



EuroMed Rights
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الأورو-متوسطية للحقوق

Return Mania. Mapping policies and practices in the EuroMed Region



Chapter 2

Returns from Spain to Morocco

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Rue des Comédiens 22, 1000 Bruxelles, Belgium, T +32 2 513 37 97

Email information@euomedrights.net – Website: www.euomedrights.org

Acknowledgment

This chapter is part of a wider research work, coordinated by EuroMed Rights, which aims at providing an overview of the current return policies and practices in the Euro-Mediterranean region by sharing testimonies and examples of these policies. It highlights the similar trends adopted across the region and sheds light on the violations of human rights entailed by this “return obsession” and which is shared across Member States, EU institutions and third countries alike.

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Executive Summary

This chapter will analyse different practices and policies concerning forced returns from Spain to Morocco and from Morocco to third countries. Firstly, it will explore the Spanish legislative framework enabling forced returns, and it will map forced return practices, including detention and racial profiling. The analysis will focus then on the two different operational and legislative frameworks related to the return of Morocco nationals, on the one hand, and of third country nationals to Morocco on the other. In addition, a section will be dedicated to the particular situation concerning returns from the Canary Islands.

The final part of the chapter will focus on Morocco, by exploring the migrants' situation in the country - concerning therefore also third country nationals forcibly returned from Spain - as well as policies and practices of forced return and displacement of asylum seekers enacted by Moroccan authorities. Throughout its different parts, the research highlights how these practices systematically lead to several human rights violations.

In conclusion, the research addresses its key findings with a series of recommendations to Spanish and Moroccan authorities, to international organisations such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM) and to the African Union.

I- Introductory note: a lack of transparency. Data and methodology

The return system from Spain to Morocco is characterised by informality, flexibility and lack of transparency.

Neither Spain nor Morocco provide accessible, public data on returns. The only information made available by the Spanish government doesn't contain any reference to the time of residence in Spain before returns were enacted and to the nationality of returnees, and is not gender-sensitive. This lack of data renders it very difficult to monitor human rights violations and identify protection gaps.

In this context, this research relies on the analysis of secondary data on return policies. Moreover, the authors produced primary data through parliamentary questions and semi-structured interviews with Moroccans who were returned from Spain as well as with activists, researchers, human rights associations and NGOs. The interviews had a key role in identifying the procedures and modus operandi of the authorities, the main violations of human rights and the current state of play concerning forced returns.

II- Legal framework of forced returns in Spain

In Spain, forced returns affect both people attempting to enter the territories and non-nationals who are already residing there¹. The Organic Law on Rights and Freedoms of Aliens (LOEx 4/2000² known as Aliens Law) foresees three legal figures for returns: expulsions, refusal of entry and readmissions (*devoluciones*)³. Each of these figures have different legal procedures providing specific guarantees and timings.

The first case, **expulsions**, concerns foreigners living in Spain, who can receive an administrative sanction due to irregular immigration status or a criminal conviction. The Spanish Aliens' Law is highly restrictive as the possibility of having a regular status is linked to the duration of employment. As a result, individuals might eventually fall into irregular status if they temporarily lose their jobs, thus producing high levels of vulnerability and uncertainty. Around 80% of returns from Spain were enforced based on irregular immigration status⁴. Furthermore, returns orders include entry bans whose duration is extremely long - up to 10 years- implying a long prohibition of entry on the Spanish territory⁴. Taking into account that in 10 years the individual circumstances of a person might significantly change, the long duration of entry bans without the intervention of a judge might constitute a flagrant violation of the right to family and private life⁵.

Moreover, the law 4/2015 on citizens' security, introduced restrictions for the regularisation of people with criminal penalties in the renewal of their permits of residence. According to this law, detention can be substituted by return. However, in practice, the system applies a double punishment to non-nationals by enforcing returns after full detention sentences have been served.

¹Due to the alien's law, even people who have born in Spain can still be a foreigner and not entitled to residence.

²Available at: <https://www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf>

³For the sake of easy reading, in the chapter, *devoluciones* are referred to as "readmissions". However, the term '*devolución*' is kept in brackets because the Spanish immigration law does not contemplate the term 'readmission' as a legal figure. Deportations (both as a generic and a sociolinguistic term), in the Spanish Aliens Law LOEx 4/2000, are classified in: expulsions, refusals of entry and '*devoluciones*'.

⁴Provisions on entry-bans are also present in the EU Return Directive and they are among the measures that the recast proposal aims to amend. See Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>

⁵Art. 8 ECHR

This constitutes a serious discriminatory treatment. Testimonies denounced that National Police officers often escort to the police station non-nationals whose residency permits have expired or are blocked by law 4/2015 with the excuse of fixing the issue. Instead, they put them in detention and later return them to Morocco. No access to legal assistance or time for contesting the decision is granted in this case. The Spanish police can execute returns in less than 72 hours, returning people detained in police stations with no obligation to pass through judicial authoritiesⁱⁱ. This modality of forced return, known in Spanish as “*expulsión express*”, violates basic fundamental rights and prevents from monitoring returns due to the celerity of its execution. People disappear from one day to another; they cannot even communicate with their families before being returned nor prepare their personal affairs or money for the displacement. Some of them have families, are responsible for children or have properties and obligations in Spain.

The second case, **refusal of entry**, concerns people who try to enter the territory at authorised border crossing points. Those who do not meet the established requirements are refused entry and retained in facilities designated for this purpose until they are returned to their country of origin. Alternatively, they can be allowed to continue the journey to another country where they are admitted. Legal safeguards in this context are very weak, especially because of the lack of time for lodging asylum applications or appeals. The Spanish Ombudsman, who also holds the functions of the National Mechanism for the Prevention of Torture, together with several NGOs denounced serious human rights abuses resulting from refusals of entry. Notably, they identified violations of the right to an effective remedy⁶, the right to physical integrity and non-degrading treatment⁷, and the right to asylum. Short deadlines, lack of information and legal assistance, as well as the absence of monitoring mechanisms during refusals of entry are the main obstacles to protection, specifically concerning minors and victims of human trafficking.

Thirdly, **readmissions** (*devoluciones*) concern people who access Spanish territory through a non-authorised border crossing, or by contravening a previous prohibition of entry. Readmissions (*devoluciones*) are regulated by article 58 of the Alien Law and affect people usually intercepted at sea in boats or at border zones in Ceuta and Melilla. To a lesser extent, readmissions (*devoluciones*) also concern individuals attempting to arrive by non-authorised ways, such as hidden in cars or lorries or as stowaways on boats. In these cases, people are retained and either transferred to a migration detention facility (Centro de Internamiento de Extranjeros - CIE) until effective return, when bilateral relations with their country of origin allow it.

Finally, **pushbacks**, known in Spanish as “*devoluciones en caliente*” (“hot returns”) are enacted throughout the coordination between the Moroccan authorities and the Spanish Guardia Civil. These operations usually take place in land borders of Ceuta and Melilla, but also in the Alboran Sea. At sea, the Guardia Civil blocks the boats until Moroccan authorities arrive to “rescue” them.

Several associations have denounced that illegal pushbacks in the Alboran Sea - in the Chafarinas islands, Tierra and Mar - were covered as rescue operationsⁱⁱⁱ.

⁶Art. 13 ECHR

⁷Art. 3 ECHR

These practices constitute a serious breach of international human rights and maritime laws, and violate in particular the principle of non-refoulement, the right to an effective remedy (Art. 13 e ECHR) and the right to asylum. Despite having been denounced by several NGOs and international bodies, the citizens' security Law 4/2015^{8]} legalised this practice, and the Spanish Constitutional Court endorsed it as well in the case it is executed individually, “respecting human rights” and “paying attention to vulnerable categories”.

In this regard, in 2017 the Court of Strasburg (European Court of Human Rights - ECtHR) condemned Spain⁹ for the illegal pushback of two Malian nationals at the Melilla border (N.D. and N.T vs Spain). In 2020, following the appeal of the Spanish Government, the sentence was overturned. Later, the Spanish Constitutional Court confirmed the ECtHR's verdict^v holding¹⁰ that Spain's summary return of these two people did not violate the European Convention on Human Rights because they were part of a larger group of people who climbed the Melilla border fence between the Moroccan and Spanish territories^v. Eventually, in November 2020, the Spanish government stated that it will continue to implement these practices as they do comply with national and international legal obligations^{vi}. However, it is important to state that in practice, by their very nature, pushbacks can not comply with the international protection obligations to which both courts made conditional their legality. Meanwhile, in February 2019, the UN Committee for the Rights of the Child¹¹ condemned Spain for the illegal pushback of an unaccompanied minor in Ceuta^{vii}.

Finally, there is a further modality of deportation to be considered, namely, the so-called “voluntary” returns. This practice has been promoted as an alternative to forced deportations by the EU and its Member States in the last years. The actual voluntariness of these deportations must be questioned given the situation of precariousness and legal insecurity to which migrants are subject to in Spain by the provisions of the Alien Law, in addition to the threat of detention and forced deportation. From a human rights perspective, it is concerning the fact that “voluntary return” is becoming a back door throughout which the deportation system gains legitimacy and is perpetuated.

From 2015 to 2019, Spain “voluntarily” returned 6,084 people, out of which 17 were Moroccan nationals (Portal de Inmigración, 2020). In comparison, in the same period, 98,112 people were deported through the rest of deportations figures exposed in this chapter (with exception to pushbacks, for which there is no record).

“Voluntary” return programs depend on the Ministry of Inclusion, Social Security and Migration, and its management depends on national and international non-governmental organizations, such as the IOM. Besides assisted voluntary return programs, productive voluntary return programs undertake entrepreneurial projects in countries of origin. However, resources are very limited, and actual benefits are usually restricted to travel expenditures.

⁸Ley de protección de la seguridad ciudadana, de 30 marzo de 2015. Available at: <https://boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>

⁹ECtHR, CASE OF N.D. AND N.T. v. SPAIN, Available at: <https://hudoc.echr.coe.int/spa#%7B%22itemid%22%3A%222001-201353%22%7D>

¹⁰For further information on the sentence see CEAR, (2020). Available at: <https://www.cear.es/wp-content/uploads/2020/12/VALORACIO%CC%81N-CEAR-Sentencia-Tribunal-Constitucional-rechazo-en-frontera-2020.pdf>

¹¹OHCHR, CRC/C/82/D/27/2017, Dictamen aprobado por el Comité en relación con el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a un procedimiento de comunicaciones respecto de la comunicación núm. 27/2017. Available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslov9FOAeMKpBQmp0X2W981jys6vlyDSyoR8LS7SYIFVqDI%2FWaUq3xpOagVR7K%2FCPIrftUVjc4IU4jqsJBtYW%2FLLiUOCCQsTQkfo3lf8LJ17C5L%2BQ4hG3%2BQYz8qLyDLzrg940pUbmeAZB%2BpMxTax89A%3D>

III- Practices connected to forced returns: racial profiling and detention

Two practices are intrinsically related to forced returns: racial profiling and detention. Regarding racial profiling, different NGOs as well as international bodies denounced the fact that Spanish law enforcements extensively use ethnic appearance as a criterion for subjecting individuals to identity checks^{viii}. During the COVID-19 pandemic and the state of sanitary emergency this discriminatory practice was even found to have increased^{ix}.

Identity checks based on racial profiling might lead to detention, whether the individual's status is found to be irregular. In this case, persons can be detained in detention centres for foreigners (*Centros de internamiento de extranjeros*– CIE) -for a maximum of 60 days- or in a police station -for a maximum of 72 hours. Detention in CIE has to be confirmed by a judicial order allowing it as a precautionary measure before the return is enacted¹². Currently, there are seven CIE in Spain, located in Barcelona, the Canary Islands, Madrid, Málaga, Murcia, Valencia and Cádiz. These facilities depend on the Ministry of Interior and are administered by the Spanish National Police. In 2019, 3,758 people were detained and returned from a CIE, 97.81 % of whom were men^x. Women in CIE are invisibilised; organisations visiting CIE find difficulties to communicate with them and few researches have been conducted on the specific situation of women in detention in these centers. Moreover, serious concerns have been raised regarding the detention of potential victims of human trafficking and the lack of protection in detention facilities^{xi}.

Human rights violations in CIE have been denounced by different NGOs, associations and institutions, such as the Spanish Ombudsman. They have found several protection gaps in CIE with regard to material conditions, use of coercion and cases of non-communication of medical reports to competent judicial authorities^{xii}. Other human rights violations include the lack of access to asylum procedures, to legal assistance and to information and translation services. Physical and psychological ill-treatment, abuse of authority and lack of access to health are also serious issues¹³.

A further concern is the lack of protection of vulnerable groups, especially regarding the detention of unaccompanied minors, which is, in principle, prohibited in Spanish law¹⁴. Moreover, detention in a CIE appears to be a disproportionate measure given that less harmful measures could be taken instead.^{xiii}

Some cases of death under detention in CIE were also registered, some of which still need to be clarified. After these episodes, in fact, witnesses were quickly returned or freed without the possibility to declare or to get in contact with ongoing investigations. Two 2012 examples illustrate it: the case of Idrissa Diallo, who died in the CIE of Zona Franca (Barcelona) at the age of 21, and the death of Samba Martin, (Juanatey Ferreiro 2012) who died in the CIE of Aluche (Madrid) after asking more than ten times for medical assistance.

¹²Article 62 LOEx 4/2000

¹³Iridia, (2020) *Entidades de defensa de derechos humanos presentan una queja por las condiciones en las que las personas internadas en el CIE están cumpliendo las medidas de cuarentena*, available at: <https://iridia.cat/es/entitats-de-defensa-de-drets-humans-presenten-una-queixa-per-les-condicions-en-que-les-persones-internades-al-cie-estan-complint-les-mesures-de-quarantena/>; Altimira O. S. (2019), *La Audiencia de Barcelona ordena imputar a los policías denunciados por maltrato a migrantes tras un intento de fuga en el CIE*, available at: https://www.eldiario.es/catalunya/sociedad/audiencia-barcelona-denunciados-migrantes-cie_1_1205956.html

¹⁴Article 189 of the Reglament of Aliens Law Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703>

In 2018, Mohamed Bouderbala died in the CIE of Archidona (Murcia) after 38 days of detention and 18 hours in a cell with no external contact and with no access to food^{xiv}. Eventually, in 2020, Spain recognised its administrative responsibility in the death of Samba Martin^{xv}.

IV- Forced return of Moroccan nationals

Spain, as a member of the EU, is part of the 2013 Mobility Partnership that frames EU cooperation on migration with Morocco¹⁵. Very recently, on 1–2 December 2020, the EU Home Affairs Commissioner Ylva Johansson, visited Morocco to discuss migration management and, in particular, readmission and visa policies, by actually trying to impose visa facilitation to be conditioned to readmission agreements. This visit follows a similar one from the Spanish Foreign Affairs Minister and discussions between France, Germany and Morocco on readmissions of Moroccan unaccompanied minors.

To date, however, despite several attempts, neither Spain nor the EU have signed a readmission agreement with Morocco¹⁶.

However, the Valletta Summit on Migration¹⁷ (2015) and the creation of the EU-Emergency Trust Fund for Africa¹⁸ consolidated a security approach to migration through externalisation of border controls. The EU-Trust Fund aims to address the “root causes” of irregular migration by conditioning funds for development to migration control and, in particular, readmission agreements. The EU funds projects that privilege migration control and securitisation over development and protection. For example, the projects funded under the EU Trust Fund in Morocco tackle objectives related to “migration governance” which is not a development goal^{xvi}.

In this context, returns of Moroccans from Spain are made on the basis of **informal diplomatic cooperation**. Article 94.1 of the Spanish Constitution (1978) provides that international treaties need to pass through parliamentary authorisation and must be controlled by the Spanish Courts. However, informal agreements are not subject to the same procedure and therefore are not published in the Spanish official bulletin. Thus, there is a significant lack of transparency and accountability facilitating opacity and lack of guarantees^{xvii}.

In addition, even if they exist, legal guarantees are extremely difficult to implement and to monitor because there is no available information on where and how people may be returned. In fact, in Spain, the National Mechanism for the Prevention of Torture is the only mechanism available to monitor some return flights, but it does not produce regular and systematic data.

¹⁵Council of the European Union. Joint declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States, (2013). Brussels, 3 June 2013 (05.06) (OR. fr) Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/2013/docs/20130607_declaration_conjointe-maroc_eu_version_3_6_13_en.pdf

¹⁶See, for instance: Kevin Kaiser (2019). *EU-Morocco Negotiations on a Readmission Agreement: Obstacles to a Successful Conclusion*.

¹⁷Valletta Summit on Migration Available at: <https://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/>

¹⁸EU emergency Trust Fund for Africa. Available at: https://ec.europa.eu/trustfundforafrica/index_en

The following table shows the evolution of returns from the EU and Spain since 2015 under bilateral cooperation. According to Eurostat, more than 50% of returns of Moroccan nationals from EU member States are executed by Spain. In 2019, 6,380 people holding Moroccan passports were returned from Spain constituting more than 50 % of the total number of individuals returned from Spain.

Eurostat data¹⁹	2015	2016	2017	2018	2019
Total forced returns from the EU	196,190	228,905	189,740	170,360	161,755
Moroccan nationals forcibly returned from the EU	8,575	9,940	10,210	10,910	10,350
Moroccan nationals forcibly returned from Spain	5,840	5,330	5,845	6,945	6,380

Though the return system applying in the case of Moroccan nationals sent back from Spain relies mostly on informal agreements, some agreements have been signed in this regard. In 2007 Spain and Morocco signed **a memorandum on the return of unaccompanied children** that was strongly contested by civil society organisations^{xviii}. This public denunciation led to two sentences from the Spanish Constitutional Court²⁰, which eroded nearly any legal basis for the return of unaccompanied minors^{xix}.

In 2012, **a cross-border police cooperation agreement between Spain and Morocco** established centers of police coordination in Tangier and in Algeciras in order to fight irregular migration and trafficking²¹. Morocco imposes informal quotas of readmission of nationals and determines where exactly people can be returned: Ceuta, Melilla or directly from Algeciras to Tangier. Informal quotas go from 10 to 20 people per day by borderlands (Ceuta and Melilla) and from 20 to 30 by ferry to Tangier.

Once the returnees arrive at the border, the Moroccan police identifies individuals with pending cases. Irregular emigration according to article 50 of the Moroccan Aliens' Law, is also considered as a criminal act. Law 02-03 provides penalties - including detention or economic sanctions - for irregular departures from Morocco, for both nationals and non-nationals.

¹⁹Eurostat. Available at: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eirtn&lang=en

²⁰Sentence nº 183/2008, Available at <http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6415> and the sentence 184/2008 available at <http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6416>

²¹Acuerdo entre el Gobierno del Reino de España y el Gobierno del Reino de Marruecos en materia de cooperación policial transfronteriza, hecho ad referendum en Madrid el 16 de noviembre de 2010. Available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-6365.

This return procedure is particularly harmful for the returnees, who might find themselves in a desperate situation when released in Morocco, being far from their original villages or networks and with no money to pay for transportation or food. The lack of support, the fear of penalties and the stigma of the return makes the re-adaptation to the country of origin extremely difficult. For example, returnees often experience difficulties with regard to access to health, housing, employment and several administrative obstacles^{xx}. Given the situation they face, more than 30% of returnees are willing to migrate again^{xxi}.

In addition, forced returns are psychologically devastating for returnees and for their families, while causing serious damage to mental health particularly for children. The return system affects people who have strong connections to Spanish society and territory, people who were born in Spain with no contact with their country of nationality and no knowledge of *dariya*, Moroccan Arabic dialect. The system also separates families, leaving children without their parents.

“I cannot do anything here, nothing, not even getting married. My life remained in Madrid (N. 29 years old, returnee in Tangier living in Spain since the age of 8)”

Not only are returnees deprived of the possibility of seeking protection, but they are also potential victims of violations of fundamental rights (Iridia and Novact, 2020). Forced returns violate the right to family life²² and the right of children to remain with their parents²³. Moreover, returnees have no means to appeal against the return decision, which constitutes a violation of the right to an effective remedy²⁴. It goes without saying that no monitoring mechanism is in place.

V- Forced return of third country nationals from Spain to Morocco

The legal framework for forcibly returning third nationals from Spain to Morocco is the Treaty on the Movement of People, the Transit and the Readmission of Foreigners²⁵ signed in 1992. Art. 2 of the Treaty establishes that the requesting party (mostly Spain) should apply for readmission to the other (mostly Morocco)²⁶ at least 10 days before the return is enacted. Ten days is an extremely short time to correctly identify the future returnees, and their eventual protection needs and vulnerabilities. Return applications consist of a dossier with identity documents or information of the individual and his/her personal information detailing entry conditions and other relevant information. After having readmitted third country nationals, Morocco is entitled to return them to their country of origin. Chain returns might occur in violation of the principle of *non-refoulement*^{xxii}.

²²Art. 8 ECHR.

²³Art. 9, Convention on the Rights of the Child. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

²⁴Art. 13 ECHR

²⁵Acuerdo entre el reino de España y el reino de Marruecos, relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente, firmado en Madrid el 13 de febrero de 1992. «BOE» núm. 100, de 25 de abril de 1992. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-1992-8976>

²⁶This agreement can be applied by both parties for readmissions in both directions. However, as indicated here, it is mostly used by Spain for readmissions to Morocco.

The 1992 agreement provides that there is no obligation of accepting a third country national when the person is an asylum seeker (Art. 3). However, several NGOs and human rights associations highlighted that this provision can be easily bypassed, since the ten-day timeframe provided does not guarantee the access to the right to asylum. However, this agreement has been applied only two times, in Ceuta on August 22nd 2018 when 116 people were returned to Morocco and two months later, on October 12 2018 when 55 people were returned, as it was denounced by different NGOs²⁷.

Regarding return operations of third country nationals from Ceuta and Melilla or the Alboran Sea, Spanish and Moroccan authorities at borders cooperate informally. Once in Morocco, migrants are either detained or returned to Algeria, as a border country with Morocco, or returned to their country of origin, and should it be impossible, they are forcibly displaced to the South of the country. In 2019, the Moroccan Association for Human Rights (AMDH) reported over ten return operations towards Algeria concerning migrants who had been intercepted in the Alboran sea. During the pandemic, 42 people- including 26 women and two babies- who arrived at the Chafarinas islands by boat were illegally pushed back. Their countries of origin were Bangladesh, Ethiopia, Guinea Conakry and Mali^{xxiii}.

VI- The current situation. The impact of COVID-19 and the Canary Islands

In the context of COVID-19 pandemic, Spain and Morocco have closed their borders since March 2020 and, as of February 2021, borders remain closed. For example, before the closure of land borders, forced returns were usually executed by land from Ceuta and Melilla, but, as a consequence of this closure, in this period no forced returns took place²⁸. Following social protest, the involvement of the Ombudsman, and an impossibility for them to conduct any returns, all Spanish CIE were closed.

Forced returns were reactivated in September 2020, in parallel to the reactivation of return flights^{xxiv} to Mauritania and Morocco^{xxv}. The first known return flight departed from the Canary Islands to Mauritania^{xxvi}, carrying 22 nationals of Guinea Conakry, Senegal and Mauritania. This operation took place on the basis of the 2003 agreement between Spain and Mauritania²⁹ on returns of third country nationals, which is similar to the Spain-Morocco agreement of 1992.

In November 2020, arrivals by boat to the Canary Islands from Morocco significantly peaked. In response, the Spanish government started to return Moroccan nationals directly from the Canary Islands to Laayoune. The first return flight departed on November 15th, with eight men holding valid Moroccan passports. They were forcibly returned in a commercial flight of Royal Air Maroc (RAM) together with 16 police agents^{xxvii}. The practice of return flight from Gran Canaria to Laayoune was even consolidated after the visit of the Spanish Ministry of Interior Fernando Grande-Marlaska to Rabat, on November 20th^{xxviii}.

²⁷CEAR condena la devolución exprés de 55 personas desde Melilla a Marruecos. CEAR. 30 de October de 2018. Available at: <https://www.cear.es/cear-condena-las-devoluciones-expres-de-55-personas-desde-melilla-a-marruecos/>

²⁸In May 2021, also the International Organisation for Migration (IOM) called for the suspension of forced returns in times of COVID-19, in a statement available here: <https://www.iom.int/news/forced-returns-migrants-must-be-suspended-times-covid-19>

²⁹Aplicación Provisional del Acuerdo entre el Reino de España y la República Islámica de Mauritania en materia de inmigración, hecho en Madrid el 1 de julio de 2003.

On 7th December another return flight, carrying around 20 Moroccans, departed from the Canary Islands^{xxix}. On the same day, the General Police Unit for Borders and Foreigners³⁰ (Comisaría General de Extranjería y Fronteras - CGEF) reached an agreement with Royal Air Maroc representatives in order to increase the number of returnees to a maximum of 20 per return flight, i.e. up to 80 people per week, in line with the requirements by Moroccan authorities.

In this context, Spanish local organisations denounced the arbitrary identification of Moroccan nationals who travelled with their own valid passports to Valencia, where their families were waiting for them at the airport^{xxx}. For example, at the beginning of December 2020, the police identified a group of twelve young Morocco nationals at Valencia's airport. The twelve, coming from the Canary, were retained by the police in Zapadores police station and subsequently returned on December 8th, 2020 to Laayoune via Gran Canaria. Testimonies reported that the returnees had no access to legal assistance nor to any information during the return process.

The situation in the Canary Islands mirrors a trend which is regrettably not spread only in Spain, but in all EU countries of arrival: the increasing use of **accelerated procedures**. These procedures lead to the reduction of the access to asylum and result in a massive use of detention and forced returns. As for Spain, in the second half of 2020, the effect of the COVID-19 pandemic led to a huge increase in both detention and controls of boats arriving by sea. Migrants who arrive by sea are in fact forcibly isolated for quarantine and detained for a time exceeding the legal 72-hour limit.

VII- Morocco as a country of forced returns and forced displacement

Despite Morocco being the headquarter of the African Migration Observatory of the African Union, there is practically no public data on return processes, which are usually blurred with “voluntary return” in official sources. Reliable data on detention are difficult to find as well. However, there is enough evidence of discrimination practices targeting mainly black people who are identified as potential migrants towards the EU^{xxxi}. This is particularly true in cities with a higher concentration of black residents, namely in Nador, Oujda, Tanger, Alhucemas and the Alboran Sea - in the northeast of the country - and in Dakhla and Laayoun - in the south. For example, despite the opening in 2014 of UNHCR offices at the Ceuta and Melilla border zones, not a single application belonging to a black asylum seeker has been processed. The reason is that black people cannot even access these offices, because they are identified before even getting close to the border^{xxxii}. After being identified, they are often detained and then forcibly returned.

In the last two years, migration routes in Morocco have changed. The presence of the European Border and Coast Guard Agency (Frontex) at the Alboran sea, the closure of the land borders between Morocco and the Spanish cities of Ceuta and Melilla, together with the growing criminalisation of migration have pushed the route towards Europe to the South of Morocco to the Canary Islands. However, the situation of blackmigrants and their possibility to access to asylum and protection is worrisome in the South as it is in the North.

³⁰Comisaría General de Extranjería y Fronteras- CGEF.

In the northeastern region, the youth center of Arkame (Nador) serves as a center for informal detention of black migrants. People detained in these informal centers are later returned to their country of origin, forcibly displaced to the cities in the South of Morocco or illegally returned to Algeria^{xxxiii}. Local NGOs denounced raids and detentions against black migrants in Nador which were followed by illegal returns to Algeria due to the COVID-19 pandemic state of emergency. During the health emergency linked to the COVID-19 pandemic, according to the Moroccan Association for Human Rights (AMDH) and *Caminando Fronteras*, more than 100 migrants including minors were abandoned in the desert with no water or food, reportedly in the surroundings of Nador and Rabat^{xxxiv}.

In the Southern region, during the COVID-19 pandemic, two informal spaces - a youth centre and a school - have been repurposed as detention centers with the aim of displacing migrants to the northern region (Tiznit or Tan Tan) or of returning them to their country of origin. Since September 2020, Moroccan authorities have continued to organise return flights and displacement to the North. Information sources spoke about internal flights from the city of Dakhla to Casablanca airport followed by international flights to Guinea Conakry, Senegal and Mali^{xxxv}.

Morocco's Aliens law 02/03 provides that foreigners in an irregular situation in the country can be detained and returned. According to the law, minimal legal safeguards such as the access to legal assistance shall be guaranteed. Vulnerable individuals like pregnant women, children, asylum seekers and refugees should not be returned. However, in Morocco, detentions, returns and displacements take place outside any legal framework, following racial profiling and without any guarantees for vulnerable individuals. Individuals are detained without any judicial proceeding, and have no access to legal assistance. After detention, they may be returned via Casablanca Airport with the complicity of their consulates. Local organisations have noted irregularities in the identification by consular authorities, reporting the case of an unaccompanied minor being returned to Guinea Conakry.

When returns are not possible, detainees are forcibly internally displaced in Morocco or illegally returned to Algeria³¹ far from the borders in degrading conditions, with almost no food or water. These practices also affect people in a situation of vulnerability, such as women with babies^{xxxvi}.

The declaration of the state of sanitary emergency in Morocco led to an intensification of these practices. The need of sanitary control, in fact, was deliberately used to justify an increase of controls over migrants. Life conditions of migrants severely deteriorated as a result of the pandemic. No equal access to medical care was guaranteed and many had no choice but to contravene to the rules of the state of emergency (lockdown and curfew) in order to make a living. This situation led to an increase of racial profiling and mobility controls, resulting in a higher number of detentions - in informal centers and even in migrants' houses - forced displacements and returns.

³¹On the situation of migrants and refugees in Algeria and at the Algerian-Moroccan border, see for instance: Davide Gnes (2013), *Maghnia : franchir la frontière infranchissable*, EuroMed Rights [Maghnia : franchir la frontière infranchissable - EuroMed Droits \(euromedrights.org\)](https://euromedrights.org)

Even the migrants who had benefited from regularisation processes in 2014 and 2016 were affected by the socioeconomic crisis derived from the COVID-19. Many lost their jobs and could not renew their permits of residence, being left in a situation of high vulnerability. In addition, there is a significant increase in criminalisation of migrants who are accused of facilitating irregular migration - that according to law 02/03 can be punished with a sentence up to 15 years of detention. This leads to an increased number of people, Moroccans and non-Moroccans, being imprisoned following accusations of “facilitating irregular entry”.

In this context, and because of COVID-19 restrictions, monitoring human rights violations was more difficult than ever.

VIII- Recommendations

To Spain

1. Data on returns - deportations, refusals of entry and pushbacks - should be made public and available. Data should include information like the time of residence in Spain before returns were enacted, the nationality of returnees. Data should be gender-sensitive.
2. All diplomatic agreements related to migratory cooperation between Spain and a third country must be subject to public and parliamentary scrutiny. The practice of informal agreements on this subject must end.
3. Returns should be considered as an exceptional measure, and executed in the full respect of national and international human rights legislation. Procedures should not be accelerated and must guarantee the right to an effective remedy.
4. Administrative detention in CIE should be considered as a last resort measure only, and dignified conditions and access to information and legal assistance should be guaranteed to the persons retained.
5. The duration of entry bans following return orders must be limited to a maximum period of two years.
6. Illegal pushbacks at Spanish border crossing points - both authorised and unauthorised - and in the Alboran sea should be stopped in respect of the right of non-refoulement.
7. Institutions (e.g. the Ombudsman), civil society organisations and NGOs carrying out human rights monitoring activities should be granted access to all areas where pushbacks and returns are executed, including airports waiting rooms and border crossing points³². All return and post return operations should be duly monitored by independent observers.
8. Spain should end forced returns of Moroccan nationals, because there is evidence of ill-treatment and lack of guarantees during the process of return.
9. Spain should end forced returns of third nationals to Morocco, a country which does not guarantee protection for migrants and asylum seekers, and thus put an end to chain return practices.

³²Deputies have the right to visit places of confinement. More than having the right, the institutions have the obligation to act in favor of deputies, that have to fulfill their parliamentary functions beyond the Parliament (not only in the scope of the parliamentary initiatives). However, this is not included in any text, beyond the power given by the 'deputy card', where their functions are included. On the other hand, since a few years ago, the obstacles and complications to access the spaces of deprivation of freedom of movement by parliamentarians are increasing, since the procedure is slow, dysfunctional and sometimes discretionary. Several complaints have been filed and the difficulties or denials of access of several parliamentarians to places of deprivation of liberty or to places that depend on the Ministry of Interior (such as, for example, the CATE of Barranco Seco in the Canary Islands or rejection rooms at airports) have been publicly denounced.

10. Spain should elaborate a legal framework to ensure the end of the use of racial profiling in law enforcements actions and identity controls.
11. In order to guarantee social and legal protection, non-nationals de facto residing in Spain should be regularised.

To Morocco

1. Morocco should provide available and public information and data on returns to Morocco both of its own citizens and of third country nationals. Data on detention, internal displacement and returns to the country of origin of third country nationals should be made available and public too.
2. The government should implement programmes and public policies to support the socio-economic reintegration of returnees and protect their fundamental rights.
3. Monitoring mechanisms should be developed in order to detect and to put an end to the use of racial profiling by law enforcement, especially when resulting in detention.
4. The practice of forced returns should be stopped.
5. The illegal detention of migrants should be ended and migrant detention centers should be closed, in line with Morocco's national and international obligations.

To UNHCR and IOM:

1. UNHCR and IOM should work with the Moroccan authorities to make sure that migration is not criminalised with prison sentences or fines and that returnees have access to support and livelihood.
2. UNHCR should work with the Moroccan authorities on the development of protection mechanisms for migrants, asylum seekers and refugees, putting an end to illegal detention, forced displacement, refoulements at sea and at land.
3. UNHCR should monitor the situation at borders to identify refoulement practices of both Spain and Morocco.

To the African Union:

1. The African Union should cooperate with Morocco in order to protect migrants and returnees regardless of their nationality
2. The African Migration Observatory in Rabat should collect information and data related to the respect of human rights of migrants in Morocco, also concerning migrants and returnees life conditions and returns to and from Morocco.

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