

Greece's Compliance with the Convention on the Rights of the Child

Additional Submissions

Report for the 90th Session of the Committee on the Rights of Child

Submitted by:

Still I Rise and I HAVE RIGHTS.

I. Reporting Organisations

1. Still I Rise (SIR) is an international non-profit organisation, founded in 2018. We provide education, safety and protection to vulnerable and refugee children in areas experiencing global migration and run the Mazi centre on Samos, offering flexible educational programmes to refugee children aged 11 to 17 residing in the island's camp. Our programmes are designed to facilitate reintegration of children into public school and tackle primary needs such as food, hygiene and child protection, as well as psychosocial support.
2. I HAVE RIGHTS (IHR) is a non-profit refugee law clinic based on Samos, Greece. As well as providing legal counselling and representation for asylum seekers and refugees in Samos, IHR engages in campaigns and strategic litigation.

II. Executive Summary

3. The submitting organisations are based on Samos, one of the five “hotspot islands” of Greece. Our submissions is focused on the treatment of UAMs¹ on the island, with a particular focus on their treatment in the Closed and Controlled Access Centre of Samos (CCAC) which was opened in September 2021.
4. In this submission we will first demonstrate that on Samos UAMs are *de facto* detained in the CCAC. They are forced to endure inhuman living conditions and experience “mental violence” on a daily basis. Secondly, we show that age and vulnerability assessment procedures are inefficient, and often are not in accordance with the best interest of the child. Third, we highlight the various ways in which UAM's are blocked from accessing asylum. Finally, express concern about the lack of children's services that are present on the island depriving UAMs of their right to an education and social development.

III. De Facto Detention and Inhumane Living Conditions as a Violation of the Convention of the Rights of the Child

Article 2 CRC: Article 2 of the Convention of the Rights of the Child

Article 3 CRC: Article 3 of the Convention of the Rights of the Child

Article 19 CRC: Article 19 of the Convention of the Rights of the Child

Article 20 CRC: Article 20 of the Convention of the Rights of the Child

Article 24 CRC: Article 24 of the Convention of the Rights of the Child

Article 27 CRC: Article 27 of the Convention of the Rights of the Child

Article 31 CRC: Article 31 of the Convention of the Rights of the Child

Article 37 CRC: Article 37 of the Convention of the Rights of the Child

Article 39 CRC: Article 39 of the Convention of the Rights of the Child

¹ In this submission we use UAMs to refer to both unaccompanied and separated minors.

Explanatory note:

5. In its written replies, Greece claims that under Greek law, asylum seeking “children may be detained only as a last resort, when no other alternatives or less restrictive measures can be applied [...] In all cases, detention is limited to 25 days. UAMs are detained only under special circumstances [...]”.² Greece also lists numerous measures which are meant “to ensure child-appropriate reception capacity for unaccompanied minors”.³ Yet, as will be shown beneath, the restrictive living conditions for UAMs in the Closed and Controlled Access Centre of Samos (CCAC) result in *de facto* detention, where they are forced to endure inhuman and degrading conditions.
6. This stands in stark contrast with standards enshrined in the UNCRC. According to Article 37(a) no child shall be subjected to inhuman or degrading treatment or punishment. Article 37(b) reads, “No child shall be deprived of his or her liberty unlawfully or arbitrarily” and detention “shall be used only as a measure of last resort and for the shortest appropriate period of time”. Furthermore the Committee has highlighted that UAMs “should not, as a general rule, be detained”.⁴ In particular, the approach of detention for UAMs should be of “care” and not “detention” and facilities “should not be located in isolated areas where [...] access to legal aid [is] unavailable”.⁵ Crucially, the Committee defines mental violence as placing children in “degrading conditions of detention”.⁶ We submit that UAMs detained in the “Safe Zone” experience mental violence on a daily basis, placing Greece in variance with its obligations as per the Convention.⁷

Evidence of Greece’s violation of rights of the child

7. In September 2021, the CCAC was inaugurated, substituting the previous reception centre. Located in a valley 8 kilometres away from the main city Vathy, it is heavily guarded and access is highly restricted. As according to the Greek Ministry of Migration:

The whole structure is surrounded by a double NATO-type security fence [...] with the installation at the entrance of the necessary control systems, such as turnstiles, magnetic gates, x-rays, two-factor access control system (identity and fingerprint), [...]

² Greece. 2021. Replies of Greece to the list of issues in relation to its combined fourth to sixth periodic reports. Paragraph 23.

³ *Ibid.* Paragraph 90.

⁴ UNCRC General Comment No.6. 2005. Treatment of Unaccompanied and Separated Children Outside Their Country of Origin. 1 September 2005. Paragraph 61 and Paragraph 40.

⁵ *Ibid.*

⁶ UN Committee on the Rights of the Child. 2011. General comment No. 13: The right of the child to freedom from all forms of violence. Paragraph 21 (f).

⁷ See for example how States are obliged to provide rehabilitation services for children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts. UN General Assembly. 1989. Convention on the Rights of the Child. United Nations. Article 39. See also: UNCRC General Comment No.6. 2005. Treatment of Unaccompanied and Separated Children Outside Their Country of Origin. 1 September 2005. Paragraph 48.

*CCTV is provided throughout the structure [...] fencing as well as tourniquets with card readers [...] [are] in the separate sections of the structure.*⁸

8. Moreover, nearly $\frac{1}{4}$ of the camp's residents are unlawfully detained in the CCAC.⁹ Since November 2021 residents that do not have an asylum seeker's card have been generally forbidden to leave the site. According to GCR and Oxfam, "this has been done without an administrative decision and without providing information regarding the legal basis on which the exit ban is implemented".¹⁰
9. Not only do these unlawful detention measures apply to children, but additionally UAMs are located in the so-called "Safe Zone" where additional barriers separate them from the general population, impeding their freedom of movement out of the CCAC and within the facility. It is the submitting organisations' experience that this separation often is not in the best interest of UAMs. This is due to a combination of factors including: their *de facto* detention due to the poorly functioning guardian system leaving them under the responsibility of security guards rather than legal guardians, the lack of services and protection actors inside the "Safe Zone" and UAM's extreme isolation and boredom. According to the testimony of a UAM, they are confined to the "Safe Zone" and are only allowed to access the "General Population" area for a few hours a day. These conditions are in stark contrast to those of children living with their families in the general population section, where access to the playgrounds and gates of the CCAC are directly accessible for them.
10. Law 4554/2018 introduced for the first time a regulatory framework for the guardianship of unaccompanied children in Greek law. In its written replies Greece concedes that "amendments are needed to make the [guardianship] system fully operational and adaptable to specific needs".¹¹ This could not be more true on Samos where the guardianship system is not even fully implemented. Instead, Public Prosecutors are designated by default as guardians for all present UAMs in the island. As per the experience of SIR, the overburden of the Public Prosecutor's functions and lack of specialised training on child safeguarding and protection needs means they are structurally incapable of assessing the best interests of UAMs. This often means that UAMs are unable to leave the camp as the guardianship system in place often lacks the ability to give them permission to exit. This stands in stark contrast with the Committee which has held that in order to ensure the safeguarding of the interests of the child the guardian "should have the necessary expertise in the field of childcare".¹²

⁸ Greek Ministry of Migration and Asylum. 2022. Greek Ministry of Migration and Asylum Website. Available at: <https://migration.gov.gr/en/ked-samoy-kleisti-elegchomeni-domi-samoy/> [Accessed 13/04/2022].

⁹ See the 17 December 2021 ruling from the Administrative Court of Syros which found such detention to be unlawful.

¹⁰ GCR and Oxfam. 2021. March 2022 Bulletin. Available at: <https://www.gcr.gr/en/ekdoseis-media/reports/reports/item/1915-gcr-oxfam-bulletin-march-2022> [Accessed 13/04/2022].

¹¹ *Ibid.* Paragraph 92.

¹² UNCRC General Comment No.6. 2005. Treatment of Unaccompanied and Separated Children Outside Their Country of Origin. 1 September 2005. Paragraph 33.

11. Available support services for UAMs in Samos have reduced considerably since April 2022. The dedicated *Merimna Project* handled by IOM, which provided protection and assistance services to UAMs in the “Safe Zone”, has ended without a proper handover of its responsibilities or functions. As per IOM’s official communication received by SIR, their duties will be temporarily assigned to Camp Management Authorities, who are security personnel and are not trained to care for UAMs. That means that the management of all daily matters affecting UAMs will be centralised under the responsible section for unaccompanied minors of the Ministry, or alternatively if no response is provided, it will be referred again to the legal guardian.
12. Not only are UAMs *de facto* detained, denied their right to effective guardianship and “supervised” by untrained security personnel, they are also forced to endure inhuman living conditions and a sort of “mental violence” as per the Committee’s definition. Once children receive the official categorisation of UAMs their access to services decreases significantly. UAMs are kept in isolation and the conditions of the “Safe-Zone” are bleak and sterile. Activities for children exist outside of the area where they are detained, for example the football pitch, table-tennis, card and board games and even the “Chai-point”, which is perhaps of most significant cultural importance to many of the children, cannot be found within the “Safe Zone”. UAMs are only allowed out of their confinement and access to these services for a few hours in the day. Restricted access to these kinds of basic tools for engagement is highly damaging for children. Their time is mostly confined to a barren area, with many sitting in their containers with little or nothing to do. UAMs reportedly feel as though they are in solitary confinement within a prison.
13. Since the opening of the CCAC SIR’s Protection Officer has noted that children in the “Safe Zone” increasingly express feelings of despair and hopelessness. Mental health issues are common for children living in the CCAC. While official data relating to the health of camp residents is difficult to come by, SIR estimates that about 15% of the children living in the CCAC attend SIR Mazí Centre. Of that portion, SIR has increasingly observed mental health issues including suicide attempts, self-harm and depression. Of the students who attend Mazí Centre since August of 2021, 2% have attempted suicide, 3% have visual evidence of self-harm, and another 9% have shown signs of depression.
14. This is further compounded by the lack of healthcare in the CCAC. At the time of writing and since the end of February 2022 there is no camp doctor, as the National Public Health Organisation (EODY) doctor’s contract was terminated in the CCAC in February 2022. For two months, the CCAC has had *ad hoc* visits of an itinerant doctor, for no more than a few days at a time. The camp authorities have not shared any plans to resolve this major gap. Without a doctor in the camp, the residents must wait, sometimes months, to be referred to the hospital or they must try to arrange an appointment with over-burdened medical NGOs outside the camp. On desperate occasions, SIR students have tried to arrange appointments at the hospital by themselves with the assistance of their lawyers or Greek nationals, such as acquaintances or teachers.

IV. Deficiencies in Age and Vulnerability Assessment Procedures as a Violation of the Convention of the Rights of the Child

Article 3 CRC: Article 3 of the Convention of the Rights of the Child

Article 8 CRC: Article 8 of the Convention of the Rights of the Child

Article 19 CRC: Article 19 of the Convention of the Rights of the Child

Article 20 CRC: Article 20 of the Convention of the Rights of the Child

Explanatory note:

15. In its written replies, Greece states that “[a] vulnerability assessment is conducted upon arrival at Reception and Identification Centres (RICs), which includes indicators on all protection matters”.¹³ In regards to the training of staff who conduct assessment procedures, Greece claims that only professionals trained and accredited by UNHCR and EASO will conduct Best Interest Assessments (BIAs).¹⁴ Such claims stand in stark contrast with the practice on Samos where untrained actors often undertake assessments.
16. The Committee has highlighted that BIAs include a “clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing ethnic and linguistic background, particular vulnerabilities and protection needs” which should be carried out by “professionals, who are trained in age and gender-sensitive interviewing techniques”.¹⁵ The Committee has highlighted that vulnerability assessments must address the particular vulnerabilities of children, “including health, physical, psychosocial, material and other protection needs, including those deriving from domestic violence, trafficking or trauma”.¹⁶ Moreover, age assessments should “accord the individual the benefit of the doubt” and the best interest of the child, as per Article 3 of the Convention, should be the guiding principle of the assessment.¹⁷ As shown beneath the age and vulnerability assessment procedures as well as the BIAs on Samos do not meet these criteria.

Evidence of Greece’s violation of rights of the child

17. Vulnerability assessment constitutes a key step in the asylum process. However, the reporting organisations continue to witness persistent flaws in the process due to the underresourced medical facilities in the Samos camp, which has been even exacerbated by the COVID-19 pandemic and by the termination of EODY doctor’s contract in the CCAC in February 2022.

¹³ Greece. 2021. Replies of Greece to the list of issues in relation to its combined fourth to sixth periodic reports. Paragraph 95.

¹⁴ *Ibid.* Paragraph 95 and Paragraph 21.

¹⁵ UNCRC General Comment No.6. 2005. Treatment of Unaccompanied and Separated Children Outside Their Country of Origin. 1 September 2005. Paragraph 20.

¹⁶ *Ibid.* Paragraph 31(iii).

¹⁷ *Ibid.* Paragraph 31 and 31(i).

18. Only the decision of the vulnerability assessment is communicated to the child, while the report results are only accessible for CCAC authorities.¹⁸ Cases are divided into categories A (vulnerable), B (under investigation) and C (not vulnerable), with A and B further subdivided into 10 levels.¹⁹ The vulnerability assessment lacks depth and sensitivity to detect cases that are not immediately evident, as the first reception medical assessment does not investigate vulnerability qualifiers unless the person explicitly expresses them.
19. At the time of writing and due to the lack of presence of a doctor in the camp, vulnerability assessments are referred to the hospital. Hospital referrals sets out additional obstacles for the correct identification of vulnerabilities, including the arrangement of appointments and interpreters and transportation to the hospital of both the minor and interpreter which often results in substantial delays and missed appointments. Moreover, the medical staff that runs the vulnerability assessment are not specialised in child protection and safeguarding standards, nor are particular measures taken to create safe spaces for the minors to disclose sensitive information.
20. Similar structural problems are identified in the age assessment procedure, which has generated considerable distress and obstacles particularly for alleged unaccompanied minors in Samos. Being registered as an adult significantly affects children's applications for international protection and their access to safeguards for UAMs. The age assessment process is a distressing experience, especially since the JMD 9889/2020 law revoked the principle of the benefit of the doubt.
21. According to Greek law, age assessment should take place in a three-tiered process, where each stage must be exhausted before using the following one.²⁰ While the age assessment process was particularly affected by the pandemic, leading to a ceasing of the process during 2020 and much of 2021, the underlying problem remains the lack of sufficient and specialised medical resources on Samos. Indeed, there are no specialised doctors nor psychologists in the CCAC to conduct age assessments. Instead, cases are referred to the hospital, where access to specialists is not guaranteed. Furthermore, doctors often skip stages in the age assessment process and do not duly justify their decisions, which is in contravention with Greek law.
22. SIR has gathered several testimonies that show the shortcomings of the system. Eight testimonies gathered in January 2022 from applicants of international protection that arrived in Samos between 2019 and early 2020, demonstrate how they have been kept in a legal limbo due

¹⁸ This was confirmed by EODY during the coordination meeting of the UNHCR Protection Working Group held on 24/02/2022.

¹⁹ *Ibid.*

²⁰ Age assessment should take place in the following tiered process:

- a. assessment of the physical development of macroscopic characteristics by a qualified health professional;
- b. a psychosocial assessment by a trained psychologist and social worker, who shall examine the cognitive, behavioural and psychological development of the person and draw a report;
- c. if there is still reasonable doubt, then the age assessment shall be carried out either by radiography of the left wrist and hand extremities to determine bone age, or by dental examination or, finally, by any other means.

to the dysfunctionality of the age assessment procedure.²¹ More than two years after their applications for asylum, the lengthy and inefficient age determination process has resulted in many of the respondents reaching legal adulthood. Among this group, only one was registered as a minor by the Greek authorities. The rest, who arrived alone to the island, were registered as adults. At least three were subsequently recognised as minors. Yet, one has not even been assessed yet and one has withdrawn his application as minor due to frustration and stress of having the resolution of the legal status pending on an undated examination.

V. Lack of Access to Asylum as a Violation of the Convention of the Rights of the Child

Article 3 CRC: Article 3 of the Convention of the Rights of the Child

Article 10 CRC: Article 10 of the Convention of the Rights of the Child

Article 22 CRC: Article 22 of the Convention of the Rights of the Child

Explanatory note:

23. In Greece's written response, it explains that UAMs can be examined through accelerated asylum procedure and/or border procedures in specific cases, including when "arriving from a safe third country" or when "the UAM has tried to mislead the Authorities by providing false identity documents".²² While it is correct that the "law clearly states that the best interest of the child should always be assessed",²³ we submit that the best interest of the child is not assessed in practice and that accelerated procedures stifle children's abilities to access protection.
24. This can be contrasted with the Convention which requires that State Parties take "appropriate measures" to ensure refugee children receive "appropriate protection and humanitarian assistance".²⁴ This includes, "the responsibility to set up a functioning asylum system [...] and to build capacities necessary to realise treatment in accordance with applicable rights codified in the Convention".²⁵ This entails "in all cases" children being "given access, free of charge, to a qualified legal representative".²⁶

Evidence of Greece's violation of rights of the child

25. The deficiencies in the guardianship system and vulnerability and age assessments have undermined access to asylum for children in Samos. For instance, the three confirmed cases of alleged minors that only received a positive decision after they had already turned 18 depriving them of their right to be treated as UAMs during their asylum claims, including: access to housing in dedicated UAM structures (outside of the CCAC), specific legal safeguards, counselling, access to psychological support and school enrolment.

²¹ The testimonies are part of a larger and dedicated report to be published by SIR in May 2022.

²² Greece. 2021. Replies of Greece to the list of issues in relation to its combined fourth to sixth periodic reports. Paragraph 24 and Paragraph 25.

²³ *Ibid.* Paragraph 25.

²⁴ UN General Assembly. 1989. Convention on the Rights of the Child. United Nations. Article 22(1).

²⁵ UNCRC General Comment No.6. 2005. Treatment of Unaccompanied and Separated Children Outside Their Country of Origin. 1 September 2005. Paragraph 64.

²⁶ *Ibid.* Paragraph 69.

26. The guarantees of the asylum process are further reduced if children and/or alleged minors are of Syrian, Afghan, Somali, Bangladeshi or Pakistani nationality. As these nationalities are evaluated on admissibility criteria based on the contested determination of Turkey as a “safe third country”.
27. UAMs living in the CCAC face bureaucratic barriers that hinder their legal rights during their asylum claims. For instance, the simple request of an appointment with their lawyer entails a long and bureaucratic process:
 - a. Contact the lawyer by phone at the UAM’s own expense;
 - b. The lawyer contacts the camp management and the legal guardian to request an appointment in the CCAC’s “Safe Zone”;
 - c. The camp management evaluates the request and decides whether to approve it or not;
 - d. If approved, the lawyer arranges the presence of a translator;
 - e. On the date of appointment, the lawyer passes through security checks to enter the CCAC and then again to access the “Safe Zone”. Checks can include long delays and SIR has been informed of cases of lawyers running out of time for the appointment, which meant restarting the whole process again.
28. Children, particularly UAMs and alleged minors, that go through the asylum process in Samos face a discouraging environment full of obstacles. Factors that constantly hinder their claims include, *inter alia*: lack of interpreters and appropriate information, uncommunicated decisions, restriction of movement, recurrent mistakes in the registration of personal data, and skipping steps in the age assessment procedure.

VI. Lack of Services as a Violation of the Convention of the Rights of the Child

Article 27 CRC: Article 27 of the Convention of the Rights of the Child

Article 31 CRC: Article 31 of the Convention of the Rights of the Child

Article 39 CRC: Article 39 of the Convention of the Rights of the Child

Explanatory note:

29. Greece writes that “measures have been taken to improve access to quality education for **all** children”.²⁷ Writing about refugee children in particular, Greece claims there are “provision[s] for informal educational services, which can be administered within hosting facilities, but do not substitute formal education services”.²⁸ They maintain that, Reception School Annexes for Refugee Education have been established where “RICs exist, both at primary and secondary schools [...] Early childhood education is provided within the Accommodation Centres in specialized facilities”.²⁹ The above mentioned measures are however not implemented on Samos

²⁷ *Emphasis added.* Greece. 2021. Replies of Greece to the list of issues in relation to its combined fourth to sixth periodic reports. Paragraph 62.

²⁸ *Ibid.* Paragraph 99.

²⁹ *Ibid.* Paragraph 97.

30. The Convention requires that State Parties “recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” which includes providing “material assistance and support programmes”.³⁰ The Convention also recognises “the right of the child to rest and leisure, to engage in play and recreational activities”.³¹ Under Article 28 CRC “State Parties recognize the right of the child to education”, which also includes making primary education “compulsory and available free to all”, including UAMs who, “irrespective of status, shall have full access to education”.³²

Evidence of Greece’s violation of rights of the child

31. UAMs on Samos are not able to attend Greek public schools during the time they remain in the CCAC. The only educational service is facilitated through the NGO Arsis, who provides classes in-situ for the minors.
32. Greece makes several references to a range of programs and provisions for services to children. The submitting organisations have seen no evidence of their implementation on Samos. This includes “Reception School Annexes for Refugee Education”. While Greece notes “integration into the education system occurs within three months of the formal identification of the minor refugee’s identity” none of SIR’s recognized minor students were integrated into the education system within three months. There is no state outreach on Samos to enrol UAMs into the state education system. In fact, without the work of NGO on the island, it is unlikely that *any* SIR students would be registered in the Greek education system.

³⁰ UN General Assembly. 1989. Convention on the Rights of the Child. United Nations. Article 27(1) and 27(2).

³¹ *Ibid.* Article 31(1).

³² UNCRC General Comment No.6. 2005. Treatment of Unaccompanied and Separated Children Outside Their Country of Origin. 1 September 2005. Paragraph 41.