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Résumé de l'article

Au moment où les demandeurs d'asile arrivent en Grèce, ils se voient souvent refuser l'accès à la justice à différents niveaux. Dans le même temps, les défenseurs de terrain volontaires internationaux ou Backpack Refugee Rights Advocates ont pour objectif d'aider les demandeurs d'asile à maîtriser les difficultés du processus d'asile européen complexe. Plus important encore, ils peuvent jouer un rôle important dans le processus d'autonomisation juridique des demandeurs d'asile. Ce document présentera d'abord le rôle et les défis des Backpack Refugee Rights Advocates dans le processus d'autonomisation juridique des demandeurs d'asile. Ensuite, le document analyse comment l'accès à la justice est refusé aux demandeurs d'asile en Grèce et comment Backpack Refugee Rights Advocates peut faire une différence grâce à l'autonomisation juridique. Enfin, le document présentera quelques alternatives au concept de Backpack Refugee Rights Advocates. Dans l'ensemble, on espère que ce document fournira aux défenseurs du terrain et aux autres chercheurs des informations sur la manière dont ils peuvent jouer un rôle essentiel dans l'autonomisation juridique des demandeurs d'asile et des réfugiés s'ils agissent conformément à certaines lignes directrices.

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"Backpack Refugee Rights Advocating" in Greece – Access to Justice through Legal Empowerment

Magnus Manhart*

The moment asylum seekers arrive in Greece, they are often denied access to justice on different levels. At the same time international volunteer field advocates or Backpack Refugee Rights Advocates have the goal of assisting asylum seekers to master the difficulties of the complex European asylum process. More importantly they can play an important role in the process of legally empowering asylum seekers. This paper will first analyze the different forms of access to justice that are denied to asylum seekers in Greece. Then the paper will proceed with the concept of legal empowerment of asylum seekers and it is argued that the main purpose of Backpack Refugee Rights Lawyers should be enabling asylum seekers and refugees to know and enforce their own rights. At the same time the paper identifies and addresses several problems of the work of Backpack Refugee Rights Lawyers. Overall, it is hoped that this paper will provide field advocates with information about how they can play an integral part in the legal empowerment of asylum seekers and refugees if they act according to certain guidelines.

Au moment où les demandeurs d'asile arrivent en Grèce, ils se voient souvent refuser l'accès à la justice à différents niveaux. Dans le même temps, les défenseurs de terrain volontaires internationaux ou Backpack Refugee Rights Advocates ont pour objectif d'aider les demandeurs d'asile à maîtriser les difficultés du processus d'asile européen complexe. Plus important encore, ils peuvent jouer un rôle important dans le processus d'autonomisation juridique des demandeurs d'asile. Ce document présentera d'abord le rôle et les défis des Backpack Refugee Rights Advocates dans le processus d'autonomisation juridique des demandeurs d'asile. Ensuite, le document analyse comment l'accès à la justice est refusé aux demandeurs d'asile en Grèce et comment Backpack Refugee Rights Advocates peut faire une différence grâce à l'autonomisation juridique. Enfin, le document présentera quelques alternatives au concept de Backpack Refugee Rights Advocates. Dans l'ensemble, on espère que ce document fournira aux défenseurs du terrain et aux autres chercheurs des informations sur la manière dont ils peuvent jouer un rôle essentiel dans l'autonomisation juridique des demandeurs d'asile et des réfugiés s'ils agissent conformément à certaines lignes directrices.

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It is a duty of this international citizenship to always confront the eyes and ears of governments with the human suffering for which it cannot truthfully be denied that they bear responsibility. People's suffering must never be allowed to remain the silent residue of politics. It grounds an absolute right to stand up and to challenge those who hold power.¹

– Michel Foucault

I. INTRODUCTION

The moment asylum seekers arrive on the shores of the Aegean islands, many are immediately confronted with blatant racism and seemingly insurmountable bureaucratic hurdles of the European asylum system. Since 2015, grassroots organizations began to develop spontaneously to support asylum seekers in overcoming these hurdles.² Short-term field advocates - or “Backpack Refugee Rights Advocates” [BRRA], as I shall name them - who join these grassroots organizations are often the first ones at the legal battlefield of Europe's refugee crisis who assist asylum seekers to navigate the looming legal uncertainties.

In Europe, asylum seekers and refugees are entitled to a full range of legally protected rights. The problem, however, lies in accessing those rights. States are often unwilling or sometimes unable to provide access to basic rights to asylum seekers and complicated asylum procedures effectively exclude asylum seekers from accessing their rights.

The BRRA are a relatively recent phenomenon. They are fortunate enough to possess the “right” passport; facilitated migration policies and globalization allow them to travel to other countries and work there on a pro-bono basis.³ In effect, BRRA use their right of free movement to support people who have difficulties accessing these rights themselves.

For this paper, the concept of “Backpack Refugee Rights Advocating” is defined specifically and as follows. “Backpack” signifies a foreign person who stays for a limited time. BRRA tend to work on a pro-bono basis for a grassroots organization, thus, they are often financially limited to stay longer. “Refugee Rights” are the set of rights pertaining to refugees and asylum seekers.⁴ One of the main goals of BRRA is to facilitate asylum seekers in accessing these specific rights, which are further discussed below. Here, the term “Advocate” can refer either to fully qualified lawyers, albeit in a different jurisdiction, or paralegals, non-practitioners with a legal background who may still be at an early stage of their legal education.

¹ Michel Foucault, “The rights and duties of international citizenship” (9 November 2015), online: *openDemocracy* <<https://www.opendemocracy.net/can-europe-make-it/michel-foucault/rights-and-duties-of-international-citizenship>>.

² Some organizations started before 2015 but many were formed spontaneously during the humanitarian crisis in 2015.

³ This was the case before the Covid-19 pandemic started and travel bans make the work of BRRA difficult. This paper was written before the Covid-19 pandemic and should be read with the assumption that regular travel should be possible again in the future.

⁴ *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 [Refugee Convention] art 1.A(2). According to the Refugee Convention a refugee is a person who is “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it;” and asylum seekers are persons who are seeking the status of a refugee pursuant to the Refugee Convention; *1967 Protocol Relating to the Status of Refugees*, 31 January 1967, 606 UNTS 267 [1967 Protocol]. The 1967 Protocol expanded the Refugee Convention which only referred to people who fled before 1 January 1951.

This paper seeks to illustrate asylum seekers' struggles and BARRA's role and challenges in assisting asylum seekers to access justice. The paper will first introduce the concept of BARRA, possible challenges, ways to overcome those challenges, and the role of BARRA in the legal empowerment of asylum seekers. Second, the paper will examine how asylum seekers are often denied access to justice in Greece and what BARRA could achieve by playing a part in the legal empowerment process. Lastly, the paper will address the problems caused by the Covid-19 pandemic and find alternatives to BARRA. Overall, the paper concludes that BARRA can play a significant role in legally empowering asylum seekers and refugees as long as they understand their role well and take certain crucial precautions.

II. THE ROLE OF BARRA

A. The Role of BARRA, Potential Risks and the Remedies

While the organizational model of grassroots organizations may be rather loose and lack a strict hierarchy, this does not mean that BARRA, who join the grassroots organizations, are lone advocates who act on their behalf without any preparation. It is paramount that there are hosting organizations and support networks that vigorously vet and prepare BARRA before the commencement of their fieldwork. In Greece, BARRA join a complex environment of governmental, non-governmental organizations and UN agencies who all work on the topic of refugees with often conflicting interests. UNHCR and larger international NGOs, such as the Danish Refugee Council, often have a top-down approach and are concerned with issues such as camp management and financial support.⁵ BARRA normally join grassroots organizations with a bottom-up approach, working more closely with individual asylum seekers, accompanying them through the asylum process, and having the ultimate goal to assist asylum seekers and refugees in becoming legally empowered. There is no formal way of recruiting BARRA, so they could be recruited online or after their arrival, with the minimum requirement that they were sufficiently vetted. Several challenges could result from the nature of the work of BARRA that will be addressed in this section.

First, BARRA often have a lack of expertise. Although BARRA should have a legal background, as a legal practitioner or paralegal, they come from a different jurisdiction and may not have the necessary expertise to address all the issues. The complex EU asylum law (such as the Dublin System or the EU-Turkey deal that will be mentioned below) and the new Greek asylum law add another layer of confusion for BARRA. Without a solid knowledge of the law, one will inevitably not be able to provide information on every issue. Underqualified volunteers who think that their mere presence will help and make a big difference to the "underprivileged" could be deeply counterproductive to the situation of asylum seekers.

Giving the wrong advice could cause tremendous damage to the case of asylum seekers and sometimes be illegal. Sarah Mardini, who came as a refugee herself, and four other volunteers were arrested in Greece for the same charges as smugglers who get caught.⁶ Legally, authorities often make no distinction between humanitarian assistance and smuggling if the act constitutes aiding or abetting "the systematic facilitation of illegal entrance of foreigners".⁷ Therefore, ignorance about the relevant regulations could bring both, the asylum seeker one is supporting and oneself into danger.

⁵ "Greece | Global Focus", online: *UNHCR* <<https://reporting.unhcr.org/greece>>; "Greece", online: *Danish Refugee Council* <<https://drc.ngo/our-work/where-we-work/europe/greece/>>.

⁶ Richard Pérez-Peña, "She Was Called a Hero for Helping Fellow Refugees. Doing So Got Her Arrested", *The New York Times* (1 November 2018), online: <<https://www.nytimes.com/2018/09/26/world/europe/greece-migrant-aid-arrests.html>>.

⁷ *Ibid*; Mariana Gkiliati, "Proud to Aid and Abet Refugees: The Criminalization of 'Flight Helpers' in Greece", (23 May 2016), online: *Oxford Law Faculty* <<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/05/proud-aid-and>>.

At the same time, it is important to manage expectations. The idea that a “lawyer” is now providing “legal aid” can create high expectations for some asylum seekers. Being too proactive can cause serious consequences for oneself but being too little engaged may cause disappointment. Without striking the right balance one could create more expectancies than one can fulfill.

It is the duty of the host organization to remind BARRA that their purpose is not to give legal advice but to provide information about the European asylum system and processes. The decision on how to proceed still lies with the asylum seekers themselves. To ensure correct and updated information about the current asylum laws, a network of all BARRA and asylum lawyers in Greece and beyond would be a good source. In this network, more experienced BARRA and Greek lawyers could provide the most updated information. Others in the group could help to peer-review the accuracy of the information. Many social media tools can be creatively used for these purposes. There are also European networks of information sharing to coordinate the distribution of supplies, give updates on policy changes, and share images of the reality in the field that media may not show.⁸ A strong support network could alleviate the problem of lack of expertise.

Second, working with any community that has a different cultural background creates challenges. Refugee communities in Greece (and beyond) have a very diverse background. In 2019, for example, the top four countries of origin were Afghanistan with 23,828, Syria with 10,856, Pakistan with 7,140, Iraq with 5,738 asylum applicants.⁹ BARRA are likely not from any of these countries and there can be a cultural and lingual barrier. Such barriers can easily cause cultural misunderstandings, which could lead to a lack of trust and the exclusion of the BARRA. Considering oneself as an expert in asylum law and refugee matters would be the wrong approach that is doomed from the beginning. The problem is that legal practitioners and law students often study a conventional “problem-solving” technique that focuses on the logical solving of pre-designed problem questions.¹⁰ The reality in Greece is messy and often it is difficult to even identify the specific problem out of all problems.

Thus, to have a culturally sensitive approach, it is paramount that BARRA can practice effective community advocacy without patronizing the community. Imai identifies three skills that can be used for effective community advocacy: “collaborating with a community, [...] recognizing individuality, [...] and taking a community perspective.”¹¹ First, collaborating with the community requires one to adopt a less hierarchical approach.¹² The best way to achieve this would be if BARRA and refugees could work together in collaboration, such as the recruitment and training of refugee paralegals that will be explained in more detail below. This would also have the advantage of overcoming potential language barriers. Second, it is important not to treat asylum seekers and refugees “as a depersonalized group of ‘oppressed people,’”¹³ since, as noted by Purkey, legal empowerment is not about seeing asylum seekers as passive objects to whom assistance happens.¹⁴ For this purpose, one should acknowledge one’s own identity and race and

⁸ Katie Whittaker, “Volunteering: a sustainable solution to Greece’s refugee crisis?”, (23 November 2015), online: *Global Citizen* <<https://www.globalcitizen.org/en/content/volunteering-a-sustainable-solution-to-greeces-mig/>>.

⁹ “Statistics - Greece | Asylum Information Database”, online: *Asylum in Europe* <<https://www.asylumineurope.org/reports/country/greece/statistics>> [“Asylum Database - Greece”].

¹⁰ Shin Imai, “A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering” (2002) 9 *Clinical L Rev* 195 at 202.

¹¹ *Ibid* at 200.

¹² *Ibid* at 206.

¹³ *Ibid* at 207.

¹⁴ Anna Lise Purkey, “A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations” (2014) 27:2 *J Refugee Stud* 260 at 265.

emotions to understand the individuality of the community.¹⁵ Third, one would have to adopt the perspective of a member of the community. Therefore, one would have to start speaking “[p]lain English.”¹⁶ It is the goal to translate legal jargon into plain English. This would also make it easier for an interpreter to translate. It would further require putting oneself into the perspective of an asylum seeker and try to understand the needs and challenges one faces. Overall, effective community advocacy within the refugee community can be achieved and it is an essential requirement to even start working.

Language barriers are another issue one will inevitably come across. But just as there are in the BRRA, the volunteer community has a large variety of skills offered by different volunteers. Organizations, such as “Translators Without Border” provide free translation services.¹⁷ The refugee community itself can be an important source if a translation is needed. Finally, in case there is no possibility to find an interpreter, translation apps may not provide perfect translations but can be useful to get an overview. For all these mentioned translation possibilities, one must speak in plain English that can be easily translated.

Third, asylum seekers often have to stay for a prolonged period, while BRRA often have a short stay. Asylum seekers often have to stay on the Greek islands for years until their status is finally determined. While officially the average processing time for an asylum claim at first instance is six months,¹⁸ individual cases may last well over a year.¹⁹ This time frame does not include the time people have to wait until they get an appointment for their asylum interview which can last several years.²⁰ Besides, some are not able to make an appointment for their asylum interview because of the discriminatory system discussed below.

Most BRRA are only able to stay for a short period due to financial and time constraints. Unless they were able to secure another source of income, BRRA have to rely on their savings to finance their stay. Realistically, BRRA will only be able to stay for a few months. Often grassroots organizations that engage BRRA act as legal clinics that also allow law students and recent graduates to work for the summer.

These time constraints on the one hand and prolonged procedures on the other can cause problems of consistency. The number of BRRA will constantly fluctuate and grassroots organizations and asylum seekers can never plan with a certain number of BRRA available in a certain area. This fluctuating number of BRRA could cause asylum seekers to have a lack of legal certainty and may be frustrating. This constant coming and going of BRRA requires constant training and the effective handover of cases. Cases could easily fall through the cracks.

There are two ways to tackle this problem: First, the handover of cases has to be done responsibly and sustainably. All information regarding a case should be meticulously well recorded and the information should be shared with the successor confidentially. Any personal information about asylum seekers and refugees can be very sensitive and cause danger to the individual if it is leaked. Thus, having a secure platform to share personal information is an essential requirement. Successor and predecessor should stay in close contact after the case has been passed on in case any question arises. Second, after the BRRA have left the fieldwork, they can continue remotely with the cases that have been taken on. Social media networks such as Facebook have been successfully used among Syrian refugees to maintain their social

¹⁵ Imai, *supra* note 10 at 217.

¹⁶ *Ibid* at 219.

¹⁷ “Volunteer as a translator for Translators without Borders”, online: <<https://translatorswithoutborders.org/volunteer/>>.

¹⁸ “Regular procedure - Greece | Asylum Information Database”, online: *Asylum in Europe* <<https://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/regular-procedure>> [“Regular procedure - Greece”].

¹⁹ *Ibid*.

²⁰ Patrick Strickland, “Refugees in Greece reflect on another year of waiting”, Al Jazeera (2 June 2018), online: <<https://www.aljazeera.com/news/2017/12/refugees-greece-reflect-year-waiting-171226173758364.html>>.

capital and to share important information among each other, therefore, it would not be a problem to be a part of this information network as a BRRA after the social network with refugees has been established on the field.²¹ Again, confidentiality is important and leaking information about individual asylum seekers on social media could jeopardize their asylum claim or even pose a risk to their life. Social media networks should, therefore, be used with caution and only for non-sensitive information, such as sharing information about changes in the asylum procedures. This way BRRA can also continue their support for asylum seekers after they leave.

Fourth, the mental health of BRRA may be negatively affected. While it may seem more obvious that refugees and asylum seekers are prone to post-traumatic stress disorders (PTSD) and other mental health conditions, the pressure on the mental health of volunteers working with asylum seekers and refugees cannot be underestimated. BRRA, in particular, may be more susceptible due to their close contact with asylum seekers and refugees. Rather than providing more superficial services, BRRA will listen to asylum seekers who reiterate their experiences as survivors of war, persecution, torture, or sexual violence. A BRRA is confronted with abysmal situations in camps, police brutality, or suicide threats. In some circumstances, their security may be at risk. The mental health of volunteers is underexplored.

Often volunteers who work with asylum seekers and refugees can be subject to burnout or secondary trauma through listening to the traumatic experiences of other people.²² The risk of anxiety disorders, PTSD, and depression is elevated for human rights workers.²³ Qualitative research on burnout factors for human rights advocates has also shown that a “martyr” culture of sacrificing one’s mental health for the sake of prioritizing their cause.²⁴ Perfectionism in the work of human rights advocates has also been linked to a higher risk of PTSD.²⁵ Neglecting one’s mental health can make traumatic experiences during the stay a lifetime problem without adequately addressing this issue.

It is, therefore, important to develop coping mechanisms oneself and to receive sufficient support from the organization and the volunteer community. Coping mechanisms that have been proved as effective include high self-efficacy that is a strong indicator of resilience.²⁶ Setting realistic goals and the belief to succeed in these tasks is a good way to prevent moments of disappointment and the feeling of helplessness. Furthermore, while coping mechanisms are highly specific to every person, studies have shown that “trauma-focused”, which focuses and objectively analyzes a traumatic event, and “forward-focused”, which focuses on future goals and remaining positive, were effective coping mechanisms to prevent PTSD.²⁷ Support mechanisms through the organization and the volunteer community are also essential for BRRA to keep healthy. The organization should facilitate routine counseling and the possibility to anonymously receive counseling if needed.²⁸

²¹ Reem Ramadan, “Questioning the role of Facebook in maintaining Syrian social capital during the Syrian crisis” (2017) 3:12 *Heliyon* e00483.

²² Sarah Knuckey, Margaret Satterthwaite & Adam Brown, “Trauma, Depression, and Burnout in the Human Rights Field: Identifying Barriers and Pathways to Resilient Advocacy” 49.3:1 *Colum HRLR* 267 at 270.

²³ *Ibid* at 272.

²⁴ *Ibid* at 274.

²⁵ *Ibid* at 312.

²⁶ *Ibid* at 313.

²⁷ *Ibid* at 315.

²⁸ *Ibid* at 317.

B. BARRA and the Legal Empowerment of Asylum Seekers and Refugees

One of the primary goals of BARRA is the legal empowerment of asylum seekers and refugees. Banik argues that while legal empowerment is often seen as a "top-down, politician-led approach,"²⁹ in reality "both in principle and in the development experience, legal empowerment is much more a matter of civil society and bottom-up initiatives."³⁰ Thus, the bottom-up approach of BARRA could be particularly effective in legally empowering asylum seekers.

Defining legal empowerment in the context of asylum seekers and refugees requires some adjustment from the more traditional definitions since these refer mostly to the rights of "citizens."³¹ Purkey offers such an adapted definition:

Legal empowerment in protracted refugee contexts can be defined as the process through which protracted refugee populations become able to use the law and legal mechanisms and services to protect and advance their rights and to acquire greater control over their lives, as well as the actual achievement of that increased control.³²

There are four features of this definition that are important to enable legal empowerment. First, legal empowerment is a "process and goal," which means that asylum seekers and refugees should be able to know and enforce their rights.³³ Second, legal empowerment is not about law but power.³⁴ Third, asylum seekers and refugees are the ones that should be the principal actors, not the ones trying to achieve something on their behalf, but a certain degree of assistance is required.³⁵ Fourth, "adequate formal legal institutions"³⁶ and the rule of law³⁷ have to be existent.

As a process, asylum seekers should be empowered to effectively use the law to advance their rights and to increase their control over their own lives which results in the goal of realizing those rights and control.³⁸ Below, this paper will show how BARRA can use educational programs and the recruitment of paralegals to fulfill this requirement.

In Europe, asylum seekers and refugees often do not lack legal safeguards but power. Rights are often not realized, due to the lack of political power of asylum seekers and refugees. While legal empowerment is about power and not law, laws can be used as a tool to achieve legal empowerment, since the political and socio-economic institutions are based on law.³⁹ For example, strategic litigation can be used as a means to tool to enforce more legal empowerment for asylum seekers. Law, however, is not the only tool that can be used to confer power to asylum seekers and refugees.⁴⁰ Community-based and creative non-

²⁹ Dan Banik, "Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication" (2009) 1:01 Hague J on the Rule of Law 117 at 130.

³⁰ *Ibid.*

³¹ *Ibid* at 120.

³² Purkey, *supra* note 14.

³³ *Ibid* at 265.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid* at 266.

³⁸ *Ibid* at 265.

³⁹ Banik, *supra* note 29 at 120.

⁴⁰ Stephen Golub, *Beyond rule of law orthodoxy: the legal empowerment alternative* (Carnegie Endowment for International Peace, 2003) at 29.

legal solutions are encouraged to reach this empowerment.⁴¹ The focus should be on group mobilization and BRRAs can be seen more as organizers rather than traditional lawyers.⁴²

Asylum seekers and refugees should not be the object of being legally empowered but should be the actor.⁴³ The role of the BRRAs should primarily be the role of an assistant to the people seeking empowerment.⁴⁴ Law practitioners and paralegals can provide basic information about the asylum process and train refugee paralegals, who could ideally provide legal information to other refugees in the absence of BRRAs or lawyers.⁴⁵

Generally, the EU and Greece provide a wide range of formal institutions that are designed to deal with asylum seekers. Greece ranks relatively poorly in Europe in the Rule of Law Index of the World Justice Project.⁴⁶ Nevertheless, the EU provides a comprehensive framework for asylum seekers and generally is considered to have a high standard of Rule of Law.⁴⁷ Hence, the requirement of having formal institutions and the Rule of Law should be fulfilled in the context of Greece and the EU.

Hence, it can be said that the prerequisites of the legal empowerment of asylum seekers can be achieved and BRRAs could play an important role in this process. The next part will examine how asylum seekers lack access to justice in the Greek asylum system and how BRRAs and the legal empowerment of asylum seekers could alleviate some of these problems.

III. ACCESS TO JUSTICE FOR ASYLUM SEEKERS IN GREECE WITH THE SUPPORT OF BRRAs

Legal empowerment and access to justice are distinct: access to justice is not primarily concerned with power.⁴⁸ However, legal empowerment can be an effective tool to enable access to justice.⁴⁹ The term “access to justice” is widely used, but there is no commonly agreed definition to it.⁵⁰ Generally, most approaches focus on a procedural component or adopt a more substantive perspective.⁵¹ Procedural access to justice would mainly concern the ability to access a court and the potential obstacles to effectively access a court.⁵² The substantive approach to defining access to justice takes into account whether the law

⁴¹ Orly Lobel, “The paradox of extralegal activism: critical legal consciousness and transformative politics” (2006) 120 *Harv L Rev* 937 at 959.

⁴² *Ibid* at 260–261.

⁴³ Purkey, *supra* note 14 at 265.

⁴⁴ *Ibid*.

⁴⁵ Golub, *supra* note 40 at 33.

⁴⁶ *Greece ranked 40 out of 128 countries on rule of law, dropping four positions*, World Justice Project (WJP) Rule of Law Index (World Justice Project, 2020).

⁴⁷ “Rule of Law”, (6 December 2016), online: *European Commission* <https://ec.europa.eu/neighbourhood-enlargement/policy/policy-highlights/rule-of-law_en>.

⁴⁸ Pilar Domingo & Tam O’Neil, “The politics of legal empowerment: Legal mobilisation strategies and implications for development” (June 2014), online: ODI <<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9008.pdf>> at 13.

⁴⁹ Sukti Dhital, “Reimagining justice: human rights through legal empowerment”, online: *OpenGlobalRights* <<https://www.openglobalrights.org/Reimagining-justice-human-rights-through-legal-empowerment/>>.

⁵⁰ Janneke H Gerards & Lize R Glas, “Access to justice in the European Convention on Human Rights system” (2017) 35:1 *Netherl QHR* 11 at 13.

⁵¹ *Ibid*.

⁵² *Ibid*; See also: Jennifer Bond, David Wiseman & Emily Bates, “The Cost of Uncertainty: Navigating the Boundary between Legal Information and Legal Services in the Access to Justice Sector” (2016) 25 *J L & Soc Pol’y* 1 at 3 [Bond, Wiseman & Bates, “Navigating”].

as a tool achieves an outcome that is "just and equitable"⁵³ considering the "social, economic and environmental spheres."⁵⁴ The substantive approach also considers the roles of human rights organizations or ombudspersons.⁵⁵ It is also argued that there is a third, symbolic dimension towards access to justice which concerns "the respect and recognition accorded by the system as a whole."⁵⁶ In this part, the paper will argue that asylum seekers in Greece are denied procedural, substantive, and symbolic access to justice and it will explore how BRRA could contribute to the legal empowerment of asylum seekers and achieve more access to justice for asylum seekers.

A. Procedural Access to Justice

Procedural access to justice focuses on the idea of fair trials and advancing one's rights through a judicial system.⁵⁷ The individuals trying to exercise their rights must have adequate and understandable information about their rights and the relevant procedures.⁵⁸ It is also an essential step to have adequate legal representation either through lawyers or legal aid.⁵⁹ In the refugee context, procedural access to justice means the ability to make an asylum claim, to be part of a fair refugee status determination process, and to have the possibility to appeal.⁶⁰

EU and Greek law provide relevant provisions that are supposed to guarantee fair trials and access to justice. For example, the European Convention of Human Rights [ECHR] provides in Article 6 the right to a fair trial and lays out several requirements to guarantee these rights,⁶¹ this is embodied in Article 6 of the Greek constitution.⁶² In reality, the Greek asylum system has many pitfalls for asylum seekers and there is not enough legal aid available for asylum seekers to avoid these pitfalls. Furthermore, the new Greek asylum law has worsened procedural access to justice.

The Greek asylum procedure is designed in a way that would make it easier to reject asylum seekers or to exclude them before they can even apply for asylum. The discrimination starts even before a person can apply for asylum. Under the Greek asylum law, if the asylum seeker arrived in Greece before the EU-Turkey deal, a person has to initiate the asylum procedures by calling a certain, country-specific number on Skype to schedule an appointment for asylum interviews.⁶³ In reality, this number will only be sporadically or not answered at all for certain countries.⁶⁴ Without having made an appointment for an asylum interview, the person is not considered to be an asylum seeker, which would be a legal status. One

⁵³ Jeremy McBride, *Access to justice for migrants and asylum seekers in Europe* (Strasbourg: Council of Europe, 2009) at para 9.

⁵⁴ *Ibid.*

⁵⁵ Gerards & Glas, *supra* note 50 at 13.

⁵⁶ Bond, Wiseman & Bates, "Navigating", *supra* note 52 at 3.

⁵⁷ Gerards & Glas, *supra* note 50 at 13.

⁵⁸ McBride, *supra* note 53 at para 13.

⁵⁹ Bond, Wiseman & Bates, "Navigating", *supra* note 52 at 3.

⁶⁰ Emily Bates, Jennifer Bond & David Wiseman, "Troubling Signs: Mapping Access to Justice in Canada's Refugee System Reform" (2016), 47:1 *Ottawa L Rev* 1 at 10 [Bates, Bond & Wiseman, "Troubling Signs"].

⁶¹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, [1950] ETS 5 Art 6.

⁶² The Constitution of Greece (Greece) Art 6.

⁶³ "How do I apply for asylum?", online: *UNHCR - Greece* <<https://help.unhcr.org/greece/applying-for-asylum/how-do-i-apply-for-asylum/>>.

⁶⁴ Stephanie Boltje, "Asylum seekers in Greece struggle with 'dysfunctional' Skype applications", (16 May 2016), online: *ABC News* <<https://www.abc.net.au/news/2016-05-16/europe-asylum-seekers-struggling-with-skype-applications/7419318>>.

does not have the fundamentally important legal identity that is a key to access justice.⁶⁵ Instead, one is kept in a precarious situation without official status and at constant risk of being detained by the police. If one manages to get an appointment interview, procedural fairness is often not guaranteed. Immigration officers would often try to trap asylum seekers during the reiteration of their reasons for leaving their country. There is also a lack of interpreters, which forces asylum seekers often to either speak in a language that is less familiar to them or sometimes to rely on interpreters who do not speak their dialect.⁶⁶ There is no uniform and satisfactory level of asylum interviews and the quality of these interviews can differ drastically.⁶⁷ These procedural issues can sometimes be the sole reason an asylum claim fails at the first instance.

These flaws were also mentioned in the case of *MSS v Belgium and Greece*, where the European Court of Human Rights identified several flaws of the Greek asylum system.⁶⁸ It held that the number of applications and inaccessibility of offices resulted in “a very long wait before obtaining an appointment for a first interview.”⁶⁹ It stated that the first asylum interview is often held without an interpreter and legal aid while asking only superficial questions.⁷⁰ It also mentions that “although any asylum-seeker can, in theory, lodge an application with the Court and request the application of Rule 39 of the Rules of Court, it appears that the shortcomings mentioned above are so considerable that access to the Court for asylum-seekers is almost impossible.”⁷¹

Since the International Protection Act (L. 4636/2019) and its subsequent amendment, L. 4686/2020, came into power in 2020, they further restricted the procedural access to justice for asylum seekers.⁷² Asylum seekers arriving after January 2020 face a shortened asylum process, which often only lasts a few days.⁷³ The safeguards of the asylum process have been reduced drastically, making it easy for asylum applications to be rejected based on minor issues, such as failure of the applicant to appear on time or when it is impossible to provide an interpreter in the applicant’s language.⁷⁴

As a general rule, Greek law does not provide legal aid for the initial asylum interview. For the asylum application and the interview, asylum seekers would have to rely on themselves or pay for a lawyer, which most people are not able to.⁷⁵ As seen above, asylum interviews are designed in a way to trap asylum seekers and without legal assistance, many legitimate claims will likely be rejected. For example, in 2019

⁶⁵ Commission on Legal Empowerment of the Poor, *Making the law work for everyone* (LEP, 2008) at 32.

⁶⁶ “Greece: A Year of Suffering for Asylum Seekers”, (15 March 2017), online: *Human Rights Watch* <<https://www.hrw.org/news/2017/03/15/greece-year-suffering-asylum-seekers>>.

⁶⁷ Aitima, NGO, *Asylum Seekers on Hold: Aspects of the Asylum Procedure in Greece* (April 2017), Criminal Justice, Borders and Citizenship Research Paper No. 2957727, online: *SSRN* <<https://ssrn.com/abstract=2957727>>.

⁶⁸ *MSS v Belgium and Greece*, 2011 EHRR 2 [MSS].

⁶⁹ *Ibid* at para 180.

⁷⁰ *Ibid* at para 181.

⁷¹ *Ibid* at para 182.

⁷² *The International Protection Act*, L 4636/2019, Gazette 169/A/1-11-2019 (Greece); *Improvement of the migration legislation, amendment of L 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) and other provisions*, L 4686/2020, Gazette A' 96/12-5-2020 (Greece) [*Improvement of Migration Amendment*]; “Overview of the legal <<https://www.asylumineurope.org/reports/country/greece/overview-legal-framework>>; “Overview of the main changes since the previous report update - Greece | Asylum Information Database”, online: *Asylum in Europe* <<https://www.asylumineurope.org/reports/country/greece/overview-main-changes-previous-report-update>>; Natalia-Rafaella Kafkoutou & Spyros-Vlad Oikonomou *Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing* (Greek Council for Refugees; Oxfam, 2020).

⁷³ Kafkoutou & Oikonomou, *supra* note 72 at 2.

⁷⁴ *Ibid* at 3.

⁷⁵ “Regular Procedure – Greece”, *supra* note 18.

the rejection rate of asylum claims at the first instance was 44.09% and people coming from Pakistan were almost all rejected, with a rejection rate of 97.35%.⁷⁶

In theory, Greek law sets out some exceptions when asylum seekers would be able to receive some free legal assistance, such as for unaccompanied minors or asylum seekers in detention. In practice, however, even those asylum seekers rarely have access to vital legal aid. For example, unaccompanied minors do not receive the assistance they are entitled to under Greek law.⁷⁷ According to L. 4554/2018, Greek authorities should appoint a legal guardian for unaccompanied minors, who are supposed to ensure decent accommodation, judicial and administrative representation, hospital visits, safety, interpretation, psychological support if needed, formal and non-formal education, foster families, respect for political, philosophical and religious beliefs of the minor, and sympathy and respect.⁷⁸ In reality, this system of guardianship is not operational and subsequent amendments have postponed the entry into force indefinitely.⁷⁹ Without a proper legal guardian, minors are not able to access the relevant information and their rights effectively exist on paper only. Making the situation worse, over 229 unaccompanied children were still in administrative detention in June 2020, which is completely contrary to the legal safeguards of L. 4554/2018.⁸⁰ Asylum seekers in detention should be able to access legal aid to challenge their detention,⁸¹ in reality, there is no legal aid system set up for these purposes, and NGOs with limited capacities have to cover this gap.⁸²

Applicants in appeal procedures are rarely able to access the free legal aid scheme. According to Article 44 (2) of L. 4375/2016⁸³ appellants should have the right of free legal assistance before the appeals authority. However, the new Greek asylum law has also made it more difficult for asylum seekers to appeal decisions and to access legal aid. It is now necessary that a lawyer appeals against the asylum decision.⁸⁴ Although asylum seekers can apply for state-funded legal aid, the funds are very limited and in 2019 only a third of the relevant people were able to obtain legal aid.⁸⁵ During the first months of the Covid-19 pandemic in Europe, the situation worsened, and the legal aid was suspended for two months, which did not hinder the Greek authorities to reject 11,000 asylum applications during this time.⁸⁶ The new law also permits the authorities to notify camp authorities or legal representatives of asylum seekers about the decision of the asylum application if it is not possible to contact the asylum seekers themselves.⁸⁷ Thus, it has become easier for notification to fall through the cracks and deadlines for an appeal to be missed.⁸⁸

⁷⁶ "Asylum Database - Greece", *supra* note 9.

⁷⁷ See *ibid* (3330 unaccompanied minors claimed asylum in 2019).

⁷⁸ *Guardianship of unaccompanied children and other provisions*, L. 4554/2018, Gazette 130/A/18-7-2018 (Greece); "Legal representation of unaccompanied children - Greece | Asylum Information Database", online: *Asylum in Europe* <<https://www.asylumineurope.org/reports/country/greece/asylum-procedure/guarantees-vulnerable-groups/legal-representation>>.

⁷⁹ *Ibid*.

⁸⁰ Kafkoutou & Oikonomou, *supra* note 72 at 9.

⁸¹ "Legal assistance for review of detention - Greece | Asylum Information Database", online: *Asylum in Europe* <<https://www.asylumineurope.org/reports/country/greece/legal-assistance>>.

⁸² *Ibid*.

⁸³ *Asylum Act*, L. 4375/2016, Gazette 51/A/3-4-2016 (Greece) Article 44 (2); "Regular Procedure – Greece", *supra* note 18.

⁸⁴ Kafkoutou & Oikonomou, *supra* note 72 at 14.

⁸⁵ *Ibid*.

⁸⁶ *Ibid*.

⁸⁷ *Ibid*.

⁸⁸ *Ibid*.

The lack of legal aid often leaves asylum seekers “guessing” in the dark about the complex processes of the asylum system.⁸⁹ The European and Greek asylum systems bring many pitfalls that can be difficult to understand for even legal practitioners. For asylum seekers, who recently fled war or persecution and undertook the perilous crossing over the Aegean Sea, these procedures may seem insurmountable. Without the right information, rumors can lead to wrong beliefs and detrimental actions. Shifts in Greek and EU asylum policies often create rumours.⁹⁰ For example, after the EU-Turkey deal, the rumour emerged that the asylum application process and the Skype interview was only possible in certain Greek cities.⁹¹ Misinformation, frequent changes in government policies, and the lack of implementation of those policies will negatively impact the trust in government officials, aid workers, and the formal processes in general.⁹² Further, there is a lack of consistency and clarity regarding official information.⁹³ It has become apparent that the government and UNHCR officials would sometimes hold back important information to convince refugees to stay in Greece.⁹⁴ This uncertainty regarding rights and processes causes refugees and asylum seekers to turn to the informal sector to receive services. Refugees and asylum seekers would, for example, turn to smugglers to informally leave Greece to other European countries.⁹⁵ Sometimes these smugglers would spread rumours and wrong information on purpose inciting refugees and asylum seekers to use their services.⁹⁶ In conclusion, it seems that the lack of coherent and correct information from official sources leads to a domino effect that benefits the informal sector and even criminal organizations that seek to exploit vulnerable refugees and asylum seekers, making information one of the most important goods.

Most BARRA cannot legally represent asylum seekers at court since they would normally come from another jurisdiction and are not qualified Greek lawyers. There are, however, steps where BARRA could make a valuable impact during the asylum process. During the initial asylum interview with an immigration caseworker, asylum seekers would normally have to represent themselves.⁹⁷ BARRA can mentally prepare asylum seekers for this interview by giving them the opportunity to tell their story before the actual interview. Further, BARRA can join asylum interviews as a non-intervening third party if the interviewee consents. The mere presence of a third party may create a more impartial asylum interview. Moreover, BARRA can remind asylum seekers that it is important to take a copy of the transcript and a recording of the interview. In appeal cases, this could be crucial evidence. They can further keep track of the deadlines to lodge appeals and connect asylum seekers with legal aid.

BARRA can serve as a source of information that can help asylum seekers to maneuver themselves through the asylum process. BARRA are in a position that enables them to attain correct and coherent information that they can share with asylum seekers and refugees. BARRA have a legal background and are better equipped than most asylum seekers and refugees to do the requisite research. As discussed above, one of the main issues that undermine the procedural access to justice for asylum seekers in Greece is the scarce availability of legal aid. BARRA can fill this gap by providing this information. This would

⁸⁹ Virginia Vigliar, “In Greece, lack of legal aid leaves migrants and refugees guessing”, (25 November 2016), online: *Devex* <<https://www.devex.com/news/sponsored/in-greece-lack-of-legal-aid-leaves-migrants-and-refugees-guessing-88964>>.

⁹⁰ Melissa Carlson, Laura Jakli & Katerina Linos, “Refugees Misdirected: How Information, Misinformation, and Rumors Shape Refugees’ Access to Fundamental Rights” (2017) 57 *Va J Int’l L* 539 at 558.

⁹¹ *Ibid* at 558–559.

⁹² *Ibid* at 559–561.

⁹³ *Ibid* at 561.

⁹⁴ *Ibid* at 562.

⁹⁵ *Ibid* at 566–567.

⁹⁶ *Ibid* at 566.

⁹⁷ “Regular Procedure – Greece”, *supra* note 18.

also prevent asylum seekers to be exploited by smugglers and gives them the possibility to be aware of their rights.

A possible strategy to increase the legal awareness of refugees and asylum seekers is the initiation of educational programs. In India "barefoot lawyers" have developed simple tactics and educational programs to enable villagers to claim their rights.⁹⁸ This educational approach can be used by BRRA to inform asylum seekers and refugees about their rights, giving them the possibility to demand and realize their rights. For example, legal information sessions, information pamphlets, and informal face-to-face information to asylum seekers and refugees can be an effective tool to ensure that asylum seekers and refugees know about their rights and are not left guessing anymore in the complex asylum process.

B. Substantive access to justice

Substantive access to justice concerns the nature and extent of rights.⁹⁹ To ensure substantive access to justice for asylum seekers, it is necessary that the asylum decision making is based on fair rules applied to the specific case of the asylum seeker.¹⁰⁰ Furthermore, socioeconomic factors impact substantive access to justice.¹⁰¹

On the surface, it seems that the EU provides a human rights framework that sufficiently protects the rights of asylum seekers. Article 18 of the *EU Charter of Fundamental Rights* guarantees the right to asylum.¹⁰² From analyzing the European and Greek asylum law more in-depth, it becomes apparent that there are numerous obstacles to substantive access to justice for asylum seekers, the consequences of the Dublin system and the EU-Turkey deal being some of the main ones.

One of the aspects of European refugee law that cause a great number of problems was the Dublin system. Originally, the EU Dublin system was developed as a unified approach to prevent the situation where the same individual would be recognized as a refugee in several EU member states at the same time, also called "refugees in orbit".¹⁰³ Article 3(1) of the Dublin Regulation III states that only one member state should examine the status of the asylum-seeker.¹⁰⁴ Article 20 provides that the responsible state should be the member state of first arrival.¹⁰⁵ Due to its geography, Greece is one of the main entry ports in Europe and the majority of refugees from the Middle East have to pass Greece at some point. According to the Dublin regulations, these people would have to stay in Greece until their status has been determined.

This system has caused Greece to take on a disproportionate share of asylum seekers, causing them to introduce restrictive rights, such as administrative detention and geographic restrictions. The EU

⁹⁸ Tina Rosenberg, "India's Barefoot Lawyers", online: *The New York Times* <<https://www.nytimes.com/2017/08/08/opinion/indias-barefoot-lawyers.html>>.

⁹⁹ David Allen Larson, "Access to Justice" in Jürgen Backhaus, ed, *Encyclopedia of Law and Economics* (New York, NY: Springer New York, 2014) 1 at 1.

¹⁰⁰ Bates, Bond & Wiseman, "Troubling Signs", *supra* note 60 at 10.

¹⁰¹ McBride, *supra* note 53 at para 9.

¹⁰² EC, *Charter of Fundamental Rights of the European Union*, [2012] C 326/02 Art 18.

¹⁰³ Ademola Abass & Francesca Ippolito, "Establishing the Common European Asylum System: 'it's a long long way to Tipperary'" in Ademola Abass & Francesca Ippolito, eds, *Regional Approaches to the Protection of Asylum Seekers An International Legal Perspective* (Routledge, 2016) Chap 6 at 124.

¹⁰⁴ EC, *Dublin Regulation (EC) 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, [2013] OJ, L 180/31 Art 3 [Dublin Regulation].

¹⁰⁵ *Ibid*, Art 20.

introduced the “hotspot approach” in 2015 as a response to a large number of refugees.¹⁰⁶ Originally, the plan envisioned reception and registration centres that would swiftly determine the status of asylum seekers and prepare them for their next step, such as being relocated to another EU member state, being allowed to enter the Greek mainland, or being returned to their country of origin if they do not satisfy the requirements for asylum.¹⁰⁷ The EU-Turkey Deal, which will be discussed below; the delay in the decision-making process and ever more restrictive policies transformed the hotspot facilities to detention centers, de facto detaining asylum seekers in those camps for the time of their stay.¹⁰⁸ Hence, the island camps that were built with a capacity of 6,178 people were occupied with 38,423 people by the end of 2019.¹⁰⁹ The overcrowding of the island camps, the lack of basic facilities, such as health care and shelter, clashes between residents of the camp, the police, and the local population of the island have led to abysmal living conditions for asylum seekers.¹¹⁰ A major legislative change that exacerbated the situation was the enforcement of the *International Protection Act* and its subsequent amendment.¹¹¹ The new provisions made administrative detention the default rule for newly arriving asylum seekers and detainees are not informed of the reason for their detention in a language that they are reasonably expected to understand.¹¹² In the past vulnerable people, such as people with disabilities or unaccompanied minors, were, at least officially, exempt from geographic restrictions that force asylum seekers to stay on Greek islands until their refugee status has been determined, however, this has been changed by the new law, eliminating any exemptions for vulnerable people.¹¹³ In September 2020 the situation on the islands worsened even more, when the Moria camp in Lesbos, the largest refugee camp in Greece, burned down, leaving its nearly 13,000 residents destitute.¹¹⁴

The EU-Turkey Statement (also known as EU-Turkey Deal), which was one of the reasons for the geographic restrictions, came into effect on 18 March 2016. It stipulated that the EU would send back every person who arrives “irregularly” on Greek islands, including asylum seekers, to Turkey. In exchange for every returned Syrian, the EU would resettle another Syrian from Turkey to the EU. Further, Turkey would attempt to prevent all illegal migration via sea and land routes.¹¹⁵ This statement had major implications for asylum seekers arriving from Turkey after 18 March 2016 as they were subject to being returned upon arrival unless they could prove that they were vulnerable or would face persecution in

¹⁰⁶ “Reception and identification procedure - Greece | Asylum Information Database”, online: *Asylum in Europe* <<https://www.asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and>> [“Reception - Greece”]; “Situation Mediterranean Situation”, online: *UNHCR* <<https://data2.unhcr.org/en/situations/mediterranean/location/5179>>. In 2015 over 850000 people arrived in Greece, mostly passing through Greece to other European countries; “Greece”, online: *International Rescue Committee* <<https://www.rescue.org/country/greece>>. Currently there are over 50000 refugees in Greece.

¹⁰⁷ “Reception - Greece, *supra* note 106.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018*, by Council of Europe Commissioner for Human Rights, CommDH (2018) 24 at paras 14–21.

¹¹¹ *International Protection Act*, *supra* note 72; *Improvement of migration Amendment*, *supra* note 72; Kafkoutou & Oikonomou, *supra* note 72.

¹¹² *Ibid* at 10–13.

¹¹³ *Ibid* at 6–7.

¹¹⁴ “Moria migrants: Fire destroys Greek camp leaving 13,000 without shelter” (9 September 2020), online: *BBC News* <<https://www.bbc.com/news/world-europe-54082201>>. Germany has agreed to take in some of the refugees and a second camp has been built to shelter 3000 people. But the majority of people are still without shelter.

¹¹⁵ Council of Europe, Press Release, 144/16, *EU-Turkey statement*, (18 March 2016).

Turkey.¹¹⁶ It is documented that some individuals were returned to Turkey without having had the chance to claim asylum or appeal against the decision to be returned.¹¹⁷ Because of the EU-Turkey Deal, the EU-Turkey relationship directly impacts the life of asylum seekers. This became apparent at the beginning of 2020 when Turkish authorities declared that they could no longer cope with the refugees and effectively suspended the EU-Turkey Deal, allowing asylum seekers to cross the border to Greece.¹¹⁸ Greek border authorities responded with firing tear gas and pushing the asylum seekers back, leaving most people stranded between the Turkish and Greek border denying any fair procedure or international protection.¹¹⁹ Both, the consequences of the Dublin system and the EU-Turkey Deal, deny asylum seekers the substantive access to justice, depriving them of a just and equitable outcome.

To challenge these laws and policies fundamental changes are necessary. BARRA could contribute to public interest litigation, which could achieve more rights for asylum seekers and refugees through court decisions. While BARRA cannot themselves participate in the litigation, they can support licensed lawyers who bring these concerns to the court. BARRA can help in the following ways: First, they can identify cases that would be suitable for public interest litigation and refer these to pro-bono lawyers. Second, they could bring an international perspective into this issue and strengthen the submissions of lawyers through their comparative perspective. Third, they are often closer to the field and can gather evidence of abuse and inadequate living conditions. Fourth, BARRA can use the gained knowledge in their own country in a similar case. It is important to keep in mind that at any stage, asylum seekers would have to play an active role themselves.

A good example of a public interest litigation case that has, at least for a few years, brought some positive change to the situation of asylum seekers in Europe is the beforementioned case of *MSS v. Belgium and Greece*.¹²⁰ Besides raising awareness about the procedural problems of the Greek asylum system, the widespread practice of detaining asylum seekers without providing a reason in Greece, and the inhumane detention conditions, the European Court of Human Rights held that because of these violations of the European Charter of Human Rights, other European countries should refrain from sending asylum seekers back to Greece, effectively suspending the Dublin system with regard to Greece.¹²¹ In 2016, however, the European Commission stated that "significant progress" has been made by the Greek government in improving the asylum process and that transfers according to the Dublin system shall resume.¹²² Nevertheless, the suspension of the Dublin system through an individual case has shown that strategic litigation can be a powerful tool to achieve more access to justice for asylum seekers and refugees in European member states since Europe has a common asylum system and decisions by the European Court of Human Rights are binding.¹²³ There are several organizations, such as the AIRE Centre

¹¹⁶ "EU/Greece: Pressure to Minimize Numbers of Migrants Identified As 'Vulnerable'", (1 June 2017), online: *Human Rights Watch* <<https://www.hrw.org/news/2017/06/01/eu/greece-pressure-minimize-numbers-migrants-identified-vulnerable>>. Greek authorities have reduced the numbers of people they deem as vulnerable, however.

¹¹⁷ Kondylia Gogou, "The EU-Turkey deal: Europe's year of shame", online: *Amnesty International* <<https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>>.

¹¹⁸ "What's happening at the Greek borders?", (5 March 2020), online: *Amnesty International* <<https://www.amnesty.org/en/latest/news/2020/03/greece-turkey-refugees-explainer/>>.

¹¹⁹ *Ibid.*

¹²⁰ *MSS*, *supra* note 68.

¹²¹ *Ibid* at 88 – 89.

¹²² European Council, Commission Recommendation (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council, [2016] OJ, L 340/60 at para 34 – 36.

¹²³ Jeff Walsh, "Strategic Litigation at a European Level/European Database of Asylum Law", (14 February 2017), online: *EDAL* <[/en/journal/strategic-litigation-european-level](https://www.edal.org/en/journal/strategic-litigation-european-level)>.

or the European Council on Refugees and Exiles [ECRE] that support lawyers to take public interest litigation cases to the European level.¹²⁴

More recently, in April 2018, the highest court in Greece, the Greek Council of State, issued a ruling that annulled the geographic restriction on the Greek islands and stated that this measure was unjustified.¹²⁵ The action was brought by the NGO Greek Council for Refugees, which consists of Greek pro-bono lawyers and volunteers.¹²⁶ However, in 2019 the Greek government introduced geographic restrictions again by transferring the power to do so from the Director of the Asylum Service to the Minister of Migration Policy, forcing asylum seekers to stay on the island camps until their asylum status determination.¹²⁷ The transfer of power made the decision a new administrative decision that had to be challenged again by the Greek Council for Refugees.¹²⁸ Although the litigation, in this case, is still ongoing and the initial success has been overturned, this case is still an example of how NGOs can challenge government decisions through the courts and potentially achieve more substantial access to justice.

C. Symbolic access to justice

Asylum seekers and refugees who may have had procedural and substantive access to justice are still often denied symbolic access to justice. Symbolic access to justice requires “adequate respect and recognition in both the rhetorical and operational realities of the decision-making environment”.¹²⁹ Anti-migration rhetoric, populism, and xenophobia have created a political climate in Europe (and beyond) that rarely will grant symbolic access to justice to asylum seekers.

Far-right populist parties are on the rise and Greece is no exception. The combination of being subject to strict austerity measures and being one of the main entry ports for refugees in Europe has created an explosive combination that catapulted the neo-fascist *Golden Dawn* party into the Greek and European parliament.¹³⁰ The party stresses ethnic nationalism, despises all foreigners, and has the goal to abolish democracy.¹³¹ Although the *Golden Dawn* party has strongly lost in support recently, other, similarly nationalist and xenophobic parties have surged in Europe, which all have the common theme of hostility towards immigration and having the goal to achieve a hard line against refugees and asylum seekers.¹³² Increasingly, refugees and asylum seekers are subject to physical attacks by far-right groups in Greece.¹³³ In some countries, such as Hungary, far-right parties already participate in the government and can enact legislation and policies against asylum seekers and refugees.¹³⁴

¹²⁴ *Ibid.*

¹²⁵ “Top Greek Court annuls island restriction for new asylum seekers | European Council on Refugees and Exiles (ECRE)”, online: *ECRE* <<https://www.ecre.org/top-greek-court-annuls-island-restriction-for-new-asylum-seekers/>>.

¹²⁶ “GCR - Who we are”, online: *Greek Council for Refugees* <<https://www.gcr.gr/en/our-work/who-we-are>>.

¹²⁷ “Freedom of movement - Greece | Asylum Information Database”, online: *Asylum in Europe* <<https://www.asylumineurope.org/reports/country/greece/reception-conditions/access-and-forms-reception-conditions/freedom-movement>>.

¹²⁸ *Ibid.* (The case has since been postponed).

¹²⁹ Bates, Bond & Wiseman, “Troubling Signs”, *supra* note 60 at 10.

¹³⁰ Sofia Vasilopoulou & Daphne Halikiopoulou, “Rising Golden Dawn: Inside Greece’s Neo-Nazi Party”, online: *Oxford Research Group* <<https://www.oxfordresearchgroup.org.uk/blog/rising-golden-dawn-inside-greeces-neo-nazi-party>>.

¹³¹ *Ibid.*

¹³² “Europe and nationalism: A country-by-country guide”, (10 September 2018), online: *BBC News* <<https://www.bbc.com/news/world-europe-36130006>>.

¹³³ Patrick Strickland, “Far-right attacks increase tension in Greece’s Lesbos”, (23 April 2018), online: *Aljazeera* <<https://www.aljazeera.com/news/2018/4/23/far-right-attacks-increase-tension-in-greeces-lesbos>>.

¹³⁴ Ian Bremmer, “These 5 Countries Show How the European Far-Right Is Growing in Power”, online: *Time* <<http://time.com/5395444/europe-far-right-italy-salvini-sweden-france-germany/>>.

Asylum seekers and refugees are not able to participate in the normal political process in a democracy since they are not able to contest the government in elections, thus, advocacy could fill this gap.¹³⁵ As non-nationals, asylum seekers and refugees are not able to vote and political parties have little incentive to cater to their rights. On the contrary, strategies based on populism and scapegoating of migrants has become a trend that many political parties have started to utilize to gain the support of the voters. Asylum seekers are excluded from being part of the political process altogether, leading to their "political death".¹³⁶ Major decisions that affect them the most are made without giving them the chance of raising their voice as the EU-Turkey deal shows.

It is, therefore, the moral obligation of the civil society to address this problem and achieve more political participation through advocacy. According to the World Bank, advocacy, to achieve empowerment, requires "speaking on behalf of and representing the voiceless, mobilizing to encourage others to speak with you, and empowering the voiceless to speak for themselves."¹³⁷ BRRA are in close contact with asylum seekers and refugees and will likely have a better understanding of the necessities in the field than policymakers. BRRA will normally have the opportunity to attend meetings with other NGOs, the UNHCR, and the Greek government, during which they can identify problems and raise them. To increase the impact of strategic litigation, one would have to engage others as well to raise awareness. Social media campaigns and joint open letters by asylum seekers, refugees, and grassroots organizations could be effective tools to raise awareness about the abysmal situation in refugee camps and the discrimination of certain nationalities in the asylum process. The necessary legal frameworks exist but are not enforced adequately or are flawed, thus extra-legal methods of empowerment must be utilized to empower asylum seekers and refugees. Moreover, BRRA could counter the right-wing propaganda by providing the general public with an objective and more authentic perspective on the situation, creating more procedural, substantial, and symbolic access to justice.

IV. ALTERNATIVES TO BRRA

So far, the paper argued that BRRA could play a positive role in the legal empowerment process of refugees, leading to more access to justice. Ultimately, however, the goal should be to create a sustainable solution that does not depend on volunteers. The Covid-19 pandemic and the countermeasures have disproportionately affected the life of asylum seekers and refugees, having to face closed borders and suspension of asylum services.¹³⁸ Moreover, refugee camps in Greece were placed under strict lockdown rules, while the rules for the rest of the country were lifted, worsening the situation in the already overcrowded camps.¹³⁹ The travel bans and lockdowns also make it impossible for BRRA to reach out to asylum seekers and refugees. The Covid-19 pandemic has shown how fragile a system that depends on external volunteers traveling to Greece would be and that there must be alternatives to such a system.

¹³⁵ Purkey, *supra* note 14 at 271.

¹³⁶ Nancy Fraser, "Reframing Justice in a Globalizing World." (2005) 36 *New Left Review* 69 at 77.

¹³⁷ Christine M Koggel, "Empowerment and the Role of Advocacy in a Globalized World" (2007) 1:1 *Ethics & Social Welfare* 8 at 16. It should be noted here that in reality people are rarely voiceless, but rather lack the possibility to make their voice heard; BRRA could play a role in amplifying this voice.

¹³⁸ Karolina Babicka, "The COVID-19 Measures Impact on the Rights of Migrants and Refugees in the EU", (29 June 2020), online: *Opinio Juris* <<http://opiniojuris.org/2020/06/29/the-covid-19-measures-impact-on-the-rights-of-migrants-and-refugees-in-the-eu-access-to-the-right-to-seek-asylum-and-reception-and-living-conditions/>>.

¹³⁹ Eva Cossé, "Greece Again Extends Covid-19 Lockdown at Refugee Camps", (12 June 2020), online: *Human Rights Watch* <<https://www.hrw.org/news/2020/06/12/greece-again-extends-covid-19-lockdown-refugee-camps>>.

Researchers, who work with NGOs in the field remotely and the training of refugee paralegals are two alternatives that will be explored in this section.

A. Remote Research

Legal practitioners and paralegals may be able to support the work of BARRA through their remote research. Country of origin information is one of the determining factors of every asylum interview.¹⁴⁰ The decision-maker would compare the information provided by the asylum seeker with the country of origin information that is available as an objective information source regarding the actual situation in a country.¹⁴¹ For example, if someone claims to be from a persecuted minority, the decision-maker would look at the country of origin information available and verify that the minority is persecuted in the country of origin of the asylum seeker. Unfortunately, decision-makers in Greece often rely on insufficient, unofficial, or outdated sources.¹⁴² If the interviewed asylum seekers themselves can present objective country of origin information to support their case it would benefit their asylum case immensely. Remote researchers can fill this gap by providing tailor-made country of origin information reports for each asylum seeker that captures the situation of people with a similar background as the asylum seeker in her or his country of origin. People with legal background would be able to present a clear and persuasive country of origin information report. Moreover, while it may be beneficial for advocates to be in the field, advocacy can be done from anywhere. International advocates can support local ones in their advocacy by creating more international awareness, which would increase the pressure on the local government.

B. Recruiting and Training Refugee Paralegals

More sustainability can be achieved if BARRA can train paralegals who are refugees themselves. As Golub says: “Educating and enabling the disadvantaged to deal with legal matters immediately affecting them would positively impact human rights, good governance, and project performance.”¹⁴³ In Thailand, for example, some legal clinics train refugee paralegals to provide more access to justice for their peers.¹⁴⁴ Refugee paralegals would have the advantage to have a better understanding of the situation of their peers. Information sharing would be facilitated through better communication and familiarity with social and cultural factors,¹⁴⁵ which could be major obstacles for BARRA. Further, more sustainability can be guaranteed once BARRA and local pro-bono lawyers leave.

There are, however, potential pitfalls that should also be addressed. Similar to the BARRA refugee paralegals often have a limited understanding of Greek laws and thorough training is necessary. Further, while coming from the same community of refugees can often be beneficial due to reduced cultural and language barriers, ethnic tension within the community, reduced trust due to conflicts, or marginalization of minorities, such as members of religious minorities or individuals who identify as LGBTQ+, can become potential challenges that refugee paralegals are more likely to face than BARRA. In addition to that, working with cases of asylum seekers who have experienced traumatic events may cause have an impact on the mental health of refugee paralegals, who have gone through similar events themselves in the past. Hence, it is the duty of NGOs and BARRAs to prepare potential refugee paralegals for all these

¹⁴⁰ Guy S Goodwin-Gill & Jane McAdam, *The refugee in international law*, 3rd ed (Oxford; New York: Oxford University Press, 2007) at 545–546.

¹⁴¹ *Ibid* at 546.

¹⁴² “Regular procedure – Greece”, *supra* note 18.

¹⁴³ Golub, *supra* note 40 at 40.

¹⁴⁴ Purkey, *supra* note 14 at 268.

¹⁴⁵ *Ibid* at 269.

challenges and to make an honest assessment, whether someone may or may not be suitable as a refugee paralegal.

Keeping these issues in mind, BARRA can join NGOs to train refugee paralegals in essential skills that would enable them to contribute to their community. Musenga, who is such a refugee paralegal in Kenya explains that in Kenya, local NGOs in conjunction with the UNHCR and IMO train refugees to become paralegals.¹⁴⁶ BARRA in Greece could be involved in this process and provide training to refugee paralegals in their field of expertise, the asylum system, and advocacy. Eventually, refugee paralegals would have the same skills as BARRA themselves but may be more effective in using them. Being a part of the refugee community is an advantage that refugee paralegals have over BARRA and other pro-bono lawyers. Musenga describes the advantages as follows:

I am able to intervene in refugee cases (especially arrest and harassment cases) at any time of the day or night, including on weekends and holidays; large organisations only intervene during their hours and days of work. We also advise, refer and follow up on cases, giving feedback to refugees, which means they do not have to pay the costs of transportation to these NGOs, whose offices are all far from where refugees live. Importantly, refugee paralegals are based where refugees live. We deal with refugees on a daily basis as the majority of us are also refugees and live as part of the refugee community. In the community where I live and work we have established a forum where refugees can share their own ideas on legal and livelihoods issues.¹⁴⁷

The Ghanaian refugee community in Canada has shown that the strong involvement of the community can be a factor in improving the overall situation of refugees in a country. Between 1987 and 1998, the chances for Ghanaians to receive asylum in Canada increased from 7% to 30%.¹⁴⁸ They worked closely with the government and decision-makers to change the preconceptions that existed and provided more accurate country of origin information regarding the situation in their country.¹⁴⁹ They prepared newly arrived asylum seekers for their asylum interviews by conducting mock interviews.¹⁵⁰ Lastly, they also changed the public perception regarding Ghanaian asylum seekers by cooperating with the media and NGOs.¹⁵¹ Of course, the refugee context in Canada is completely different from the situation in Greece and one cannot leap from one positive conclusion to another. Nevertheless, the active role of the refugee community and community advocacy could benefit refugees in the Greek context.

Refugee paralegals in Greece could use a similar approach to increase the access to justice of asylum seekers. They could prepare newly arrived asylum seekers for their asylum interview to remind them of potential pitfalls during the asylum interview. Further, they could advocate for more rights and participate in strategic litigation cases as plaintiffs to achieve more substantial justice. Through cooperating with the media they could also give people a better understanding of the situation, making them less hostile towards

¹⁴⁶ Tshimankinda Christian Musenga, "Refugee paralegals", online: *Forced Migration Review* <<https://www.finreview.org/economies/musenga>>.

¹⁴⁷ *Ibid.*

¹⁴⁸ Cynthia Hardy, "Refugee Determination: Power and Resistance in Systems of Foucauldian Power" (2003) 35:4 *Administration & Society* 462 at 475. It should be noted here that the recognition rate of asylum cases depends on several factors, including the political situation in the country of origin and the country of asylum, general societal and legal trends, and the development of the asylum system in the country of asylum).

¹⁴⁹ *Ibid* at 477.

¹⁵⁰ *Ibid* at 479–480.

¹⁵¹ *Ibid* at 480.

refugees in general. Effectively, they could be able to achieve more procedural, substantive, and symbolic access to justice, making them some of the most important actors in the legal empowerment process.

V. CONCLUSION

This paper shows that the obstacles that are faced by asylum seekers the moment they arrive in Greece and that BARRA can provide some relief and promote legal empowerment, as long as they keep in mind that legal empowerment is a goal and process, that it is about power, that asylum seekers and refugees should be the primary actors, and that adequate formal institutions and the Rule of Law have to be a given. However, there are several potential challenges that BARRA may face during their time in the field. First, since BARRA are not normally familiar with the asylum system in Greece, they may give out the wrong information or even be engaged in acts that are considered to be illegal. Second, there may be cultural and lingual barriers and the danger that BARRA may patronize their clients. Third, the short-term stay of BARRA may not be enough for long-term problems and could even be detrimental sometimes. Fourth, BARRA may be prone to PTSD or depression through the constant encounter with victims of violence and persecution. If BARRA are aware of their role in the legal empowerment process and overcome the challenges, they can contribute to refugees achieving more access to justice through legal empowerment. So far, access to justice is denied in the procedural dimension by making the asylum process complicated and arbitrary, and by not providing adequate legal aid; and in the substantive dimension, by having policies that are unfair and detrimental for asylum seekers, such as the Dublin system or the EU-Turkey deal, and in the symbolic dimension, by adopting a more and more anti-immigration stance with the rise of right-wing parties in Europe. BARRA can assist asylum seekers to maneuver themselves through the asylum process, participate in public interest litigation, enhance people's knowledge about the procedures, and advocate for more rights. The goal should be that asylum seekers and refugees should be able to know their rights and be able to enforce these rights themselves.

The paper acknowledges that a system that would solely depend on volunteers coming from other countries would not be sustainable and the Covid-19 crisis, which affects asylum seekers and refugees disproportionately, showed that BARRA cannot rely on open borders and travelling freely. Thus, alternatives to BARRA could be remote researchers, support NGOs in the field remotely, and refugee paralegals, who are themselves refugees but received training about the relevant laws and procedures.

Overall, BARRA can play an integral part in the legal empowerment of asylum seekers and refugees if they act according to certain guidelines and provide asylum seekers with the chance to empower themselves. BARRA can be a small step in a greater movement that could achieve more access to justice from the bottom-up and challenge those who hold power.