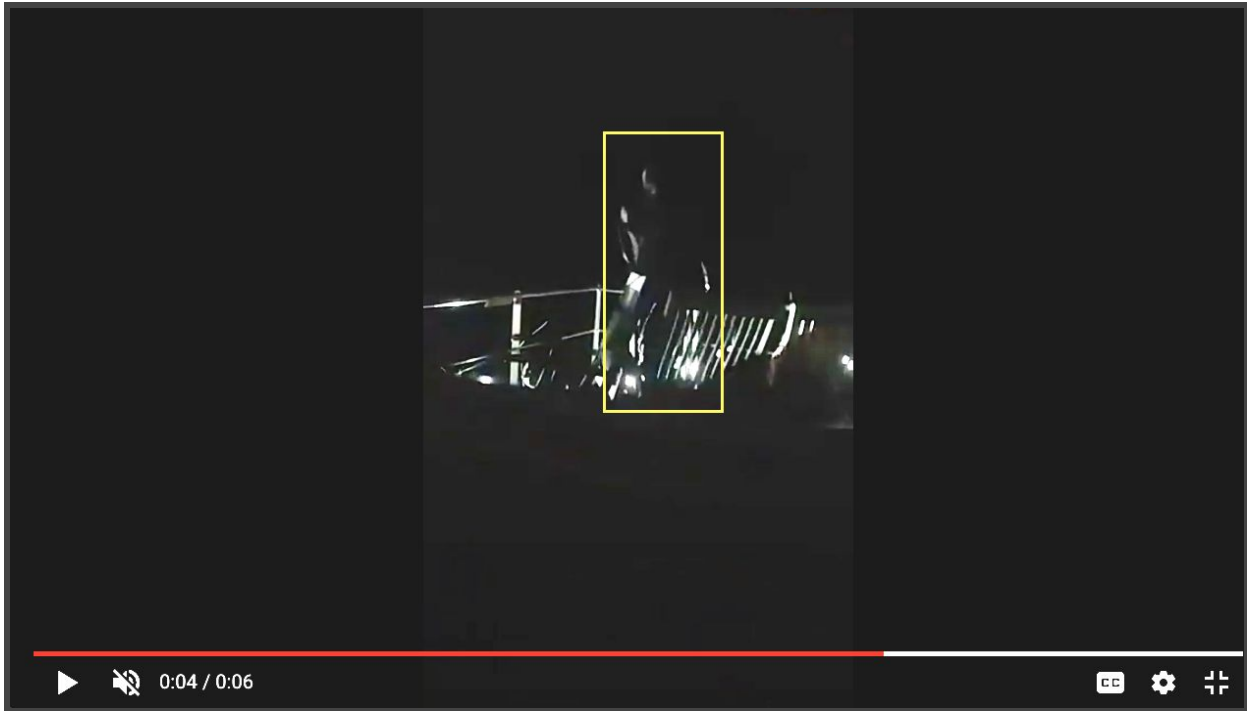


Image 5.1. Screenshot of the video showing a masked man in black uniform on top of the metallic ladder leading to the fishing boat's upper deck.



Image 5.2. Zoomed-in shot of Image 5 (above).

The chairs visible in Image 4, as well as the metal railing with ladder and chairs visible in Image 5.1, appear to be the same chairs and railing visible in photographs taken on board the fishing boat in daylight on the day before they were attacked (Images 6 and 7).



Image 6. Picture taken from the lower deck of the fishing boat showing the metallic railing ladder.

Image 7. Picture taken from the upper deck of the fishing boat showing the metallic ladder and chairs in front of it.

While the commandos were on board the group's boat, they beat and physically injured many individuals, despite the fact that the group was peaceful and unarmed. The commandos broke the windows of the cabins situated on the lower deck of the boat and the windows of the driver's cabin situated on the upper deck. They violently attacked, beat and insulted the person who they identified as the driver of the migrants' boat. **Many survivors of the pushback were particularly traumatised by the violence of the commandos' raid on their boat and continued to experience nightmares and flashbacks three months after the incident.**

They told the Legal Centre that they were treated like "terrorists," and described the commandos as "worse than the police in Syria". Some relatives of the survivors who contacted LCL confirmed that they lost contact with the group after approximately 9 pm. One of the individuals in the group sent a final message to their son on 21 October 2020, at 9:07 pm saying: "police are on board and people are being beaten up".

After that, the commandos violently forced the group to divide into two groups by grabbing their clothes and pushing them. Everyone was forced to leave their bags and belongings behind them on the fishing boat, before being forcibly transferred to HCG boats. The commandos tried to separate men from women, even members of the same family. The survivors estimated that it took about one and a half hours for both groups to be transferred onto two bigger grey military-shaped HCG boats, that is **until approximately 10:30 or 11 pm.**

At no point was any of the group fingerprinted or asked whether they wanted to apply for asylum.

The first group, which was composed of approximately 120 persons (mostly men and only a few women), spent the night on the HCG boat. In the **early morning of 21 October 2020, just before sunrise**, the authorities on board violently assaulted the group, in the course of forcing them to run and jump off the back of the larger boat, one by one, into 2 grey inflatable life rafts (Image 8) and into 1 life raft which was orange on top with a black base. None of the life rafts had motors.

The HCG boat left them there and navigated away. The first group was rescued by the TCG which also reported to have rescued 3 life rafts with 121 persons in the region south of MUĞLA/Marmaris at 8:30 am on 21 October 2020.²¹ The first group was brought to the police station of Marmaris, Turkey, where they were detained until the next day.



Image 8. Picture of the rescue of part of the first group, m.r.c./خلية الإنقاذ و المتابعة, 21 October 2020.²²

²¹ See Turkish Coast Guard Command, Search and Rescue Operations, 21 October 2020, available at: <https://en.sg.gov.tr/current-operation-21-october-2020>.

²² m.r.c./خلية الإنقاذ و المتابعة, Facebook post of 22/10/2020, available at: <https://www.facebook.com/call122/posts/2575363976019341>.

The second group, which was composed of approximately 80 persons (mostly women and families) was forcibly transferred onto a second big, grey, military-style HCG boat. Once on board, everyone was searched and all phones were confiscated. No food and insufficient water was provided. The Applicants could not go to the toilet and had to urinate directly into the sea, from the back of the boat. The HCG boat navigated until it arrived near Turkish waters **in the afternoon of 21 October 2020**. Survivors explained that the Greek authorities on board then “opened four large orange bags which were on the boat the whole time” at the back of the HCG boat under white inflatable jet boats. The bags contained square tent-like life rafts, orange at the top and black at the base, without a motor and with an estimated capacity for up to 20 persons. The group was then forced to go, one by one, down a ladder at the end of the larger HCG boat, into the life rafts in the sea (Image 9). The HCG boat left them there and navigated away.



Image 9. Picture of the rescue of the second group, *m.r.c./خلية الإنقاذ والمتابعة*, 21 October 2020.²³

The TCG reported to have rescued 4 life rafts with 76 persons off the coast of MUĞLA/Datça on 21 October 2020, which correspond to the description of the second group.²⁴ The survivors explained that once in Turkey, they were detained for one night in a police station of Datça.

²³ *Ibid.* n. 22.

²⁴ See Turkish Coast Guard Command, Search and Rescue Operations, 21 October 2020, available at: <https://en.sg.gov.tr/current-operation-21-october-2020>.



PART 2: CONSISTENT *MODUS OPERANDI*

Collective expulsions in the Aegean have followed a consistent *modus operandi* since March 2020. The Greek authorities' operational pattern in carrying out pushbacks in the Aegean is evidenced by the testimonies shared with LCL in relation to the evidence set out in our previous report covering **eight collective expulsions in the Aegean from March to June 2020**,²⁵ **nine collective expulsions in the Aegean that took place between July 2020 and December 2020**, and is further underscored by the evidence of additional expulsions documented by other civil society collectives, non-governmental organisations and the press, which consistently corroborates the *modus operandi* set out below.²⁶

2.1 Key findings from documented collective expulsions

The data set out below only includes the incidents of collective expulsion reported by survivors directly to LCL. For each of these expulsions there is substantial evidence, often including photos, videos, and saved GPS locations, and corroborating reports published by other civil society organisations and/or media outlets. For each collective expulsion listed, at a minimum we received direct individual testimony of survivors of the expulsion, who provided details of the expulsion.

Table of Pushbacks Reported to Legal Centre Lesvos

- ✓ = Reported
- Blank = Not mentioned in reports to the Legal Centre by survivors.
-  = Pushback following a landing
-  = Pushback following interception at sea
- N/A = Not applicable

²⁵ *Ibid* n.1

²⁶ See, for example:

Nick Waters et al, 'Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks', Bellingcat, 23 October 2020, available at: <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>;
Patrick Kingsley and Karam Shoumali, 'Taking Hard Line, Greece Turns Back Migrants by Abandoning Them at Sea', The New York Times, 14 August 2020, available at: <https://www.nytimes.com/2020/08/14/world/europe/greece-migrants-abandoning-sea.html>;
Itamar Mann and Niamh Keady-Tabbal, 'Torture by Rescue: Asylum-Seeker Pushbacks in the Aegean', Just Security, 26 October 2020, available at: <https://www.justsecurity.org/72955/torture-by-rescue-asylum-seeker-pushbacks-in-the-aegean/>;
Human Rights Watch (HRW), 'Greece: Investigate Pushbacks, Collective expulsions: EU Should Press Athens to Halt Abuses', 16 July 2020, available at: <https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

TABLE OF PUSHBACKS REPORTED TO LEGAL CENTRE LESVOS

Date and place	Lack of registration	Confiscation of belongings	Use of physical violence	Other inhumane acts	Damage to dinghy	Arbitrary detention on land	Forcible transfer towards Turkish sea border	Abandonment at sea
5 March 2020 Chios	✓	✓ Phones.	✓ Beating, pushing, throwing into dinghy.	✓ Verbal abuse. False assurance of transfer to Athens. Detention for ~ 65 days in Turkey following pushback.	N/A - pushback following a landing.	✓ In a warehouse near a port for 2 days.	✓ In authorities' vessel by masked men wearing balaclavas.	✓ In motorless dinghy into which masked men threw them.
23 March 2020 (I) Samos	✓	✓		✓ Detention in Turkey following pushback.	N/A	✓	✓	✓ In the same dinghy they had arrived in.
23 March 2020 (II) Symi	✓ Un-accompanied minor and at least one individual denied ability to apply for family reunification.	✓ Phones, passports, IDs, medical docs, money.	✓ Beating with hands, batons and butts of guns, kicking, choking, throwing into dinghy.	✓ Verbal abuse. Deprivation of food, water, shelter, sanitation, prescribed medication, medical assistance. False assurance of transfer to Athens. Detention ~ 2 months in Turkey in inhumane conditions following pushback and deportation of one unaccompanied minor (15 years old) to Syria following detention. He currently lives in a camp for internally displaced people in Idlib, Syria.	N/A	✓ For 2 days and 2 nights in an unofficial port area. Detainees including children with chronic health conditions, unaccompanied minors, and persons with cognitive and physical disabilities.	✓ In HCG vessel by masked men.	✓ In motorless orange life rafts into which masked men threw them, from a height of approx. 3 metres.
27 March 2020 Chios	✓	✓ Phones, money.	✓ Threats with batons. Throwing into dinghy.	✓ Summary searches. Deprivation of food, water, sanitation, medical assistance. False assurances of transfer to 'camp' and Athens. Detention ~ 2 months in Turkey following pushback.	N/A	✓ In a warehouse near port for 2 days 1 night.	✓ In HCG vessel by masked men wearing balaclavas.	✓ In motorless orange life rafts into which masked men threw them, from a height of at least 1 metre.

Date and place	Lack of registration	Confiscation of belongings	Use of physical violence	Other inhumane acts	Damage to dinghy	Arbitrary detention on land	Forcible transfer towards Turkish sea border	Abandonment at sea
29 March 2020 Lesvos	✓	✓ Phones, other possessions		✓ Detention ~15 days in Turkey following pushback.	N/A	✓ In a bus station /warehouse in port area.	✓	✓
13 May 2020 (near Samos)	✓	✓	✓ Beating, shooting.	✓ No access to food/water. Detention ~18 days in Turkey following pushback.	✓	N/A - pushback following interception at sea	✓ Transfer to 2 damaged orange life rafts and towing of those life rafts by “commando” on HCG vessel.	✓ In motorless orange life rafts.
5 June 2020 (near Lesvos)	✓	✓	✓ Beating with batons by “commandos” on HCG vessel.	✓ Deprivation of food and water (for adults). False assurance of transfer to Lesvos.	✓	N/A	✓ In HCG vessel by “commando”.	✓ In the damaged dinghy (admitting water) into which the “commando” men threw them from a height of 3 metres.
12 June 2020 (near Lesvos)	✓	✓	✓ Beatings.	✓ Deprivation of food and water and sanitation. False assurance of transfer to Greece. Detention in Turkey following pushback.		N/A	✓ In HCG vessel during approx. 8 hours.	✓ In motorless orange life rafts.
19 June 2020 (near Lesvos)	✓			✓ False assurance of transfer to Athens.		N/A	✓ Towing of the already damaged dinghy by armed men in “military-style uniforms” on HCG vessel.	✓ In the damaged dinghy.

Date and place	Lack of registration	Confiscation of belongings	Use of physical violence	Other inhumane acts	Damage to dinghy	Arbitrary detention on land	Forcible transfer towards Turkish sea border	Abandonment at sea
7 July 2020 (near Lesvos)	✓		✓	✓ Masked men with balaclavas and black uniforms on a speedboat transferred the migrants to an uninhabited island between Lesvos and Turkey and abandoned them there without food, water or shelter for at least one night before they were rescued by the Turkish Coast Guard.*	✓	N/A	✓ In unidentified authorities' vessel by masked men with balaclavas and black uniforms.	✓ On an inhabited island between Greece and Turkey.
28 July 2020 (near Lesvos)	✓		✓ Threat with a knife.		✓	N/A	✓ Towing of the damaged dinghy by masked men with balaclavas in black uniform on jet boat.	✓ In the damaged dinghy.
9/10 August 2020 Lesvos	✓	✓ Phones, bags, money.	✓ Beatings.	✓ False assurances of safety, transfer to camp.	N/A	✓ In a car.	✓	✓ In motorless orange life rafts.
11 August 2020 Lesvos	✓	✓ Phones, documents, money.	✓ Beatings, kicking, use of force, pushing to jump into life rafts.	✓ Summary searches. Children separated from their mother. False assurances.	N/A	✓ In a van and on the shore guarded by Greek authorities.	✓ In the authorities' vessel.	✓ In motorless orange life rafts supplied by German NATO ship, A1411.

* This was also reported in one incident in Chios on 31 April 2020, where a group who had reportedly landed “disappeared” and could not be traced, until a few days later when the Turkish Coast Guard reported picking up a group of 14 people from an uninhabited rock islet off the coast of Izmir/Çesme, which is roughly opposite Chios, see: Katy Fallon and Alexia Kalaitzi, “Boats arrive, people disappear: one Greek’s search for missing refugees”, 19 June 2020, available at:

<https://www.theguardian.com/global-development/2020/jun/19/boats-arrive-people-disappear-a-lone-search-for-missing-refugees-in-greece>;

Turkish Coast Guard Command, “Search and Rescue Operations, 30 April - 03 May 2020”, available at: <https://en.sg.gov.tr/current-operation-30-april--03-may-2020>.

Date and place	Lack of registration	Confiscation of belongings	Use of physical violence	Other inhumane acts	Damage to dinghy	Arbitrary detention on land	Forcible transfer towards Turkish sea border	Abandonment at sea
3 September 2020 (near Lesbos)	✓		✓ Beating by masked men in “dark blue uniforms”.		✓ Removal of motor and strong collision of authorities’ vessel with dinghy by masked men in “dark blue uniforms”.	N/A	✓ Already damaged dinghy left adrift at night.	✓ In the damaged dinghy.
20/21 October 2020 (near Crete)	✓	✓	✓	✓ Deprivation of food, water, shelter, sanitation, medical assistance. False assurance of transfer to Italy and Greece.		N/A	✓ On 2 HCG vessels.	✓ In motorless orange life rafts and grey inflatable life rafts.
24 November 2020 Samos	✓	✓			N/A	✓	✓	✓ In motorless life rafts.
17 December 2020 Chios	✓				N/A	✓	✓	✓ In motorless orange life rafts.

Total (out of 17)	17	12	12	13	5 (out of 8 interceptions at sea)	9 (out of 9 pushbacks following landings)	17	17
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2.2 *Modus operandi* of collective expulsions in the Aegean

The collective expulsions documented by the Legal Centre over the past 10 months with the testimonies and evidence of over fifty survivors of pushbacks in the Aegean are consistent with those documented by other actors,²⁷ and fit a systematic, well-documented and widespread operative pattern on the part of Greek authorities.

Key elements of the *modus operandi* in collective expulsions in the Aegean can be identified as follows:

2.2.1. In all collective expulsions, Greek authorities denied migrants' access to procedures by which they could claim asylum or reunite with their family members.

In each of the 17 incidents of collective expulsion, the Greek authorities failed to register individuals' arrival or any of their personal details. Greek authorities did not provide any information about accessing asylum procedures, let alone any opportunity to register prospective claims. Although in all incidents, survivors explained to LCL that they expressed their intent to seek asylum (including in English) to Greek authorities, this has been invariably ignored by the authorities.

In addition, in every single incident where survivors were in direct physical contact with the Greek authorities, on the authorities' sea vessel or an island, their belongings were systematically confiscated, including their identity documents and personal belongings: preventing individuals from documenting the crime being committed against them, but also depriving individuals of the means to prove their identity and family relationships in any future claims for international protection. In one incident of 23 March 2020, further described in LCL's previous publication, an unaccompanied minor was part of a group collectively expelled off the Greek island of Symi and was not able to access asylum procedures, although he would have been eligible to family reunification reunite with his close relatives in Europe under Regulation EU 604/2013 (the "Dublin Regulation").²⁸ This case illustrates some of the severe consequences and rights violations a collective expulsion might lead to, beyond the immediate event.

²⁷ See, among others:

Refugee Support Aegean, 'Push backs and violations of human rights at sea: a timeline', 29 December 2020, available at:

<https://rsaegean.org/en/push-backs-and-violations-of-human-rights-at-sea-a-timeline/>;

Bashar Deeb, 'Samos and the Anatomy of a Maritime Push-Backs', Bellingcat, 20 May 2020, available at:

<https://www.bellingcat.com/news/uk-and-europe/2020/05/20/samos-and-the-anatomy-of-a-maritime-push-back/>;

Bashar Deeb and Leone Hadavi, 'Masked Men on a Hellenic Coast Guard Boat Involved in a Pushback Incident', Bellingcat, 23 June 2020, available at:

<https://www.bellingcat.com/news/uk-and-europe/2020/06/23/masked-men-on-a-hellenic-coast-guard-boat-involved-in-pushback-incident/>;

Giorgos Christides and Steffen Lüdke, 'Greece Suspected of Abandoning Refugees at Sea', Spiegel International, 16 June, 2020, available at: <https://www.spiegel.de/international/europe/videos-and-eyewitness-accounts-greece-apparently-abandoning-refugees-at-sea-a-84c06c61-7f11-4e83-ae70-3905017b49d5>;

HRW, et al (including LCL), Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses, 6 October 2020, available at: https://www.hrw.org/sites/default/files/media_2020/10/ENG%20Joint%20NGO%20Letter%20to%20Parliament.pdf;

HRW, 'Greece: Investigate Pushbacks, Collective Expulsions', 16 July 2020, available at:

<https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

²⁸ See *Ibid.* n. 1, page 7, for example, the expulsion of a husband who had planned to apply for family reunification with his wife pursuant to the Dublin Regulation, c.f Itamar Mann and Niamh Keady-Tabbal, 'Torture by Rescue: Asylum-Seeker Pushbacks in the Aegean', Just Security, 26 October 2020, available at: <https://www.justsecurity.org/72955/torture-by-rescue-asylum-seeker-pushbacks-in-the-aegean/>.

2.2.2. During most collective expulsions, Greek authorities subjected migrants to physical violence and other inhumane acts, in some cases amounting to torture.²⁹

In the majority of collective expulsion incidents (12 out of 17) survivors' testimonies included reports of physical violence, including beatings, use of weapons, batons, choking, and throwing people from the deck of the HCG boat onto life rafts. **In every pushback reported to LCL, children – in some cases infants – were among the survivors**, further demonstrating a total disregard for their lives and safety. In the majority of reported pushback incidents (13 out of 17) survivors reported other inhumane acts, including deprivation of adequate food, water, medical assistance and sanitation, false assurances of transfer to Greek territory, family separation, summary searches, verbal abuse, other acts of humiliation and exposure to serious harm.

One survivor of a collective expulsion documented by LCL (on 23 March 2020) was deported from Turkey to Syria, following expulsion from Greece. This individual was travelling as an unaccompanied minor (15 years old) and now lives in a camp for internally displaced people in Idlib, Syria.

2.2.3. In all collective expulsions where survivors had reached a Greek island, Greek authorities arbitrarily detained migrants in inadequate and inhumane conditions.³⁰

Unofficial detention sites and authorities' vehicles were reportedly used to arbitrarily detain migrants in all of the collective expulsions from Greek islands (9 out of 9 incidents reported). Detention sites – across four different Greek islands – included beaches, warehouses, and port areas. Survivors reported that they were held for up to two days and two nights by Greek authorities, and in 2 cases that they did not have access to adequate food, water, sanitation facilities, or shelter during that time. None of the survivors were informed by Greek authorities of the reasons for, or the length of their detention. In none of the incidents, did the Greek authorities carry out any vulnerability assessments to identify the ages and health situation of migrants detained.

In all of the 9 collective expulsions, minor children, including unaccompanied minors, were detained with groups of unrelated adults. In at least one incident, a child with chronic health conditions, a man with cognitive disabilities, and an older man with physical disabilities were detained in the same conditions and denied access to prescribed medicines.

2.2.4. In collective expulsions where survivors had reached Greek territorial waters, Greek authorities followed consistent operational patterns.

In 5 out of 8 reported pushback incidents at sea, Greek authorities **damaged the dinghy** on which the survivors were travelling, including by removing the motor of the dinghy. In 3 cases, Greek authorities used the now **damaged dinghy as the vehicle of collective expulsion**, either by leaving it adrift, or attaching a rope to tow it towards Turkey. A number of videos shared with the LCL show identifiable Hellenic Coast Guard boats towing survivors' dinghies out to sea. In 5 cases, Greek authorities transferred survivors from their dinghy **onto the authorities' vessels or directly onto orange liferafts**.

²⁹ The use of physical violence in pushbacks has been extensively documented, see for example:

Refugee Support Aegean, 'Push backs and violations of human rights at sea: a timeline', 29 December 2020, available at:

<https://rsaegean.org/en/push-backs-and-violations-of-human-rights-at-sea-a-timeline/>;

HRW, et al (including LCL), 'Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses', 6 October 2020, available at:

https://www.hrw.org/sites/default/files/media_2020/10/ENG%20Joint%20NGO%20Letter%20to%20Parliament.pdf;

HRW, 'Greece: Investigate Pushbacks, Collective Expulsions', 16 July 2020, available at:

<https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

³⁰ This was also documented by Human Rights Watch, see:

HRW, 'Greece: Investigate Pushbacks, Collective Expulsions', 16 July 2020, available at:

<https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

2.2.5. Multiple entities were consistently identified as involved in pushback operations.

- Hellenic Coast Guard (HCG): In 13 out of 17 incidents described above, HCG boats were specifically identified by survivors or visible in videos or pictures as instrumental in carrying out the collective expulsion.³¹ In one of the incidents (case summary nr. 2 above), survivors were also approached by a Greek search and rescue boat (type “Lambro Halmatic 60”) operating under the HCG command, which instead of proceeding to their rescue, provided misleading information and asked the group to wait until the HCG and “commandos” proceeded to their collective expulsion.
- Greek police: In 6 out of 9 collective expulsion incidents involving a landing on a Greek island, survivors specifically reported the involvement of Greek police forces.³²
- Masked and armed “commandos” in dark uniforms: In 9 incidents, survivors testified to have been expelled by masked and/or armed “commandos” in dark uniforms.³³
- NATO: Members of German armed forces stationed on the German-flagged EGV *Berlin* ship, which operates within NATO’s Standing Task Force 2 in the Aegean have reported witnessing at least three collective expulsions in the Aegean.³⁴ In the collective expulsion of 19 June 2020, a boat resembling the NATO boat EGV *Berlin* A1411 can be seen in the surroundings of the collective expulsion and a survivor of the 11 August incident reported to LCL the presence of a big boat with 1411 written on the side, which supplied the Greek authorities with life rafts.
- Frontex: Investigations published in March and October 2020 reported that Frontex assets were either in the vicinity or participated directly in six pushback incidents since March and that they were also involved in endangering a migrant boat on 8 June 2020 by creating dangerous waves and obstructing a dinghy from proceeding.³⁵ The migrants on board that boat were later subjected to a collective expulsion by Greek authorities.

³¹ The HCG were identified as involved in all reports cited in n. 27.

³² The involvement of the Greek police in pushbacks was referred to in a letter from a number of NGOs to the Greek parliament: HRW, et al (including LCL), ‘Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses’, 6 October 2020, available at: https://www.hrw.org/sites/default/files/media_2020/10/ENG%20Joint%20NGO%20Letter%20to%20Parliament.pdf.

³³ This has been extensively documented elsewhere, see for example:

Refugee Support Aegean, ‘Push backs and violations of human rights at sea: a timeline’, 29 December 2020, available at:

<https://rsaegaeon.org/en/push-backs-and-violations-of-human-rights-at-sea-a-timeline/>;

Bashar Deeb and Leone Hadavi, ‘Masked Men on a Hellenic Coast Guard Boat Involved in a Pushback Incident’, Bellingcat, 23 June 2020, available at:

<https://www.bellingcat.com/news/uk-and-europe/2020/06/23/masked-men-on-a-hellenic-coast-guard-boat-involved-in-pushback-incident/>;

Giorgos Christides and Steffen Lüdke, ‘Greece Suspected of Abandoning Refugees at Sea’, Spiegel International, 16 June, 2020, available at: <https://www.spiegel.de/international/europe/videos-and-eyewitness-accounts-greece-apparently-abandoning-refugees-at-sea-a-84c06c61-7f11-4e83-ae70-3905017b49d5>;

HRW, et al (including LCL), ‘Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses’, 6 October 2020, available at:

https://www.hrw.org/sites/default/files/media_2020/10/ENG%20Joint%20NGO%20Letter%20to%20Parliament.pdf;

HRW, ‘Greece: Investigate Pushbacks, Collective Expulsions’, 16 July 2020, available at:

<https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

³⁴ See:

Andrej Hunko, ‘Questions from Andrej Hunko to the Federal Government, Written question about pushbacks in the Aegean’, 6 August 2020, available at (German): <https://www.andrej-hunko.de/en/bt-en/fragen/5045-schriftliche-frage-zu-pushbacks-in-der-aegaeis>;

German Bundestag, ‘Written questions in the week of June 22, 2020, responses received from the Federal Government’, § 26, available at (German): <https://dip21.bundestag.de/dip21/btd/19/203/1920374.pdf>.

Andrej Hunko, ‘Questions from Andrej Hunko to the Federal Government, Written question about further pushbacks in the Aegean’, 26 August 2020, available at (German):

<https://www.andrej-hunko.de/en/bt-en/fragen/5044-schriftliche-frage-zu-weiteren-pushbacks-in-der-aegaeis>;

Info Migrants, ‘German soldiers report pushbacks in Aegean waters’, 11 August 2020, available at:

<https://www.infomigrants.net/en/post/26573/german-soldiers-report-pushbacks-in-aegean-waters>.

³⁵ Nick Waters et al, ‘Frontex at Fault: European Border Force Complicit in ‘Illegal’ Pushbacks’, bellingcat, 23 October 2020, available at: <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>;

Laurie Tritschler, ‘Danish boat in Aegean refused order to push back rescued migrants’, Politico, 6 March 2020, available at:

2.2.6. In all instances, Greek authorities summarily expelled migrants from Greek territory through forcible transfer towards Turkish waters and ultimately abandoned them at sea, putting their lives in grave danger.

After attaching the migrants' damaged dinghy to the authorities' vessel, or transferring migrants on to the authorities' vessel, Greek authorities **forcibly transferred survivors towards Turkish waters**. Greek authorities then abandoned the damaged dinghy, or forced migrants onto motorless life rafts or dinghies in the water below. Greek authorities often kicked and pushed migrants toward the edge of the vessel's deck, which was metres above sea level, before forcing them to jump or throwing them to the inflatable boats below. Unsurprisingly, migrants were frequently injured by the fall and suffered lasting psychological trauma.

2.2.7. The end result of Greek authorities' collective expulsion operations were consistent in every incident reported.

- Migrants were **violently prevented from accessing Greek and European territory** and thereby **from accessing asylum procedures**.
- Their **lives were put at grave and deliberate risk** through their **abandonment at sea, in unseaworthy, motorless vessels**.³⁶
- Survivors were ultimately picked up by the Turkish Coast Guard and **returned to Turkey**.
- In over half (9 out of 17) of the pushback incidents survivors reported having been **arbitrarily detained in inhumane and degrading conditions in Turkey**³⁷ following the pushback, for periods ranging between several hours and 2 months.

The regularity and consistency of the violent *modus operandi* described above; the extraordinary means used by the Greek authorities to implement those illegal practices – including the coordination of multiple agencies and authorities, the use of highly trained personnel and consistent equipment – and the consistency of its end results indicate that the Greek state is **operating an unofficial, yet highly coordinated State policy of collective expulsions of migrants**.

<https://www.politico.eu/article/danish-frontex-boat-refused-order-to-push-back-rescued-migrants-report/>;
Nikolaj Nielsen, 'Revealed: Official Greek order to illegally pushback migrants', euobserver, 18 November 2020, available at:
<https://euobserver.com/migration/150099>.

Moreover, Frontex launched an internal inquiry in October 2020 following the above reports, see:
Statewatch, 'Frontex to carry out "internal inquiry" into allegations of direct involvement in pushbacks', 27 October 2020, available at:
<https://www.statewatch.org/news/2020/october/frontex-to-carry-out-internal-inquiry-into-allegations-of-direct-involvement-in-pushbacks/>.
The European Ombudsman also opened an inquiry into how Frontex manages allegations of human rights violations, see:
Ombudsman, 'Ombudsman opens inquiry to assess European Border and Coast Guard Agency (Frontex) 'Complaints Mechanism'', 12 November 2020, available at: <https://www.ombudsman.europa.eu/en/news-document/en/134739>.

On 11 January 2021 the EU anti-fraud office announced that it had launched an investigation into Frontex covering allegations of pushbacks and has allegedly carried out raids of the offices of Frontex's Executive Director and head of Cabinet in connection with the investigation:

Nikolaj Nielsen, 'EU anti-fraud office launches probe into Frontex', 11 January 2021, available at:
<https://euobserver.com/migration/150574>.

On 27 January 2021, Members of the European Parliament from the Civil Liberties, Justice and Home Affairs (LIBE) Committee agreed to set up a Frontex Scrutiny Working Group, to investigate reports of Frontex's involvement in pushbacks.
The Greens/EFA in the European Parliament, 'New Frontex Scrutiny Working Group', 29 January 2021, available at:

<https://www.greens-efa.eu/en/article/news/new-frontex-scrutiny-working-group-quote-from-tineke-strik-mep/>

³⁶ Abandonment in unseaworthy vessels has been documented extensively elsewhere, see all reports cited at n. 27.

³⁷ In addition to inhumane treatment reported by survivors to LCL, forced returns of migrants, physical abuse of detainees by staff, the detention of children and families, overcrowding, bug infestations in the cells, the deprivation of access to cellphones, and the deprivation of access to lawyers have all been documented in migrant detention centres in Turkey. See, for example: Asylum Information Database (AIDA), 'Country Report: Turkey, 2019 Update', 29 April 2020, available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_tr_2019update.pdf.

PART 3: LEGAL ANALYSIS

3.1 Recognized Human Rights and principles of International Law

Collective expulsions are always unlawful, regardless of the way in which they are carried out. They explicitly violate international, European Union (EU) and national human rights law and they are prohibited by a number of conventions and treaties to which Greece is bound. The Human Rights Committee has affirmed that **no derogation from the prohibition on collective expulsions is permitted, even under a state of emergency.**³⁸

Charter of Fundamental Rights of the European Union (CFREU)	Article 19(1) of Charter of Fundamental Rights of the European Union (CFREU), to which Greece is a party, explicitly prohibits collective expulsions.
European Convention of Human Rights (ECHR)	Article 4 of Protocol no. 4 to the European Convention of Human Rights (ECHR) expressly prohibits collective expulsions. While Greece is the only European Union Member State which has neither signed or ratified Protocol nr. 4 to the ECHR to date, ³⁹ collective expulsions are prohibited in an absolute way by all major human rights treaties ⁴⁰ and this prohibition is considered as a principle of customary international law to which all States are bound. ⁴¹
International Covenant on Civil and Political Rights (ICCPR)	The United Nations Human Rights Committee has stated that “laws or decisions providing for collective or mass expulsions” entail a violation of Article 13 of the ICCPR, ⁴² which guarantees that “ an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom <i>only</i> in pursuance of a decision reached in accordance with law ” (emphasis added).

³⁸ General Comment No. 29, States of Emergency, CCPR, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, §13d.

³⁹ Council of Europe, Chart of signatures and ratifications of Treaty 046, available at:

https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/046/signatures?p_auth=9I9hfQ2i.

⁴⁰ Treaty prohibitions on collective expulsions are contained in Article 4 of Protocol 4 to the ECHR but also in Article 12.5 of the African Charter on Human and Peoples' Rights, Article 22.9 of the American Convention on Human Rights, Article 26.2 of the Arab Charter on Human Rights, and Article 22.1 International Convention on the Protection of the Rights of All Migrant Workers.

⁴¹ UN General Assembly, *Third report on the expulsion of aliens by Maurice Kamto, Special Rapporteur*, 19 April 2007, A/CN.4/581, paragraph 115, available at: http://legal.un.org/ilc/documentation/english/a_cn4_581.pdf;

UN Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante*, 25 February 2008, A/HRC/7/12, §49 note 36.

⁴² International Covenant on Civil and Political Rights, General Comment No. 15, §10.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	The CERD Committee found that collective expulsions violate Article 5(a) and 6 of the Convention, ⁴³ which guarantee the right to equal treatment before tribunals and all other organs administering justice - without distinction as to race, colour, or national or ethnic origin, and effective protection and remedies against any acts of racial discrimination.
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Furthermore, the violent, inhumane way in which Greek Authorities are carrying out collective expulsions in the Aegean Sea, as is now widely documented by LCL and other actors,⁴⁴ is illegal as a practice in itself.

It is irrefutable that abandoning people in unseaworthy, motorless boats in the middle of the sea – often after violently attacking them and detaining them in inhumane conditions – is both unlawful and cruel.

Greece is obligated to protect the following rights and principles of International Law. All have been flagrantly violated in the conduct of collective expulsions in the Aegean.

Recognized Human Rights and principles of International Law	Legal obligations	Documented rights violations
The right to life	ECHR Article 2; CFREU Article 2; Greek Constitution Article 5(2).	Violated by forcing people, within Greek jurisdiction, into a motorless life raft in open water and/or denying assistance to people on a damaged dinghy, and instead towing them to open sea, where they are abandoned with no guarantee of rescue. ⁴⁵ The risk is exacerbated by non-provision of life jackets and confiscation of means to call for rescue. Vulnerable people, including children and people with disabilities are at heightened risk. See, in particular, parts 2.2.6 and 2.2.7 above.

⁴³ UN Committee on the Elimination of Racial Discrimination (CERD), *Consideration of reports submitted by States parties under article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: concluding observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, 16 May 2008, CERD/C/DOM/CO/12, available at: <https://www.refworld.org/docid/4885cf9dd.html>, §13.

⁴⁴ *Ibid.* n. 1-4.

⁴⁵ *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09 ECHR 2012, §§ 81-82; *Makaratzis v. Greece* [GC], no. 50385/99 ECHR 2004-XI, §§ 49-60.)

<p>The right to be free from torture, inhuman and degrading treatment</p>	<p>ECHR Article 3; CFREU Article 4; Greek Constitution Article 7(2).</p>	<p>Violated through the arbitrary detention of migrants in inhumane conditions, without access to sufficient food, water, shelter or hygiene facilities; through the violence towards migrants, both mental and physical; false assurances of rescue; and through abandonment of migrants at sea, at grave risk to their lives.⁴⁶</p> <p>The subjection of vulnerable groups, such as children (present in every pushback documented by LCL) to those acts constitute a particularly egregious violation of Article 3 of the ECHR, given the inherent “situation of extreme vulnerability” of minor children.⁴⁷ More generally, migrants willing to seek asylum are considered a “particularly vulnerable” group because of “the traumatic experiences [they are] likely to have endured previously”, which constitute an aggravating factor to the severity of the acts suffered in violation of Article 3.⁴⁸</p> <p>See, in particular, parts 2.2.2, 2.2.3, 2.2.6 above.</p>
<p>The principle of non - refoulement</p>	<p>1951 Convention Article 33; ECHR Article 3;⁴⁹ CFREU Article 19(2); Schengen Borders Code Articles 3 and 4;⁵⁰ Greek Law 4636/2019 Article 21.</p> <hr/> <p><i>Ibid.</i> and article 38(1) of the Asylum Procedures Directive.⁵¹</p>	<p>Violated by summarily removing migrants from Greek territory without individually identifying and registering them and therefore impeding them to claim asylum in Greece. Greek authorities do not carry out a reasonable and individual assessment of the risks of ill-treatment or refoulement that exist in the country individuals are expelled to, in light of their particular situation, which is required by law even if that country is considered a safe third country.⁵² See, in particular, parts 2.2.1, 2.2.6, 2.2.7 above.</p> <hr/> <p>Violated by exposing migrants to a risk of “chain” or “indirect” refoulement, through their expulsion to Turkey, where they might face expulsion to a country where their life or liberty would be at risk – again, without proper assessment of the individual's claim for international protection. This obligation applies despite the existence of the EU-Turkey</p>

⁴⁶ *Selmouni v. France*, no. 25803/94, § 99, ECHR 1999-V, § 99. See also *Sonko v. Spain*, UN Doc CAT/C/47/D/368/2008 (20 February 2012), §10.4.

⁴⁷ *Rahimi v. Greece*, no. 8687/08, ECHR 2011, § 87; *SH.D. and others v. Greece et. al*, no. 14165/16, ECHR 2019, §56.

⁴⁸ *M.S.S. v. Belgium and Greece*, no. 30696/09, ECHR 2011, §§ 232-233; *Kanagaratnam and Others v. Belgium*, no. 15297/09, ECHR 2012, § 67.

⁴⁹ For The European Court of Human Rights’ case law about Article 3 of the ECHR encompassing a prohibition on *refoulement*, see in particular: *Soering v. United Kingdom*, no. 14038/88, ECHR 1989-A161; *Vilvarajah and Others v. United Kingdom* [GC], nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, ECHR 1991-A215; *Chahal v. United Kingdom* [GC], no. 22414/93, ECHR 1996-V.

⁵⁰ “Schengen Borders Code” corresponds to the Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders. Article 3a of the Schengen Borders Code has been introduced by Regulation (EU) No. 610/2013 of 26 June 2013 amending the Schengen Borders Code, OJ 2013 L 182/1.

⁵¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. Article 38 (1) provides that: “Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned: These are (a) that life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) that there is no risk of serious harm as defined in Directive 2011/95/EU; (c) the principle of non-refoulement in accordance with the Geneva Convention is respected; (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.”

⁵² *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, ECHR 2012, §198; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, ECHR 2005-III, §448.

<p>The principle of non-refoulement (continued).</p>		<p>Deal.⁵³ Given recent assessments of the situation for migrants there,⁵⁴ Turkey cannot be considered as a “safe third country” as:</p> <ul style="list-style-type: none"> • Turkish authorities regularly refoyl asylum seekers,⁵⁵ within a false frame of legality⁵⁶ in application of Turkish Law No. 7070/2018⁵⁷ and No. 6458/2013.⁵⁸ See, in particular, part 2.2.7 above. • Migrants’ access to international protection in Turkey is also limited, both legally, owing to Turkey’s restrictive framework on international protection, in particular its geographic limitation to the 1951 Convention,⁵⁹ and practically, owing to the closures of registration offices in many of Turkey’s major cities.⁶⁰ Under the 29 October 2016 emergency decree, Turkish authorities are authorized to derogate from the principle of <i>non-refoulement</i> “for reasons such as public order, security and terrorism,” and has in fact carried out thousands of deportations.⁶¹
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⁵³ *Ibid.*

⁵⁴ See, for example:

HRW, ‘Human Rights Watch World Report 2021 - Turkey’, 13 January 2021, available at:

<https://www.ecoi.net/en/document/2043511.html>;

Asylum Information Database (AIDA), ‘Country Report: Turkey, 2019 Update’, 29 April 2020, available at:

https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_tr_2019update.pdf;

Global Detention Project, ‘Turkey Immigration Detention Profile’, October 2019, available at:

<https://www.globaldetentionproject.org/countries/europe/turkey#country->

⁵⁵ See, for example:

Amnesty International, ‘Sent to a War Zone: Turkey’s illegal deportations of Syrian Refugees’, 2019, available at:

<https://www.amnesty.org/download/Documents/EUR4411022019ENGLISH.pdf>;

The Syria Campaign, ‘Stop illegal forced returns to Syria’, available at:

<https://thesyriacampaign.org/refugee-returns/#:~:text=Over%20the%20past%20year%2C%20Lebanon,the%20Syrian%20regime%20and%20Russia;>

Refugees International, ‘Insecure future: Deportations and Lack of Legal Work for Refugees in Turkey’, 19 September 2019, available at:

<https://www.refugeesinternational.org/reports/2019/9/18/insecure-future-deportations-and-lack-of-legal-work-for-refugees-in-turkey>;

Jesse Marks, ‘Why Syrian refugees are at risk of a forced return to Syria’, Washington Post, 13 February 2019, available at:

[https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/12/syrian-refugees-face-growing-pressure-to-return-to-insecure-conditions-heres-why/;](https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/12/syrian-refugees-face-growing-pressure-to-return-to-insecure-conditions-heres-why/)

Jesse Marks, ‘Pushing Syrian Refugees to Return’, Carnegie Endowment for International Peace, 1 March 2018, available at:

<https://carnegieendowment.org/sada/75684>.

⁵⁶ See *Ibid.* n.56 and; Asylum Information Database (AIDA) and the European Council on Refugees and Exiles (ECRE), ‘Removal and Refoulement - Turkey’, 30 November 2020, available at:

<https://www.asylumineurope.org/reports/country/turkey/removal-and-refoulement>;

Sertan Sanderson, ‘Istanbul expels more than 15,000 undocumented migrants’, InfoMigrants, 1 August 2019, available at:

<https://www.infomigrants.net/en/post/18545/istanbul-expels-more-than-15-000-undocumented-migrants>.

⁵⁷ Asylum Information Database (AIDA) and the European Council on Refugees and Exiles (ECRE), ‘Removal and Refoulement - Turkey’, 30 November 2020, available at: <https://www.asylumineurope.org/reports/country/turkey/removal-and-refoulement>.

⁵⁸ Article 54(1)(h) of Turkish Law 6458 of 2013, states that “a removal decision shall be issued in respect of those foreigners listed below who . . . breach the terms and conditions for legal entry into or exit from Turkey.”

⁵⁹ Turkey only applies the Refugee Convention to asylum seekers originating from European countries. See: Asylum Information Database (AIDA) and the European Council on Refugees and Exiles (ECRE), ‘Introduction to the Asylum Context in Turkey’, 30 November 2020, available at: <https://www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey>.

⁶⁰ Asylum Information Database (AIDA) and the European Council on Refugees and Exiles (ECRE), ‘Registration under Temporary Protection - Turkey’, 30 November 2020, available at:

<https://www.asylumineurope.org/reports/country/turkey/registration-under-temporary-protection>.

<p>The right to asylum</p>	<p>Article 14 of the Universal Declaration of Human Rights; 1951 Refugee Convention; CFREU Article 18; Asylum Procedures Directive (2013/32/EU) Article 6 and Recital 26; Greek Law 4636/2019 Article 65.</p>	<p>Violated by denying access to asylum procedures to migrants who had reached Greek territory, be it at sea or on land, irrespectively of the circumstances in which they crossed the border.⁶² Survivors of collective expulsions were consistently denied the chance to access or initiate the procedures by which they could claim asylum, although they expressed their intent to do so to Greek authorities.</p> <p>See, in particular, part 2.2.1 above.</p>
<p>The right to liberty and security</p>	<p>ECHR Article 5; and CFREU Article 6; Greek Constitution Article 6.</p>	<p>Violated by routinely detaining migrants, whether in unofficial detention facilities on the Greek islands, in vans, or on national sea vessels, without issuing any order of detention or expulsion, and without providing any information about the reasons for, or the length of migrants' detention. Detention is used for the sole purpose of unlawfully expelling migrants from Greece without registration or process of their asylum claim and practically putting them in a situation where they cannot exercise any of their rights. In all cases, this is without individualised assessment to identify vulnerabilities, such as the age of the children or the health needs of each person detained, which is also required to prevent arbitrary detention.⁶³</p> <p>See, in particular, part 2.2.3 above.</p>
<p>The right to a private and family life</p>	<p>ECHR Article 8; CFREU Article 7; EU Regulation 604/2013 (the “Dublin Regulation”); Greek Constitution Article 21; Greek Law 4636/2019 Article 23.</p>	<p>Violated by impeding migrants' access to asylum procedures and more specifically the right to reunify with family members in application of the “Dublin Regulation” (EU 604/2013).</p> <p>See, in particular, parts 2.2.1 and 2.2.2 above.</p>

⁶¹ Global Detention Project, ‘Turkey Immigration Detention Profile’, October 2019, available at: <https://www.globaldetentionproject.org/countries/europe/turkey#country-report>; Amnesty International, ‘Turkey: Thousands of Afghans Swept Up In Ruthless Deportation Drive’, 24 April 2018, <https://www.amnesty.org/en/latest/news/2018/04/turkey-thousands-of-afghans-swept-up-in-ruthless-deportation-drive/>; Asylum Information Database (AIDA), ‘Turkey: Country Report’, 16 March 2019, available at: <https://www.asylumineurope.org/reports/country/turkey/>;

M. Zoetewij, ‘The State of Emergency, Non-Refoulement and the Turkish Constitutional Court’, *Verfassungsblog*, 9 May 2018, available at: <https://verfassungsblog.de/the-state-of-emergency-non-refoulement-and-the-turkish-constitutional-court/>.

⁶² European Commission, ‘Press remarks by Vice-President Schinas on immediate actions to support Greece’, 4 March 2020, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032>; see also, for analysis, Itamar Mann and Niamh Keady-Tabbal, ‘Torture by Rescue: Asylum-Seeker Pushbacks in the Aegean’, *Just Security*, 26 October 2020, available at: <https://www.justsecurity.org/72955/torture-by-rescue-asylum-seeker-pushbacks-in-the-aegean/>.

⁶³ *Rahimi v. Greece*, no. 8687/08, ECHR 2011, §§ 108-110; *Housein v. Greece*, no. 71825/11, ECHR 2013, § 76.

<p>The right to effective remedy</p>	<p>ECHR Article 13; CFREU Articles 19 and 47; Greek Constitution Article 20.</p>	<p>Violated by deliberately putting survivors in a situation where they have – <i>at no point</i> – access to legal remedies in Greece to challenge any violations of their rights. This is the very nature of collective expulsions. Survivors of collective expulsions in the Aegean have made several claims before the European Court of Human Rights,⁶⁴ in the hope of obtaining reparation and recognition of the Greek authorities’ liability for violating migrants’ rights.</p> <p>See, in particular, part 2.2.1 above.</p>
<p>The prohibition of discrimination</p>	<p>ECHR Article 14; CFREU Article 21; Greek Constitution Article 5(2); and all international human rights treaties.</p>	<p>Violated by specifically targeting migrants who entered Greece and imposing on them an unjustified difference in treatment which is likely based on their racial profile, national origin, and migration status, and informed by social, structural and institutional discrimination towards migrants in Greece.⁶⁵ Pushbacks involve foreign nationals or stateless persons being expelled or removed from Greece en masse as a result of their nationality or membership of a particular racial or ethnic group, rather than as a result of a judgement on the particular circumstances of their individual cases, in violation of the prohibition of discrimination.</p>

⁶⁴ ICL has represented individuals in four separate cases filed with the ECtHR; in addition, it was reported that a claim was brought on behalf of A.N., a survivor of a collective expulsion from Samos. NUI Galway, ‘Press Release: New Complaint at the European Court of Human Rights’, Irish Centre for Human rights, 18 November 2020, available at: <http://www.nuigalway.ie/irish-centre-human-rights/newsevents/press-release-new-complaint-at-the-european-court-of-human-rights>.

⁶⁵ Olga Demetriou, ‘Materiality, imbrication, and the longue durée of Greco-Turkish borders’, in *The Political Materialities of Borders: New Theoretical Directions*, 2018, edited by Olga Demetriou and Rozita Dimova, Manchester: Manchester University Press, pp. 16-35; Racist Violence Recording Network, ‘Annual Report 2018’, April 2019: “In 2018, the Racist Violence Recording Network (RVRN) recorded an increase in incidents of racist violence, especially against refugees and migrants. The RVRN recorded 74 incidents where the victims were migrants or refugees and targeted due to their ethnic origin, religion, colour, associations of third country nationals.” available at: <https://fra.europa.eu/en/databases/anti-muslim-hatred/node/4303>, accessed on 8 January 2021.

<p>Duty to rescue at sea</p>	<p>United Nations Convention on the Law of the Sea (UNCLOS) Article 98; Greek Law 2321/1995 (ΦΕΚ 136, τ. Α') Article 98; MSC 78/26/Add.2 ANNEX 34 Par. 2.5, 6.12-6.13, 6.17 and 6.20; Presidential Decree 137/2007 (ΦΕΚ 174/Α` 31.7.2007) Annex 3.</p>	<p>Greek authorities are intentionally putting people's lives in grave danger by abandoning them in the middle of the Aegean sea, in violation of their obligation "to render assistance to any person found at sea in danger of being lost."⁶⁶ Far from their obligation of providing migrants a safe place of disembarkation, within a reasonable time, where the survivors' life is no longer in danger and where their basic human needs can be met,⁶⁷ Greek authorities are attacking migrants at sea, arbitrarily detaining them on land, and abandoning them on unseaworthy vessels in the middle of the sea.</p> <p>See, in particular, parts 2.2.4-2.2.7.</p> <p>Other actors, such as Frontex and NATO, are likewise in flagrant violation of their obligations to render assistance to people found in danger at sea, where they have witnessed or directly participated in pushbacks.</p> <p>See part 2.2.5, <i>Ibid.</i> n. 34-35.</p>
<p>Liability for Aiding and Abetting Crimes</p>	<p>UN Guiding Principles on Business and Human Rights, Principle 17; Greek Law 4619/2019 (Penal Code), Article 47.</p>	<p>In at least 9 of the 17 cases documented by the LCL, life rafts – repurposed from their original intended use – have been instrumental in carrying out pushbacks. Over several months, reports by LCL and other actors⁶⁸ have detailed the use of life rafts for this nefarious purpose. Given the publicity surrounding the material use of life rafts to perpetrate these ongoing crimes in the Aegean, the suppliers of these life rafts to the HCG at this point are “knowingly providing practical assistance,”⁶⁹ to the commission of these crimes, and are themselves criminally liable.⁷⁰</p>

⁶⁶ United Nations Convention on the Law of the Sea (UNCLOS), Article 98.

⁶⁷ MSC 78/26/Add.2 ANNEX 34 RESOLUTION MSC.167(78), ‘Guidelines on the treatment of persons rescued at sea’, 20 May 2004, see para 2.5 and 6.12-6.13, available at: <https://www.refworld.org/pd/432acb464.pdf>.

⁶⁸ See, for example:

Bashar Deeb, ‘Samos and the Anatomy of a Maritime Push-Backs’, Bellingcat, 20 May 2020, available at: <https://www.bellingcat.com/news/uk-and-europe/2020/05/20/samos-and-the-anatomy-of-a-maritime-push-back/>;

Giorgos Christides and Steffen Lüdke, ‘Greece Suspected of Abandoning Refugees at Sea’, Spiegel International, 16 June, 2020, available at:

<https://www.spiegel.de/international/europe/videos-and-eyewitness-accounts-greece-apparently-abandoning-refugees-at-sea-a-84c06c61-7f11-4e83-ae70-3905017b49d5>;

HRW, et al (including LCL), ‘Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses’, 6 October 2020, available at:

https://www.hrw.org/sites/default/files/media_2020/10/ENG%20Joint%20NGO%20Letter%20to%20Parliament.pdf;

Human Rights Watch (HRW), ‘Greece: Investigate Pushbacks, Collective expulsions: EU Should Press Athens to Halt Abuses’, 16 July 2020, available at: <https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>.

⁶⁹ UN Guiding Principles on Business and Human Rights, Principle 17, unanimously endorsed by the Human Rights Council in June 2011, A/HRC/17/31, available at: <https://www.ohchr.org/documents/issues/business/a.hrc.17.31.pdf>.

⁷⁰ Greek Law 4619/2019, Article 47 (whoever may “intentionally provide assistance before the commission or during the commission of the unjust act committed, is punished as an accomplice.”).

3.2 Ongoing impunity

The foregoing laundry list of ongoing violations entailed in the *modus operandi* of collective expulsions in the Aegean only underscores the **ineffectiveness of existing accountability mechanisms**. A number of extensively evidenced complaints on collective expulsions in the Aegean have already been submitted to the Greek courts,⁷¹ the Hellenic Parliament,⁷² the Greek National Commission of Human Rights (GNCHR),⁷³ the European Commission,⁷⁴ other EU institutions⁷⁵ and the European Court of Human Rights, by numerous civil society and legal actors including the LCL,⁷⁶ yet collective expulsions in the Aegean continue with absolute impunity. Moreover, Greek Law and the Greek Criminal Code do not include any provisions criminalising specifically collective expulsions, unlike the vast majority of European States which have ratified Protocol No. 4 to the ECHR. Those structural shortcomings and obstacles prevent victims of collective expulsions from obtaining an effective remedy for their harm in the Greek legal system and attest to the ways in which the Greek authorities' systematic practice of summary expulsions is shielded and enabled by a disregard for the rule of law. **There are only so many times legal and civil society actors can list and table these human rights violations and be met with deafening silence and inaction before this itself becomes evidence of Greek and European liability for collective expulsions as an egregious attack on migrants' lives.**

The Greek authorities veer between outright denial of collective expulsions and celebration of their “effective border control” in reducing the number of migrant arrivals.⁷⁷ In response to an investigation that revealed over 1,000 people were expelled to Turkey in approximately 31 separate incidents, the Greek Prime Minister Mitsotakis continued to deny the existence of pushbacks at sea.⁷⁸ Meanwhile, the European Commissioner for Home Affairs Ylva Johansson evades accountability by shifting the onus onto national authorities and claiming she has “no power to investigate” collective expulsions,⁷⁹ despite presiding over an institution that has the power

⁷¹ Lizan Nijkraake, ‘Greek prosecutor investigating allegations of ‘systematic’ violence against migrants at Evros River’, CBC News, 6 March 2019, available at:

<https://www.cbc.ca/news/world/greek-prosecutor-investigating-allegations-of-systematic-violence-againstmigrants-at-evros-river-1.5043460>; Human Rights Watch, ‘Ελλάδα: Να διερευνηθούν οι Επαναπροωθήσεις και οι Συλλογικές Απελάσεις’, July 2019, available under:

<https://www.hrw.org/el/news/2020/07/16/375802#>.

⁷² HRW, et al (including LCL), ‘Open Letter to Members of the Hellenic Parliament Calling for an Investigation into Border Abuses’, 6 October 2020, available at:

https://www.hrw.org/sites/default/files/media_2020/10/ENG%20Joint%20NGO%20Letter%20to%20Parliament.pdf

⁷³ Greek National Commission for Hellenic Republic (GNCHR), ‘Reference Report on the Refugee and Migrant Issue (Part B), 24 September 2020’, p. 13, available at: https://www.nchr.gr/images/English_Site/PROSFYGES/Reference_Report_Refugees.pdf.

⁷⁴ Oxfam and We Move Europe, Complaint to the European Commission Concerning Infringements of EU Law by Greece, 22 September 2020, available at:

<https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/wemove-oxfam-complaint-to-ec-asylum-greece-eu.pdf>

⁷⁵ See, for example:

HRW, ‘Greece: Investigate Pushbacks, Collective expulsions: EU Should Press Athens to Halt Abuses’, 16 July 2020, available at:

<https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions>;

Border Violence Monitoring Network, ‘The Black Book of Pushbacks’, December 2020, available at:

Volume I: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:3f809f15-bada-4d3f-adab-f14d9489275a#pageNum=1>

Volume II: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b10a04a4-25dd-45f1-8b2d-e9c25946cb44#pageNum=1>

⁷⁶ The Legal Centre Lesvos has reported to the GNCHR, and represented individuals in four separate cases filed with the ECtHR; in addition, it was reported that a claim was brought on behalf of A.N., a survivor of a collective expulsion from Samos. NUI Galway, ‘Press Release: New Complaint at the European Court of Human Rights’, Irish Centre for Human rights, 18 November 2020, available at: <http://www.nuigalway.ie/irish-centre-human-rights/newsevents/press-release-new-complaint-at-the-european-court-of-human-rights.html>

⁷⁷ Proto Thema, ‘Μηταράκης: Η χώρα μας φυλάσσει τα σύνορά της με απόλυτο σεβασμό στο διεθνές δίκαιο’, 24 October 2020, available at: <https://www.protothema.gr/politics/article/1058361/mitarakis-i-hora-mas-fulassei-ta-sunora-tis-me-apoluto-sevasmo-sto-diethnes-dikai>

⁷⁸ Youtube video of the Prime Minister Mitsotakis’s interview, The Pappas Post, ‘Greek PM Mitsotakis Categorically Denies New York Times Story’, 20 August 2020, available at: <https://www.youtube.com/watch?v=u-blgKqc7Is>

⁷⁹ European Commission, ‘Intervention in the European Parliament LIBE Committee on the situation at the Greek/Turkish border and respect for fundamental rights’, 6 July 2020, available at: https://ec.europa.eu/commission/commissioners/2019-2024/johansson/announcements/intervention-european-parliament-libe-committee-situation-greecturkish-border-and-respect_en

to initiate infringement actions when Member States violate European law.⁸⁰ In March 2020, when Greece unilaterally suspended the right to asylum and conducted systematic pushbacks involving the use of lethal force,⁸¹ instead of taking action against such brazen violations of EU law, EU Commission President Ursula von der Leyen thanked Greece for acting as Europe’s “shield”.⁸² Shortly following Greece’s unlawful suspension of asylum, the Commission announced an additional 700 million euros for “border and migration management in Greece”, stating “Greece’s border is Europe’s border”⁸³ and in June the EU’s Internal Security Fund awarded Greece a further 10.75 million euros for “Reinforcement of Eastern Greek Borders”.⁸⁴ The vice-president of the European Commission has since cited the example of “Evros at the beginning of March” as proof “Europe can now effectively ensure border management.”⁸⁵

The documented involvement of multiple national and international authorities in systematic collective expulsions only compounds the situation of impunity. The various authorities identified by survivors as being involved in collective expulsions, as set out in part [2.2.5](#) above, all operate in the Aegean on different legal bases: the Greek police is regulated by the Police Structure and Rules of Regulation;⁸⁶ the Hellenic Coast Guard is regulated by the Greek military penal code;⁸⁷ Frontex is governed by EU Regulations and its own Codes of Conduct,⁸⁸ while in principle NATO is accountable pursuant to international law on the responsibility of international organisations⁸⁹ as well as to its member governments. All vessels are additionally bound by international maritime law.

Despite numerous reports and investigations concerning Frontex’s involvement in pushbacks (see part [2.2.5](#) above), the agency continues to deny participation in collective expulsions and explains the drop in migrants’

⁸⁰ Treaty on the Functioning of the European Union, Articles 258-260.

⁸¹ Forensic Architecture, ‘The Killing of Muhammad Gulzar’, 8 May 2020, available at:

<https://forensic-architecture.org/investigation/the-killing-of-muhammad-gulzar/>;

International Association of Democratic Lawyers (IADL), ‘IADL statement on grave violations of refugee rights in Greece and the EU and Turkey’s invasion of Syria’, 8 March 2020, available at:

<https://iadllaw.org/2020/03/iadl-statement-on-violations-refugee-rights-in-greece-and-the-eu-and-turkeys-invasion-of-syria/>.

⁸² European Commission, ‘Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis et al, 3 March 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380

⁸³ European Commission, ‘Press remarks by Vice-President Schinas on immediate actions to support Greece’, 4 March 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_395

⁸⁴ European Commission, ‘Managing Migration: EU Financial Support to Greece, November 2020, p. 2, available at:

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/202011_managing-migration-eu-financial-support-to-greece_en.pdf

⁸⁵ Nikolaj Nielsen, ‘EU migration pact to deter asylum’, euobserver, 24 September 2020, available at:

<https://euobserver.com/migration/149530>

⁸⁶ Προεδρικό Διάταγμα 141/1991 - Αρμοδιότητες οργάνων και υπηρεσιακές ενέργειες του προσωπικού του Υπουργείου Δημόσιας Τάξης και θέματα οργάνωσης Υπηρεσιών [Presidential Decree 141/1991: Responsibilities of bodies and official actions of the staff of the Ministry of Public Order and issues of organization of Services (unofficial translation)], available at:

<https://www.e-nomothesia.gr/kat-astynomikos-astynomia/armodiotes-organon/pd-141-1991.html>

⁸⁷ Νόμος 2287/1995, Κύρωση του Στρατιωτικού Ποινικού Κώδικα (Σ.Π.Κ.) [Law 2287/1995: Ratification of the Military Penal Code (unofficial translation)], available at: <https://www.e-nomothesia.gr/kat-enoples-dynameis/n-2287-1995.html>

⁸⁸ Pursuant to Frontex’s governing Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard; Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, particularly Articles 3 and 4; and Frontex Code of Conduct, Article 4, all operations must comply with international law and with respect for fundamental rights. Frontex, as a European agency, is additionally bound by the CFREU. It is recalled that collective expulsions frequently violate Articles 2, 4, 6, 7, 18, 19 and 47, as discussed in Part 3.1. Following suspected incidents of fundamental rights abuses, Frontex is obliged to file serious incident reports, see: Frontex, Annex 14 Serious Incident Reporting, in particular Section 3.2, available at: <https://www.statewatch.org/media/documents/news/2016/aug/frontex-serious-incident-reporting.pdf>

In addition, Article 5 of Frontex’s Code of Conduct affirms that “participants in Frontex activities shall: a) **promote, in full compliance with the principle of non refoulement, that persons seeking international protection are recognised, receive adequate assistance**, are informed, in an appropriate way, about their rights and relevant procedures and are referred to national authorities responsible for receiving their asylum requests; ... c) give special consideration to particularly vulnerable groups of people, including women, unaccompanied minors, disabled people, persons susceptible to exploitation and victims of exploitation or trafficking in human beings.”

⁸⁹ Draft Articles on the Responsibility of International Organizations, 3rd June 2011 (UN Doc A/CN.4/L.778), OXIO 11.

arrivals by reference to COVID-19.⁹⁰ Executive Director of Frontex Fabrice Leggeri maintains that “there is no evidence of a direct or indirect participation of Frontex staff or officers deployed by Member States under Frontex operations in alleged “pushbacks” in the Aegean Sea”⁹¹ and has further sought to shift responsibility to national authorities: claiming that Frontex does not have “tactical command” of operations in the Aegean,⁹² which belongs to the HCG, despite the fact HCG liaison officers are deployed on Frontex vessels. Meanwhile, in response to reports of NATO involvement in pushbacks (see part 2.2.5 above) and to repeated questions on this issue to the German Federal Government, the German secretary of state refused to publicly disclose information on the grounds that “public disclosure of information in the sense of the question could have negative effects on NATO activities in the Aegean Sea as well as on bilateral relations between Germany and Greece and thus be detrimental to the interests of the Federal Republic of Germany.”⁹³

Such evasions in response to the allegations of both international agencies’ involvement in collective expulsions in the Aegean only underscores the difficulty in pursuing remedies, let alone anything resembling justice, for survivors. Added to this, survivors consistently describe the authorities as unknown, masked, “commandos”, though it is likely from the equipment that they are using that these commandos are supported by the State. This makes identifying the agencies responsible, and seeking remedy for violations committed by them, extremely difficult.

As if impunity was not enough, four human rights monitoring and migrant solidarity groups – which have all publicly denounced collective expulsions in the Aegean – have been identified by Greek police in an investigation that accuses them of espionage, forming and membership of a criminal organization, violating state secrets, and violating the immigration code.⁹⁴ This not only targets the four named organisations, but also contributes to the ongoing hostility towards organisations working in solidarity with migrants in Greece.⁹⁵ The investigation clearly constitutes an attempt to deflect from the Greek government’s own commission of criminal acts, by directing public attention towards allegations of misconduct by civil society actors and human rights defenders. A similar effect is achieved by the Greek state’s systematic prosecution of migrants for facilitation of illegal entry/exit⁹⁶ or its perverse decision to prosecute the father of a six-year-old child who tragically drowned in a shipwreck near Samos in November for endangering his son’s life.⁹⁷ **Such attempts by states (and organisations of states such as the EU) to frame migrants, migrants’ rights defenders and solidarity actors as criminals and threats to the nation is a deliberate and effective tactic to circumvent their own liability for severe criminal acts and human rights violations.**

The brutality and disregard for human life evidenced in the Aegean collective expulsions and the banalisation of these atrocious acts through both the frequency of their occurrence and discursive ideological work of European

⁹⁰ Frontex, ‘Irregular migration into EU last year lowest since 2013 due to covid-19’, 8 January 2021, available at:

<https://frontex.europa.eu/media-centre/news-release/irregular-migration-into-eu-last-year-lowest-since-2013-due-to-covid-19-j34zp2>

⁹¹ ECRE, ‘Greece: Frontex Denies Involvement in Pushbacks, Expert Council Critique of NGO Registration Rules’, 27 November 2020, available at: <https://www.ecre.org/greece-frontex-denies-involvement-in-pushbacks-expert-council-critique-of-ngo-registration-rules/>;

⁹² European Parliament, Committee on Civil Liberties Justice and Home Affairs, 1 December 2020, 13:45-15:45, available at: https://multimedia.europarl.europa.eu/en/committee-on-civil-liberties-justice-and-home-affairs_20201201-1345-COMMITTEE-LIBE_vd;

⁹³ German Bundestag, Written questions in the week of June 22, 2020, responses received from the Federal Government, p.18 (§26), available at (German): <https://dip21.bundestag.de/dip21/btd/19/203/1920374.pdf>;

Andrej Hunko, ‘Questions from Andrej Hunko to the Federal Government, Written question about further pushbacks in the Aegean’, 26 August 2020, available at (German):

<https://www.andrej-hunko.de/en/bt-en/fragen/5044-schriftliche-frage-zu-weiteren-pushbacks-in-der-aegeais>

⁹⁴ North Aegean Journalists Information Office, ‘33 members of NGOs and 2 third-country nationals, are included in a case file for an organised circuit to facilitate the illegal entry of aliens into the Greek territory, via the island of Lesbos, 28 September 2020, available at (Greek): http://www.astynomia.gr/index.php?option=ozo_content&lang=%27..%27&perform=view&id=97610&Itemid=2509&lang=

⁹⁵ Institute of Race Relations, ‘Humanitarianism: the unacceptable face of solidarity’, 2017, available at:

https://irr.org.uk/app/uploads/2017/11/Humanitarianism_the_unacceptable_face_of_solidarity.pdf

⁹⁶ Valeria Hänsel, Rob Moloney, Dariusz Firla, Rûnbîr Serkepkanî, ‘Incarcerating the Marginalised: The Fight Against Alleged Smugglers on the Greek Hotspot Islands, Aegean Migrant Solidarity, Deportation Monitoring Aegean.bordermonitoring.eu, borderline-europe e.V, 2020, available at: https://bordermonitoring.eu/wp-content/uploads/2020/12/report-2020-smuggling-en_web.pdf

⁹⁷ Katy Fallon and Stavros Malichudis, ‘Father faces criminal charge over son’s death in migrant boat tragedy’, The Guardian, 16 November 2020, available at

<https://www.theguardian.com/global-development/2020/nov/16/father-faces-criminal-charge-over-sons-death-in-migrant-boat-tragedy>,

institutions and the media to devalue migrant lives,⁹⁸ is not adequately captured by the current legal framework of human rights and the remedies in place to guarantee them. The complex network and multiplicity of actors involved in collective expulsions in the Aegean would require independent international institutions with significant investigative powers to trace modes of liability. In this context, international criminal law's foundational logic that atrocities are "committed by men, not abstract entities"⁹⁹ and its promise to de-naturalise the banality of evil appears more appropriate.

The Greek government and the European Commission should **conduct prompt and serious investigations into the existing evidence of illegal actions at the EU's external borders, and impose accountability measures for the respect of human rights.** The EU agency Frontex and NATO are involved, directly and indirectly, in those illegal acts and should suspend their operations in the Aegean as long as investigations are ongoing and transparently disclose the information and evidence that they have acquired. In the absence of such initiatives, Greece and the EU and its officials – who are already facing accusations of crimes against humanity for the deadly migration policies implemented in the Central Mediterranean¹⁰⁰ – are making themselves complicit in crimes against humanity in the Aegean.

⁹⁸ As a recent communication to the ICC argues, "the category of 'migrants' has been created in order to be categorically attacked" in or by the EU, in precisely the form of "discursive reification" that "often precedes the commission of mass crimes". See part 3.3.3 below and, generally:

Lena Karamanidou *et al.*, 'Border Management and Migration Control Comparative Report', Working Papers Global Migration: Consequences and Responses, Paper 2020/46, March 2020, available at: https://www.academia.edu/42383285/Border_Management_and_Migration_Control_Comparative_Report;

Liz Fekete, *Europe's Fault Lines Racism and the Rise of the Right* (Verso, January 2018);

Reece Jones, *Violent Borders Refugees and the Right to Move* (Verso, October 2017).

⁹⁹ 'Judgment' in *Trial of the Major War Criminals before the International Military Tribunal*, vol 1 (International Military Tribunal 1947), pp. 171–341.

¹⁰⁰ Omer Shatz and Dr Juan Branco, Communication to the Office of the Prosecutor of the International Criminal Court Pursuant to the Article 15 of the Rome Statute, 2019, available at:

<https://www.statewatch.org/media/documents/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>

3.3. Greek authorities are committing Crimes against Humanity in the Aegean

The collective expulsions perpetrated by Greek authorities against migrants in the Aegean constitute a **widespread and systematic policy**. With the complicity or operational support of international bodies and private entities, Greek authorities are purposefully committing crimes against humanity through their ongoing commission of pushbacks in the Aegean. The Rome Statute, clearly defines¹⁰¹ and sets standards for determining the commission of crimes against humanity.

Crimes against humanity are defined by the Rome Statute as the knowing commission of any specified crime, as part of a widespread or systematic attack directly against any civilian population.¹⁰¹ These specified crimes include:

1. Unlawful deportation;
2. Unlawful detention;
3. Torture or other inhumane acts

In order for crimes against humanity to be found, four main elements must be shown: (I) the knowing commission of a specific crime, (II) the widespread or systematic nature of the crime (III) against a targeted civilian population and (IV) that the crime was committed in furtherance of a State or organizational policy.¹⁰² All four elements are present in the Greek authorities commission of pushbacks in the Aegean in 2020.

¹⁰¹ Rome Statute, Article 7(1) provides that “For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; **(d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture;** (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; **(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.**

¹⁰² Rome Statute, Article 7(1) and 7(2)(a).

3.3.1. Collective expulsions in the Aegean necessarily involve commission of specific crimes prohibited by the Rome Statute

UNLAWFUL DEPORTATION¹⁰³

"Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

In *every* case of collective expulsion reported to LCL, the elements of the crime of unlawful deportation as set out in the Rome Statute are met:

Forced displacement: In all instances, the **forcible** aspect of the expulsion is undeniable: all survivors were forcibly expelled towards Turkish waters, whether through attacks on and the towing of their dinghies, or being forced into life rafts.

Lawful presence: Per the 1951 Convention on the Status of Refugees, **the asylum seekers are lawfully present, if they have irregularly crossed borders in order to seek asylum.**¹⁰⁴ Criminal responsibility for unlawful deportations cannot be circumvented by denying intended asylum seekers the ability to register their asylum claims¹⁰⁵ – **which is categorically denied to victims of pushbacks, as described above in part 2.2.1.**

Without legal grounds: The unlawful nature of the forced displacement in carrying out pushbacks in the Aegean is undeniable, given **the illegality of collective expulsions**, and the violation of **the principle of non-refoulement** they always entail, as described above in part 3.1.

¹⁰³ Rome Statute, Articles 7(1)(d), and 7(2)(d).

¹⁰⁴ 1951 Convention on the Status of Refugees, Article 31.

¹⁰⁵ Achiume, T. et al, (GLAN), 'Communication to the Office of the Prosecutor of the International Criminal Court Under Article 15 of the Rome Statute, The Situation in Nauru and Manus Island: Liability for Crimes Against Humanity in the Detention of Refugees and Asylum Seekers', 14 February 2017, available at: <https://www-cdn.law.stanford.edu/wp-content/uploads/2017/02/Communique%C3%A9-to-Office-Prosecutor-IntlCrimCt-Art15Rome-Stat-14Feb2017.pdf>

UNLAWFUL DETENTION¹⁰⁶

Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.

In *every* collective expulsion reported to LCL following a landing on a Greek island, migrants were unlawfully and arbitrarily detained, in violation of the fundamental rules of international law, as described above in part [2.2.3](#). Migrants subsequently subjected to pushbacks were held in unofficial detention sites, during which they were routinely denied adequate access to food, water, sanitation facilities or shelter, and where they were denied due process of law,¹⁰⁷ without being given any information about their fate,¹⁰⁸ and with no ability to legally contest their detention. As described above in part [2.2.2](#), the circumstances of their detention frequently amounts to torture and inhumane treatment, given the poor conditions in which they are held and the physical and mental violence to which they are subjected by Greek authorities. Furthermore, and as discussed above, the individuals subjected to detention are often vulnerable and include infants, children, unaccompanied children, persons with disabilities, and pregnant women.

TORTURE OR OTHER INHUMAN ACTS¹⁰⁹

"Torture" is defined as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused.

Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health are likewise crimes against humanity when committed as part of widespread or systematic policy against a civilian population.

In *every* pushback reported to LCL, survivors were subject to inhumane acts, which could in some instances amount to torture and which in all cases caused great suffering. According to the survivors' testimonies, they were exposed to **verbal and physical violence** (often with the intent to disable the vessel on which they were travelling, or to forcibly transfer people in and out of dinghies, authorities' vessels or motorless life rafts, and/or while being held in arbitrary detention) before being abandoned, in open water, at risk of death. Such violence frequently also includes **psychological abuse**, such as: providing misleading information about where migrants will be taken; forcing migrants off metres-high vessels, out of sight of the group with which they are travelling, in circumstances resembling a mock execution; and/or the refusal to assist and active abandonment of people on unseaworthy vessels without means to call for rescue.

¹⁰⁶ Rome Statute, Article 7(1)(e)

¹⁰⁷ *Prosecutor v. Dario Kordić, Mario Cerkez* (Appeal Judgement), IT-95-14/2-A, ICTY, 17 December 2004, § 116.

¹⁰⁸ UN GAOR, 44th sess, Item 8 of the Provisional Agenda, UN Doc E/CN.4/1998/44 (19 December 1997) annex 1 16-17 8(c); *Prosecutor v. Milorad Krnojelac* (Trial Judgement), IT-97-25-T, ICTY, 15 March 2002, § 137.

¹⁰⁹ Rome Statute, Articles 7(1)(f), 7(1)(k), and 7(2)(e).

In addition, migrants are frequently deprived of adequate access to food or water while under Greek authorities' control, whether in unofficial detention sites on land, or while on the Greek authorities' vessel. See [parts 2.1, 2.2.2, 2.2.3](#).

'Other inhumane acts' that have been found to constitute crimes against humanity and apply to the consistent *modus operandi* of collective expulsions in the Aegean include: beatings;¹¹⁰ acts of humiliation;¹¹¹ forcible transfer;¹¹² detention or confinement in gravely inadequate circumstances or inhumane conditions (for example, without water, food or sanitary facilities);¹¹³ physical abuse of detainees;¹¹⁴ denial of safe haven or creation of conditions exposing victims to serious harm;¹¹⁵ severe attacks against human dignity (including deprivation of food, water, adequate shelter, medical assistance, unacceptable sanitary conditions).¹¹⁶

3.3.2. Collective expulsions in the Aegean are both widespread and systematic

The criminal acts described above are conducted as part of both a systematic and widespread attack.

- "Systematic" refers to a pattern or methodical plan, on the basis of a common policy, which reflects the organized nature of the acts of violence and the improbability of their random occurrence - as opposed to isolated or random attacks.¹¹⁷
- "Widespread" refers either to the commission of the criminal act over a broad geographic area, or to large-scale violence in relation to the number of crimes and victims.¹¹⁸

Pushbacks carried out by Greek authorities have been documented on the Greek-Turkish border for years¹¹⁹ – yet since March 2020 a common pattern has been followed in each of the reported pushbacks carried out in the Aegean Sea. As shown in our previous publication and in [part 2.2](#) of the present report, a **consistent *modus operandi* can be identified in all documented collective expulsions**. The direct consequences of those crimes are also identical in all cases: migrants are removed from Greek territory, without any opportunity to

¹¹⁰ *Prosecutor v. Milan Lukic and Sredoje Lukic* (Judgment), IT-98-32/1-T, ICTY, 20 July 2009, §§ 977ff and 989ff; *Prosecutor v. Mladen Naletilic aka "Tuta", Vinko Martinovic aka "Stela"* (Trial Judgement), IT-98-34-T, ICTY, 31 March 2003, §§ 345ff; *Prosecutor v. Pasko Ljubičić*, Case No. IT-00-41-PT, ICTY, Corrected Amended Indictment, 8 April 2002, §§ 54ff.

¹¹¹ *The Prosecutor v. Tharisse Muvunyi* (Judgment and Sentence), ICTR-2000-55A-T, ICTR, 12 September 2006, §§ 456, 530.

¹¹² *Prosecutor v. Milomir Stakic* (Appeal Judgement), IT-97-24-A, ICTY, 22 March 2006, § 313ff, in particular, §317 (finding that 'specific "acts of forcible transfer may be sufficiently serious as to amount to other inhumane acts' '); *Prosecutor v. Momčilo Krajišnik* (Trial Judgement), IT-00-39-T, ICTY, 27 September 2006, § 722ff.

¹¹³ *The Prosecutor v. Ignace Bagilishema* (Trial Judgement), ICTR-95-1A-T, ICTR, 7 June 2001, § 490 (finding that "the confinement of a large number of people on exposed ground without water, food or sanitary facilities will amount to an inhumane act if the act is deliberate and its consequences are serious mental or physical suffering or a serious attack on human dignity"), and §§ 491–494 (finding that "the necessary requirement of equal gravity" was met in this case in light of all relevant circumstances)

¹¹⁴ *Prosecutor v. Miroslav Kvočka et al.* (Trial Judgement), IT-98-30/1-T, ICTY, 2 November 2001, §§ 208, 209; *The Prosecutor v. Siméon Nchamibigo* (Judgement and Sentence), ICTR-01-63-T, ICTR, 12 November 2008, § 350; *Prosecutor v. Blagoje Simic et al.* (Trial Judgement), IT-95-9-T, ICTY, 17 October 2003, §§ 773-775; *Prosecutor v. Krnojelac*, *Ibid.* n. 110, §§ 143, 209, 215.

¹¹⁵ *Prosecutor v. Ntakirutimana & Ntakirutimana* (Judgment and Sentence), ICTR-96-10 & ICTR-96-17-T, 21 February 2003, §§ 853–856.

¹¹⁶ *Prosecutor v. Nuon Chea & Khieu Samphan*, 002/19-09-09-2007/ECCC/TC, Case 002/01 Judgment, 7 August 2014, §§ 440, 456ff (noting that deprivations of food, water, adequate shelter and medical assistance and sub-para. sanitary conditions in the context of detention constitute an attack upon the human dignity of the detainees), and §§ 563ff (regarding the Chamber's findings upon that aspect of the charges, and pointing to the evacuees' journeys were marked by the almost complete absence of food, water, medical care, shelter and hygiene facilities for periods ranging from several days to several week and overall hardship of and violent circumstances surrounding this movement of population).

¹¹⁷ *Prosecutor v. Dusko Tadic aka "Dule"* (Opinion and Judgment), IT-94-1-T, ICTY, 7 May 1997, § 648; *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgement), ICTR-96-4-T, ICTR, 2 September 1998, § 580; *Prosecutor v. Dario Kordic, Mario Cerkez* (Appeal Judgement), IT-95-14/2-A, ICTY, 17 December 2004, § 94; *The prosecutor v. Germain Katanga*, ICC (Trial Judgment), 7 March 2014, ICC-01/04-01/07, § 1123.

¹¹⁸ *Prosecutor v. Kunarac*, § 94; *Prosecutor v. Tadić*, § 648; *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-424, 15 June 2009, §§ 116-126; *Prosecutor v. Jean-Pierre Bemba Gombo* (Judgment, Article 74 of the Statute), ICC-01/05-01/08-3343, 21 March 2016, §§ 162-163, 688-689.

¹¹⁹ *Ibid.* n. 6.

request international protection, and are abandoned at sea without any assistance or guarantee of being rescued. This consistent *modus operandi* shows that the **pushbacks are being systematically carried out**.

The testimonies shared with LCL clearly indicate that a consistent policy is being carried out over a broad geographic area throughout the Aegean – both at sea and on the islands. A consistent pattern of behaviour by a variety of actors throughout this area, including, at a minimum, members of the Greek police and HCG, has led to identical results, indicating **a widespread coordination of the attack** on migrants throughout the Aegean.

Furthermore, the abundance of evidence reported by LCL – which has documented at least 17 collective expulsions in the last 10 months, in addition to evidence published by numerous other actors,¹²⁰ indicates **the large-scale widespread nature of the crime**.

Greek officials admitted to preventing 3000 migrants’ entry into Greece in August alone – and refused to detail the circumstances of these “preventions.”¹²¹ Furthermore, according to the Shipping Minister, Giannis Plakiotakis, there has been an 84% reduction in new arrivals since 1 March 2020 as compared to the same time period in 2019.¹²² As illustrated in the [introduction](#) to this report, this reduction is coterminous with reports of the new pattern of Aegean collective expulsions.

In light of the extensive reports of collective expulsions with a shared *modus operandi*, the Greek state’s recognition of its mass “preventions”, and the widespread knowledge of expulsions among the migrant community, it can be concluded that **collective expulsions in the Aegean are both a systematic and widespread policy**.

3.3.3. Migrants attempting to seek asylum in Greece after crossing from Turkey constitute a targeted civilian population

A “civilian population” for the purposes of determining a crime against humanity, corresponds to a significant number of people, identified as a collectivity, present in a delimited geographical area that are targeted in the systematic or widespread attack.¹²³ The civilian population can be of any nationality, ethnicity or another group with distinguishing features, that show they are not a randomly selected group of individuals.¹²⁴ As a recent communication to the ICC argues, “the category of ‘migrants’ has been created in order to be categorically attacked” in or by the EU, in precisely the form of “discursive reification” that “often precedes the commission of mass crimes”.¹²⁵ The ICC prosecutor herself has identified migrants as a targeted civilian population, expressing concern about “serious and widespread crimes allegedly committed against migrants” in the context of the ICC’s ongoing investigation into the situation in Libya.¹²⁶

All of the pushback survivors in the Aegean who have provided evidence and testimony to the LCL are – without exception – migrants who crossed the border between Turkey and Greece to seek international protection in Europe. The Greek authorities specifically targeted them for collective expulsion (as already shown in parts [3.1](#) and [3.3.3](#)) precisely because of their status as migrants. As such, ‘migrants’ qualify as a targeted civilian population within the meaning of Article 7.

¹²⁰ *Ibid.* ns.1-4.

¹²¹ Elena Becatoros, ‘Minister: Over 10,000 migrants stopped from entering Greece’, *Ekathimerini*, 2 September 2020, available at: <https://www.ekathimerini.com/256498/article/ekathimerini/news/minister-over-10000-migrants-stopped-from-entering-greece>.

¹²² *Ibid.*

¹²³ *The Prosecutor v. Germain Katanga* (Trial Judgment), 7 March 2014, ICC-01/04-01/07, §§ 1102-1105; *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC Trial Judgement, 21 March 2016, ICC-01/05-01/08, §§ 153-156.

¹²⁴ *The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber II, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, 15 June 2009, ICC-01/05-01/08, §§ 76-77.

¹²⁵ *Ibid.* n. 99, § 409; §§ 404-412 and §§ 538-554.

¹²⁶ International Criminal Court, ‘Statement of the ICC Prosecutor to the UNSC on the Situation in Libya’, 9 May 2017, available at: <https://www.icc-cpi.int/pages/item.aspx?name=170509-otp-stat-lib>.

3.3.4. Collective expulsions in the Aegean are carried out pursuant to and in furtherance of a coordinated State and organisational policy

Per Article 7 (2) (a) of the Rome Statute, the attack must be committed “*pursuant to or in furtherance of a State or organizational policy*”.

Such policy or plan does not need to be explicitly declared or formally adopted and can be inferred from the totality of the circumstances in which the acts occur.¹²⁷ The evidence of collective expulsions documented by LCL demonstrate a recurrent, systematic, coordinated and planned intervention of multiple State actors and authorities, trained and equipped to operate both on land and at sea to repress, detain, and forcibly expel groups of migrants. In the majority of documented incidents described, significant resources and personnel associated with the Greek State were deployed. This includes, *inter alia*, police personnel, supported by vehicles (including cars and vans); at least one, and often multiple, maritime vessels (including speedboats and large vessels); and the procurement of rescue equipment, repurposed to serve the expulsions (life rafts). The Hellenic Coast Guard, Greek police units, “commandos”, and even a rescue ship in one reported case, all take part in a coordinated way in implementing the illegal pushbacks in the Aegean. In addition, documents leaked to the media or obtained via freedom of information requests have demonstrated that clear commands emanate from the Hellenic Coast Guard (HCG) in the commission of collective expulsions.¹²⁸ Taken together, those circumstances demonstrate that collective expulsions in the Aegean sea are not a random occurrence, but are committed by Greek authorities in furtherance of a State policy, despite it being unofficial.

Moreover, although “unofficial” (because of their illegality), the collective expulsions carried out in the Aegean are pursuant to and in furtherance of the official deterrence-based migration policies already implemented in Greece and at the EU’s external borders, whose “underlying motivations”¹²⁹ are to immediately reduce the number of migrants reaching Greece to seek asylum and to deter future migration movements towards Greece. The very fact that remedies for the flagrant violations of national and European law inherent in systematic collective expulsions are theoretically possible – and have been achieved to some degree in other contexts¹³⁰ – is only further evidence that the crimes being committed systematically in the Aegean form part of a deliberate, if “unofficial” Greek state and EU organisational policy.

Greek authorities’ migration and border policies do not exist in isolation. They are, for the most part, designed at the European Union level or are closely intertwined with EU migration policies. The “EU-Turkey Deal” of March 2016, which aims at further externalising migration management outside of the EU and at “stemming migration flows” into Europe, through deterrence policies towards migrants, is the main example of an EU policy consistently implemented in the Greek islands.¹³¹ Increasing political and financial support provided by

¹²⁷ *Prosecutor v. Rašević & Todović* (First Instance Verdict), No. X-KR/06/275, Court of BiH, 28 February 2008, p. 37.

¹²⁸ Dimitris Angelidis, ‘Together they return, together they cover it up’, efsyn, 28 November 2020, available at (Greek):

https://www.efsyn.gr/ellada/dikaioimata/270551_mazi-epanaproothoyn-mazi-sygkalyptoyn;

Giorgos Christides et al, ‘How Frontex boss Leggeri has deceived the public’, Spiegel Politics, available at (German):

<https://www.spiegel.de/politik/ausland/wie-frontex-chef-fabrice-leggeri-die-oeffentlichkeit-getaeuscht-hat-a-97235557-16c5-4340-bf9b-c1032b2dabab>.

¹²⁹ *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC Trial Judgment, ICC-01/05-01/08-3343, 21 March 2016, §160; *Prosecutor v. Bosco Ntaganda*, ICC Trial Judgment, ICC-01/04-02/06, ICC, 8 July 2019, §674; *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya*, ICC-01/09-19, 31 March 2010, §§ 90-93.

¹³⁰ See, for example:

The recent decision rendered by the Court of Rome, in which illegal acts of pushback from Italy to Slovenia were condemned as violations of constitutional and international law obligations, including the right to seek asylum, the right to effective remedy and the prohibition of collective expulsions, while also acknowledging the inhuman and degrading treatment migrants are subjected to along the Balkan route:

Euromed Monitor, ‘Rome Court decision against Italy’s illegal migrant pushbacks is a significant step’, 26 January 2021, available at: <https://euromedmonitor.org/en/article/4120/Rome-Court-Decision-Against-Italy-s-Illegal-Migrant-Pushbacks-is-a-Significant-Step>; and *Commission v Hungary*, Case C-808/18, 17 December 2020.

¹³¹ Consider the pursuit of externalization deals with countries such as Turkey, as exemplified by the 2016 EU-Turkey ‘Deal’. See, for example: Kondylia Gogou, ‘The EU-Turkey deal: Europe’s year of shame’, Amnesty International, 20 March 2017, available at: <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>. Or the ‘new’ EU ‘Pact on Migration

EU institutions and agencies to Greece's border management activities are further illustrations of the strong involvement of the EU in migration policies in Greece. Since 2015, Greece has benefited from 2.64 billion euros of EU support to better manage migration and protect the EU's external borders.¹³² Part of this budget (10.75 million euros) was dedicated to the "Reinforcement of Eastern Greek Borders" in 2020, and another part (22.85 million euros) was invested for the "Deployment of Hellenic Coast Guard maritime assets and Border Surveillance Officers".¹³³ The fact that Frontex "Joint Operation Poseidon" in the Aegean was reinforced with personnel and equipment following the "Rapid Border Intervention Aegean" in March 2020¹³⁴ is further proof of the EU's close involvement in Greece border management policies.

In light of the above, the collective expulsions as a widespread and systematic attack on migrant lives, are undeniably both pursuant to, and in furtherance of, Greek State and EU organisational migration policies.

and Asylum which provides a framework to facilitate and justify obstruction of access to asylum procedures, mass arbitrary detention and refoulement. See, for example, European Association of Lawyers for Democracy and World Human Rights (ELDH), 'ELDH Statement on the new EU 'Pact on Migration and Asylum'', 5 November 2020, available at:

<https://eldh.eu/2020/11/05/eldh-statement-on-the-new-eu-pact-on-migration-and-asylum/>.

¹³² *Ibid.* n.85.

¹³³ *Ibid.* n.85.

¹³⁴ Frontex, 'Frontex launches rapid border intervention on Greek land border', 13 March 2020, available at:

<https://frontex.europa.eu/media-centre/news-release/frontex-launches-rapid-border-intervention-on-greek-land-border-j7k21h>.

CONCLUSIONS

Since March 2020, collective expulsions in the Aegean Sea have been perpetrated with impunity. Despite the insurmountable evidence demonstrating the reality and the extreme violence of these pushbacks, the national and European response has been to turn a blind eye: failing to even attempt to hold the responsible Greek authorities to account, let alone other public and private actors involved directly or indirectly in collective expulsions. On the contrary, the European Commission has praised the violent “border and migration management”¹³⁵ practices implemented in Greece and underwritten their support with substantial financial and material assistance.

While the systematic violence of pushbacks in the Aegean is scandalous, it is also the logical endpoint of a European border regime that has increasingly prioritised and funded detention and containment through the ‘hotspot’ system, accelerated procedures, deportations, border militarisation and externalisation through deals of questionable legality with third countries. The absence of serious investigations, let alone practical steps to redress violations are a clear sign that **collective expulsions form part of a Greek and European migration policy: instrumentalising human suffering in acts of spectacular state violence for the purpose of deterring migration, at any cost.**

After unilaterally (and illegally) suspending the right to seek asylum and violently fortifying its borders in March 2020, the Greek government has repeatedly hardened its legislation on international protection¹³⁶ and systematically obstructed access to asylum in flagrant disregard for EU law. In the context of the COVID-19 pandemic which prevented Greece carrying out “official” deportations to Turkey, collective expulsions have conveniently served as an unofficial implementation of the “EU-Turkey Deal” and other bilateral “readmission” agreements with Turkey, which form part of fortress Europe’s border externalisation drive. Beyond being in egregious violation of international, European and national human rights law, the constituent elements of the *modus operandi* of collective expulsions in the Aegean reach the level of gravity required for the prosecution of crimes against humanity. The fact that hundreds of migrants have been, and continue to be, deliberately and systematically abandoned in the middle of the sea, without means to call for rescue, on unseaworthy, motorless dinghies and liferafts, is a new landmark in the erosion of human rights in Europe. **It reveals how migrants’ lives are increasingly treated as disposable, in a manner that has historically accompanied the commission of atrocity crimes.**

Europe’s dehumanising and punitive treatment of racialised migrants from the Global south deliberately and effectively obscures European states’ own historical and ongoing imperialist role in many of the reasons for such migration, including invasions, occupations and other acts of war, colonial divide and rule policies, the arms trade, land dispossession, resource extraction and environmental degradation. It also obscures the fact that it is nation states that possess the monopoly on violence – as the encounters between armed, highly equipped state actors and people seeking freedom and safety in flimsy dinghies described in the testimonies of survivors of collective expulsions at parts 1 and 2 above so clearly demonstrates. For survivors of collective expulsions in the Aegean, the locus of violence is certainly such actors, who operate pursuant to state and organisational policies.

In this context, it is important to ask what justice might look like for survivors of crimes against humanity in the Aegean, many of whom experience ongoing psychological trauma and distress as a result of these crimes. Survivors who have been in contact with LCL have spoken about justice in terms of being able to safely reach Europe. **Justice for collective expulsions as crimes against humanity must therefore include safe and legal routes to Europe, as well as defunding, demilitarising and dismantling Europe’s violent border regime.**

¹³⁵ European Commission, ‘Press remarks by Vice-President Schinas on immediate actions to support Greece’, 4 March 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_395.

¹³⁶ Oxfam and Greek Council for Refugees, ‘Diminished, Derogated, Denied’, 1 July 2020, available at:

<https://www.oxfam.org/en/press-releases/greeces-new-asylum-system-designed-deport-not-protect-warn-greek-council-refugees>.