

## Legal Instruments Related to Refugees' Mental Health Care: From Greek Legislation to Practice



Anna Carolina Moreno

**ABSTRACT:** Since the titled Global Refugee Crisis of 2013, the number of refugees has been constantly increasing. In 2018, the global number of persons of concern identified by UNHCR was 70.8 million, of which more than 25.9 million were refugees, and about half of them were below the age of 18. Refugees are subjected to multiple risk factors before, during, and after their displacement. Besides, the conditions why they had to flee their countries, the insecurity, and anxiety connected to their future, inter alia, are among the stressors that may affect refugees mental well-being. The relation between the existing international instruments related to refugees, mainly those concerning their right to health and the actual care they receive, compose complex scenery that asks for more attention to allow refugees to have positive outcomes, such as improving their mental well-being, which assists in social inclusion. This paper aimed at showing the gap between active mental health care rights and government practices, specifically those within the Greek context. This was made through exploratory research of qualitative nature, based on literature from the period of 2009-2019 and legal and international documents related to descriptors such as mental health care and refugees.

### INTRODUCTION

The situation that is presently referred to as the “Global Refugee Crisis” can be traced back to 2013. According to the United Nations High Commissioner for Refugees (UNHCR) Population Statistics Database, the number of refugees has been constantly increasing ever since, diverting from a stable migratory pattern existent since the 2000s and early 2010s.<sup>1,2</sup>

In this context, between 2015 and early 2016, Greece received more than one million migrants and refugees, who were fleeing violence in their countries of origin. Consequently, the Balkans were transformed into “an express corridor for countless refugees”<sup>3</sup> to move to Northern European countries.<sup>4,5,6</sup>

In these journeys, refugees are not only subjected to multiple risk factors before their displacement, but also during and after their travels. Besides, the conditions why they had to flee their countries, the insecurity, and anxiety connected to their future, inter alia, are among the stressors that may affect refugees' mental well-being.<sup>7,8,9,10</sup>

Bearing this in mind, psychological health issues are one of the most relevant health issues refugees present. Nevertheless, the relation between the existing international instruments related to refugees, mainly those concerning their right to health, and

<sup>1</sup> United Nations High Commissioner for Refugees, Global Trends: Forced Displacement in 2018, [website], 2019, <https://www.unhcr.org/5d08d7ee7.pdf>, (accessed 14 October 2019).

<sup>2</sup> S. F. Martin, 'The Global Refugee Crisis', Georgetown Journal of International Affairs, vol. 17, no. 1, 2016, pp. 5-11.

<sup>3</sup> D. Dalakoglou, 'Europe's last frontier: The spatiality's of the refugee crisis', City, vol. 20, no. 2, 2016, p. 184.

<sup>4</sup> United Nations High Commissioner for Refugees, Greece, [website], <https://www.unhcr.org/greece.html>, 2018, (accessed 08 December 2019).

<sup>5</sup> Rescue.org, Greece, [website], <https://www.rescue.org/country/greece>, (accessed 08 December 2019). <sup>6</sup> Eurostat, Asylum applications (non-EU) in the EU-28 Member States, 2008-2018, [website], [https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics#Citizenship\\_of\\_first-time\\_applicants:\\_largest\\_shares\\_from\\_Syria.2C\\_Afghanistan\\_and\\_Iraq](https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Citizenship_of_first-time_applicants:_largest_shares_from_Syria.2C_Afghanistan_and_Iraq), (accessed 09 January 2020).

<sup>7</sup> United Nations High Commissioner for Refugees, Desperate Journeys: Refugees and migrants arriving in Europe and at Europe's borders, 2019, p. 13.

<sup>8</sup> World Health Organization, 'Mental Health in Primary Care: Illusion or Inclusion?', World Health Organization, 2018a, p. 36.

<sup>9</sup> J. Abarbanel, 'Moving with emotional resilience between and within cultures', Intercultural Education, vol. 20, 2009, p. 133

<sup>10</sup> L. de W. Pastoor, 'The mediational role of schools in supporting psychosocial transitions among unaccompanied young refugees upon resettlement in Norway', International Journal of Educational Development, vol. 41, 2015, p. 246.

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the actual care they receive, compose a complex scenery that asks for more attention to allow them to have positive outcomes, such as improving their mental well-being, which assists in social inclusion and adaptability.<sup>11,12</sup> Nonetheless, the provisions of care depend not only on existing legislation but also of States' capacity and willingness to abide by them. This paper aimed at showing the gap between active mental health care rights and government practices, specifically those within the Greek context.<sup>13</sup>

### Development

This study is an exploratory research of qualitative nature, based on both literature from the period of 2009-2019, as well as national and international legal documents related to descriptors such as "mental health care", "Greek asylum system", "culture shock", and "refugees".<sup>14</sup>

The methodological path focused on developing following themes: 1) International instruments related to refugees' mental health 2) Greece's national instruments protecting refugees' right to mental health care 3) Factors that show incompliance of the Greek government in abiding to the protection of the aforementioned rights.

#### 1. International instruments related to refugees' mental health

The right of persons to seek asylum from persecution in other countries was established in 1948 with Article 14 of the Universal Declaration of Human Rights (UDHR). Specific documents referring to the status of refugees can be found since the 1949 United Nations General Assembly (UNGA) Resolution 319 A (IV), which founded UNHCR, and continuously developed even after the ratifying of the 1951 Convention relating to the Status of Refugees.

Article 1 of the 1951 Convention defined the term "refugee" and unified previously existing concepts and could be summarized with the following words:

The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.<sup>15</sup>

The creation of this specific instrument related to refugees was needed due to their vulnerable status. In order to allow them the possibility of enjoying their "fundamental rights and freedoms without discrimination"<sup>16</sup>, "the scope of and protection accorded by"<sup>17</sup> previous international agreements, such as the Charter of the United Nations, had to be extended.<sup>18</sup>

"Protecting and caring for refugees is life-saving for the individuals involved"<sup>19</sup> mainly because of the multiple dangers they must confront even before leaving their countries. People forced into displacement may do so because of existing conflicts, human rights violations, environmental disasters, or general insecurities. Nonetheless, fleeing their States may represent further risks, as they can fall victim to, inter alia, human trafficking or sexual abuse.<sup>20</sup>

Because of the risk-factors they are subjected to throughout their displacement, refugees may present various health issues, among them, those of psychological character. Further on there may be an additional psychological burden through worries about family, either left behind in the home country or settling into the new country; poor living conditions; lack of good social integration and cultural attitudes; or unemployment.<sup>21</sup>

As seen, their cross-cultural journey requires the capability of adjusting to different realities, be it in an asylum country or after being admitted to resettlement in a third country. This situation of "moving between cultures can contribute to high emotional

<sup>11</sup> World Health Organization, 'Mental Health in Primary Care: Illusion or Inclusion?', World Health Organization, 2018a.

<sup>12</sup> International Federation of Red Cross and Red Crescent Societies Reference Centre for Psychosocial Support, Danish Red Cross Youth, Psychosocial Support for Youth in Post-Conflict Situations: A trainer's handbook, Denmark, Paramedia 1679, 2014.

<sup>13</sup> A. Aust, Handbook of International Law, Cambridge University Press, 2<sup>nd</sup> ed., 2010.

<sup>14</sup> L.C.H. Zanella, 'Metodologia de pesquisa', 2 ed., Florianópolis, UFSC, 2011.

<sup>15</sup> United Nations High Commissioner for Refugees, Convention and Protocol relating to the Status of Refugees, Geneva, United Nations, 2010, p. 3.

<sup>16</sup> *ibid.*, p. 13.

<sup>17</sup> *ibidem.*

<sup>18</sup> United Nations High Commissioner for Refugees, Convention and Protocol relating to the Status of Refugees, *cit.*

<sup>19</sup> United Nations High Commissioner for Refugees, Report of the United Nation High Commissioner for Refugees – Part II: Global compact on refugees, New York, United Nations, 2018, p. 2.

<sup>20</sup> United Nations High Commissioner for Refugees, Desperate Journeys: Refugees and migrants arriving in Europe and at Europe's borders, 2019, p. 13.

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arousal (discomfort, irritability, anger, homesickness, sadness)"<sup>22</sup>.

In a 2018 Report, the World Health Organization (WHO) stated that the mental disorders most related to refugees and migrants in the European Region are depression and anxiety; post-traumatic stress disorder (PTSD); alcohol and other substance abuse; psychosis and schizophrenia; and child and adolescent internalizing disorders (PTSD, depression, and anxiety).<sup>23</sup>

While the 1951 Convention and its 1967 Protocol do not have a specific provision referring to refugee's mental health care, Article 5 of the former document affirms that "Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention".<sup>24</sup>

This statement is deepened through the analysis of the four volumes available of the Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR, which shows that rights related to refugees have a wide range of more than 260 documents. It considered the inter-relationship among international refugee law and "human rights, humanitarian, criminal and other bodies of law"<sup>25</sup>, that further reiterates their entitlement "to the same universal human rights and fundamental freedoms as other people."<sup>26</sup>

This means that not only the International Bill of Human Rights, which includes the UDHR, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR); but also the Statute of the International Court of Justice (ICJ); international maritime and aviation law; or conventions, guidelines, protocols, principles, codes of conduct, and other documents related to, for example, torture; enforced disappearance; discrimination; slavery, slavery-like practices, and forced labour; and freedom of association have to be considered in the defense of refugees' rights.<sup>27,28</sup>

In addition, the creation of instruments in diverse regions such as Africa, Europe, Asia, and the Americas, where issues differ in context and existing resources are valuable for the development of the international refugee framework. These regional recommendations, comments, conventions, treaties, protocols, inter alia, on the aforementioned topics add to the consistency of existing rights, even expanding them in some cases.<sup>29,30</sup>

Furthermore, special attention is given, regionally and internationally, to specific groups of people, such as children, women, and people with disabilities.

Bearing this in mind, these various sources related to refugees' rights can be found to bind States to provide adequate treatment, including of those psychological disorders, for everyone, including refugees.<sup>31,32</sup>

Article 13.1(b) of the Charter of the United Nations already affirmed that the UNGA would work in "promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>33</sup> This is reiterated in Article 55, where the promotion of solutions to the previously mentioned goals is one of the objectives of the United Nations.<sup>34</sup>

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<sup>21</sup> World Health Organization, 'Mental Health in Primary Care: Illusion or Inclusion?', World Health Organization, 2018a, p. 36.

<sup>22</sup> J. Abarbanel, 'Moving with emotional resilience between and within cultures', *Intercultural Education*, vol. 20, 2009, p. 133

<sup>23</sup> World Health Organization, 'Report on the health of refugees and migrants in the WHO European Region. No PUBLIC HEALTH without REFUGEE and MIGRANT HEALTH', Copenhagen, World Health Organization, 2018b.

<sup>24</sup> United Nations High Commissioner for Refugees, *Convention and Protocol relating to the Status of Refugees*, Geneva, United Nations, 2010, p. 17.

<sup>25</sup> United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', *International Instruments*, vol. 1, Geneva, UNHCR, 2007a, foreword.

<sup>26</sup> World Health Organization, A72/25, World Health Organization, 2019, p. 2.

<sup>27</sup> United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', *International Instruments*, vol. 1, Geneva, UNHCR, 2007a.

<sup>28</sup> United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', *International Instruments*, vol. 2, Geneva, UNHCR, 2007b.

<sup>29</sup> United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', *Regional Instruments*, vol. 3, Geneva, UNHCR, 2007c.

<sup>30</sup> United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', *Regional Instruments*, vol. 4, Geneva, UNHCR, 2007d.

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Article 25 of the UDHR states that:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.<sup>35</sup>

In addition, ICESCR's Article 12 expands the ideas already established by the previous documents stating that "State Parties (...) recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." and includes "steps to be taken (...) to achieve the full realization of this rights".<sup>36</sup>

In the General Recommendation No. 30 on Discrimination Against Non-Citizens, the Committee on the Elimination of Racial Discrimination asks State Parties to "remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health"<sup>37</sup> and to "respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services".<sup>38</sup>

Furthermore, other documents, such as Article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 9 of the 1978 Declaration on Race and Racial Prejudice, and Article 5 of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief affirm that host-countries should also respect population groups of foreign origin's dignity and cultural values. The 1978 Declaration even adds that States should invest "to facilitate their adaptation to the host environment".<sup>39</sup>

There are, as aforementioned, groups of more vulnerable people, such as children, women, and persons with disabilities, which deserve an amplified observation of their rights to health through their available specific instruments.

Firstly, in the case of women, one could observe Articles 12 and 14 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Article 3 of the 1993 Declaration on the Elimination of Violence against Women.

Secondly, in the case of children, the 1989 Convention on the Rights of the Child (CRC) has multiple articles, which could be mentioned, such as the 3<sup>rd</sup>, 17<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, and 39<sup>th</sup>. In addition, General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin further expands the relevance of providing them with "qualified persons in order to ensure the child's physical and psychosocial health".<sup>40</sup>

Thirdly, Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD) provides a wide list of obligations to State parties on their duties to these people's health care. In this sense, also the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care is fundamental because it establishes underlying freedoms and basic rights, as asserted by the first two paragraphs of Principle 1:

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.
2. All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.<sup>41</sup>

<sup>31</sup>The Office of the United Nations High Commissioner for Human Rights, International Covenant on Economic, Social and Cultural Rights, [website], <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, (accessed 24 February 2020).

<sup>32</sup>United Nations Organization, Convention on the Rights of the Child, [website], 2010, [https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf?\\_ga=2.104761922.392084270.1571051976-932679225.1571051976](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.104761922.392084270.1571051976-932679225.1571051976), (accessed 15 October 2019).

<sup>33</sup>United Nations Organization, Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 1945, p. 5.

<sup>34</sup>United Nations Organization, Charter of the United Nations and Statute of the International Court of Justice, cit.

<sup>35</sup>United Nations Organization, Universal Declaration of Human Rights, [website], 2015, [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf), (accessed 14 October 2019).

<sup>36</sup>United Nations Organization, International Covenant on Economic, Social and Cultural Rights, United Nations, 1966, p. 4.

<sup>37</sup>United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', International Instruments, vol. 1, Geneva, UNHCR, 2007a, p. 593.

<sup>38</sup>ibidem.

<sup>39</sup>ivi, p. 33

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This document also clarifies how the determination of mental illness should be made, on the relevance of community and culture in one's treatment, and on standards of care, among other relevant details.<sup>42</sup>

As proven by the instruments above, health care is an important part of refugees' rights. According to the WHO "mental health is an inherent element of health and well-being"<sup>43</sup> and "refugee and migrant health security is part of global health security".<sup>44</sup> This is also proven by the UNGA's vision of the 2030 Agenda for Sustainable Development Goals, where Goal 3 aims to "ensure healthy lives and promote well-being for all at all ages".<sup>45</sup> Specifically, the Goal highlights the importance of equality, non-discrimination, and the assurance of physical, mental and social well-being.<sup>46</sup>

### 2. Greek national instruments protecting refugees' right to mental health care

Greece, as a state party to the Geneva Convention on Refugees of 1951 and its 1967 Protocol, is bound to adhere to the fundamental asylum-law of nonrefoulement and thus to provide asylum to those who meet the criteria. In addition, as a Member State of the European Union (EU) and the Schengen area, Greece is required to comply with the directives and regulations that constitute the Common European Asylum System (CEAS) and the Schengen Borders Code, which requires that the external borders be secured. Greece is also obliged to respect the binding Charter of Fundamental Rights of the European Union, which recognizes the right to asylum.<sup>47</sup>

In addition to the international legal framework related to refugee and human's rights, Greece has new procedures for granting international protection based on the Geneva Convention and on national objective, non-discriminatory and unbiased standards.<sup>48</sup>

Those who are recognized as refugees or receive subsidiary protection are granted several rights and benefits by the Greek government. They encompass family unity, residence permit, travel documents, education, social welfare, access to employment, repatriation, extra care and protection to unaccompanied minors (UAM), and "the right to free access to primary, secondary and tertiary health care"<sup>49</sup>.<sup>50</sup>

Thus,

Recognized refugees or persons with subsidiary protection status have the right to health care on the same basis and conditions as nationals. Those who have special needs, such as (...) people who have been subject to torture or other inhuman or degrading treatment, (...) as well as trafficking victims and those who come from conflict areas, are entitled to sufficient medical care, including psychological care and support, under the same conditions as nationals. Presidential Decree 220/2007 provides for free healthcare services for all asylum seekers regardless of whether they are hosted in the reception facilities or not. However, access is conditioned depending on the economic status of the asylum seekers.<sup>51</sup>

This means, that not only recognized refugees or persons with subsidiary protection status have the right to access the public health system but also applicant asylum seekers since they have the right to stay in Greece during their application process. Bearing this in mind, the Commission urged "Greece to ensure that the reception conditions in both open and closed reception accommodations, and access to health care"<sup>52</sup> respect established standards.<sup>53,54</sup>

These rights add to the already established international framework protecting refugees' right to appropriate health care.

### 3. Factors that show incompliance of the Greek government in abiding to the protection of refugees' right to mental health care.

<sup>40</sup> United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', International Instruments, vol. 1, Geneva, UNHCR, 2007a, p. 602.

<sup>41</sup> *ivi*, p. 503.

<sup>42</sup> United Nations High Commissioner for Refugees, *op. cit.*

<sup>43</sup> World Health Organization, 'Mental Health in Primary Care: Illusion or Inclusion?', World Health Organization, 2018a, p. 1

<sup>44</sup> World Health Organization, 'Report on the health of refugees and migrants in the WHO European Region. No PUBLIC HEALTH without REFUGEE and MIGRANT HEALTH', Copenhagen, World Health Organization, 2018b, p. 12.

<sup>45</sup> United Nations Organization, A/RES/70/1, United Nations, 21 October 2015, p. 14.

<sup>46</sup> United Nations Organization, *op. cit.*

<sup>47</sup> T. Papadimitriou, 'Greece', In: Refugee Law and Policy In Selected Countries, The Law Library of Congress, 2016, pp. 149-150.

<sup>48</sup> T. Papadimitriou, *op. cit.*

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Because of the remnants of the 2009 economic crisis, the Greek government faced the impossibility of providing correct support to all the refugees in need. Moreover, the “unprecedented migratory flow of 2015 combined with a shift in the migration route coming to Greece from Turkey dramatically tested Greece’s already weakened asylum system.”<sup>55</sup>

Since the ratification of the Convention relating to the Status of Refugees, traditional and new asylum countries have gradually implemented more restrictive deterrence policies, legal or physical, “to prevent refugees from accessing asylum.”<sup>56</sup> This tightening of national asylum systems and border control have the goal of restricting “access to or cut short ordinary asylum procedures, targeting specific categories of refugees based on their nationality, claim, manner of entry and/or arrival point.”<sup>57</sup> They also aim at preventing refugees from accessing the territory of asylum countries through, inter alia, visa regulations and the interception of migrant boats on high seas.<sup>58</sup> In Europe, this happened because of the understanding of the aforementioned high number of refugee arrivals as a major crisis by local citizens and governments. Therefore, refugees began to gradually face greater difficulties to travel deeper into Europe, having even to accept the impossibility of doing so.<sup>59</sup>

One of the actions barring refugees’ passage was a project implemented by the European Union (EU) and the European Commission, called the Dublin System. It is a conjunct programme where the establishment of “EURODAC” - Regulation (EU) no. 603/2013 – installed a mechanism “for the comparison of fingerprints for the effective application of” the Dublin Regulation - Regulation (EU) no. 604/2013. The latter one “established the criteria and mechanisms for determining which EU Member State is responsible for an asylum application.”<sup>60,61</sup>

The Dublin System “was not designed to ensure a sustainable sharing of responsibilities for asylum applicants across the EU.”<sup>62</sup> The system implies that the responsibility of examining an asylum claim lies primarily under the Member State that played the greatest role in an individual’s entry in Europe, which is, usually, the country of first entry.<sup>63</sup>

Even though the European Commission proposed a reform of the Common European Asylum System, the previously mentioned rules are currently still into force. These policies also mean that countries like Italy and Greece bear greater responsibility for the lives of those who entered Europe hoping for safety and higher well-being.<sup>64,65</sup>

Thus, despite Greece having always received a “large number of migrants attempting to enter the EU illegally due to its geographic location”<sup>66</sup>, its responsibilities towards the Dublin Regulation also demanded higher efforts in assessing asylum seekers’ reception. The increased migrant flow highlighted the State’s incapacity of properly registering migrants and their fingerprints and returning economic migrants to their countries of origin.<sup>67,68,69</sup>

Furthermore, the polemic agreement made between Europe and Turkey in 2015, or the EU-Turkey Deal, showed how “EU governments repeatedly sought to shift responsibility onto countries outside the EU”.<sup>70</sup> It was understood by some critics as a desperate move, in which European governments accepted to converse with a discredited State because the respect of human rights and democracy was gradually declining in that time.<sup>71,72</sup>

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<sup>49</sup> United Nations High Commissioner for Refugees, Access to Healthcare, [website], <https://help.unhcr.org/greece/living-in-greece/access-to-healthcare/>, (accessed 23 September 2020).

<sup>50</sup> T. Papademetriou, ‘Greece’, In: *Refugee Law and Policy In Selected Countries*, The Law Library of Congress, 2016, pp. 149-164.

<sup>51</sup> *ivi*, p. 158.

<sup>52</sup> *ivi*, p. 155.

<sup>53</sup> T. Papademetriou, *op. cit.*

<sup>54</sup> B. Blitz et al, ‘Health Challenges in Refugee Reception: Dateline Europe 2016’, *International Journal of Environmental Research and Public Health*, vol. 14, 2017.

<sup>55</sup> T. Papademetriou, ‘Greece’, In: *Refugee Law and Policy In Selected Countries*, The Law Library of Congress, 2016, p. 150.

<sup>56</sup> T. Gammeltoft-Hansen, ‘International Refugee Law and Refugee Policy: The Case of Deterrence Policies’, *Journal of Refugee Studies*, vol. 27, no. 4, 2014, p. 576.

<sup>57</sup> *ivi*, p. 577.

<sup>58</sup> T. Gammeltoft-Hansen, *op. cit.*

<sup>59</sup> D. Dalakoglou, ‘Europe’s last frontier: The spatialities of the refugee crisis’, *City*, vol. 20, no. 2, 2016.

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Nevertheless, the European Commission reviewed the impact of this statement of cooperation between the European States and the Turkish government in March 2019 and affirmed that since its implementation in 2016, it “had immediate and tangible results. Thanks notably to the cooperation with the Turkish authorities, arrivals decreased significantly – showing clearly that the business model of smugglers exploiting migrants and refugees can be broken.”<sup>73</sup>

The EU-Turkey joint action plan:

(...) seeks to control the crossing of refugees and migrants from Turkey to the Greek islands, and was initially intended to curb the large numbers of refugees arriving in Europe (...) The crux of the deal was that every person arriving irregularly (i.e. by boat, without official permission or passage) to the Greek islands – including asylum-seekers – would be returned to Turkey. In exchange, EU Member States would take one Syrian refugee from Turkey for every Syrian returned from the islands.<sup>74,75</sup>

This meant that, rapidly, reception facilities and temporary camps on the Greek islands became detention centres to withhold these irregular migrants and further redirect them to Turkey. Refugees started to be held indefinitely in places, located in Greece's mainland and various islands, with gradually deteriorating conditions that did not improve with time. These settings became overcrowded and increasingly dangerous ever since, access to proper sanitation facilities, medical care or nutritious food became extremely difficult.<sup>76</sup>

After the Dublin System, the Greek government was accused of “deliberately waiving through refugees (who should be registered in Greece as soon as they enter).”<sup>77</sup> Also, the Greek government was further censured for rejecting asylum applications without correctly assessing the cases on the assumption that Turkey was a safer environment for asylum-seekers and refugees. The government also failed in identifying and relocating vulnerable individuals.<sup>78</sup> Several European institutions and bodies have been monitoring Greece's process in raising its asylum system to the EU and Council of Europe's standards. The European Commission pointed out various infringements for, inter alia, maintaining “poor reception conditions, especially those for vulnerable groups”<sup>79</sup> and observes the implementation of its recommendations.<sup>80</sup>

In addition, almost a decade ago, the European Court of Human Rights and the Court of Justice of the European Union already pointed out some “systemic deficiencies” in Greece's asylum system. Its government made comprehensive efforts in establishing new reception centres, improving its reception conditions (including conditions for those in detention), fingerprinting irregular migrants and asylum applicants, ensuring appropriate treatment of unaccompanied minors, and ensuring access to an effective remedy against a negative decision.<sup>81</sup>

Nevertheless, the systems available inside reception centres were overstretched and depended on geography and available resources within centres. Medical provisions were “uneven and access uncertain.”<sup>82</sup>

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<sup>60</sup> European Commission, The Dublin System, [website], [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet\\_-\\_the\\_dublin\\_system\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet_-_the_dublin_system_en.pdf), (accessed 09 December 2019).

<sup>61</sup> Official Journal of the European Union, Regulations, L 180/1, 29.6.2013.

<sup>62</sup> European Commission, The Dublin System, [website], [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet\\_-\\_the\\_dublin\\_system\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160406/factsheet_-_the_dublin_system_en.pdf), (accessed 09 December 2019).

<sup>63</sup> *ibidem*.

<sup>64</sup> European Commission, Country responsible for asylum application (Dublin), [website] [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en), (accessed 08 January 2020).

<sup>65</sup> Rescue.org, Greece, [website], <https://www.rescue.org/country/greece>, (accessed 08 December 2019). <sup>66</sup> T. Papademetriou, ‘Greece’, In: Refugee Law and Policy In Selected Countries, The Law Library of Congress, 2016, p. 150.

<sup>67</sup> Rescue.org, Greece, [website], <https://www.rescue.org/country/greece#what-caused-the-crisis-in-greece>, (accessed 20 December 2019).

<sup>68</sup> Kedisa, The Refugee Crisis in Europe: Challenges and Problems, Olga Aristeidou, [website], <https://kedisa.gr/en/3463/>, (accessed 20 December 2019).

<sup>69</sup> T. Papademetriou, *op. cit.*

<sup>70</sup> Kedisa, *op. cit.*

<sup>71</sup> Human Rights Watch, Turkey, [website], <https://www.hrw.org/europe/central-asia/turkey>, (accessed 29 December 2019).

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<sup>73</sup> European Commission, EU-Turkey Statement - Three years on, [website], [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190318\\_eu-turkey-three-years-on\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190318_eu-turkey-three-years-on_en.pdf), (accessed 19 January 2020).

## Legal Instruments Related to Refugees' Mental Health Care: From Greek Legislation to Practice

Adding to this, Medicines du Monde (MdM) noticed some issues that impacted their work during their health care intervention in response to the 2015 refugees, asylum seekers, and migrants' arrivals. Among them, the "limited resources within the state health system, notably human resources (health care workers and interpreters) and logistical capacity (ambulance and transport capabilities) to meet the needs of an expanding population."<sup>83</sup>

MdM has been present in Greek territory for 23 years and was "one of the main health actors working in response to the refugee crisis"<sup>84</sup> due to their already established programs.

In response to the high number of incomers, MdM made a partnership with the Hellenic Seaways to provide medical care covering crossings from Lesvos and Piraeus in early 2016.<sup>85</sup> The services provided included "integrated mental health with psychosocial support (MHPSS) with the provision of psychological first aid, and onboard Psychologists for identification and referral of those in need to MdM services in Athens."<sup>86</sup> This allowed professionals to note that 2,3% of service users reported mental health problems. Many of these people reported feeling hopeless, trapped and frustrated. Other issues that were reported included depression, anxiety, sleep disturbance, post-traumatic stress disorder (PTSD) and self-harming. Service users cited poor living conditions, uncertainty about the future, lack of information and fear of running out of money as their top concerns.<sup>87</sup>

Unfortunately, mental health concerns were only assessed when self-reported, since there were not only physical limitations related to space and lack of interpreters but also differing belief systems, cultural expectations and lack of trust establishment, which hindered the detection of further mental health issues.<sup>88</sup> MdM's intervention "identified several key unmet health needs including (...) NCDs<sup>89</sup> and MHPSS"<sup>90</sup>, since necessities related to MHPSS are often overlooked if compared to communicable diseases, for example.<sup>91</sup> "For a variety of reasons, mainly associated with the poor finances but also with failure to establish priorities, the mental health of refugees in Greece has not received the attention it deserves."<sup>92</sup> Due to this incapacity and inability to efficiently respond to this new migratory flow, the humanitarian crisis became chronic.<sup>93</sup>

This was described by MdM through the prolonged deprivation met by asylum seekers not only with unmet material and health needs but also with the loss of social structure and uncertainty that bred hopelessness. In detail, the stressful events suffered by asylum seekers that may consequently affect their risk of psychopathology are not limited to their physical, emotional, and traumatic experiences. Challenges in confronting poverty, hostility and racism and their experience with "changes in family functioning and living conditions as well as low social support and isolation"<sup>94</sup> tend "to have a strong and negative impact on health outcomes"<sup>95</sup>, which seemed "to worsen with longer periods spent in the reception process."<sup>96,97,98</sup>

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<sup>74</sup> Help Refugees, The EU-Turkey Deal: Explained, Olivia Long, [website], <https://helprefugees.org/news/eu-turkey-deal-explained/>, (accessed 20 December 2019).

<sup>75</sup> On 28 February 2020 Turkey "opened its gates" for refugees to access Greece due to disagreements between the EU and Turkey's military efforts in Syria. This caused Athens to declare state of emergency and the EU to consider new plans of actions towards the possible "mass migration flows" that may occur. It also had multiple consequences, inter alia, on Europe's border control and Greece's actions related to new asylum applications. See the European Parliamentary Research Service's "EU-Turkey relations in light of the Syrian conflict and refugee crisis" briefing by Branislav Stanicek for more information.

<sup>76</sup> Help Refugees, The EU-Turkey Deal: Explained, Olivia Long, [website], <https://helprefugees.org/news/eu-turkey-deal-explained/>, (accessed 20 December 2019).

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<sup>79</sup> T. Papademetriou, 'Greece', In: *Refugee Law and Policy In Selected Countries*, The Law Library of Congress, 2016, p. 151.

<sup>80</sup> T. Papademetriou, *op cit*.

<sup>81</sup> *ivi*, p. 150.

<sup>82</sup> B. Blitz et al, 'Health Challenges in Refugee Reception: Dateline Europe 2016', *International Journal of Environmental Research and Public Health*, vol. 14, 2017, p. 16.

<sup>83</sup> R. Glazik et al, 'On the ferries: the unmet health care needs of transiting refugees in Greece', *International Health*, vol. 9, 2017, pp. 272-273.

<sup>84</sup> *ivi*, p. 272.



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### CONCLUSION

As proposed, this study explicates that key States' interests may enter conflict with refugee policies and lead to "practices that prima facie violate refugee rights."<sup>99</sup> The physical and legal impediments can be interpreted as internal and external mechanisms not only to observe travellers throughout their journeys but also to displace State responsibility to third States and private parties, as exemplified by the Dublin Regulation. Signatory governments of this restrictive policy have made several contrasting statements reiterating the relevance of the 1951 Convention, which proves that "formal support not necessarily translates into political practice in all areas."<sup>100</sup>

As mentioned, not only specific documents related to refugees are applicable to them, but also "human rights, humanitarian, criminal and other bodies of law."<sup>101</sup> Nevertheless, international law has the peculiarity of its binding force being "based on the consent (express or implied) of States and national self-interest."<sup>102</sup> Simultaneously, it has "no easy sanction for its breach, and there is no international police force or army that can immediately step in"<sup>103</sup>, which may lead to deviations of States from their international obligations. Even if this attitude could create unintended chaos in the international realm, domestic concerns determine national interest and the latter one gives meaning to the principles and rules of international law, which may, in a wrongful act of a State, be neglected or intentionally ignored.<sup>104</sup>

"International refugee law is seen by many as constitutive for national refugee policy. Yet, as asylum has become politicized, many countries have adopted procedural and physical deterrence mechanisms to prevent refugees from accessing protection."<sup>105</sup> The 1951 Convention does restrict States' sovereignty in deciding who has the right to enter and remain in their territories, it defines refugeehood and refugees' rights. Still, "international refugee law may not always be deep or inclusive enough, may lack the international enforcement capacity of other human rights treaties, and may not always be respected by the governments which formally endorse it."<sup>106</sup>

This lack of respect and political support for international refugee law has various explanations and are amplified by the nature of international law, where

Rules do not apply themselves (...). The fact that even binding international obligations are "open-textured" (...) and interpretation thus often depends on general principles, soft law, transnational adjudication, and state practice should come as no surprise for refugee lawyers. Yet, this not only affords states a certain interpretative scope or sovereign "margin of appreciation", it equally works to assist the continued effectiveness of international law from the perspective of international institutions, judiciaries and refugee advocates. This is particularly important in an area such as human rights and refugee law, where a strong *telos* invariably affects interpretation.<sup>107</sup>

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<sup>85</sup> R. Glazik et al, op. cit. <sup>86</sup> *ivi*, p. 273.

<sup>87</sup> *ivi*, p. 275.

<sup>88</sup> R. Glazik et al, op. cit.

<sup>89</sup> NCDs stands for non-communicable diseases.

<sup>90</sup> R. Glazik et al, 'On the ferries: the unmet health care needs of transiting refugees in Greece', *International Health*, vol. 9, 2017, p. 278.

<sup>91</sup> R. Glazik et al, op. cit.

<sup>92</sup> G.N. Christodoulou and M.T. Abou-Saleh, 'Greece and the refugee crisis: mental health context', *BJPsych International*, vol. 13, no. 4, 2016, p. 90.

<sup>93</sup> R. Glazik et al, op. cit.

<sup>94</sup> G.N. Christodoulou and M.T. Abou-Saleh, op. cit., p. 90.

<sup>95</sup> B. Blitz et al, 'Health Challenges in Refugee Reception: Dateline Europe 2016', *International Journal of Environmental Research and Public Health*, vol. 14, 2017, p. 2.

<sup>96</sup> *ivi*, p. 19.

<sup>97</sup> R. Glazik et al, op. cit.

<sup>98</sup> G.N. Christodoulou and M.T. Abou-Saleh, op. cit.

<sup>99</sup> T. Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies', *Journal of Refugee Studies*, vol. 27, no. 4, 2014, p. 576.

<sup>100</sup> T. Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies', *Journal of Refugee Studies*, vol. 27, no. 4, 2014, p. 578.

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Nevertheless, international refugee law has somewhat success in questioning newly applied deterrence policies, even if belatedly and has maintained considerable relevance and impact in States' behavior. This ability to respond to countries' non-liberal practices is a reason for optimism, although it consequently increases States' creativity in avoiding their responsibility towards refugees. Normative developments and judicial practice have helped maintain international refugee law's relevance but its answer to practices is not a perfect process. Some areas, such as the private sector, for example, are still out of reach for international legal innovations.<sup>108</sup>

But, despite States' failure in complying to international rules, the role of Non- Governmental Organizations (NGOs) in implementing additional projects where the State is less present, and services are inaccessible or inexistent has proven to be of extreme relevance. They "could be found in reception centre's both on Greek islands and mainland, often working in parallel with other relief providers"<sup>109</sup> and reached populations with services otherwise unavailable.<sup>110</sup>

NGOs have been gradually becoming "central actors on the world stage of development, receiving, in some cases, more donor funds than their state counterparts."<sup>111</sup>, as a consequence of donors' frustration with the inefficiency and opacity of state-based systems and the increasing interest towards NGOs, since they "have been seen as more efficient, effective, flexible, and innovative than governments, to be other-oriented and ideologically committed to democracy (...), and to be more accountable and transparent than the government."<sup>112</sup>

Even though NGOs may create their projects taking their survival as imperative, they tend to locate where "recipient need is very great and alternative means of service provision do not exist or are insufficient."<sup>113</sup> NGO's location also explains to policymakers and donors how they work, whom they target, and their priorities as an organization.<sup>114,115</sup>

NGOs may also act in complementarity to governance and state-building, since their activities are more present where the State is weaker.<sup>116,117</sup>

and do "account for the needs of their communities in deciding their location."<sup>118</sup>

In conclusion, international refugee law's adaptability leads to the continuous evolution of deterrence policies, which also influences the development of refugee and human rights law's interpretation. The ever-changing nature of the refugee framework and the slow adaptation of its institutionalization leads to a gap between refugee protection and their established rights. Nevertheless, the flexibility of NGOs is a trump that aids diminishing the worrying consequences of such difference between existing rights and obvious needs to be assessed.<sup>119</sup>

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<sup>101</sup> United Nations High Commissioner for Refugees, 'Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR', International Instruments, vol. 1, Geneva, UNHCR, 2007a, foreword.

<sup>102</sup> A. Aust, Handbook of International Law, Cambridge University Press, 2<sup>nd</sup> ed., 2010, p. 3.

<sup>103</sup> *ibidem*.

<sup>104</sup> A. Aust, *op. cit.*

<sup>105</sup> T. Gammeltoft-Hansen, *op. cit.*, p. 574.

<sup>106</sup> *ibidem*.

<sup>107</sup> T. Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies', Journal of Refugee Studies, vol. 27, no. 4, 2014, p. 584.

<sup>108</sup> T. Gammeltoft-Hansen, *op. cit.*

<sup>109</sup> B. Blitz et al, 'Health Challenges in Refugee Reception: Dateline Europe 2016', International Journal of Environmental Research and Public Health, vol. 14, 2017, p. 17.

<sup>110</sup> B. Blitz et al, *op. cit.*

<sup>111</sup> J.N. Brass, 'Why Do NGOs Go Where They Go? Evidence from Kenya', World Development, vol. 40, no. 2, 2012, p. 387.

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<sup>113</sup> J.N. Brass, 'Why Do NGOs Go Where They Go? Evidence from Kenya', World Development, vol. 40, no. 2, 2012, p. 389.

<sup>114</sup> J.N. Brass, *op. cit.*

<sup>115</sup> K.C. Dipendra, 'Between Rhetoric and Action: Do NGOs Go Where They Are Needed?', Voluntas, vol. 30, 2019, pp. 1197-1211.

<sup>116</sup> J.N. Brass, *op. cit.*

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