



EuroMed Rights  
EuroMed Droits  
الأورو-متوسطية للحقوق

## *Return Mania. Mapping policies and practices in the EuroMed Region*



### Chapter 3

## Forced Returns from France to Morocco

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## 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 research focuses on France's forced return system, with particular attention to the return procedures to Morocco<sup>1</sup> of both Moroccan and third nationals. To this aim, it will analyse the legal framework, the procedures and practices related to forced returns, including the use of detention. In particular, this research intends to identify the main human rights violations inherent to the system - the forced return of minors, for example, or the lack of sufficient legal guarantees, especially for vulnerable individuals. Moreover, the research highlights the obstacles in the functioning of monitoring mechanisms and the lack of transparency of the whole process.

The research was based on the analysis of primary data - interviews to NGOs, human rights associations and key informants- as well as of secondary data - policy documents, reports and legislation.

### I- Forced return from France to Morocco: legal framework, lack of transparency and human rights violations

The first official text governing migration between France and Morocco dates from 1987<sup>2</sup>; it concerns residence permits linked to paid work and the rights of members of the joining family in the two countries; all other provisions are covered by common law.

In France, the return of Moroccan nationals is thus not regulated by a formal bilateral readmission agreement but instead based on administrative arrangements, bilateral deals and diplomatic cooperation. In this way, in 2018, France and Morocco signed a consular cooperation arrangement on the readmission of Moroccan nationals, which replaced the previous 1993 arrangement (Embassy of Morocco in France, 2020). According to the arrangement, Moroccan authorities must issue a *Laissez-Passer Consulaire* (LPC) to allow French authorities to deport Moroccan nationals on a case-by-case basis.

Such arrangements, characterised by informality and lack of both public accountability and of a legislative and regulatory framework, leave room for a large discretionary and flexibility in the implementation of return processes, whose outcome often depends on diplomatic and foreign affairs considerations.

According to Eurostat, in 2019 France forcibly returned 1.100 Moroccan nationals out of a total of 26.137 returns. After Spain, France is the second EU country for the number of returned Moroccan nationals.

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<sup>1</sup> This chapter only contemplates deportations from mainland France, not overseas territories

<sup>2</sup> Franco-Moroccan agreement of 9 October 1987, available at: <https://www.immigration.interieur.gouv.fr/Europe-et-International/Les-accords-bilateraux/Les-accords-bilateraux-en-matiere-de-circulation-de-sejour-et-d-emploi/L-accord-franco-marocain>

	2015	2016	2017	2018	2019
Total deportations from the EU	196,190	228,905	189,740	170,360	161,755
Moroccan nationals deported from the EU	8,575	9,940	10,210	10,910	10,350
Moroccan nationals deported to Morocco by France	965	815	835	940	1,100

Figure 1: Eurostat, 2020

In general, France's legal framework for enabling forced returns is the Code of Entry and Residence of Foreigners and of the Right to Asylum (CESEDA)<sup>3</sup>. Having transposed the EU Return Directive<sup>4</sup>, the CESEDA establishes different legal typologies<sup>5</sup> of return from the French territory. Removal measures can be applied if a person does not comply with the requirements for entering the French territory, if s/he entered illegally<sup>6</sup> or remained illegally in the territory, or if his/her presence in France constitutes a threat to public order. In the latter cases the administration issues an Obligation to Leave French Territory (OQTF)<sup>7</sup>.

This Code raises serious human rights concerns, mainly because of the lack of procedural guarantees and the excessive use of administrative detention<sup>8</sup>.

<sup>3</sup> Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile (CESEDA)

<sup>4</sup> 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>

<sup>5</sup> These measures include: the "Schengen" surrender orders, the "Dublin" transfer orders, the Prefectoral or Ministerial Expulsion Orders (APE/AME), the Judicial Prohibitions on French Territory (ITF), the Administrative Prohibitions on French Territory (IAT), the Traffic Prohibitions on French Territory (ICTF), the Prohibitions on Returning to French Territory (IRTF) and the Prefectoral Orders on Deportation (APRF) issued on the basis of an alert on the Schengen Information System (SIS).

<sup>6</sup> It is important to point out that people and their migration processes are not irregular or illegal per se. Instead, the State displays disciplinary controls and discards (i.e. deport) certain individualities. This allows the perpetuation of legal vulnerability and the violation of fundamental rights, expanding the possibilities of detention and deportability.

<sup>7</sup> Obligation de Quitter le Territoire Français (OQTF).

<sup>8</sup> The 2018 Law for Controlled immigration, effective right to asylum and successful integration doubled the length of detention, allowed for the re-detention of people shortly after being released from a previous stay in detention, increased recourse to videoconferencing eroding effective detention appeals, and failed to prohibit the detention of children. Furthermore, the amendment ruled that the jour franc (24h of safeguard from removals in cases of denied entry) does not apply in Schengen border controls.

First of all, the timeframe for appealing against the return decision, regarding migrants in an irregular situation or following a refusal of entry, is extremely short, and the appeal does not entail a suspensive effect: this is a clear violation of the right to an effective remedy according to European human rights framework<sup>9</sup>.

Secondly, whether in a waiting zone (see chapter 2.2) or in a detention centre (CRA) (see chapter III), the right to apply for asylum and the principle of non-refoulement are systemically compromised during the detention prior to the return process. This is due to multiple obstacles, such as a short timeframe for submissions, lack of access to legal information and interpretation and difficulty for accessing legal assistance. Moreover, according to the French Ombudsman<sup>10</sup> (2015), forced contact with the consular authorities of asylum seekers may constitute a violation of Article 3 of the ECHR.

Return procedures may also violate the right to private and family life (Art. 8 of the ECHR) and the principle of the best interest of the child (Convention on the Rights of the Child), when they affect people who are parents of children in France.

Furthermore, other human rights concerns relate to the alleged protection of vulnerable groups, such as ill people or minors, for which there are no safeguards against removal or detention.

The impact of forced return goes far beyond the moment of expulsion and has long-lasting consequences in the lives of returnees. In the case of Moroccans, according to ECRE<sup>ii</sup>, those who have been forcibly returned face difficulties to access housing, lack of employment opportunities, insufficient salary, lack of access to the health system, and administrative issues. ECRE's survey results show that more than a quarter of the respondents whose return was forced were unemployed, making evident the negative impact of return on the prospects for professional reintegration.<sup>11</sup> All these difficulties lead many returnees to take the decision to re-emigrate, as they face the same social, political and economic rights violations that pushed them to migrate to France<sup>iii</sup>.

## II- Refusal of entry and refoulement

### 2.1. Forced return at borders (pushbacks)

The risk of being forcibly returned starts when migrants enter or try to enter the French territory. Airports, ports, train stations or land-borders are the first screening point for the selecting people who are entitled or not to access French territory. Border police can issue a refusal of entry to a person who does not comply with entry requirements or based on a "migration risk." The person may be detained in a waiting zone (see chapter 2.2) or in a basic facility controlled by the border police (*Police aux frontières* - PAF) with an undetermined legal status until s/he is returned, detained or released with an OQTF<sup>12</sup>. People can also be released without an OQTF, but rather a regularisation visa valid for 8 days (called a safe conduct).

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<sup>9</sup> Art. 13 and 34 of the European Convention on Human Rights (ECHR) and Art. 47 of the Charter of Fundamental Rights of the European Union.

<sup>10</sup> *Défenseur des Droits*.

<sup>11</sup> See the chapter on returns from Spain to Morocco, here: [https://euromedrights.org/wp-content/uploads/2021/04/EN\\_Chapter-2>Returns-Spain-to-Morocco\\_Report-Migration.pdf](https://euromedrights.org/wp-content/uploads/2021/04/EN_Chapter-2>Returns-Spain-to-Morocco_Report-Migration.pdf)

<sup>12</sup> ECRE (2020c). *Access to asylum and detention at France's borders*, Minos Mouzourakis and Kris Pollet. Available at: <https://asylumineurope.org/wp-content/uploads/2020/11/franceborders.pdf>.

Before the end of this period, the person must either leave France, or go to the Prefecture to apply for a residence permit, if he/she is authorised to do so<sup>13</sup>.

Even though there is no official data, several organisations have reported illegal pushbacks at French borders, especially to Italy and Spain. NGOs, journalists and monitoring institutions have no access to these transit areas, where illegal practices remain invisible. Pushbacks often occur before the first formal border control, under racial profiling or discretionary considerations of the police, thus violating the principle of non-discrimination. Moreover, the quickness of the procedures impedes access to legal assistance and interpretation, in violation of the right to asylum.

## 2.2. Waiting zones at entry points

The “waiting zones” referred to as international zones- are the physical areas that extend from embarkation to disembarkation points at borders, where people who are refused entry can be detained according to the law<sup>14</sup> for the time strictly necessary for the administration to organise their expulsion or, in the case of asylum seekers, to examine their applications. At the end of the stay in the waiting zone, the person retained can be either admitted in the French territory, returned or placed under police custody in a waiting zone in case of refusal to board, and, subsequently in a CRA (Administrative Detention Centre) or even in prison. The maximum duration of detention in waiting zones is 20 days<sup>iv</sup>.

Waiting zones are spaces of impunity where fundamental rights are systematically violated., Moreover, independent organisations can't easily access them for monitoring purposes<sup>v</sup>. As denounced by several NGOs, border police take fast, arbitrary and discriminating decisions. Persons in waiting zones have no sufficient access to legal information, interpretation and legal assistance, which violates their right to an effective remedy. NGOs also reported violations of the right to physical integrity and non-degrading treatment (Art. 3 ECHR), right to health. As some families are separated after arrival, the right to private and family life (Art. 8 ECHR) might also be violated. Besides, there are numerous protection gaps, ranging from a lack of police specialisation to a lack of adequate detection mechanisms. In particular, there is no protection system for vulnerable groups, such as minors and ill-people, and especially for victims of human trafficking, who are mostly women.

Despite the COVID-19 pandemic, several dozen migrants have been placed in waiting zones without being able to benefit from *ad hoc* health measures. In October 2020, after eight days in the *Roissy* waiting area, a Moroccan migrant was sent back to Morocco without waiting for the result of his/her test, which was positive<sup>vi</sup>.

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<sup>13</sup> <https://www.service-public.fr/particuliers/vosdroits/F11144>.

<sup>14</sup> Waiting zones were legislated by 1992 French Law No. 92-625

According to the 1944 Convention on International Civil Aviation, people detained in transit areas can be pushed back to the countries they come from, regardless of whether they are sent back to their country of origin or not. On this basis, France returns both third country nationals and Moroccans to Morocco, thus violating the principle of non-refoulement, and by allowing *chain forced returns*, in the case of non-Moroccan nationals. Once returned to Morocco, third nationals pushed back by France risk being detained again in waiting zones and might be directly returned to their country of origin without any legal assistance<sup>vii</sup>.

Il faut observer que le renvoi par la France de migrants venant du Maroc, mais qui n'ont pas pour autant la nationalité de ce pays, est en contradiction avec le refus constant opposé par le Maroc à un accord de réadmission tel que proposé par l'UE et figurant dans le Partenariat pour la mobilité UE-Maroc, signé en Juin 2013. La conséquence première est bien un risque de retours en chaîne pour ces migrants.

A further issue of concern is the ongoing externalisation and privatisation of migration control,<sup>15</sup> as air companies must pay a fee for allowing to board a person who, once in France, is denied entry (fees of EUR 10.000 in the case of adults, and EUR 20.000 in the case of minors). The fact that air companies are given migratory and asylum control competencies has serious human rights implications. Moreover, air companies must provide private escorts to enforce returns, leaving room for larger impunity for human rights abuses and reducing State accountability, according to NGOs consulted. If the airline crew refuses to execute a pushback, the company is charged a EUR 30.000 fee.

### III- Detention in CRA, LRA and home arrest: the antechamber of expulsion

Once a person to be returned have been identified, for example following an identity check of a person who is present on the territory in an irregular situation<sup>16</sup>, the first step is to put them in detention by issuing an OQTF.

Despite the fact that detention should be an exception, the deprivation of liberty prior to return is systematically used in France. Returns are conducted from Administrative Detention Centres (CRA), from Administrative Detention Facilities (LRA) or following home arrest.

#### 3.1. The Administrative Detention Centres (CRA)

People with an irregular immigration status and with an OQTF can be held in Administrative Detention Centres (CRA) for a maximum of 90 days<sup>17</sup> before the implementation of a forced return. These centres are under the control of the Border Police (PAF) and/or the National Police (DGNP). In total, in France, there are 24 CRA, which served as detention facilities for 50.000 in 2019.

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<sup>15</sup> Air Royal Maroc and Air France brought these measures to Court, but the Constitutional Court failed in favour of the French State, as stated by its *Decision n° 2019-810 QPC on 25th October 2019*.

<sup>16</sup> Usually, these identifications are based on racial profiling and identity checks carried out on discriminatory grounds (in particular race or origin) to carry out checks on the legality of foreigners' residence. The French Ombudsman made several observations and considered that these practices constitute an infringement of the principle of equal treatment and a flagrant violation of fundamental rights. As previously explained, these identifications can also take place at French borders and waiting zones.

<sup>17</sup> A maximum of 210 days in the case of terrorist offences.



Alongside the police authorities, since 2008 several associations (5 or 6 depending on the year) have been providing legal and social assistance to detained foreigners. The *Contrôleur général des lieux de privation de liberté* (Controller-General for Places of Deprivation of Liberty)<sup>viii</sup> defined CRAs as spaces of undignified conditions ruled by arbitrary norms and restrictions. The CGLPL and NGOs who are present in the centres reported systematic violations to the right to liberty and security (Art. 5 ECHR), the rights to physical integrity and non-degrading treatment (Art. 3 ECHR), the right to an effective remedy (Art. 13 and 34 ECHR) the right to asylum and the right to health<sup>ix</sup>.

The COVID-19 pandemic has raised serious concerns regarding detention in CRAs. First of all, French NGOs questioned the usefulness of CRA in a context in which returns could not be enforced because of the border closure<sup>x</sup>. Even though the French Ombudsman (2020) stated that detention entails a disproportionate interference with the right to life, and health, and urged the closure of CRA during the health crisis, people continued to be detained. Although in the first months of lockdown the reception capacity of the centres was limited to 50%,<sup>18</sup> it gradually increased to 60%, 70% or even 90% in some centres<sup>xi</sup>. French NGOs denounced that conditions in CRAs do not comply with sanitary protocols, and people detained have a high risk of contracting COVID-19. Prior to return, people detained were obliged to be tested, and those who refused were penalised with prison sentences, under criminal law. Those tested positive were placed in isolation or transferred to specific CRAs, which often lack proper sanitary conditions<sup>xii</sup>.

The CGLPL and several NGOs also denounced the French State's failure to protect people in situations of vulnerability, such as minors, elderly people; people with disabilities, pregnant women, and victims of torture, persecutions and human trafficking, especially women and minors.

*M.R., of Moroccan nationality, was deaf, dumb and had a mental disability. On his arrival at the centre, he did not understand where he was and thought to be in a home or a hospital. All his family -parents, brothers and sisters- lived in France. He had not benefited from any interpreter in the language of the signs, nor for notification of the decision of retention, nor for its audience in front of the judge of liberties and detention (JLD). He was eventually sent back to Morocco after 30 days of retention.<sup>xiii</sup>*

It is important to highlight that only 40% of persons detained are actually returned, which implies that long-term detention is used as a penalty against migrants rather than as an effective means to enforce returns. This is particularly true for Moroccans, the third most affected nationality by administrative detention in CRA since 2015. In 2019, 2.205 Moroccans were detained, and 669 were returned, with a return rate of 30,3 %, according to data provided by *France Terre d'Asile*.

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<sup>18</sup> France's National Sanitary Protocol stated that CRA's should remain under 50 percent capacity to avoid the spread of the virus.

Although statistics prove that in 2019 91% of forced returns took place within the first 45 days of detention, the maximum period of detention was extended from 45 to 90 days in 2018<sup>xiv</sup>. According to the CGLPL, this extension constitutes an attempt to exercise psychological pressure on detainees to encourage *voluntary* returns (among other considerations).<sup>19</sup> However, different actors raised serious concerns about the actual *voluntariness* of these returns.<sup>20</sup>

In the last years, around 7% of people detained in CRA were identified as women. There is no specific clause in CESEDA in relation to women in detention, except for the provision of separate sleeping rooms for women and men. In 2016, the CGLPL denounced that women often reported feeling insecure in detention and stressed the need to provide specific detention spaces for women in all CRA.

	2015	2016	2017	2018	2019
Moroccans placed in CRAs	2.521	2.077	2.166	2.384	2.205
Moroccans forcibly returned from CRAs to Morocco	499	450	464	499	669
Total Moroccans deported to Morocco (CRAs, LRAs, Home arrest, Waiting zones)	965	815	835	940	1,100

Data provided by France Terre d'Asile

<sup>19</sup> In 2018, a parliamentary report made public forced expulsions, which account for the vast majority (between 70 and 80% of expulsions), cost more than six times as much as assisted return to the country of origin. On average, 13,800 euros compared to 2,500 euros (Assemblée Nationale, 2019).

<sup>20</sup> This research has had access to official IOM form that "voluntary returnees" have to complete, and it has to be stated that they constitute an attempt against the dignity of the person, who has to sign a clause so the State nor IOM can be hold responsible for "any injury or death caused during/after my participation in the IOM project."

### 3.2. The Administrative Detention Facilities (LRA)

*The Administrative Detention Facilities (LRA) are spaces of administrative detention which are created ad hoc, permanently or for a fixed temporary term by a prefectural decree. Detention in these facilities is limited to 48 hours. These facilities raise a series of concerns, ranging from structural inadequacy to the right of the detainees. First of all, LRAs do not comply with detention conditions standards because they are not designed for this aim. Moreover, because of their often-temporary nature, there is a lack of transparency regarding the location of some LRAs. The CGLPL and different NGOs also reported several cases where detention in LRAs exceeded the legal temporary limit, and in general it is not clear which detention procedures are followed. The rights of the persons detained in LRAs are considerably restricted since legal, material, and medical assistance are not mandatorily provided, as is the case in CRAs. These factors, added to the celerity of procedural resolutions, cause serious violations of the right to an effective remedy.*

*A 19 years old woman of Moroccan origin presented herself at the gendarmerie to denounce a case of gender violence against her, perpetrated by her brother. The gendarmerie checked her passport and found she was staying in France in an irregular situation. She was brought to a LRA and, in less than 24h, she was transferred to the airport at 4 am and returned to Morocco. This is a clear example of violation of the Art. 5 of the ECHR, which guarantees the right to liberty and security.<sup>xv</sup>*

### 3.3. Home arrest

Home arrest is a measure that obliges a person who is subject to a return order to stay in a specific place, which can be the person's house, or any accommodation space for migrants and refugees, in order to ensure surveillance. The measure consists of the obligation not to leave a certain area, stay for a maximum of 10 hours per day at home, and report regularly to the police<sup>xvi</sup>. The non-compliance with these obligations can lead to a 3-year prison sentence. The coercive effectiveness of home arrest is almost equivalent to the one of detention. The number of decisions on home arrest has increased significantly in the last years, from 373 in 2011 to 8745 in 2017<sup>xvii</sup>.

According to the French Ombudsman<sup>xviii</sup>, home arrest does not comply with the respect of fundamental rights. People subject to return decisions can stay under home arrest for an excessively long period, which can be extended up to 6 months and renewed once. In the case of people subject to a Prohibition of Entry to the French Territory<sup>21</sup> (ITF), home arrest can be unlimitedly extended. The Ombudsman further denounced the fact that people's potential vulnerabilities are not taken into account when enforcing home arrest decisions.

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<sup>21</sup> Interdiction du Territoire Français.

Another matter of concern is the very short timeframe for lodging an appeal against a home arrest decision, which also constitutes a violation of the right to an effective remedy. Finally, the use of public force required to execute the return or a transfer to a CRA or LRA of someone who is under home arrest is contrary to the right to private and family life (Art. 8 ECHR)<sup>22</sup>. Moreover, the procedure constitutes also a violation of the right to an effective remedy (Art. 13 ECHR), as in many instances appealing home arrest and return decisions is in practice impossible because procedural time limits for appeal are too short or non-existent.

## IV- The modalities of return

### 4.1. The forced returns

In the whole return process, the actual return operation is the least transparent stage due to the limitations that organisations, NGOs and institutional actors face in monitoring the procedures. In spite of the lack of transparency, several human rights violations inherent to the procedure have been reported.

For example, according to the CGLPL (2014) people are not systematically informed in advance of the execution of their return, in order to avoid self-mutilation as a form of resistance against it. Expulsions are conducted by the *Unité Nationale de l'Éloignement de Soutien et d'Intervention* (UNESI), l'*Unité Locale d'Éloignement* (ULE) or the PAF.

In the case of Moroccan nationals, forced returns take place by plane or by boat, which varies depending on the three following factors: the location of the CRA, LRA, residence or waiting zone from which the person is being returned, the proximity of airports and ports and the availability of commercial transportation. Most forced returns are carried out in commercial flights. In the case of returns by air, people can be brought to a Deportation Unit room in the airport and from there to the plane, or directly from the waiting zone to the plane.

During the removal, the police escort the person until boarding. However, if the person refuses to board, he or she is taken back to the CRA or taken into police custody for this offense, which is punishable with up to 3 years of jail.<sup>23</sup> The second attempt is made with a police escort to the final destination (3 escorts per person), who are always dressed in plain clothes. Police are entitled to use means of restraint: handcuffs are systematically used since the person is removed from CRA, LRA or home arrest. Further means of restraint include Velcro straps placed at knee height or the immobilisation belt, as well as masks and helmets<sup>xix</sup>. According to the French Ombudsman<sup>xx</sup>, the use of these coercive instruments is unacceptable for the enforcement of an administrative or judicial decision of expulsion. Indeed, their use - which is not legally regulated- infringes human dignity, within the meaning of Art. 3 of the ECHR relating to the prohibition of torture.

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<sup>22</sup> Interpreting Art. 8.2 of the ECHR, as saying: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>23</sup> Under Article L.624-1 of the CESEDA.

## 4.2. Forced returns of minors

The preventive detention and return of minors is common practice in the French return system and one of the main human rights issues to highlight. According to CESEDA's Articles L511-4 and L521, unaccompanied foreign minors cannot undergo a forced return order. In spite of that, the French Ombudsman and several French NGOs have repeatedly denounced that French authorities are detaining and returning unaccompanied minors, using flawed, and scientifically contested, age determination mechanisms.

In fact, the practice of returning minors is being increasingly institutionalised. On 7th December 2020, France and Morocco signed an agreement that aims at paving the way to return Moroccan unaccompanied children. Despite the fact that the legal agreement remains undisclosed, official sources confirmed that, in the long run, it will allow French judges to order returns based on placement decisions issued by Moroccan youth magistrates<sup>xxi</sup>.

UNICEF has expressed serious concerns about this agreement because it violates the principle of the superior interest of the child. Returned children can be prosecuted and sentenced for the crime of emigration (0203 Law), if they have left Moroccan territory in a clandestine manner. In fact, according to the agency, in 2017, 231 minors were prosecuted on this ground. Moreover, UNICEF points at the insufficient quality of the social care institutions and practices that violate the rights of the child. In Morocco, the majority of social care institutions are privately run, and the lack of control instruments greatly increases the vulnerability of children in these institutions. Furthermore, there is no efficient mechanism for a judge to monitor the implementation of the placement, or to review it if necessary<sup>24</sup>.

In transit zones, unaccompanied minors are subject to the same procedure as adults and do not benefit from the particular protection that should be granted to them<sup>xxii</sup>. Even if Article L. 213-2 al. 2 of the CESEDA provides that unaccompanied minors in transit zones have a twenty-four-hour protection against expulsion and have the right to meet with an *ad hoc* administrator to assess their situation, many of them do not benefit from this assistance. The French Ombudsman emphasizes that the detention conditions of minors at the border are not in line with the best interests of the child in Article 22 of the Convention on the Rights of the Child (CRC). Moreover, accompanied minors are also being detained (both in CRAs and LRAs) and forcibly returned under the fiction that they only "accompanied" their families and are therefore not legally deprived of their liberties.

In 2016, ECtHR ruled that the detention of children accompanying their parents violates Article 3 of the ECHR on the prohibition of torture and inhuman or degrading treatment or punishment. Despite the ruling, the number of detained children has steadily increased since 2012, the year of the first conviction of France by the ECHR for its practice<sup>25</sup>. In 2019, 3.380 children were detained in French CRAs, more than double of the previous year - 1.429<sup>xxiii</sup>.

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<sup>24</sup> UNICEF (2021). *Déclaration d'UNICEF France sur la coopération franco-marocaine pour le retour des mineurs non accompagnés*. Available at: <https://www.unicef.fr/article/declaration-d-unicef-france-sur-la-cooperation-franco-marocaine-pour-le-retour-des-mineurs>.

<sup>25</sup> ECHR, Popov c. France, 19th January 2012, n°39472/07 and 39474/07.

The detention of minors in France and their confinement in transit zones have been the subject of numerous reports and recommendations from international human rights bodies, such as the UN Human Rights Council (2018)<sup>26</sup>, the UN Committee on the Elimination of Racial Discrimination (2015)<sup>27</sup>, the Human Rights Committee<sup>28</sup>, the UN Committee on Enforced Disappearances (2013)<sup>29</sup>, the Committee on the Rights of the Child (CRC)<sup>30</sup> and the *Contrôleure générale des lieux de privation de liberté*<sup>31</sup>.

## V- Monitoring mechanisms

The generally informal nature of returns agreement, protocols and procedures is one of the reasons why human rights monitoring mechanisms, although existing, are not fully functioning. Low levels of public accountability regarding return agreements hinder returnees' rights making difficult monitoring tasks to ensure compliance with European and international human rights law.

However, the administration signed a convention with five NGOs,<sup>32</sup> allowing them to have a permanent presence in CRA and provide legal advice and social support to people detained, which is exceptional in the EU. According to the sources consulted, the State is implementing measures that gradually undermine monitoring and denounce capabilities of those NGOs with a more consolidated presence and legitimacy.

The CGLPL and the French Ombudsman are also key independent figures for the monitoring of CRA, LRAs and waiting zones. Their presence ensures that CRA are monitored and that some data is available. In addition, volunteers of other associations have been able to meet and support detainees in the CRA or to visit waiting areas. Nevertheless, certain spaces in CRA remain inaccessible and several of the "authorised" NGOs have complained about the constant pressure by authorities to restrict their freedom of expression in exchange for permission to intervene in CRA.

In conclusion, despite the existing monitoring system, opacity and lack of access still characterise many of these detention spaces. As for forced return in general, the lack of transparency is even more evident, as there is no available public data on return procedures and practices.

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<sup>26</sup> Working Group on the Universal Periodic Review, "Draft Report of the Working Group on the Universal Periodic Review - France, A/HRC/WG.2/29/L.1," 17 January 2018, <https://bit.ly/2ujjEcC>

<sup>27</sup> Committee on the Elimination of Racial Discrimination, "Concluding Observations on the Combined Twentieth and Twenty-First Periodic Reports of France, CERD/C/FRA/CO/20-21," 10 June 2015, <https://bit.ly/2golsOM>

<sup>28</sup> Human Rights Committee, "Concluding Observations on the Fifth Periodic Report of France, CCPR/C/FRA/CO/5," 17 August 2015, <https://bit.ly/2lvU8JF>

<sup>29</sup> Committee on Enforced Disappearances, "Concluding Observations on the Report Submitted by France Under Article 29, Paragraph 1, of the Convention, Adopted by the Committee at its Fourth Session (8–19 April 2013), CED/C/FRA/CO/1," 8 May 2013, <http://uhri.ohchr.org/document/index/767FC455-2B5A-4372-9FE4-A92B8A72D7F4>

<sup>30</sup> Committee on the Rights of the Child, "Concluding Observations on the Fifth Periodic Report of France, CRC/C/FRA/CO/5," 23 February 2016, <http://uhri.ohchr.org/document/index/2C6F3E71-EACO-48FE-B58E-416146917EF1>

<sup>31</sup> *Contrôleur général des lieux de privation de liberté*. (2021). Rapport thématique Droits fondamentaux des mineurs enfermés 2021. [online]. Available at: [https://www.cglpl.fr/wp-content/uploads/2021/03/2021\\_CGLPL\\_Rapport-Droits-fondamentaux-des-mineurs-enferm%C3%A9s\\_Dossier-de-presse.pdf](https://www.cglpl.fr/wp-content/uploads/2021/03/2021_CGLPL_Rapport-Droits-fondamentaux-des-mineurs-enferm%C3%A9s_Dossier-de-presse.pdf).

<sup>32</sup> This five NGOs are Ordre de Malte, Forum Réfugiés, La Cimade, France Terre d'Asile and Assfam.

## VI- Recommendations to the French government<sup>33</sup>

### *On the legal framework enabling returns, forced returns and pushbacks:*

1. All agreements regulating France's cooperation with third countries on readmissions of nationals and non-nationals, and especially in the case of Morocco, must be subject to public and national parliamentary scrutiny, consultation of relevant NGOs working in this field, in order to ensure democratic accountability and transparency. It must be ensured that these agreements comply with international law and human rights standards.
2. France must provide a legal framework on entry requirements to eliminate arbitrariness and potential racial discrimination in denying entry. In fact, in practice, there is a high degree of discretion and arbitrariness. Some procedures take place outside of any legal framework or monitoring, as in the case of refusals at border that take place before formal border controls. For example, police officers at borders can refuse entry on the basis of a perceived "migration risk".

### *On return practices and procedures:*

1. Given the violence and coercion inherent to any return procedure, the French government should consider return as a last resort measure, rather than as a normalised instrument for the enforcement of migration policies. The deportation framework should be transformed, so rather than being the norm, expulsion is to be regarded only in exceptional cases.
2. "Voluntary" returns should be assessed by National Human Rights Institutions and European institutions, so they do not to become a back door throughout which the return system gains legitimacy and is perpetuated.
3. France should put an end to returns of third nationals to transit countries, especially in the case of Morocco, as they may entail chain forced returns and therefore a violation of the principle of *non-refoulement*.
4. Border and migration control are State's competences and, therefore, should not be externalised to private companies, as in the case of air companies.
5. There must be an immediate and definitive end to illegal pushbacks at French authorised border crossing points and borderlands.
6. Police protocols and practices during expulsions must comply with the French Ombudsman's recommendations and respect the right to physical integrity and non-degrading treatment.

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<sup>33</sup> For recommendations addressed to Morocco, see: [https://euromedrights.org/wp-content/uploads/2021/04/EN\\_Chapter-2>Returns-Spain-to-Morocco\\_Report-Migration.pdf](https://euromedrights.org/wp-content/uploads/2021/04/EN_Chapter-2>Returns-Spain-to-Morocco_Report-Migration.pdf)

### *On the right to a fair trial, to an effective remedy and to asylum:*

1. To guarantee the right to a fair trial, all hearings regarding forced return execution should be held in public and in front of a competent Court. It is therefore necessary to put an end to the establishment of "relocated" courtrooms in places of detention, such as CRAs<sup>34</sup>.
2. Any refusal of entry, any return order and any measure depriving a person of his or her liberty must be accompanied by a suspensive appeal that guarantees the systematic control by an administrative judge and a court judge.
3. Free legal assistance should be provided in all places where foreign nationals are deprived of their liberty. NGOs should be allowed to assist detained people in the exercise of their rights.
4. A professional interpreter must be provided by public institutions and be able to intervene at all stages and from the beginning of the forced return procedure, including during interviews with lawyers and associations.
5. Judicial review of detention measures (in CRAs, LRAs, home arrest and waiting zones) should be granted with celerity and before any forced return or refoulement order is executed, in order to guarantee the respect of the individual liberties.
6. Access to international protection must be granted along the returns process, and asylum seekers should be protected from administrative detention measures.

### *On detention prior to return:*

1. Given the undignified conditions in detention facilities and the lack of guarantees for the exercise of rights, France should refrain from systematically using administrative detention measures in order to enforce deportation decisions.
2. Detention in CRAs, LRAs and home arrest should be only conceived as last resort measures given their disproportionate impact on people's lives.
3. Specific detention spaces for women should be provided in all CRA, as well as effective protection mechanisms for victims of human trafficking at borders and detention facilities.

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<sup>34</sup> According to *La Cimade*, judicial decisions trials are taking place throughout videoconference in CRAs. This implies a violation of fundamental rights because people are being judged in detention spaces, close to the police officers who surveil them, and without a lawyer close to the person. There is a lack of proper translation services and, in some occasions, there is no good internet connection nor adequate sound conditions. This practice took place before the Covid-19 health crisis, but in the Covid-context it became the rule in all detention centers.



### *On the protection of vulnerable individuals:*

1. Vulnerable individuals, such as ill people, minors, elderly and disabled people, pregnant women, victims of torture, persecution and human trafficking, must be granted effective protection from detention and deportation.
2. There must be an immediate and definitive end to the detention and expulsion of all accompanied and unaccompanied minors.
3. In accordance with French law, the State must be held responsible for the protection and care of unaccompanied minors.
4. The right to family life and the principle of the best interest of the child must have precedence over further considerations in administrative and judicial forced return decisions.

### *On the monitoring mechanisms:*

1. In the enforcement of expulsion, monitoring mechanisms must be available on a permanent basis in order to ensure human rights compliance. Monitoring mechanisms can be multiple, variable and adapted to the context. They are essential in order to prevent, identify and attribute responsibilities when violations of rights are committed.
2. NGOs present in CRAs and waiting zones should be granted access to all detention spaces. Their independence and freedom of expression should be protected to safeguard their monitoring role.
3. In ports and airports, NGOs and other monitoring institutions should be granted access to the area prior to the first border control, where illegal pushbacks usually occur.

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<sup>xix</sup> GNP. (2003). *Instruction relative à l'éloignement par voie aérienne des étrangers en situation irrégulière*. [online] Available at: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiniuDmg8ztAhUioRQKHXS1D8MQFjAAegQIAhAC&url=https%3A%2F%2Fwww.frenchleaks.fr%2FIMG%2Fpdf%2FPAF.pdf&usg=AOvVaw0Tnn\\_pPmK2TZjoJ0iwPFUD](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiniuDmg8ztAhUioRQKHXS1D8MQFjAAegQIAhAC&url=https%3A%2F%2Fwww.frenchleaks.fr%2FIMG%2Fpdf%2FPAF.pdf&usg=AOvVaw0Tnn_pPmK2TZjoJ0iwPFUD)

<sup>xx</sup> French Ombudsman. (2019). *Décision du Défenseur des droits n°2019-127*. [online]. Available at: [https://juridique.defenseurdesdroits.fr/index.php?lvl=notice\\_display&id=30995&opac\\_view=-1](https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=30995&opac_view=-1)

<sup>xxi</sup> ECRE. (2020a). *France: Deal to Facilitate Deportations to Morocco, Situation in Calais Deteriorates*. <https://www.ecre.org/france-deal-to-facilitate-deportations-to-morocco-situation-in-calais-deteriorates/>

<sup>xxii</sup> France Terre d'Asile (2018). *Rétention et privation de liberté des étrangers en France. L'Essentiel, No. 3*. [online]. Available at: [https://www.france-terre-asile.org/images/stories/publications/pdf/Retention\\_et\\_privation\\_de\\_liberte\\_des\\_etrangers\\_en\\_France.pdf](https://www.france-terre-asile.org/images/stories/publications/pdf/Retention_et_privation_de_liberte_des_etrangers_en_France.pdf)

<sup>xxiii</sup> France Terre d'Asile et al. (2019). *Centres et Locaux de Rétention Administrative. France*. [online]. Available at: [https://www.france-terre-asile.org/images/RA\\_CRA\\_2019\\_web.pdf](https://www.france-terre-asile.org/images/RA_CRA_2019_web.pdf) Dans ce même rapport il est dit : « En 2019, de très jeunes ressortissants Marocains, souvent mineurs, pris dans des réseaux d'exploitation n'ont ainsi pas pu être protégés. Ce serait souhaitable d'utiliser cette information dans le § concernant les mineurs