



Barbed wire fences surrounding the refugee reception facilities on the islands. Credit: Matthew Cassel

THE REALITY OF THE EU-TURKEY STATEMENT

How Greece has become a testing ground for policies that erode protection for refugees

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One year ago, European states closed their borders along the Western Balkan route and European Union (EU) leaders put in place the EU-Turkey Statement¹ (the Statement), a so-called temporary measure to stop irregular migration to Europe. Now EU leaders are declaring their approach a success.

The International Rescue Committee (IRC), the Norwegian Refugee Council (NRC), and Oxfam are providing humanitarian response on the Greek islands and mainland, and as our experience clearly shows, the context on the ground is far more troubling and complex.



INTRODUCTION

This brief² outlines three areas which illustrate how Greece has become a testing ground for policies that are eroding international protection standards:

- i. The growing difficulty in seeking international protection and the diminishing access to fair and efficient asylum procedures;
- ii. A convoluted and constantly changing process that lacks oversight, checks and balances; and
- iii. The increasing vulnerability among those stranded in Greece.

Beyond the deeply concerning situation in Greece, the EU is looking to replicate the EU-Turkey Statement model elsewhere, and in so doing, risks setting a dangerous precedent for the rest of the world. The EU has a proud history of commitment to international law and human rights which has driven its policies for 60 years. Now is the time for Europe to show global leadership on migration by adopting policies that uphold these values, rather than triggering a race to the bottom.

Situation at a Glance **Since 20 March 2016**

Arrivals

29,671 (UNHCR)

Dead or Missing

303 (IOM)

Returns

916 (EC)

Demographics

86% Syria, Afghanistan, Iraq
(UNHCR)

21% women, 28% children
(UNHCR)

(I) MISSION IMPOSSIBLE – SEEKING INTERNATIONAL PROTECTION

As per the Statement, anyone arriving irregularly to the Greek islands after 20 March 2016 is to be returned to Turkey, as a safe country. During the “admissibility” procedure, European Asylum Support Office (EASO) or Greek Asylum Service (GAS) caseworkers assess not a person’s individual need for international protection, but only whether he or she can be returned to Turkey. This procedure essentially deflects the responsibility of Europe—one of the wealthiest continents in the world—to Turkey, a country already hosting 3 million refugees. There is evidence that this approach has already encouraged other countries to question their responsibility to give protection to refugees, and that the EU will seek to introduce similar agreements elsewhere. Currently the EU is looking to replicate a similar Statement with Libya, a country where both the United Nations (UN) and the German Foreign Ministry have reported torture and execution in migrant camps.⁴

The rights of refugees to seek asylum and have their individual claims examined are crucial to protecting people against refoulement as enshrined in the Refugee Convention.⁵ In Greece, however, the EU’s use of admissibility checks prevents asylum seekers from seeking refugee status in the EU. This slowly derogates from the European responsibility towards individuals seeking international protection as asylum seekers wait as long as 12 months without access to appropriate accommodation and services, including education, to which refugees are entitled.

‘Presenting the current situation as a humanitarian crisis only demonstrates short-sightedness. The real crisis in Europe resides in the lack of political will, resulting from the absence of a common political vision as to how migration and mobility are part of Europe’s present and future.’

UN Special Rapporteur on the human rights of migrants
François Crépeau³

Greece put safeguards in place to uphold international standards but they are now slowly being removed, under pressure from European leaders,⁶ as they do not facilitate the goal of sending all migrants back to Turkey. Greek Law 4375/2016, put in place to implement the Statement, exempts vulnerable cases—e.g., unaccompanied children, single parents with minor children, and the elderly—and those eligible for family reunification in another EU state from accelerated border procedures that truncate each step of the process. To date, these groups have been de facto exempt from the admissibility procedure. This exemption enables them to lodge a claim for asylum in Europe, and frees them to move from the overcrowded islands to sites on the mainland. In December, however, the European Commission and Greek authorities released a Joint Action Plan (JAP)⁷ proposing to remove these safeguards. Thirteen Greek and international organisations⁸ have urged the Greek Parliament not to do so.

Exacerbating matters is the indisputable need for legal counselling and assistance on the islands. There is very little reliable and accessible information, and the few lawyers who are available to assist are overstretched. Individuals need assistance with preparation and legal counsel for their first instance interview as they have little or no information about how interviews are conducted, what evidence to bring, or even the purpose of the interview. For example, they may not understand that an admissibility interview means they will not be asked about why they fled their country, only about their time in Turkey. Legal counsel at second instance, the appeal stage, is often too late, yet this is the only legal assistance guaranteed by law. We were told of cases where people who had strong claims for asylum due to the persecution they suffered were rejected because they did not understand the importance of speaking about these experiences. Unfortunately, even when lawyers are available, some people are informed of their interviews on such short notice that they do not have enough time to receive counsel and assistance. Others arrive for their scheduled interview, only to learn that it is postponed indefinitely due to a lack of interpreters, unless they choose to proceed in a language that is not their native tongue. Often, they agree to do so out of fear that they will need to wait several months more in substandard conditions for their next chance.

‘For several months, we had no information. Then the interviews started but we didn’t have information about how they work. No one knew where people were to ask questions. No one gave information about our rights are. At the interview, I only got information about my right to interpretation.’

Wasim, 37-year-old Syrian who arrived 20 March 2016.

(II) WHO IS MONITORING THIS? CONVOLUTED PROCESSES LACKING IN OVERSIGHT, CHECKS AND BALANCES

European policies are being tested out in Greece, as evidenced by the sheer chaos in the initial days and weeks after the Statement came into effect, as no systems or procedures had been appropriately developed in advance of its implementation.

To this day, processes change frequently, are convoluted (see the GAS' own flowchart⁹), and vary from island to island, with legal experts telling us that they cannot keep track. For instance, it was decided to stop accepting original birth certificates as evidence that an unaccompanied child was under 18, only original passports or national IDs are now allowed. And in another recent example, without warning, Afghans, Eritreans, and people of other nationalities started to go through admissibility procedures that were previously used only for Syrians. Neither the individuals nor the lawyers were made aware before the interviews took place that, because of the change in procedure, they would now only be able to speak about their experiences in Turkey. Subsequently it has been set out that they will go through a joint admissibility and merit interview, but there is no information on how that will happen. Asylum seekers cannot be expected to navigate this complicated and constantly changing system without counsel and assistance.



Fatima, from Baghlan province in Afghanistan, breaks down into tears after reaching the shores of Lesbos by boat with her family. Credit: Jim Huylebroek/NRC

From an access to justice perspective, the interview process is particularly worrisome. Several stakeholders expressed concern about the level of training and expertise of EASO caseworkers conducting interviews, as well as their understanding of procedures. The IRC, NRC, and Oxfam received reports and saw transcripts from interviews illustrating that caseworkers lacked the necessary understanding of asylum procedures, the basics of the armed conflict in Syria, and the political dynamics in Turkey to assess a claim for international protection or recognize a well-founded fear of being returned. Due to this lack of understanding, as one lawyer put it: “the minute an applicant undergoing an admissibility interview utters a word about Syria, they are stopped by the caseworker and told that the interview has nothing to do with Syria, even if in fact it does.” We also received reports of translations that were evidently wrong. This may impact the GAS' assessment and decision on these cases, as in many instances, they will not meet the applicants, but rather base their decisions solely on these documents and the opinion of EASO.

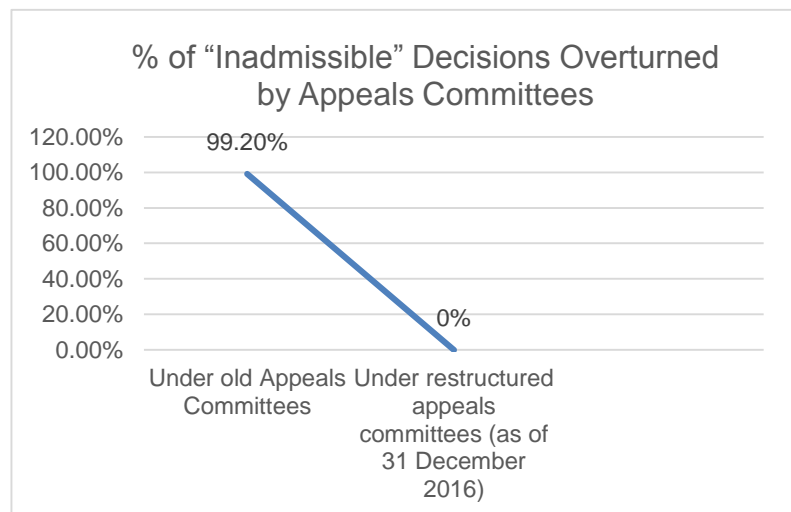
We also received concerning accounts of some EASO interviewers' lack of cultural sensitivity and understanding. For example, in one account, a gay individual from a culture where speaking about sexual orientation is prohibited was asked to go into humiliating levels of detail to prove their sexual orientation and their fear of persecution because of it. We have also heard reports that interviewers sometimes use difficult terminology and ask questions that aren't conducive to eliciting interviewees' stories. For example, people may be asked if they have been tortured without having a full understanding of what constitutes torture.

Various responders working on the islands explained that to their knowledge, there is no reliable system in place for reporting such incidents, for checking or questioning the quality of interviews, for reporting malfeasance, or for guaranteeing accountability. In light of the growing role foreseen for EASO under the Common European Asylum System (CEAS), it is essential that the quality of their procedures meet the highest standards and this requires more investigation and evaluation. This is particularly important given that the Commission is recommending that EASO take a more active role in both admissibility and eligibility procedures and since lawyers report that the GAS almost always accepts EASO's opinions.

Asylum seekers, lawyers, humanitarian workers, and Greek officials all provided accounts setting out the lack of oversight and checks and balances regarding EASO staff. And the case of the appeals committees is an example of the removal of existing checks and balances in the process. The Commission pressured Greece¹¹ to restructure its appeals committees to a new composition which was introduced through an overnight legislative amendment in June 2016. This amendment was heavily criticised by Greek civil society and international nongovernmental organisations, which saw it as a means to facilitate increased returns to Turkey and as a threat to human rights and rule of law in Greece.¹² The original Greek appeals committees had upheld only three out of 393 inadmissibility decisions for return, acting as a critical safety net, while the restructured appeals committees have upheld all 20 inadmissibility decisions as of 31 December 2016.¹³ These decisions and the backlog of appeals have meant that only 916¹⁴ people have been returned under the Statement as of 10 March 2017, something that the Commission initially publicly lauded as a proven guarantee against mass expulsion. However, organisations now fear that the last stage of an ongoing case at Greece's highest administrative court may pave the way for mass returns of Syrians to Turkey.¹⁵ Additionally, the JAP suggests exerting pressure on appeals committees for faster decisions and to explore the possibility of limiting the number of appeal steps in the context of the asylum process.

'This recent experience [of appeals decisions in favor of the appellant reversing the negative first instance decision] clearly demonstrates that the safeguards provided by the Asylum Procedures Directive...are in place and respected.'

EC lauds the safeguards inherent in the appeals process just one week before Greece restructured its appeals committees because of pressure from the EC.¹⁰



What the restructuring of Greece's Appeals Committees means in numbers

Percentage of Negative 1st Instance Asylum Decisions Overturned in Greece after Appeal

2014: 25%

2015: 24%

2016*: 0.56% (2 out of 352)

*(Under restructured appeals committees 20 July - 8 December 2016)

Percentage of "Inadmissible" Decisions Overturned by Appeals Committees (as seen in the chart)

Under Old Appeals Committees: 99.2% (390 out of 393)

Under Restructured Appeals Committees*: 0% (zero out of 20)

*(As of 31 December 2016)

Percentage of All Negative and Inadmissible 1st Instance Decisions Overturned by New Appeals Committees (as seen in the chart)

0.45% (4 out of 880)

(III) INCREASING VULNERABILITIES

The reality on the ground over the last year is that the Statement, with its stated intention of "ending human suffering," is actually prolonging and exacerbating suffering. As a result of the Statement, asylum seekers have been made to live in substandard and overcrowded conditions for months on end, some since 20 March 2016.

Over the course of the year, there have been deaths; suicide attempts; people engaging in self harm; and children, women, and men exposed to abuse and sexual violence. We have also received accounts of people relying on negative survival mechanisms, including sex for money and sex for protection. Medical checks and other assessments outlined in Greek law to identify and protect vulnerable people arriving to the islands are not consistently applied, ultimately resulting in some of those most vulnerable falling through the cracks. For example, in Samos, we were told that only those who are visibly vulnerable (e.g., pregnant women) or self-identifying as unaccompanied children automatically go through a vulnerability assessment. On most of the islands, there are not enough professionals with the appropriate expertise available to identify those individuals falling within the vulnerable groups outlined in Greek law that are not visible (e.g., rape survivors, victims of torture, people living with post-traumatic stress disorder).

At times, there were more than 16,000 people, now 13,000, on the islands crammed into facilities with the capacity to accommodate just 9,000 or less.¹⁶ Some children traveling with no family to protect them were, and continue to be, kept in unsafe situations, sometimes mixed with adults, as is the case for one 17 year-old child we met who arrived one year ago and continues to live alone among unrelated adults in a tented camp. People have insufficient access to basic services, and unsurprisingly, there is a significant need for

mental health and psychosocial support services.¹⁷ On Lesbos, the island with the largest number of asylum seekers, for instance, there is just one psychiatrist in the hospital providing free care for Greeks and asylum seekers, and only one roving child psychiatrist for all of the islands.

Across the islands, more than 2,000 people were forced to sleep in tents during the freezing winter and some continue to reside in these structures today. On Lesbos, a pilot project is ongoing under which asylum seekers from six nationalities may be detained upon arrival allegedly to expedite the processing of their applications. During their detention, they are mixed with people whose claims have been rejected and are awaiting removal to Turkey, and people undergoing the International Organization for Migration's assisted voluntary return and repatriation programme. Putting some asylum seekers straight into detention solely on the basis of their nationality is discriminatory and is contrary to Article 8 of the Reception Conditions Directive 2013/33/EU. This also makes a mockery of statements by the Commission that the EU does not discriminate on the basis of nationality, race or religion, when it comes to asylum or any of our other policies.¹⁸ In Chios, new arrivals are kept in cages with barbed wire, with no separation of children, women and men, while they wait to go through their registration process.¹⁹ They can be held in the cages anywhere from hours to overnight, depending on the number of arrivals to be processed.

It is troubling to see the Commission encouraging increased use of detention to better manage the response to asylum seekers in the JAP as well as in other recent Commission recommendations.²⁰ A year ago, the reception and identification centres (“hotspots”) were turned into closed facilities, and many humanitarian agencies withdrew. According to UN experts, “there is no empirical evidence that detention deters irregular migration or discourages people from seeking asylum.”²¹

Finally, we have seen and heard reports of how implementation of the Statement has unnecessarily kept families apart or prolonged their separation, rather than facilitate their reunification. We were told of vulnerable individuals being granted authorisation to transfer to the mainland, while their family members, including those serving as caretakers, were not. This ultimately contributes to the separation of already vulnerable people.

RECOMMENDATIONS

European leaders are declaring the EU-Turkey Statement a success. In reality, the Statement outsources Europe’s responsibility to Turkey, has exacerbated the vulnerabilities of highly traumatised people, and exposes them to further risks and abuse in Greece due to the treatment and conditions set out in this paper. We fear that what was justified as a temporary measure for an emergency situation in Greece may become the blueprint for EU asylum policy



Credit: Eline Bouma/Freelancer photographer

'I came to Greece in August with my family and my wife who was pregnant. We arrived to Lesbos. We stayed first in Moria, but then the problems started. A huge fire burned down our tents - the entire camp burned. I didn't know anything about the agreement that took place on the 20th of March 2016 until I arrived in Greece. In the name of God my feelings are... I mean what do you want me to say? I was shocked when I understood what it meant. I know people who were forced to return from Greece to Turkey and I know people who returned from Greece to Turkey and who came back to Greece.'

Tahir, 28 years old, fleeing from Syria

elsewhere and a model for the future. As evidenced by this paper, it is not possible, even in the European context, to apply this model while complying with international standards and ensuring asylum seekers' rights. EU leaders should not replicate this model or expect that it will work elsewhere. Basic human rights and the right to seek international protection are at stake. It is time for a different approach.

TO THE EUROPEAN COMMISSION:

- i. Ensure implementation of EU asylum policy is carried out in line with the principles of the EU Charter of Fundamental Rights, and ensure effective and robust monitoring.
- ii. Monitor and uphold the standards set out in the EU's Reception Conditions and Procedures Directives.

TO THE EUROPEAN UNION, MEMBER STATES, AND ASSOCIATED COUNTRIES:

- iii. Ensure that all asylum procedures include a fair, quality and individual assessment of a person's need for international protection and relevant circumstances, and abide by the EU fundamental rights framework. To achieve this, Member States and the Commission should:
 - Support the GAS and EASO with a greater number of interpreters to ensure the ability of applicants to communicate their application;
 - Expand the training and guarantee the preparedness of EASO experts to assess the protection concerns of asylum seekers; and
 - Ensure asylum seekers have access to all necessary information and individual legal assistance prior to the presentation of their admissibility/asylum application.
- iv. Redouble efforts to ensure safe and regular routes to Europe for people in need of international protection through resettlement, humanitarian visas, private sponsorships and family unity, and meet commitments made to solidarity and responsibility sharing mechanisms within Europe such as the relocation scheme.
- v. Abide by the principle of non-refoulement. Individuals must not be returned to countries where they are at risk of persecution.
- vi. Ensure that applicants are informed of the procedure to be followed, their rights and obligations during the procedure, the outcome of the examination and the possibility of challenging a negative decision.
- vii. Ensure all reception and accommodation facilities remain operated as open facilities. Detention should only ever be used as a last resort, on an individual basis, in accordance with the law, and never for children. Detention is never in the best interest of children, even as a last resort.

TO THE GREEK GOVERNMENT:

- viii. Protect safeguards in Law 4375/2016 to exempt vulnerable and family reunification cases from the accelerated border procedure, continue to de facto exempt these groups from the procedure, and introduce an amendment to guarantee access to appropriate and timely legal information, counsel and assistance ahead of the first interview for both the admissibility and normal asylum procedures.
- ix. Ensure access to quality services in reception facilities including appropriate shelter, medical care, and uphold protection standards (e.g., psychosocial support, gender-based violence prevention and response services, child protection).

TO DONORS:

- x. Ensure legal assistance in the first and second instance through specialised legal and protection actors, and that those specialised legal and protection actors have access to reception and asylum processing facilities to support a response based on humanitarian principles and in line with international protection framework.

NOTES

¹ European Commission, “EU-Turkey statement”, 18 March 2016, Press release 144/16 <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

² Based on observations from ongoing programming and joint research conducted on the islands of Lesbos, Chios and Samos in February and March 2017.

³ OHCHR, “UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece” 16 May 2016 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19972&LangID=E#>

⁴ Reuters, “German Foreign Ministry cites torture, executions in Libyan migrant camps report”, 29 January 2017. <http://uk.reuters.com/article/uk-europe-migrants-libya-report-idUKKBN15D03D> and UN Office of the High Commissioner for Human Rights (OHCHR), “Detained and Dehumanized: Report on Human Rights Abuses against Migrants in Libya” 13 December 2016 http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf

⁵ Refoulement is the return of an individual to a country where they are at risk of persecution. The Refugee Convention, 1951, Article 33, p233 and ECRE, “Admissibility, Responsibility, and Safety in European Asylum Procedures” September 2016, p19. <http://www.ecre.org/wp-content/uploads/2016/09/ECRE-AIDA-Admissibility-responsibility-and-safety-in-European-asylum-procedures.pdf>

⁶ EU Observer, “EU Pushes Greece to Set Up New Appeal Committees” 15 June 2016. <https://euobserver.com/migration/133841>

⁷ European Commission, “Joint Action Plan on Implementation of the EU-Turkey Statement” https://www.neweurope.eu/wp-content/uploads/2017/02/december2016-action-plan-migration-crisis-management_en-4.pdf

⁸ Joint NGO Letter to Greek Government, 9 March, 2017 https://jrseurope.org/assets/Publications/File/Joint-NGO-letter-to-Greek-government_asylum_EN.pdf

⁹ GAS, “Asylum Procedure in the Context of the EU-Turkey Statement” February 2017. <http://asylo.gov.gr/en/wp-content/uploads/2017/02/Asylum-procedure-in-the-context-of-the-EU-Turkey-statement.pdf>

¹⁰ European Commission, Second Report on the progress made in the implementation of the EU-Turkey Statement, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf

¹¹ EU Observer, “EU Pushes Greece to Set Up New Appeal Committees” 15 June 2016. <https://euobserver.com/migration/133841>

¹² More Than Six Months Stranded-What Now? A Joint Policy Brief on the Situation for Displaced Persons in Greece, October 2016. <http://reliefweb.int/report/greece/more-six-months-stranded-what-now-joint-policy-brief-situation-displaced-persons>

¹³ Amnesty International letter to Head of the Department for the Execution of Judgements, Human Rights Directorate, Council of Europe, 17 February 2017 [http://www.amnesty.eu/content/assets/MSSvBelgandGreece_Submiss_AmnestyInternational17Feb17\(1\).pdf](http://www.amnesty.eu/content/assets/MSSvBelgandGreece_Submiss_AmnestyInternational17Feb17(1).pdf)

¹⁴ GAS, “Asylum Procedure in the Context of the EU-Turkey Statement” February 2017. <http://asylo.gov.gr/en/wp-content/uploads/2017/02/Asylum-procedure-in-the-context-of-the-EU-Turkey-statement.pdf>

¹⁵ Human Rights Watch, “The Unfairness of Forcing Refugees in Greece Back to Turkey” 27 February 2017. <http://linkis.com/www.hrw.org/news/2017/mpTrY>

¹⁶ UNHCR, “Europe Refugee Emergency: Daily Map Indicating Capacity and Occupancy (Government Figures), 14 March 2017. <https://data2.unhcr.org/en/documents/download/54465> Accommodation capacity on the islands has increased from 7,450 to 8,759.

¹⁷ Medecins Sans Frontieres, “One Year on from the EU-Turkey Deal: Challenging the EU's Alternative Fact, March 2017, p13. http://www.msf.org/sites/msf.org/files/one_year_on_from_the_eu-turkey_deal.pdf

¹⁸ As said by Margaritis Schinas, Chief Spokesperson of the European Commission and a Deputy Director-General at the Commission's DG Communication. EU Observer, EU Migration Chief <http://www.euractiv.com/section/global-europe/news/eu-migration-chief-to-call-trump-team-over-muslim-travel-ban/>

¹⁹ VICE, ‘Η Φωτογραφία στην Χίο με τους πρόσφυγες μέσα σε κλουβί θα σε κάνει να ντέπεςαι’, 16 March 2017, <https://www.vice.com/gr/article/ayth-h-fwtografia-sth-xio-me-toys-prosfyges-mesa-se-kloybi-8a-se-kanei-na-ntrepesai>

²⁰ European Commission, “Commission Recommendation on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council,” 7 March 2017 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf

²¹ UN OHCHR, “New EU recommendation on return procedures a “slippery slope” to solve European migration challenges – UN experts” 9 March 2017 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21330&LangID=E#sthash.tr6YYgbS.dpuf>

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The information in this publication is correct at the time of going to press.

The names have been changed.

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The International Rescue Committee is a humanitarian aid organisation working in 40 countries across the world, and committed to helping people whose lives and livelihoods are shattered by conflict and disaster to survive, recover, and gain control of their future. More information about the IRC's response in Greece at this link <https://www.rescue.org/country/greece>

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The Norwegian Refugee Council (NRC) is an independent, international, humanitarian non-governmental organisation which provides assistance, protection and contributes to durable solutions for refugees and internally displaced people worldwide. For further information please go to www.nrc.no

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