EuroMed Rights
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الأورو-متوسطية للحقوق

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

## Introduction Chapter

*March 2021*

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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.

EuroMed Rights wish to thank all the people - experts, stakeholders, interviewees - who contributed to the finalisation of this report. A special thanks goes to the researchers for their extensive and detailed analyses and their unwavering commitment in seeking evidence and justice for human rights violations.

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# I- Introduction of the Research

*"When I returned to Syria, I found terrible living conditions, poverty, weapons, fear and much worse things. Day by day, life gets worse. We have not been able to find security and refuge. My children live in fear and are illiterate. There is no education, only the sound of shelling and shootings."*

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

These are the stories of Abdullah and Yassine, two people forcibly returned to Syria and Morocco. They are two of the hundreds of thousands of victims of the EU and Member States' policies on returns and expulsions happening across the Euro-Mediterranean region. This research work, coordinated by EuroMed Rights, aims at providing an overview of the current return policies and practices in the 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.

In addition to providing an overview of the EU legislative and policy framework on returns, this report covers national return policies and practices in the Mashreq and Maghreb regions, focusing on returns from Turkey and Lebanon to Syria, and on readmission agreements between Italy and Tunisia, Spain and Morocco as well as France and Morocco. The report also looks at Egypt through two main case studies focusing on returns from Germany and Italy.

## a) Practices inscribed in a restrictive European approach

For 2020, if it appears that the COVID-19 pandemic has in fact decreased or stopped the number of returned people, we can observe that this has *de facto* reinforced the idea of return policies as a pillar of the European strategy. States have used the pretext of the pandemic to increase detention, restrict freedom of movement and reduce access to detention places for civil society organisations. For instance Italy started using quarantine boats, which became the antechamber of expulsions for many Tunisians. In Cyprus, newly arrived migrants were brought to the quarantine section of the Pournara camp, with no vulnerability screening prior to the transfer. Some of them were then fooled with the pretext of a PCR test and returned to Lebanon instead.

At EU level, the New EU Pact on Asylum and Migration, presented by the European Commission in September 2020, turns this increase in returns into an essential variable to be implemented in the policy, introducing the dangerous proposal of 'return sponsorship' as a form of European solidarity while promoting the concept of "safe third countries" and the role of Frontex.

At the same time, parallel tools are used at EU level to strengthen the conditionality between migration management and readmissions and the granting of visa and development aid. The revised Visa Code, for example, legally introduced the possibility to link the level of cooperation on readmissions of a third country with the granting of visa to its citizens. The new 2021-2027 Multiannual Financial Framework (MFF) confirmed this approach: budget allocations for repatriation and border management have been exponentially increased at the expense of resources dedicated to strengthening the common asylum system, legal pathways, integration and relocation. Moreover, Art. 17 of the Neighbourhood, Development and International Cooperation Instrument (NDICI) Regulation proposal provides that indicatively 10% of the budget for the Southern Neighbourhood shall be dedicated to rewarding the progress of partners in a series of thematic areas, including human rights and rule of law, but also migration cooperation. This double conditionality is quite dangerous, and seriously undermines the EU credibility in seeking "mutual beneficial partnerships" and defending human rights worldwide.

## b) The lack of transparency

The research shows an absolute **lack of transparency in accessing data/information** on numbers of people returned from expelling countries, on numbers of people detained while waiting to be returned and on the fate of returnees across the Euro-Mediterranean region. There is a complete absence of assistance whatsoever to returnees in terms of support to socio-economic integration and psychological support in the case of Morocco and Tunisia, while there is a total risk of being persecuted, arrested, detained, tortured and/or forcibly disappeared upon return to Syria and Egypt.

Contrary to the demands reiterated for many years both by civil society and by elected European representatives, the research also shows the total **lack of transparency and Parliamentary scrutiny** on readmission agreements between EU/Member States and third countries. Bilateral readmission agreements often take the form of informal arrangements, thus circumventing the competences of the European and national Parliaments in terms of monitoring and scrutiny. This "informality" leads to an increase in returnees' quotas while disregarding people's individual needs and vulnerabilities. Recent informal readmission agreements between Spain's Canary Islands and Morocco as well as between Italy and Tunisia show a clear trend aiming at increasing return quotas, deportation flights and the number of people per flight. The "political agreements" on returns as is the case between Turkey, Lebanon and Syria show the same trend.

The report stresses the need for an effective **return monitoring mechanism**, covering the pre-removal, removal and post-removal phases. It also underlines the dramatic risk in terms of psychological impact, economic and social consequences as well as the risk of forced disappearances and violence once people are returned to their country of origin or transit country, particularly in those that penalise irregular emigration. Thus, it is relevant to underline the range of national authorities' measures that can involve serious human violations and threats such as fines, imprisonment and physical violence.

## c) "Voluntary" forced returns

Another concern relates to the excessive use of "voluntary" departures, or existing coercive returns in disguise, through which the deportation system gains legitimacy and is perpetuated. The EU is pushing for "voluntary" departures, but how much of these departures really are "voluntary" when no other alternative exists? Migrants suffer from discrimination and are the most exposed to labour and sexual exploitation in host countries. Extending detention periods before deportations, as France does for example, can be seen as an attempt to exercise psychological pressure to encourage voluntary returns. In Lebanon, dire socio-economic conditions, unemployment and protection issues (only 20% of Syrians have a legal residence permit), such as deportations, lack of access to information, to legal documentation, to emergency healthcare, in addition to forced evictions are all "push factors" for people to accept "voluntary" returns. In Turkey, examples of migrants being forced to sign "voluntary" return forms, without any interpretation, have been numerous.

## d) A massive use of detention

Return practices also entail a massive and often unlawful use of **detention** and information on detention practices in the return process are often missing and unclear. Even though detention should be an exception and a measure of last resort, the deprivation of liberty is systematically used, for example in France, prior to deportation and the use of long-term detention is often used as a penalty against migrants rather than as an effective means to enforce deportation. This abuse of detention periods, as seen for example in France, Italy and Spain, compromises legal safeguards and the right to ask for asylum. Another concern relates to widespread discrimination in the access to the asylum procedure on the basis of nationality and racial profiling in detention and returns.

Many concerns are raised also in relation to the **detention of minors**. For example, France and Morocco signed an agreement that aims at paving the way to return Moroccan unaccompanied children from France. Often relying on questionable minority/majority judgements, French authorities are detaining and expelling **unaccompanied minors**. Regarding the return of minors, in Spain, flagrant violations of the European Convention of Human Rights, including the right to family life, and the Convention on the Rights of the Child have been identified along the return procedure.

## e) Migrant women are often invisible

The research attempted to integrate a **gender-sensitive** lens on the issue of returns through all its chapters. However, in the case of Spain, specific data on women returnees is not made available. Women in detention facilities in Spain are made invisible and organisations visiting detention centres find difficulties to communicate with them. In addition, there is a lack of protection of vulnerable groups, particularly concerning the case of victims of human trafficking, who are mostly women. In the case of Turkey, although the majority of deportees are young men, there were also women, but they also remain very difficult to access and therefore to take into account for the research.

In Lebanon, according to the UNHCR, General Security returned 8,827 individuals to Syria in 2019, of which 48% were women (UNHCR Lebanon: 2019). Back in Syria, with the exception of military service staff, Syrian women can also be arrested and detained for the same reasons as men. Importantly, women are also at risk if they merely have male relatives who have participated in revolutionary events, have voiced public opinions against the regime or have lived in opposition-held areas. The UN, for example, has documented how security forces at times arrest women as a means to put pressure on men to come and surrender.

## f) Increased refoulement at borders

The research also raises concerns over the wide-spread **pushbacks** along the EU external and internal borders which have significantly increased in the past years. It also assesses Frontex's increasingly broad return mandate alongside risks of human rights violations in that regard. Reliable reports of pushbacks from Greece to Turkey are long-standing and involve detention upon entry without any guarantees, confiscation of the person's belongings (mobile phones and sometimes footwear) and transfer across the Evros River. The unlawful pushbacks from Greece to Turkey also involve Syrians. The Border Violence Monitoring Network (BVMN) documented almost 50 incidents of illegal and violent pushbacks at the Greek-Turkish border where Syrians, including children and families, were involved, between May 2019 and November 2020.

The pushbacks are allegedly carried out across the Aegean Sea, whereby people having reached the Aegean Islands were re-embarked on a dinghy and towed back to Turkish waters, where they were left adrift. The NGO Mare Liberum counted, in 2020 alone, 321 pushbacks in the Aegean Sea, with some 9,798 people pushed back, where the European Border and Coast Guard Agency Frontex has actively and systematically contributed to these illegal practices. The practice of return in Turkey leaves open the risk of chain refoulement to Syria as a result of Greece's illegal practices at its sea (Aegean islands) and land (Evros region) borders.

In the Eastern Mediterranean, more recent pushbacks started being reported from Cyprus to Lebanon and to Turkey with a high risk of **chain refoulement** to Syria. Furthermore, the Balkan route is notorious for wide-spread chain pushbacks and unprecedented levels of violence, including beating, sexual abuse, robbery and humiliation, have been reported. In the Western Mediterranean, pushbacks from the Spanish enclaves of Ceuta and Melilla towards Morocco are long-standing and include so-called hot pushbacks, whereby people are arrested and returned to Morocco without any identification and access to a lawyer.

Pushback practices are not limited to external borders. In the last years, hundreds of migrants - including minors - have been refused entry and been pushed back at the French-Italy border in Ventimiglia, as well as - as denounced in a recent decision by the Court of Rome - between Italy and Slovenia, with consequent chain refoulement along the Balkan route.

In light of the above-mentioned concerns and challenges in terms of human rights violations, the research provides concrete **recommendations** to decision-makers to change direction and to respect their EU and international obligations. What is needed is a pre-return and post-return monitoring mechanism for fundamental rights violations able to operate across borders in an independent and transparent way.

The involvement of civil society organisations is fundamental as necessary watchdogs and independent actors and the increased criminalisation of solidarity in the Euro-Mediterranean region should be fought back, thus allowing civil society organisations to actively participate in this independent monitoring.

## II- Short Summary of Different Chapters

The first chapter provides **a framework of EU policies** when it comes to the "return obsession". The chapter maps out recent EU legislative and policy measures and some Member States' adopted or encouraged practices in the field of return/expulsion. The chapter discusses in detail the 2018 proposal to recast the Return Directive and legislative proposals accompanying the 2020 Pact on Asylum and Migration, notably border return procedure and return sponsorship mechanism. The chapter also looks at the cooperation on readmission with third countries and the concept of "safe country" used by the EU and its Member States to swiftly remove people to these countries. Finally, Frontex's increasingly broad return mandate is assessed, alongside risks of human rights violations in that regard. The chapter points to measures that are not called removals, but which are, in fact, no less coercive. These include "voluntary" departure when no reasonable alternative exists and pushbacks. There is a strong need to monitor these policies to prevent human rights violations.

Chapters 2, 3 and 4 are focused on return policies to Maghreb countries and, in particular, on bilateral cooperation on readmission, return and reintegration between **Spain and France with Morocco** as well as between **Italy and Tunisia**, respectively. These chapters explore the dangerous concepts of safe third countries and safe countries of origin, given the fact that Morocco and Tunisia are considered as such by most EU Member States although neither of them have an asylum law in place nor truly protect migrants, asylum seekers and refugees. The increasing numbers of returnees in readmission agreements, for both Tunisia and Morocco (the Canary Islands return 80 persons to Morocco each week on average), highlight the failure to take into account individual needs and possible vulnerabilities. Violent pushbacks continue to take place at Ceuta and Melilla's land borders with Morocco. These must be added to the so-called "express refoulement" procedure according to which people are directly returned to Morocco under the 1992 Spain-Morocco agreement.

The Spanish return system in the case of Morocco is framed by "informality", flexibility and lack of transparency. Spain does not publish transparent, disaggregated or gender sensitive data on deportations, making it difficult to monitor human rights violations during deportation or post deportation processes. In Morocco, Law 02-03 criminalises irregular migration with prison and fines affecting both Moroccan and non-Moroccan deportees. Chapter 3, which deals with returns to Morocco from France, focuses on the deportation of Moroccan nationals from France, taking into account that France is the second EU country that expels the most Moroccan nationals. The French deportation system violates fundamental rights in all stages, both at national borders and within administrative detention facilities as well as during the enforcement of expulsion decisions. Flagrant violations of the European Convention of Human Rights have been identified along the deportation procedure, especially regarding the deportation of minors.

To face the increase of arrivals in the Canary Islands, the EU and Spain negotiated with Morocco a quota of 80 returnees per week. Italy reached a similar agreement with Tunisia after hundreds of Tunisian landings in Lampedusa in the month of August 2020. In both cases, negotiating a quota of returnees per week risks avoiding taking into account personal situations in order to fill such quotas.

With regards to **Italy**, which recently intensified discussions with **Tunisia** to increase the number of returns and, despite the COVID-19-related restrictions, the country resumed repatriation flights as of 10 August 2020. Tunisians are by far the most numerous deportees from Italy. Young Tunisians prefer to brave the Mediterranean Sea to reach Italy and risk being infected by the virus, than return to their country given the level of desperation. From one election to the next, in Tunisia, Italy or at EU level, the migration issue remains a source of electoral mobilisation.

The research then proceeds to look at **Egypt** by focusing on two main case studies, the returns from Germany and Italy. Through bilateral readmission agreements, Italy and Germany intensified deportations to Egypt, with a total of 469 Egyptians returned from Italy in 2019 and thus in violation of Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance and the European Convention of Human Rights. The European Union and its member states absolutely depend on cooperation with President Al-Sisi due to the geographical location of Egypt and the country's importance both as a transit station for refugees and as a country of origin for many of them. Overall, in 2018 Germany was the highest country with operating charter flights and the third in organising scheduled flights. However, deportations from Germany have also decreased dramatically in 2020, due in part to the COVID-19 pandemic.

As for Lebanon, the study maps different return policies and practices at the **Cyprus-Lebanon** and **Lebanon-Syria** border and analyses their impact on the rights of displaced Syrians to have access to international protection. Returns from Lebanon and smuggling routes to Cyprus both reflect a lack of access to meaningful international protection in Lebanon, where only 20% of Syrians have a legal residence permit. Lebanese authorities are pressuring Syrians to accept return through a series of policies and practices. Syrian refugees who want to return to Syria need to apply for security clearance with the regime's Intelligence Services, and the UN and human rights organisations have documented how refugee returnees have been arrested, detained, tortured and/or forcibly disappeared upon return to Syria. While these returns should be extensively monitored, the UNHCR faces important limits in monitoring returns both before and particularly after return to Syria. Reports from various civil society organisations recently revealed that hundreds of people from Syria were detained across Turkey and coercively returned to Syria and that the Lebanese General Security detained and directly handed refugees to the Syrian government.

Finally, the chapters focusing on return from **Turkey and Lebanon** clearly expose why Syria is not a safe country and why refugees should not be returned. The main trends found in Turkey are how the Turkish Government seeks ways to encourage Syrians' return due to the increasing politicisation of refugee policies. Additionally, Turkish state officers use unlawful techniques when collecting signatures on the voluntary return forms. These are then used to manipulate, deny or block appeals made by refugees or organisations who question the degree of free-will exerted during the signature as well as the violation of the non-refoulement principle.

## III- Bibliographic Information

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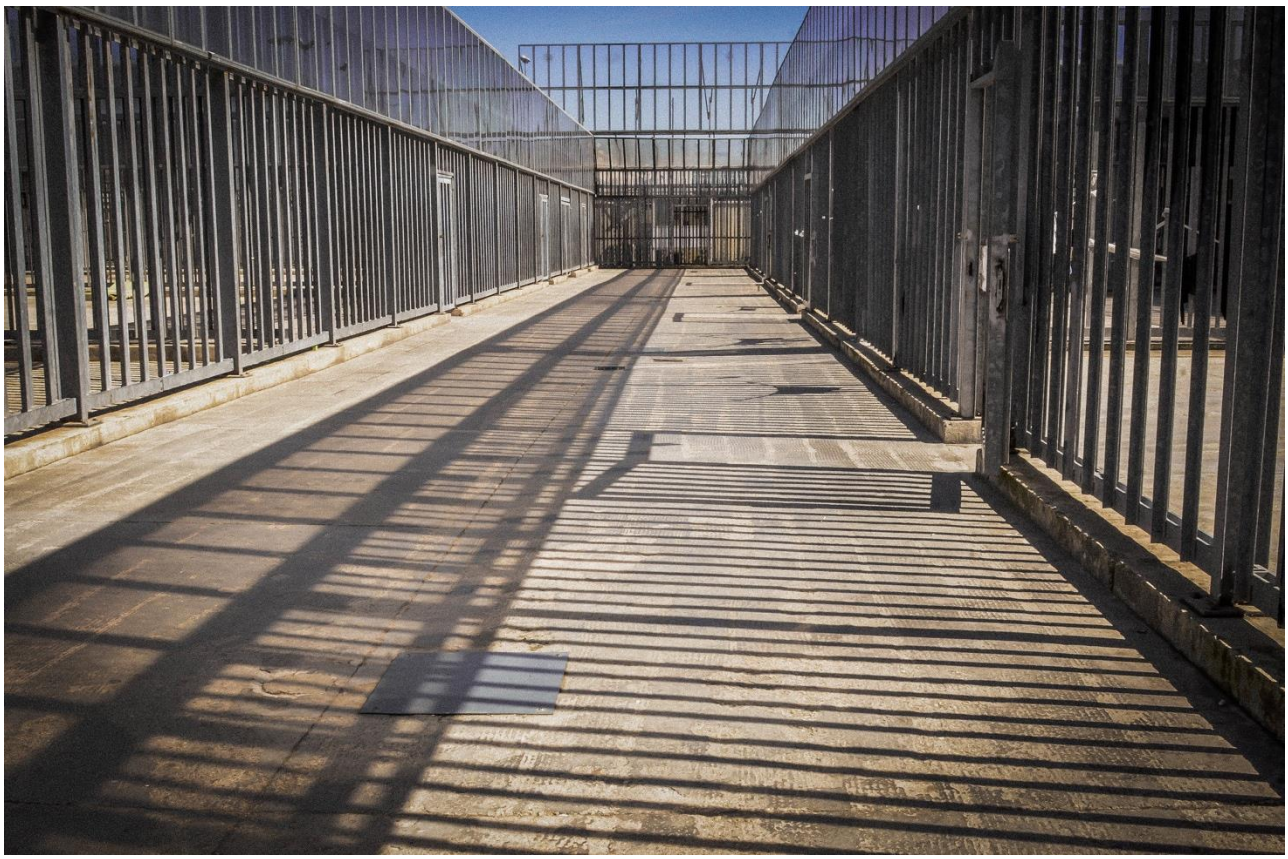

## Chapter 1

## The EU framework of return policies in the Euro-Mediterranean Region

*April 2021*

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# List of abbreviations

| | |
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| APD | Asylum Procedures Directive |
| APR | Asylum Procedures Regulation |
| ASGI | Association for Legal Studies on Immigration |
| AVR | Assisted Voluntary Return |
| BVMN | Border Violence Monitoring Network |
| CAT | Convention against Torture |
| CJEU | Court of Justice of the European Union |
| CoE | Council of Europe |
| CPT | Committee for the Prevention of Torture |
| CRC | Convention on the Rights of the Child |
| CSO | Civil society organisation |
| DRC | Danish Refugee Council |
| EC | European Commission |
| ECHR | European Convention on Human Rights |
| ECRE | European Council on Refugees and Exiles |
| ECtHR | European Court of Human Rights |

| | |
|---|---|
| EP | European Parliament |
| EPRS | European Parliamentary Research Service |
| EUTF | EU Trust Fund for Africa |
| FRA | European Union Agency for Fundamental Rights |
| HRC | Human Rights Committee |
| ICCPR | International Covenant on Civil and Political Rights |
| IOM | International Organization for Migration |
| NHRI | National Human Rights Institution |
| NPM | National Preventive Mechanism |
| PACE | Parliamentary Assembly of the Council of Europe |
| RAMM | Asylum and Migration Management Regulation |
| SBC | Schengen Borders Code |
| SRHRM | UN Special Rapporteur on the Human Rights of Migrants |
| UNHCR | Office of the UN High Commissioner for Refugees |
| WGAD | UN Working Group on Arbitrary Detention |

## Executive Summary

This chapter maps out recent EU legislative and policy measures and some selected Member States' practices in the field of return/expulsion adopted or encouraged under the EU's current disproportionate focus on return. The chapter discusses the 2018 proposal to recast the Return Directive and legislative proposals accompanying the 2020 Pact on Migration and Asylum, notably the border return procedure and return sponsorship mechanism. It points to provisions which, if adopted, may lead to human rights violations while they will not necessarily increase the effectiveness of the return system. The discussion then looks at readmission cooperation with third countries and "safe country" concepts used by the EU and its Member States to swiftly remove people to these countries. Further, Frontex's increasingly broad return mandate is assessed, alongside risks of human rights violations in that regard. The discussion also points to measures not called removals but which are no less coercive, notably "voluntary" departure when no reasonable alternative exists and push-backs. Next, the chapter outlines current removal monitoring provisions and practices and recently-proposed border monitoring mechanism. The discussion of the return policies and measures is put in the context of human rights norms and standards in the area of return/expulsion. The chapter can be conceived as a reminder for Member States that EU law and policies do not dispense them from their human rights obligations under international and regional law. The chapter ends with several recommendations to the EU, its Member States, the UN, and the CoE bodies.

## I- Introduction

The expulsion of people in an irregular situation came to the spotlight in the wake of the 2015 so-called refugee crisis. The European Commission (hereafter Commission or EC) developed an argument that the key to tackling the "crisis" was to increase the number of returns. The term "return" is used in the EU parlance as a euphemism to expulsion to "soften" the practice in the eye of the general public and will be used here for the sake of coherence with EU instruments.[i] [1] The Commission started disproportionately focusing on return, compared to other policy areas in need of reforms, such as asylum systems, Dublin system, and legal pathways to the EU. Furthermore, return-numbers-obsession has also come to dominate the return policy, which is primarily regulated by the Return Directive.[2] The Directive's double objective is to establish a return system that is both effective and compliant with fundamental rights.[ii] Yet, the Commission has begun focusing solely on effectiveness. Moreover, rather than seeing the principle of effectiveness as sustainability and an overall observance of adequate standards, the Commission reduced it to the return rate, which compares the annual number of return orders to the actual returns. In that spirit, the Commission issued a line-up of policy documents. In the 2015 EU *Action Plan on Return*, the Commission presented five sets of measures aimed at fostering the effectiveness of the return policy, such as enhancing "voluntary" return, enforcement of the provisions of the legislation, information sharing, the mandate of Frontex, and development of an integrated system of return management.[iii]

[1] For the use of euphemisms in the area of asylum and migration, see Grange 2013.
[2] 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

In the 2017 *Renewed Action Plan*, the Commission further developed measures proposed in 2015[iv] to answer the increased challenges faced by the EU return policy. The *Renewed Action Plan* was followed by the Commission's *Recommendation on making returns more effective*, in which the Commission instructed states on how to increase the return rate.[v] The return rate is a misleading indicator[3]. To improve the return system's effectiveness, the Commission could have focused on well-known gaps, notably the lack of regularisation channels for people who cannot return.

Expulsion of migrants in an irregular situation does not occur in legal limbo. Rather, this measure is subjected to a vast array of human rights norms and standards, stemming in particular from the UN *International Covenant on Civil and Political Rights* (ICCPR), *Convention against Torture* (CAT), *Convention on the Rights of the Child* (CRC) and Council of Europe (CoE) *European Convention on Human Rights* (ECHR).[4] In addition, states should act in line with EU primary law, particularly the *Charter of Fundamental Rights of the European Union* (hereafter EU Charter) and principles of EU law, such as proportionality and defence rights. Under Article 3 of the ECHR, Article 7 of the ICCPR, Article 3 of the CAT, and Article 19(2) of the EU Charter, Member States are prohibited from removing anyone who risks death penalty, torture, or ill-treatment upon return (referred to as the principle of *non-refoulement*). Under Article 4 of the Protocol 4 to the ECHR and Article 19(1) of the EU Charter, states are prohibited from carrying out collective expulsions. In some cases, the right to family and private life under Article 8 of the ECHR, Article 17 of the ICCPR, and Article 7 of the EU Charter may outweigh a state's power to remove the person. Under Article 13 of the ECHR, Article 2(3) of the ICCPR, and Article 47 of the EU Charter, everyone has the right to an effective remedy, which implies sufficient time to appeal and protection from removal during the period when the court assesses the appeal. If the person is detained, he/she should be afforded several guarantees, particularly the review of detention, stemming from the right to liberty under Article 5 of the ECHR, Article 9 of the ICCPR, and Article 6 of the EU Charter. Removal (deportation) should not amount to torture or ill-treatment, prohibited in absolute terms under Article 2 of the CAT, Article 3 of the ECHR, Article 7 of the ICCPR, and Article 4 of the EU Charter. Under Article 3(1) of the CRC, similar to national children, migrant children should have their best interests prioritised in all actions concerning them.

It is against this tight set of return-related human rights norms and standards, that the chapter maps out recent measures and practices which overly focus on returns. The discussion starts in Section 2 with a look at legislative and policy proposals in the field of return. Section 3 outlines readmission cooperation with third countries, and Section 4 focuses on the role of Frontex in the area of return. Section 5 zooms into the practice at the state level and points to measures not called removals but which are no less coercive. Against the backdrop of risks of various human rights violations flagged out throughout the discussion, Section 6 highlights current and forthcoming measures in the area of monitoring. The chapter ends with a few concluding thoughts in Section 7 and recommendations to the EU, its institutions and bodies, its Member States, the Council of Europe (CoE), and the UN.

[3] The reason is because the return decision is not always enforced in the same year as it is issued and some countries tend to issue more than one decision to the same person. Above all, however, if return is suspended, the return decision is typically not withdrawn, which further decreases the return rate, see EPRS 2020b: 64-65

[4] For a wider discussion on international human rights law standards relevant to return/expulsion, see Majcher 2019: 38-47

# II- Legislative and policy proposals

The disproportionate focus on the return rate, discussed above, underlies the Commission's recent legislative and policy proposals, notably the 2018 proposal to recast the Return Directive (2.1) and the 2020 Pact on Migration and Asylum (hereafter Pact) (2.2).

## 2.1. The recast of the Return Directive

Adopted in 2008, the Return Directive has been criticised by scholars, civil society organisations, and UN experts for several coercive measures that it laid down, such as the lack of prohibition on ordering return on account of the principle of *non-refoulement*, wide exceptions to offering the so-called "voluntary" departure, detention for up to 18 months and obligatory re-entry ban in broad cases.[vi] On the other hand, it still introduced minimum safeguards previously absent in domestic legislation of some Member States. In its 2014 report on the implementation of the Directive, the Commission generally praised a human rights compliant implementation. It also highlighted that the Directive did not prevent returns, contrary to some initial concerns[vii]. Yet, in line with its recent disproportionate focus on return, in September 2018, the Commission proposed to amend the Directive, with an overall aim to increase the number of returns[viii]. At that time, the numbers of arrivals had dropped to the pre- "crisis" level, yet the Commission pointed to unprecedented challenges the EU was experiencing. The recast proposal aims to amend four key measures laid down in the Directive: a) return decision, b) implementation of the return decision through a "voluntary" departure, c) detention, and d) entry ban.

### *a) Return decision*

The return procedure begins with a Member State issuing a return decision. As Article 6(6) of the Directive stresses, the Directive does not prevent states from adopting a decision on ending a legal stay together with a return decision and removal order in a single administrative or judicial decision or act. The recast aims at merging various procedures. Under proposed Article 8(6), states *shall* issue a return decision immediately after adopting a decision ending a legal stay, including a decision refusing refugee or subsidiary protection status. Commission's stance that a return decision should directly follow the decision refusing asylum is premised upon assuming that the person has already had his/her protection needs assessed within the asylum procedure. Yet, first of all, the scope of the principle of *non-refoulement* under the Return Directive is broader than the protection scheme under the EU Qualification Directive.[5] People refused international protection may still have protection needs under the very prohibition of *refoulement*, since the refugee and subsidiary protection status are subject to exclusions and exceptions, reflecting refugee law.

[5] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095

Secondly, there are human rights bars to return going beyond the very *non-refoulement* and include the right to family and private life and the rights of the child. According to the Court of Justice of the European Union (CJEU)'s ruling in *Boudjlida*, before adopting a return decision, authorities should take due account of the family life, state of health, and best interests of the child and hear the person on that subject[ix]. This was further detailed in ruling in *TQ*, where the CJEU stressed that if a state intends to issue a return decision against an unaccompanied child, it must necessarily take into account the best interests of the child at all stages of the procedures, which entails a general and in-depth assessment of the situation of the child, including the availability of adequate reception facilities in the destination country[x].[6]

Under the Commission's recast proposal, there are two implications for refused asylum seekers: shorter time-period to lodge an appeal and a narrower possibility to be protected from removal during the appeal procedure.[xi] Currently, the Directive does not regulate the time-limit for appealing return decisions. Draft Article 16(4) provides that states should grant a period up to maximum five days to lodge an appeal against a return decision when such a decision is the consequence of a final decision rejecting an application for international protection. A five-day period is usually too short for preparing an appeal, so it would render the remedy inaccessible in practice, in breach of Article 13 of the ECHR. According to the European Court of Human Rights (ECtHR), the right to an effective remedy requires the provision of an accessible and effective domestic remedy which entails that automatic application of short time-limits for lodging appeals may be at variance with the very protection from *refoulement*.[xii] Regarding the suspensive effect of appeal, current Article 13(2) of the Directive leaves an option to states to either provide for suspensive effect in their legislation or endow the authority or body in charge of review with the power to suspend the execution of deportation. The Luxembourg jurisprudence strengthens the requirements to provide for a suspensive effect. According to the CJEU, for the appeal to be effective, it must necessarily have suspensive effect when it is brought against a return decision, enforcement of which may expose the person to a serious risk of being subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment[xiii]. Draft Article 16(3) of the recast proposal introduces several complex rules regarding the suspensive effect of the appeal, which ultimately would considerably restrict the protection from removal pending the examination of their appeal as regards failed asylum seekers. These amendments look like a law-making initiative to side-line CJEU jurisprudence on the suspensive effect of appeal and are inconsistent with well-established Strasbourg case-law. According to the ECtHR, if the appeal against return is based on the principle of *non-refoulement*, it should have an automatic suspensive effect[xiv].

### *b) "Voluntary" departure*

Under Article 3(8) of the Directive, a "voluntary" departure means a departure in compliance with the obligation to return within the time-limit fixed in the return decision. Thus, this measure is not genuinely voluntary because the alternative that the person faces is a forced return, often combined with detention or destitution.[xv] The expression of "voluntary departure" is a euphemism, the more adequate term being "mandatory return"[xvi], and it is used here for ease of reference.[7]

[6] It needs to be added, however, that the CJEU's jurisprudence provides for a narrow understanding of the right to be heard prior to the adoption of a return decision (Basilien-Gainche 2014), and, overall, rarely refers to international human rights standards (Molnar 2018)

[7] The so-called "voluntary" departure is further explored in Section 5.1

That said, a "voluntary" departure is still a preferable option to a forced return, not only for the person concerned but also for the host country itself. In fact, it is cheaper and easier to organise than a forced return.[xvii] The return scheme under the Return Directive is premised upon the priority of a "voluntary" departure compared to the enforced return. Under Article 7(1), the return decision *shall* provide a period for "voluntary" departure and refusal to grant it, as spelled out in Article 7(4), is understood as an exception. The requirement to prioritise "voluntary" departure also stems from the principle of proportionality as a general principle of EU law, as reiterated by the CJEU. In *Zh. and O.*, the CJEU held that the principle of proportionality must be observed throughout all the stages of the return process, including the stage when granting a period for "voluntary" departure is decided.[xviii] The principle of proportionality implies that return should be carried out through "voluntary" departure, unless it is justified in individual circumstances of the case to refuse it.

In disregard to the requirement of proportionality, the recast proposal renders "voluntary" departure exceptional. First, under Article 7(1) of the Directive, the period for "voluntary" departure should be between seven and thirty days. In draft Article 9(1), the Commission proposes removing the current minimum time-limit of seven days so that states would be allowed to offer a period shorter than a week. Such a short period for leaving the host country may deprive this measure of any voluntariness. Second, under Article 7(4) of the Directive, states *may* refrain from granting a period for voluntary departure or grant a shorter one than seven days in one of three circumstances: a risk of absconding, if the person's application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or the person poses a risk to public policy or public/national security. According to the CJEU, the three circumstances allow derogation from a principle that voluntary departure should generally be afforded, so they should be narrowly construed.[xix] Draft Article 9(4) significantly amends current Article 7(1) of the Directive. Accordingly, in any of these three circumstances, states *shall* not grant a voluntary return. Hence, the proposed amendment, first, requires states to refuse voluntary departure, rather than merely providing an option for states to do so. Secondly, it removes the choice between waiving the period for voluntary departure and shortening it. The mandatory refusal of a voluntary departure, in combination with expanding the remit of the concept of the risk of absconding, as discussed below, would result in voluntary departure being systematically refused.[xx] Consequently, draft Article 9(4) reverses the order between the rule and exceptions thereto and is inconsistent with the requirement of proportionality and individual assessment, stemming from EU primary law.

### *c) Detention*

Article 15(1) of the Directive lays down two grounds justifying detention, namely if the person represents a risk of absconding or avoids/hampers the return process. Under the current provisions, it appears that these two grounds are not listed exhaustively, as the provision includes the expression "in particular."[8] Instead of seeking to remedy these shortcomings and align the Directive with EU and ECtHR law, the Commission's recast proposal aggravates these concerns. Draft Article 18(1) erases the word "only," which reinforces the reading of this provision that the two grounds are non-exhaustive.

[8] Indeed, some Member States have grounds for pre-removal detention which go beyond the two grounds under the Return Directive, see Majcher, Flynn and Grange 2020

The exhaustive list of grounds for detention is necessary for the legal basis to fulfil the requirement of legal certainty and foreseeability, as stemming from the right to liberty under Article 5(1) of the ECHR and Article 6 of the EU Charter.[9] Further, draft Article 6(1) of the recast proposal lays down a non-exhaustive list of sixteen criteria for establishing the risk of absconding.[10] Four of these criteria would lead to a rebuttable presumption that the person represents a risk of absconding,[11] they would thus function akin to grounds for detention, extending considerably legal basis to detain. In addition, some of the criteria under proposed Articled 6(1) would apply to the majority of people in an irregular situation, such as lack of identity documents, reliable address or financial resources. This would allow quasi-automatic detention of people in an irregular situation, disrespecting the principle of necessity and proportionality, which requires that detention is an exceptional measure of last resort.[xxi] Finally, draft Article 18(1)(c) adds a risk to public policy and public/national security as a ground for detention. It does not refer at all to the CJEU's ruling in *Kadzoev,* where the Court found that detention due to risk to public policy cannot be a self-standing ground for a pre-removal detention under the Directive.[xxii] The amendment thus looks like a law-making intervention to side-line Luxembourg jurisprudence. To justify this amendment, the Commission stresses that new risks have emerged in recent years, making it necessary to detain migrants who pose a threat to public order or national security. While such circumstances may justify the deprivation of liberty, yet they do not justify the administrative immigration detention. Allowing states to place people in pre-removal detention on this account blurs the lines between supposedly administrative and penal detention – a phenomenon labelled as crimmigration in academia.[xxiii]

### *d) Entry ban*

Entry ban is one of the most widely criticised measures laid down in the Directive. It prohibits returnee from (legally) re-entering the whole Schengen area for up to five years (or ten years in case of a serious threat to public policy or public/national security). Such a measure raises the question of legitimacy and proportionality, as the returnee may be prohibited re-entry by a country which would not have ordered the person's return in the first place. Under Article 11(1) of the Directive, entry ban *should* be imposed if the person has not been granted a voluntary departure period or has not complied with it, and this measure *may* be imposed in "other cases." The mandatory character of an entry ban in the two circumstances is problematic in itself, as it risks depriving the decision of any individual assessment. In addition, these two circumstances may cover most people liable to return, since, as discussed above, there is a broad possibility for states to refuse a "voluntary" departure period to the person.

[9] According to the ECtHR (2008: §23) and CJEU (2017: §37-40), legal basis should comply with the "quality of the law" which implies that domestic law authorising detention must be sufficiently clear, accessible, and predictable in order to avoid all risk of arbitrariness

[10] The list of criteria proposed by the Commission in Article 6(1) comprises such circumstances as lack of documentation proving the identity, lack of residence or reliable address, lack of financial resources, irregular entry, unauthorised movement between the member states, explicit expression of intent of non-compliance with return-related measures, being subject to a return decision issued by another member state, non-compliance with a return decision, non-compliance with the requirement to go immediately to the member state which granted authorisation to stay, non-compliance with the obligation to cooperate, existence of conviction for a criminal offence and ongoing criminal investigations and proceedings

[11] These criteria include using false or forged identity documents, destroying existing documents, or refusing to provide fingerprints; opposing violently or fraudulently the return process; not complying with measures aimed at preventing the risk of absconding during the voluntary departure period; and not complying with an existing entry ban

Furthermore, the "other cases" in which states may impose an entry ban refer to cases when the person has left in accordance with the "voluntary" departure period. It risks allowing the systematic and indiscriminate application of the entry ban, which is also counterproductive for states, as it defeats its purpose to "encourage" voluntary departure. To reflect the principle of proportionality, the entry ban should not be a mandatory measure. Instead, it could be imposed on a case-by-case basis if the person constitutes a narrowly understood risk to public order. To prevent violation of the principle of *non-refoulement* and the right to family and private life, the non-imposition, suspension or withdrawal of entry ban under Article 11(3) should be widely used, rather than being conceived as an exception. Instead of aligning the current provisions of the Directive with the principle of proportionality, the recast proposal aggravates the concerns by expanding the scope of the use of the entry ban. Under proposed Article 13(2), states may impose an entry ban, which does not accompany a return decision, to a person whose irregular stay is detected in connection with border checks carried out at exit. Imposing an entry ban in such circumstances would be at odds with human rights obligations because it is doubtful that adequate procedure can be carried out at border crossing points.

### *e) Questionable effectiveness*

As demonstrated above, amendments proposed by the Commission considerably restrict protective safeguards around four key measures established under the Directive, namely return decision, "voluntary" departure, detention, and entry ban, and risk leading to human rights violations. In addition, these amendments will not necessarily improve the effectiveness of return, which was the very objective behind proposing the recast in the first place.

Reducing procedural safeguards to challenge a return decision would foster the perception that procedures are not fair and, consequently, reduce the willingness among the concerned persons to cooperate with the process. The need to apply for the suspensive effect of appeal would increase the burden on the courts.

Restrictions on "voluntary" departure period are counterproductive as this form of return is considered more sustainable and less costly and cumbersome to organise for states. In fact, the Commission shows a lack of coherence regarding the "voluntary" departure. On the one hand, its proposed amendments will effectively curtail the use of this measure, and the Commission continues supporting the recast. On the other hand, as of January 2021, the Commission was working on a Strategy on Voluntary Return and Reintegration, as a part of the Pact package discussed below, whose first objective is to increase the uptake of "voluntary" departure programmes.[xxiv]

Likewise, higher numbers of detainees or longer duration of detention do not necessarily translate into more deportations, while at the same time detention is more costly than non-custodial alternatives to detention.[xxv]

Finally, imposing an entry ban on a person leaving the EU would delay the person's departure and so would be counterproductive.[xxvi] In contrast to the Commission's better regulation guidelines[xxvii], the Commission's recast proposal was not accompanied by an impact assessment, which may explain why it fosters none of the two objectives of the Directive, namely effectiveness and fundamental rights compliance.

### *f) Position of co-legislators*

Based on a detailed analysis of the recast proposal, the European Parliamentary Research Service (EPRS)'s substitute impact assessment concluded that the recast risks violating fundamental rights and that there is no evidence that it would lead to more effective return policy.[xxviii] The EPRS assessment will likely inform the European Parliament's (hereafter Parliament or EP) position for the upcoming trialogue negotiations with the Council. It can be assumed that the Parliament's position will also be in line with its Resolution on the Implementation of the Return Directive, adopted in December 2020.[xxix] The Resolution was based on the EPRS implementation assessment[xxx] and a response to the failure of the Commission to evaluate the implementation of the Directive, as it is required to do under Article 19 of the Directive and, overall, better regulation guidelines. According to the Resolution, voluntary departure is a general rule and the circumstances when it can be refused should be interpreted narrowly; detention should be a last resort measure, and longer detention does not automatically increase the possibility of return; children should not be detained, and entry ban should be based on an individual assessment and never applied alongside voluntary departure.

At the time of writing, the Parliament was working within its Committee on Civil Liberties, Justice and Home Affairs Committee on its position. The draft report was released in February 2020, and it removed several worrying amendments of the Commission and overall increased human rights protection standards.[xxxi] However, the Council of the European Union adopted its final partial position in June 2019, and it generally welcomed the recast proposal.[xxxii]

## 2.2. The return policies in the new Pact on Migration and Asylum

In its long-awaited Pact, released in September 2020, the Commission stresses that the recast of the Directive is crucial for implementing the measures proposed in the Pact and calls upon the co-legislators to conclude their negotiations in the first half of 2021.[xxxiii] Increasing the return rate is the overriding objective of the Pact and the word "return" is mentioned over 100 times in the document. The Pact is premised upon a false assumption that most people arriving in the EU are not eligible for protection.[xxxiv] It also fails to contemplate regularisation as a component in any return system. To increase the effectiveness of return, the Pact proposes the appointment of a Return Coordinator within the Commission DG HOME, who will chair the to-be-established High-Level Network for Returns, made up of states' representatives. The Return Coordinator's overall role will be to coordinate between the Member States to ensure effective returns, particularly concerning the return sponsorship (see below).[xxxv] At the time of writing, the Coordinator's seniority level within the EU administrative structure and of the states' representatives in the Network was not yet established, so the added value and effectiveness of these mechanisms remain to be seen. It is striking that an Asylum Coordinator has not been equally proposed. Another return-related measure is the above-mentioned Strategy on Voluntary Return and Reintegration.

The Pact also calls on Frontex to operationalise its reinforced mandate on return and appoint a Deputy Executive Director for Return and promises stronger cooperation with third countries.[12] Two return-related measures are further provided in legislative proposals accompanying the Pact, namely the border return procedure and return sponsorship.

### *a) Border return procedure*

The amended proposal for the Asylum Procedures Regulation (APR)[xxxvi] [13] lays down "border procedure for carrying out the return," which was initially provided in the proposal for a recast of the Return Directive. Under new Article 41a, the border return procedure applies to people who have been refused international protection in the border asylum procedure, whose scope is broadened, and character is mandatory in certain cases. Like the applicants for international protection under the border procedure, people subject to border return procedures are formally prohibited from entering the territory. The procedure is to take place in locations at or in proximity to the external border or transit zone. The Regulation fosters the fiction of non-entry, yet under international human rights law, borders and so-called transit zones are not excluded from states' jurisdiction, and domestic labels do not exonerate states from their human rights obligations. The proposal brings about a parallel system to the return procedure regulated by the Return Directive, which reduces legal certainty and introduces unjustified differences in treatment. In fact, like any procedure to be carried out in the border context, this procedure provides for an overall lower level of protection and hinders access for civil society actors. There are three key concerns regarding the proposed border return procedure.[xxxvii]

Firstly, like the draft recast of the Return Directive, the proposal for APR links border asylum procedure and border return procedure, with the same risks as discussed above concerning in-country procedure.[xxxviii] Under draft Article 35a, the return decision should be issued as part of or in a separate act issued together with the decision rejecting international protection application. Unless the procedure for international protection assesses protection needs beyond refugee or subsidiary status, this procedure does not afford the protection from the very *refoulement*. The risk of violations of the principle of *non-refoulement* is compounded by limited access to an effective remedy. According to draft Article 53, the person would be able to appeal against the return decision within the same procedure as to appeal against the decision rejecting the asylum application. Under Article 53(7)(a), the timeline for submitting the appeal is at least one week. A week period may not be sufficient to collect evidence and prepare the appeal, especially when being held at the border. Under Article 54(3)(a), the appeal does not have a suspensive effect but, according to Article 54(4), the tribunal would have the power to grant it upon the applicant's request, or ex officio if the domestic law would provide so. In line with the Luxembourg and Strasbourg case-law discussed above, Articles 19(2) and 47 of the EU Charter and Article 13 of the ECHR require that an appeal based on the principle of *non-refoulement* has a suspensive effect.

[12] These questions are discussed in Sections 4 and 3, respectively

[13] This proposal amends the 2016 proposal for Asylum Procedures Regulation, to replace the current Asylum Procedures Directive (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032)

Secondly, under Article 41a(2), the applicants are to be "kept" in locations at or in proximity to the external border or transit zones. Hence, the border return procedure would typically involve detention.[14] Two scenarios are envisaged:

- Under Article 41a(5), people who have been detained during border asylum procedure may continue to be detained to prevent entry to the Member State's territory, preparing the return or carrying out the removal process. This provision does not lay down specific grounds for detention as preparation of return or removal is a general context of pre-removal detention. To be lawful under Article 5(1) of the ECHR and Article 6 of the EU Charter, the legal basis for detention should be precise and foreseeable in its application. Without clear ground for detention, Article 41a(5) enables automatic detention, in violation of the principles of proportionality and necessity.

- Under Article 41a(6), those persons who have not been detained during border asylum procedure may be detained on grounds for detention provided for in the recast Return Directive.[15] As discussed above, the new ground proposed by the Commission, allowing detention in case of risk to public policy or public/national security blurs administrative and penal detention, and hence does not guarantee legal certainty. It is noteworthy that Article 18(1) is not included among the provisions of the recast Return Directive applicable to the border return procedure. That provision provides that detention may be imposed when other sufficient but less coercive measures cannot be applied effectively. According to Article 41a(7), detention cannot exceed twelve weeks, which is the time-period of the border return procedure, and the period of detention should be included in the maximum periods of detention under the Return Directive.[16] All in all, in practice, "keeping" a person at the border during the return procedure will likely result in detention, as border procedure typically involves formal or de facto detention.[xxxix] The proposal for the APR risks leading to systematic detention at the EU external borders.

Thirdly, the Regulation allows the border return procedure to be subject to two different frameworks, depending on whether a Member State issues a return decision or refusal of entry upon rejecting the application for international protection in a border procedure. In the first scenario, except for appeal and detention, discussed above, under Article 41a(3), most of the provisions of the Return Directive would apply and thus regulate the border return procedure. The second scenario is allowed under Article 41a(8), which maintains the possibility under Article 2(2)(a) of the Return Directive not to apply the Directive towards people refused entry according to the Schengen Borders Code (SBC)[17] or who have been apprehended in connection with the irregular border crossing and have not subsequently obtained an authorisation to stay. Arguably, people who have undergone up to a three-month border asylum procedure should not be covered by the SBC anymore, but rather be subjected to the return procedure regulated by the Return Directive.

[14] For an overview of the Member States' practices of detention in the border context, see Majcher, Flynn and Grange 2020.
[15] See Section 2.1
[16] The maximum period of detention is 6 months, extendable to 18 months, if the person or the destination country does not cooperate and it delays return.
[17] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0399-20190611

Although under Article 41a(8) of the APR proposal and Article 4(4) of the Return Directive, people excluded from the scope of the Directive under Article 2(2)(a) should be afforded several basic safeguards, the refusal of entry procedure under the SBC offers overall weaker protection than the return procedure under the Directive. Crucially, allowing states to apply SBC's provisions to the border return procedure decreases legal certainty as it will bring about two parallel border detention procedures, different across countries.

### *b) Return sponsorship*

The concept of return sponsorship is introduced in Article 45(1)(b) of the proposal for the Regulation on asylum and migration management (RAMM)[xl], as a form of solidarity, required from the Member States towards states under "migratory pressure" or following disembarkation from the search and rescue operations. Instead of merely relocating asylum seekers, under Article 55(1) of the proposal for RAMM, Member States may provide "return sponsorship," by supporting the host Member State in returning the persons in an irregular situation. According to Article 55(4), the measures which the sponsoring state can take include: providing return and reintegration counselling, organizing voluntary departure, leading or supporting policy dialogue or exchanges with third countries to facilitate readmission, contacting the competent authorities of third countries to verify the identity of the person concerned and obtain valid travel documents, or organizing practical arrangements for removals, such as charter or charter flights. As Article 55(4) of the proposal stresses, these activities do not affect the benefitting state's obligations and responsibilities under the Return Directive. Article 55(2) provides that if the person is not returned within eight months (or four months in case of "crisis"), the sponsoring state should transfer the person onto its territory. By proposing an alternative to relocation accompanied by obligatory transfer after eight months, the Commission attempted to fulfil the priorities of both southern and eastern Member States.[xli] The system is complicated and unpredictable already on paper, whereby its actual implementation raises several questions, regarding both effectiveness[18] and human rights compliance.[xlii]

The proposal for RAMM implies that the sponsoring state implements a return decision issued by the benefitting Member State. In case of violation of the principle of *non-refoulement* or other human rights obligations, which of these two countries would be responsible?

[18] As regards the effectiveness and the very solidarity with Member States at external borders, this mechanism allows the Member States to avoid to simply relocate people from states with external borders. The sponsor can discharge its obligations quite easily by, for instance, providing return counselling, rather than engaging in negotiations with the third country, which can jeopardise its own relations with that country (Cassarino 2020b). The Return Coordinator will be in charge of coordinating between the Member States and matching nationalities of people to be returned from the benefitting state with the preferences of the sponsoring state. However, under Article 52(3), states are free to selectively choose the nationalities of returnees who they wish to include in the sponsorship mechanism. Hence, people from countries to which returns are easier compared to other ones will be more often subject to the sponsorship mechanism. This will decrease the predictability of the mechanism and ultimately leave people from countries to which returns are difficult with a state under "migratory pressure" or allowing disembarkation. Another question remains whether the sponsor state will indeed accept in practice the transfer of the person concerned to its territory, as the implementation of the Dublin system showed frequent attempts to avoid taking back people under the responsibility criteria. Under Article 57(6), the sponsoring state can refuse the transfer if it considers the person to be a danger to its national security or public order. Overall, the intra-European transfer does not support the objective of an effective return system, as it may unduly prolong the return procedure. Arguably, if the return has not taken place within eight months, it is doubtful it will be implemented in the ninth month. This should be honestly acknowledged by the EU and regularisation channels for non-returnable persons should be established.

Against which state would the person be able to appeal? Further, if a transfer after eight months takes place, which body will monitor the treatment of the persons concerned in the sponsoring state which did not accept the relocation in the first place[xliii]? Above all, what status will those people have in the sponsoring state? Since the risk is that the sponsoring state would not afford a particular permit to the person concerned, he/she would end up in extended irregular stay and under the threat of detention. Will a new return procedure be conducted? If the sponsoring state recognises the initial return decision issued by the benefitting state, it may be required to enforce a decision which it would not have given in the first place. The mutual recognition of return decisions raises human rights concerns as the conditions for legal stay have not been harmonised across the EU.[xliv] So, a person may be in an irregular situation in one Member State (hence subject to return) but not in another..

On the other hand, if the sponsoring state starts a new return procedure according to its domestic law, it would undermine the overall effectiveness of the EU return system and risk subjecting the person to periods of detention counted from scratch. Arguably, the detention period in the benefitting state and sponsoring state should be counted together towards a maximum period allowed in the sponsoring state. However, in practice, this mechanism may encourage detention before and after the transfer. A further concern is that the return sponsorship mechanism may be applied not only to newly arrived people.[xlv] Rather, unreturnable people who have spent in the benefitting state a considerable period of time may be subject to this mechanism. They thus risk being transferred to a country whose system and language they do not know and losing the support networks. Instead of proposing impracticable return sponsorship mechanism and intra-European transfers, the Pact should tackle long-term non-returnability and grey zones in states' practice and the failure of the Return Directive to regulate the status of people who cannot be returned.

## **III-** Readmission cooperation

In the EU parlance, while the term "return" refers to the internal legislative framework discussed in the previous section, the notion of "readmission" typically refers to external aspects of the return policy, namely the involvement of third countries. As part of a broader cooperation with third countries, readmission agreements or arrangements aim to operationalise the return decision issued by domestic authorities of the Member States (3.1). To formally comply with human rights requirements, the EU and its Member States label the destination countries as "safe" (3.2).

### 3.1. Readmission agreements and informal arrangements

The readmission agreements are the key instrument of the EU readmission policy. Signed between the EU and a third country, the readmission agreements establish rapid identification procedures for people in an irregular situation and facilitate the transfer of these persons to the country of origin or transit.[xlvi] Indeed, under "third country clause" in the agreements, the parties agree to readmit their nationals and migrants who transited through their territories.

The EU has so far concluded 18 readmission agreements, namely with Hong Kong (2004), Macao (2004), Sri Lanka (2005), Albania (2006), Russia (2007), Ukraine (2008), North Macedonia (2008), Bosnia and Herzegovina (2008), Montenegro (2008), Serbia (2008), Moldova (2008), Pakistan (2010), Georgia (2011), Armenia (2015), Azerbaijan (2014), Turkey (2014), Cape Verde (2014) and Belorussia (2019).[xlvii] The Commission has received the mandate from the Council to negotiate agreements with Morocco, Algeria, Tunisia, China, Jordan and Nigeria. Yet, it has not been successful in advancing the negotiations with these countries[xlviii]. In fact, readmission agreements are burdensome for the third countries, and the return of their citizens often implies fewer remittances received. Negotiations are thus ultimately contingent upon the third country's power to resist the EU's pressure. To compel the third countries, the EU has used a range of incentives and threats which link readmission to other policy areas, such as visa facilitation schemes, preferential trade and financial assistance. The EU recently turned to development assistance as additional leverage for return cooperation and attempts to insert migration-related conditionality in the currently negotiated Neighbourhood, Development and International Cooperation Instrument in the next Multiannual Financial Framework (MFF).[xlix]

Another implication of the third countries' resistance has been an increasing reliance on informal agreements which favour flexibility for both parties and allow easier negotiations. These agreements by-pass the European Parliament and are characterised by a lack of transparency.[l] Bilateral agreements that the Member States concluded with third countries served as a model for the Commission[li].[19] Initial focus on agreements different from the formal readmission agreements surfaced already in 2005. Under the Global Approach to Migration (GAM), the EU signed mobility partnerships with several countries, notably Moldova (2008), Georgia (2009), Armenia (2011), Morocco (2013), Azerbaijan (2013), Tunisia (2014), Jordan (2014), and Belarus (2016). The mobility partnerships are political agreements encompassing a wide range of issues, including readmission cooperation.[lii] However, the true drive towards flexibility and informalisation started with the 2015 Partnership Framework[liii]. Since then, three Common Agendas on Migration and Mobility were signed, notably with Nigeria (2015), Ethiopia (2015), and India (2016). Crucially, a plethora of other forms of agreements were elaborated, such as a Joint Communiqué (Côte d'Ivoire (2016), Mali (2016)), Joint Migration Declaration (Ghana (2016), Niger (2016)), Standard Operating Procedures (Mali (2016), Bangladesh (2017)), and Good Practices (Ghana (2017), Guinea (2017), the Gambia (2018)), Admission Procedures for the Return (Ethiopia (2018)), EU Turkey Statement (2016) and Joint Way Forward (Afghanistan (2016)).[liv] Among these, probably the most notorious is the EU-Turkey deal, under which all people who arrived at the Aegean Islands after 16 March 2016 are to be returned to Turkey. In exchange, Brussels offered to Turkey to resettle one Syrian for every Syrian returned to Turkey, paying initially 3 billion euros, and accelerating visa liberalisation.[lv]

[19] For a mapping of bilateral readmission agreements, see Cassarino 2021.

## 3.2. "Safe" countries

To rely on simplified return procedures under the readmission agreements or arrangements, the EU and its Member States argue that the destination country is considered "safe." In case of return to the person's country of origin, the concept of the "safe country of origin" comes into play. Under Annex I to the Asylum Procedures Directive (APD), a country is considered a safe country of origin where, based on the legal situation, the application of the law within a democratic system, and the prevailing political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of the Qualification Directive, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of armed conflict. Under the APD, the person from a country considered safe should be channelled to accelerated asylum procedure (Article 23(4)). If he/she does not rebut the presumption of safety in his/her circumstances (Article 36), states may refuse his/her asylum application as an unfounded application (Articles 31(8) and 32). The underlying idea is to process faster applications from nationals from countries considered "safe" and ensure their swifter removal. The concept of a safe country of origin raises several protection concerns as there can be virtually no country safe for all its nationals, including ethnic and sexual minorities. Labelling some countries as "safe" discriminates between asylum applicants. An accelerated procedure offers weaker procedural safeguards and narrower possibility to access an effective remedy. Consequently, such procedures can hardly be considered fair and ensure individual assessment.[lvi]

These concerns are compounded by the fact that some Member States established lists of countries of origin considered "safe" according to the APD. Procedures for drawing up these lists differed between the countries and were generally opaque and selection of the countries to be included appeared to be driven by political motivations.[lvii] In September 2015, the Commission published a proposal for a Regulation amending the APD and establishing a common list of safe countries of origin[lviii]. According to the Commission, 12 Member States had national lists (Austria, Belgium, Bulgaria, Czech Republic, Germany, France, Ireland, Luxembourg, Latvia, Malta, Slovakia, and the UK)[lix] and the Regulation was meant to reduce the divergences between domestic lists. To this end, the proposal for the Regulation laid down a list of seven countries to be considered safe (Albania, Bosnia and Herzegovina, FYROM, Kosovo, Montenegro, Serbia, and Turkey). However, none of them was unanimously acknowledged as "safe" by all the 12 Member States, let alone remaining Member States.[lx] In July 2016, the Commission published its proposal for the APR, which included the proposal for an EU list of safe countries of origin. Annex I of the proposal incorporates the list of the aforementioned seven safe countries of origin and Article 47 lays down the concept of safe country of origin, currently addressed in Annex I of the APD[lxi]. At the time of writing, the negotiations on the proposal for the APR were ongoing. Meanwhile, as of 2019, some Member States relied on lists of safe countries of origin, which were of diverse length, ranging from 8 countries in Germany, to 12 countries in Greece, 13 countries in Italy, 15 countries in Malta, 16 countries in France, and 23 countries in the Netherlands. On the other hand, this concept was not prevalent in administrative practice in Sweden, Spain, Poland, Portugal, and Romania.[lxii]

As seen above, the "third country clause" in the EU readmission agreements and arrangements allows the Member States to send the person to a transit country (also called third country). For instance, under the EU-Turkey deal, Greece may return to Turkey *any* person who had transited Turkey before reaching the Aegean Islands. The return to a transit country raises specific concerns under the prohibition of *refoulement*.

The principle of *non-refoulement* prohibits return not only to a risk of serious violations of the person's rights (direct *refoulement*) but also to a country from which the person risks being subsequently returned to such risk (indirect *refoulement*). Removal to a transit country may amount to indirect *refoulement* if two conditions are present, notably, the person faces a real risk of ill-treatment in his/her country of origin and the subsequent return to his/her country of origin from the transit country is foreseeable. To refute allegations of indirect *refoulement*, sending states tend to challenge the second condition, which gave rise to the concept of a "safe third country." This notion generally presupposes that before reaching the country where the person seeks protection, he/she could have already applied for asylum in a transit country, considered safe for the person. It is based on a flawed reading of the Refugee Convention as obliging the person to apply for asylum in the first country reached after fleeing their country of origin.[lxiii]

Under EU law, the concept of a safe third country is provided in the APD. The conditions for classifying a country as safe include absence of threat to life and liberty on account of race, religion, nationality, membership of a particular social group or political opinion; absence of risk of serious harm as defined in the Qualification Directive; the respect of the principle of *non- refoulement* under the Refugee Convention; compliance with the prohibition of removal to a risk of ill-treatment; and the possibility for the applicant of requesting a refugee status and receiving protection following the Refugee Convention (Article 38(1)). The latter condition merely requires a possibility of requesting asylum, rather than that the third country agrees to admit the applicant to a fair and efficient asylum procedure. Another concern relates to an absence of an explicit requirement in the APD of a meaningful link with the third country (Article 38(2)), as demanded by the UNHCR.[lxiv] Also, the APD does not explicitly provide for an individualised assessment of safety of a country for the particular applicant, as required by the UNHCR. Instead, it provides for vague provisions, ultimately referring to domestic law.[lxv] While already current rules raise human rights concerns, the 2016 proposal for the APR expands the concept of a safe third country and, as for the safe countries of origin, introduces a common EU safe third country designation. The proposal renders the concept mandatory for the Member States and lowers the level of protection in the third country, as protection in accordance with "substantive standards" of the Refugee Convention would be sufficient. It also weakens the connection required between the person and the country as it would be satisfied if the person have transited through the country which is geographically close to his/her country of origin.[lxvi]

Irrespective of the EU law provisions, Member States are bound by the prohibition of indirect *refoulement* under international law. According to the ECtHR, the removal of a person to an intermediary country does not affect the responsibility of the sending state to ensure that the person is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the ECHR.[lxvii] The ECtHR conducts a two-step assessment, analysing the risks in the person's country of origin and the risk of being sent there by the intermediary country. In *Hirsi v. Italy*, concerning the push-back of Somalian and Eritrean asylum seekers to Libya, the Court first inquired into the situation in the applicants' countries of origin and found that upon their potential return, they would face treatment contrary to Article 3 of the ECHR. Then, the Court assessed whether Italy could reasonably expect Libya to afford adequate safeguards against arbitrary removal. Finding a violation of Article 3 of the ECHR, the Court ruled that when transferring the applicants to Libya, the Italian authorities knew or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin.[lxviii] More recently, in *M.A*, the Court found that Lithuania violated Article 3 of the ECHR by rejecting Chechen asylum seekers at its border with Belarus because it did not carry out adequate assessment of the risk of whether Belarus would send the applicants back to Russia.[lxix]

# IV- Frontex's return mandate

The Pact foresees a key role for the European Border and Coast Guard Agency (Frontex) in the common EU return system. According to the Commission, Frontex should become the "operational arm of EU return policy," through a series of measures including: the nomination of a Deputy Executive Director for return in early 2021, further integrating return expertise into its Management Board, deploying the new standing corps, and assisting with the implementation of the new Voluntary Return and Reintegration Strategy. Frontex will also support the introduction of a return case management system at EU and national level, covering all steps of the procedure from the detection of an irregular stay to readmission and reintegration in third countries to linking up operational cooperation with Member States and readmission cooperation with third countries.[lxx] Most of these measures were introduced in the 2019/1896 Regulation (hereafter Frontex Regulation),[20] which the Agency was urged to "fully" implement by the end of 2020. The 2019 Regulation largely expands Frontex's capacity and mandate in the area of return. The changes build upon already reinforced return powers under the 2016 Regulation and cement the gradual expansion of Frontex's role in terms of return operations.[lxxi] In 2017, Frontex spent around 53 million euro on return activities, compared to 8.5 million in 2014.[lxxii] As this section demonstrates, Frontex's return mandate raises several human rights and accountability concerns, in particular as regards return operations, influence on the Member States, cooperation with third countries and data protection.

## *a) Return operations*

Since its establishment in 2004, Frontex's key return-related activity has been return operations. Under the Frontex Regulation, a return operation is an operation that is organised or coordinated by Frontex and involves technical and operational reinforcement provided to one or more Member States under which returnees from one or more Member States are returned, either on a forced or voluntary basis (Article 2(27)). While in 2006, only 4 operations were organised to deport 74 people, in 2019 over 15,850 people were deported in Frontex-supported return operations.[lxxiii] Frontex provides states with a multi-facet support in the context of return operations, notably technical and operational assistance, coordination or organisation of operation, including through the chartering of aircraft or organising removal on scheduled flights or by other means of transport (Article 50(1)) as well as the deployment of return teams (forced return monitors, escorts, and specialists) and technical equipment. In addition, return operations should be financed or co-financed by the Agency from its budget (Article 50(8)). A return operation may lead to three sets of human rights violations.

First, Frontex offers this wide-ranging assistance in the area of return without entering into the merits of the return decision (Article 50(1)). It thus cannot be excluded that the Agency assists a state in enforcing a flawed return decision, which would violate the prohibition of *refoulement*. This is not a hypothetical risk, as confirmed by a 2016 case in which eight Syrians were removed to Turkey through a Frontex-coordinated flight without having the possibility to apply for asylum.[lxxiv]

[20] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, https://eur-lex.europa.eu/eli/reg/2019/1896/oj

Secondly, although escorts are subject to the Code of Conduct for Return Operations and the operations are to be monitored, ill-treatment of returnees, like during national return operations, cannot be ruled out. The CoE Committee for the Prevention of Torture (CPT), for instance, reported a case of ill-treatment of an Afghan returnee during a Frontex-coordinated flight in 2018.[lxxv] Finally, with the vast incentives that they offer to states, return operations may encourage collective expulsions. Arguably, states may be tempted to unduly accelerate domestic administrative procedures concerning people from a country to which a Frontex-coordinated operation is being prepared to participate in it.[lxxvi]

### b) *Influence on domestic decision-making*

According to the Frontex Regulation, technical and operational assistance to states includes the collection of information necessary for issuing a return decision and identification of people subject to return procedures (Article 48(1)(a)(i)). The information and identification phases may have a considerable impact on the decision to return the person, despite the claim that the Agency does not enter into the merits of the return decision (Article 48(1) and 50(1)). As the deployment of the European Asylum Support Office in Greece showed, the Justice and Home Affairs agencies have in practice much broader influence on domestic decision-making than their funding regulations allow.[lxxvii] The risk is that domestic authorities will just rubber stamp the return decision unofficially prepared by Frontex. The involvement of Frontex (and its influence) increases if a Member State experiences undefined "challenges with regard to their return systems." In such circumstances, Frontex's "help" (Article 48(2)) includes a wide range of "services": the provision of interpretation services; practical information and recommendations on destination countries; advice on the implementation and management of return procedures; advice on and assistance in relation to detention and alternatives to detention, as well as equipment, resources and expertise for the implementation of return decisions and for the identification of third-country nationals. The Regulation does not clarify that Frontex deploys *independent* interpreters, so it can be well Frontex's staff providing that service. Further, what will the advice and assistance as regards detention involve? It cannot be excluded that Frontex will advise authorities on whether detention should be applied in a given case and then assist with the implementation of this measure. Overall, the Regulation leaves great leeway for Frontex to unduly influence Member States in relation to return (and detention).

### c) *Cooperation with third countries*

The Frontex Regulation tasks the Agency with assisting states with the acquisition of travel documents, including by means of consular cooperation, without disclosing information relating to the fact that an application for international protection have been made, nor information that is not necessary for the purpose of the return (Article 48(1)(a)(ii)). But which information will be "necessary for the purpose of the return"? This formulation allows Frontex to share sensitive information with the countries of origin which, in turn, can create the risks for the returnees.

Consular or other authorities of countries of origin must never have access to information about the identity of people who may need international protection. The country of origin can be requested to confirm the nationality of the potential returnee and to issue the necessary travel documents only after any risk upon return has been thoroughly assessed and excluded and the person had access to an effective appeal to challenge his expulsion. As it happened in Belgium in 2017, Sudanese officials were invited to identify the persons slated for removal, who afterwards were ill-treated upon return.[lxxviii] The identification interview, which was not preceded by an assessment of the applicant's protection needs, was one of the reasons leading the ECtHR to conclude that Belgium violated the prohibition of *refoulement* in the *M.A*. case.[lxxix]

Further, the Regulation vaguely mentions that third country authorities will participate in the integrated return management system (Article 48(1)(a)(i)). Again, there is a risk that the authorities of the countries of origin will have access to information about returnees which will place them at risk of human rights violations upon return. This risk is compounded by the possibility for Frontex, under the Regulation, to transfer personal data to a third country if this is necessary for the performance of the Agency's tasks. Such transfers should not prejudice the rights of asylum seekers, in particular as regards *non-refoulement* (Article 86(3)-(4)). This provision implies that people whose asylum application has been refused do not benefit from this protection. Yet, under international law and the EU Charter, everyone, and not solely asylum seekers, is protected from *refoulement.*

### *d) Data sharing*

The 2019 Regulation expands the Agency's powers to manage databases.[lxxx] Frontex should operate and further develop an integrated return management platform for processing information, including personal data transmitted by the Member States' return management systems, which is necessary for the Agency to provide technical and operational assistance. To this end, the Agency should develop and operate information systems and software applications functioning as communication infrastructure. These should link the domestic return management systems with the platform for the purpose of exchanging personal data and information for the purpose of return (Article 48(1)(d) and 49). Personal data should only include biographic data or passenger lists and should be transmitted only where they are necessary for the Agency to assist in the coordination or organisation of return operations. Such data should be transmitted to the platform only once a decision to launch a return operation has been taken and should be erased as soon as the operation is terminated.

The Agency may also use the platform for transmitting biographic or biometric data, including all types of documents which can be considered as proof or prima facie evidence of the nationality of people subject to return decisions, when the transmission of such personal data is necessary for the Agency to provide assistance in confirming the identity and nationality of the persons concerned. Such data should not be stored on the platform and should be erased immediately following a confirmation of receipt (Article 49).

In addition, Frontex may establish internal rules restricting the application of Regulation 2018/1725 on the protection of natural persons regarding the processing of personal data by the Union institution, bodies, offices and agencies[21] if the return procedure risks being jeopardised (Article 86(2)). The processing of personal data by Frontex raises serious concerns about the right to data protection and privacy respectively under Article 8 of the EU Charter and Article 8 of the ECHR.

# V- Coercive returns disguised in practices

The two previous sections focused mainly on removal (forced return). This section looks at different measures which in practice function as removals. These are the so-called "voluntary" departures in circumstances where a dignified and adequate alternative does not exist (5.1) and pushbacks (5.2).

## 5.1. "Voluntary departure" or standing between a rock and a hard place

As discussed earlier,[22] the so-called voluntary departure laid down in Article 7 of the Return Directive is preferred over forced return (removal/deportation) regulated under Article 8 of the Directive. Yet, under the Directive, these two forms of return should not be regarded as entirely distinct. The so-called "voluntary" departure is not genuinely voluntary because the alternatives faced by the person are often forced return, combined with pre-removal detention, or destitution.[lxxxi] Hence, there is no clear dividing line between "voluntary" and enforced return under the Directive, as the degree of coercion can be seen on a sliding scale[lxxxii] or indeed as "deportation continuum"[lxxxiii]. This "return spectrum," (i.e. a classification of a return according to the degree of coercion as opposed to the person's free will) includes five levels: solicited, voluntary, reluctant, pressured, obliged and forced return.[lxxxiv] In some cases, even if the person is not directly threatened with forced return, the circumstances in the host state are so adverse that he/she is literally compelled to accept the pressure of a "voluntary" departure.

For instance, as an apparent implementation of the EU-Turkey deal,[23] people have been held on the Greek Aegean islands and prevented from moving to the mainland. They are subject to protracted degrading reception conditions due to the hotspots being overcrowded while the admissibility of their asylum application is being examined. They are often detained[lxxxv] and the risk of deportation to Turkey (pursuant to the EU-Turkey deal), is hanging on them.

[21] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725
[22] See Section 2.1
[23] See Section 3.1

As a consequence, many give up their asylum claims or the right to appeal against negative asylum decisions by accepting the return within an Assisted Voluntary Return (AVR) programme implemented by the International Organization for Migration (IOM). Although IOM maintains that the participation in the AVR programme is entirely voluntary as the person has a freedom of choice and takes an informed decision, people are driven into accepting AVR due to lack of other possibilities to escape the dire situation in the Greek hotspots.[lxxxvi] The implementation of an AVR resembles removal/forced return as people are detained prior to the flight and then escorted by the Greek police. Ironically, considerably more people left Greece to their home countries via AVR programme than were returned to Turkey pursuant to the EU-Turkey deal.[lxxxvii]

Another example is the so-called humanitarian evacuation and return of people detained or stranded in Libya, notorious for torture, sexual abuse and forced labour.[lxxxviii] Under the UNHCR-run humanitarian evacuation programme, people are released from detention and transferred to transit centres in Niger and, to a lesser extent, Rwanda and Romania. They receive humanitarian assistance in Emergency Transit Mechanisms in Niger and Rwanda and await a durable solution.[lxxxix] Since its inception in 2017, this programme has benefited around 4,000 people. Only a minority of evacuations were in fact relocations – mainly to Italy.[xc] Co-funded with the EU Trust Fund for Africa (EUTF)[xci], the programme pulls out people from their ordeal in Libya while keeping them away from the EU. The EUTF also funds the IOM-run so-called Voluntary Humanitarian Return programme in Libya started in 2015. Since 2017, the programme has been a part of the EU-IOM Joint Initiative for Migrant Protection and Reintegration and reportedly covered over 50,000 persons returned to over 40 countries of origin.[xcii] Besides Libya, under the EU-IOM Joint Initiative for Migrant Protection and Reintegration, the IOM also offers AVR to migrants stranded in other countries *en route* to the EU, notably in Niger, Mali, Burkina Faso and Mauritania. In Niger, for instance, accepting the AVR allows migrants to access shelter, health care and food, often after life-threatening deportation to the desert by Algeria.[xciii] [24]

People who accept the AVR offer have to sign a "voluntary return declaration," in which they agree for themselves and their dependents that in the event of personal injury or death during or after participation in the AVR, neither IOM nor any other participating agency or government can be held liable or responsible.[xciv] Such a declaration was at stake in the case of *N.A. v. Finland* in front of the ECtHR.[xcv] The applicant's father was a Sunni Muslim who had previously worked for the national army under Hussein and the Inspector General Office. His asylum application was refused and after exhausting all appeal channels, he accepted the IOM-administered AVR and left for Iraq. He was killed within less than three weeks. In the proceedings before the ECtHR, Finland relied on the "voluntary return declaration" signed by the applicant's father and argued that he had returned voluntarily to Iraq. The Court held that against the factual background of the applicant's father's flight from Iraq he would not have returned there under the AVR without the enforceable removal order issued against him. Consequently, his departure was not "voluntary" in terms of his free choice.[xcvi]

[24] The term "voluntary" has also been misused in the context of return of people of concern to the UNHCR, including Syrian refugees from Lebanon and Turkey. Since May 2018, Lebanon facilitated and organised returns of Syrian refugees. Although Syrians are not forced to leave, they face increasing poverty, lack of residency rights, restrictions on freedom of movement, and restriction on legal employment and access to basic services in Lebanon, and at the same time Syria cannot be considered safe (Sawa 2019, AI 2019, Refugee Protection Watch 2020). In addition, there have been reported cases of forced return from Lebanon and Turkey, whereby Syrians were coerced to sign a voluntary return form and then transferred to the border, despite expressing fear of returning to Syria. In Turkey those returns are reportedly widespread and involve violence (HRW 2019a, 2019b)

He had to choose between either staying in Finland without any possibility of obtaining a legal residence permit, being detained to facilitate his forced return, and receiving a two-year entry ban, as well as attracting the attention of the Iraqi authorities upon return; or agreeing to leave Finland voluntarily and take the risk of ill-treatment upon return. According to the Court, in these circumstances, the applicant's father did not have a genuinely free choice between these options, which rendered his supposed waiver of his right to protection in the "voluntary return declaration" invalid. Consequently, his removal to Iraq had to be considered as a forced return engaging the responsibility of the expelling state.[xcvii]

## 5.2. Pushback or return before arrival

The forced return can also take the form of a "pushback." The EU Agency for Fundamental Rights (FRA) defines a pushback as apprehension of a person after an irregular border crossing and a summary return to a neighbouring country without assessing their individual circumstances on a case-by-case basis.[xcviii] For the Parliamentary Assembly of the Council of Europe (PACE), pushbacks mean refusal of entry and expulsion without any individual assessment of protection needs. Pushbacks involve actions towards migrants who have already crossed the border and find themselves inland, but also towards people who are present near or at the border, attempting to cross it.[xcix] In some cases, pushback policy takes the form of "pushbacks by proxy," as it relies on actions by neighbouring/third countries. Based on an agreement typically involving some form of benefits, the neighbouring country prevents the person from leaving its territory/jurisdiction and entering/arriving to an EU Member State and takes the person back. These practices can be referred to as "pull-backs".[c] [25] Overall, pushback practices and policies aim at preventing the person from entering the country and requesting international protection. They are typically accompanied by excessive force (ill-treatment), arbitrary detention, and destruction of personal property.[ci]

The evidence of wide-spread pushbacks along the EU external and internal borders has been growing in the past years. Reliable reports of pushbacks from Greece to Turkey are long-standing and involve detention upon entry without any guarantees, confiscation of the person's belongings (mobile phones and sometimes footwear) and transfer across the Evros River. The pushbacks are allegedly carried out across Aegean Sea, whereby people having reached Aegean Islands were re-embarked on a dinghy and towed back to Turkish waters, where they were left adrift.[cii] In the Eastern Mediterranean, more recently pushbacks started being reported from Cyprus. As Chapter 6 details, people are prevented from disembarking and put on vessels and returned to Lebanon and Turkey.[ciii] Further, the Balkan route is notorious for wide-spread and indeed chain pushbacks, where the person risks being repetitively pushed-back, notably from Italy to Slovenia, from Slovenia to Croatia, from Croatia to Bosnia and Herzegovina or to Serbia.[civ] Pushbacks by Croatia involve an unprecedented level of violence, including beating, sexual abuse, robbery and humiliation.[cv] Like pushbacks from Italy and Slovenia confirm, such practice occurs also within the Schengen area, for instance from France to Italy through the Alpine border and the Ventimiglia-Menton border[cvi] and from France to Spain.[cvii]

[25] Pull-backs (pushbacks by proxy) are more difficult to be proved due to lack of direct contact between an EU Member States and the person concerned. GLAN (Global Legal Action Network) challenged this practice in front of the UN Human Rights Committee (*SDG v. Italy*) and, with Forensic Oceanography, before the ECtHR (*SS v. Italy*). As of December 2020, both cases were pending, see GLAN 2020, ASGI 2020

In the Western Mediterranean, as Chapter 2 discusses, pushbacks from Spanish enclaves in Ceuta and Melilla to Morocco are long-standing and include so-called hot pushbacks, whereby people are arrested and returned to Morocco without any identification and access to a lawyer and interpreter.[cviii] In the Central Mediterranean, the return to Libya has a form of pushbacks by proxy or pull-backs. Under a memorandum of understanding between Italy and Libya, Libyan Coast Guards intercept people and take them back to Libya, where they are at risk of arbitrary detention, torture and sexual abuse, as it has been previously documented. Similar pushbacks by proxy are carried out from Maltese search and rescue zones.[cix]

Preventing entry, blocking access to asylum procedure and pushbacks violate several fundamental rights, most notably the right to asylum under Article 18 of the EU Charter, the prohibition of *refoulement* under Article 3 of the ECHR and Article 19(2) of the EU Charter, and the prohibition of collective expulsion under Article 4 of the Protocol 4 to the ECHR and Article 19(1) of the EU Charter. To avoid their human rights responsibilities in the border context, states tend to argue either that they lack jurisdiction over the person or that the prohibition of *refoulement* or collective expulsion applies only to removal from the state's territory. Human rights bodies rebutted both lines of argument. First, as regards the jurisdiction, in line with ECtHR's rulings in *Sharifi v. Italy and Greece*[cx] and *M.K. v. Poland*[cxi], refusal of entry at the border places the concerned people under the effective control of the state. The same goes even for extraterritorial operations. According to *Hirsi v. Italy*, interceptions on the high seas by the authorities of a State constitute an exercise of jurisdiction which engages the responsibility of the State in question.[cxii] Secondly, these rulings also confirm that non-admission at the border may amount to *refoulement* or collective expulsion. In *Sharifi,* Italy violated the prohibition *refoulement* and collective expulsion by immediately returning the applicants from its port to Greece, without assessing the risk they were facing there.[cxiii] Poland violated these obligations in *M.K.*, as it refused to receive asylum applications at the border and removed the applicants to Belarus.[cxiv] As *Hirsi* confirms, intercepting a group of migrants in the high seas and handling them over to a place where they face a real risk of ill-treatment violates the prohibition of *non-refoulement* and of collective expulsion.[cxv] Hence, people requesting protection at the border should be granted access to asylum procedure.[cxvi] The principle of *non-refoulement* imposes procedural requirements on states, notably to carry out individualised procedure to thoroughly assess human rights bars to return and ensure that the person is properly informed, has access to legal and linguistic assistance to challenge negative decision, and is protected from removal before the appeal decision is rendered. These obligations apply also when a group of persons cross the border in an undocumented way as under the prohibition of collective expulsion, states should not remove migrants as a group, unless each person had his/her claim individually assessed.

Growing evidence of pushbacks has triggered responses from several organisations. At the EU level, it is believed that reports of wide-spread and violent pushbacks prompted the Commission's proposal under the Pact package from September 2020 to establish border monitoring mechanism, discussed below.[26] In October 2020, investigative journalists revealed that Frontex was involved in pushbacks carried out by the Greek Coast Guard.[cxvii]

[26] See Section 6.2

These allegations were denied by the Agency but led to a number of processes, ongoing as of January 2021, notably an internal inquiry by a specially-established working group within the Agency's Management Board, a European Ombudsman's own-initiative inquiry into the effectiveness of Frontex's complaint mechanism and independence of Frontex's Fundamental Rights Officer[cxviii], and an investigation of the European Anti-Fraud Office over allegations of pushbacks and internal harassment and misconduct[cxix]. Opinions were also expressed within the Parliament of a need to establish a Parliamentary inquiry committee to scrutinise Member States' conduct at the EU's external borders, the role of Frontex and the Commission's response in that regard.[cxx] At the CoE level, in December 2020, the PACE Committee on Migration, Refugees and Displaced Persons appointed a Rapporteur on pushbacks to investigate these practices (Special Representative of the Secretary General on Migration and Refugees 2020). At the UN level, the Special Rapporteur on the Human Rights of Migrants (SRHRM) will dedicate his next report to the Human Rights Council to the human rights impact of pushbacks.[cxxi]

# VI- Human rights monitoring

Given the risk of serious human rights violations in the context of removal and border management activities, independent human rights monitoring has come to be seen as a crucial safeguard, whereby it reduces the risk of rights violations, provides feedback and increases accountability of the actors involved. This section first looks at removal monitoring provided under the Return Directive and points out to the need to extend such monitoring to the post-arrival phase (6.1). Secondly, the section discusses border monitoring, not (yet) regulated under EU law. Against the background of current and past border monitoring projects in various countries, the analysis discusses the Commission's recent proposal to establish a border monitoring mechanism under the Screening Regulation (6.2).

## 6.1. Removal and post-removal monitoring

Under Article 8(6) of the Return Directive, Member States should provide for an effective forced-return monitoring system.[27] According to FRA, to be effective, monitoring should fulfil three criteria. It should be carried out on an ongoing basis, by an organisation which is independent of the authorities in charge of removal, and it should cover all stages of the operation (pre-departure, in-flight, and arrival phase).[cxxii]

[27] Under Article 50(5) of the Frontex Regulation, every return operation organised or coordinated by the Agency (as discussed in Section 4) should be monitored in accordance with Article 8(6) of the Return Directive. The monitoring should be carried out by the forced-return monitors, deployed from the Frontex's pool of monitors under Article 51. While laudable, this system cannot be considered independent as the monitors may also be Agency staff and they report to Frontex's Executive Director (and also the Fundamental Rights Officer and the competent national authorities of all the Member States involved in the given operation). Follow-up is be ensured by the Frontex's Director and competent national authorities respectively. As a result, NPMs from a dozen of Member States set up a so-called Naphlion initiative to ensure involvement of independent bodies

There are three main categories of bodies carrying out monitoring, namely National Human Rights Institutions (NHRIs)/Ombudspersons,[28] civil society organisations (CSOs), and bodies affiliated to authorities in charge of removal or belonging to the enforcement machinery. According to information compiled by FRA, as of 2019, NHRIs and National Preventive Mechanisms (NPM) under Optional Protocol to the CAT were carrying out monitoring in 11 Member States, CSOs in 11 Member States, and bodies affiliated to law enforcement or migration agency in five Member States.[cxxiii] Only monitoring by the first two categories, if the organisation is independent from authorities, including compliance by NHRI with the Paris Principles, can be considered independent. NHRIs, especially if they also have the mandate of NPMs, are well placed to carry out monitoring given their standing vis-à-vis government.[29] For this task, however, they require adequate capacity and funding, which are often not forthcoming.[cxxiv] As regards CSOs, the funding for monitoring activities is even more challenging and access to detention and airport areas typically needs to be allowed in advance. Funding available to the monitoring body considerably influences the frequency of inspections and the scope of monitoring.[cxxv] Arguably, removal monitoring by independent bodies implements Article 8(6) of the Return Directive, hence it should be funded by EU funds, typically Asylum, Migration and Integration Fund (AMIF) should be used to cover these activities. According to data collected by FRA, overall, monitoring rarely extends to the in-flight phase. The number of flights with a monitor on board in 2019 ranged from 134 in Cyprus to one in Bulgaria and Lithuania.[cxxvi]

Unlike removal monitoring, monitoring of the post-removal phase is not provided in EU legislation or policy documents. In addition, the Commission stressed that the return monitoring under Article 8(6) of the Return Directive does not cover the period after reception of the person in the destination country.[cxxvii] As documented by journalists, researchers and CSOs, upon return, people often face human rights violations, including arrest, charge of treason, extorsion, ill-treatment, and deprivation of nationality[cxxviii].[30] A handful of organisations have begun to monitor the situation of returnees and provide them with assistance upon return.[31] Sometimes such projects are funded by expelling states. For instance, in Uganda and DRC, local CSOs carry out post-return monitoring of unaccompanied children removed from Norway and Belgium, respectively.[cxxix] In 2012, the Fahamu Refugee Programme set up the Post- Deportation Monitoring Network to enable organisations based in deporting and receiving countries to be connected.[cxxx] Post-return monitoring reduces the risks to returnees and enhances transparency. It also documents human rights violations and hence points to necessary changes in asylum and return procedures. It is noteworthy that in its Resolution on the Implementation of the Return Directive, the Parliament urged the Commission to establish a post-return monitoring mechanism to understand the fate of returned people, facilitate the exchange of good practices among the Member States on post-return monitoring and allocate sufficient funding for this purpose.[cxxxi]

[28] NHRIs, which fulfil the Paris Principles, are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State. However, they operate and function independently from government as per the Paris Principles, see GANHRI 2021.

[29] As regards public reporting, the findings of monitoring are included in the annual reports of the NHRI/NPM. See the return monitoring project carried out by the Italian NPM, National Guarantor for the Rights of Persons Detained or Deprived of Liberty 2020.

[30] Overall, post-deportation risks can be systematised in three categories, namely economic and psychological risks, insecurities at hands of authorities, and inhumane and degrading treatment (Alpes and Nyberg Sorensen 2016)

[31] For instance, as of 2012, Justice First helped Congolese deportees and the Refugee Law Project supported deportees in Kampala (Podeszfa and Manicom 2012). French ANAFE (Association Nationale d'Assistance aux Frontières pour les Etrangers) monitored the post-return fate of people whom it supported in transit zones and organised several missions to the countries of return (ANAFE 2020)

As the above initiatives demonstrate, post-monitoring programmes need adequate funding and capacities and appropriate guarantees of safety and access to deportees for the monitors. Hence, involvement of NHRIs/NPMs from the expulsing states or regional organisations (the EU or CoE) would help ensure that the monitoring is effective and sustainable. Ideally, the independent observers monitoring removal (NHRI or CSOs) could monitor the reception phase and afterwards, the monitors based in the destination country should be involved. Such monitoring would thus involve cooperation between CSOs and Ombudspersons in both countries involved (the European Network of Ombudsmen could liaise between Ombudspersons from the sending and destination countries) and be supported by the CPT. The key question however remains as to the follow-up and consequences of documented violations.

## 6.2. Border monitoring

Allegations of violent pushbacks at EU external borders discussed earlier[32] unveil the need for independent monitoring of border management activities. The term border monitoring is understood here as oversight of border control activities to assess their compliance with international refugee and human rights law.[cxxxii] Similar to removal monitoring addressed above, to be considered independent, the monitoring should be carried out by the CSOs and/or NHRIs/Ombudspersons, which fulfil the Paris Principles. In many Member States, NHRI are indeed involved in promoting and protecting human rights in the context of border management. Preventive actions include NHRIs going to the border crossing points and other places at the border and collecting data, visiting border reception and detention centres and police facilities (if they are designated as the NPM), and interviewing migrants. Thanks to their special standing, NHRIs are interlocutors for the government and parliament and may be able to advise on or review legislation, policy and practice. Within reactive actions, where legislation, policy or practice are not compliant with human rights, NHRIs can adopt official recommendations and some of them can challenge the lawfulness of the provisions before domestic tribunals. As remedial actions, where violations of migrants' rights at the border have occurred, NHRIs can ensure that they have access to an effective remedy, including providing information about redress mechanisms. Additionally, some NHRIs can receive and handle individual complaints and adopt formal conclusions and recommendations to authorities. To work effectively and independently, NHRIs need sufficient capacity and budget; these are yet often lacking. Further, in some Member States, NHRIs face obstacles, lack of cooperation from the authorities or even threats when they work on migration issues. Cooperation with CSOs, especially those who are present at the borders, can alert NHRIs about violations committed and prompt their response.[cxxxiii]

Indeed, CSOs play a crucial role in monitoring border management activities. Created in 2016, Border Violence Monitoring Network (BVMN) is a noteworthy initiative. BVMN monitors EU external borders along the Balkans and in Greece, collects testimonies and evidence of violence and pushbacks, makes them public and advocates for a change.

[32] See Section 5.2

Out of 11 civil society organisations constituting BVMN, five organisations are located in areas along the relevant borders and collect pushback cases via a standardised methodology, five organisations are involved in advocacy, and one ensures management and administrative coordination.[cxxxiv] Among country offices in the Balkans of the Danish Refugee Council (DRC), the country office in Bosnia and Herzegovina is engaged in border monitoring. Established in 2018, the country office systematically documents pushbacks and violence at the Croatian-Bosnian border and publishes "Border Monitoring Monthly Snapshot" on its website.[cxxxv] At other borders, CSOs carry out border monitoring activities which are of small scale due to limited capacity or because they are included within other projects. The cross-border nature of pushbacks requires transnational cooperation between CSOs. For instance, as of 2018, the Italian ASGI (Association for Legal Studies on Immigration) coordinated with partners in France and Switzerland.[cxxxvi] To be able to carry out border monitoring, CSOs need access to border crossing points to be granted by the authorities and adequate funding. In that regard a UNHCR initiative from early 2000 is noteworthy. A series of tripartite agreements (UNHCR-state border authorities-CSO) were signed with eastern European countries (including Poland, Slovakia, Hungary,[33] Bulgaria, Romania, and Lithuania) ahead of their accession to the EU. In 2017, a tripartite agreement was signed with Croatia. Under the tripartite agreement, the funding is provided by the UNHCR and a CSOs acts as an implementing partner which visits border areas (with various degrees of involvement of the UNHCR). The access granted by border authorities differs between the countries. While, as of 2018, in Bulgaria, the implementing partner could access all border detention facilities without limitation or prior permission (but not border crossing points per se), in Romania, the border police were notified in advance, and in Poland, the findings were not publicly available.[cxxxvii]

Seemingly as a response to reported violence and pushbacks at the EU external borders, the proposal for the Screening Regulation[cxxxviii], accompanying the Pact, provides for fundamental rights monitoring. According to Article 7(1), states should adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening. Under Article 7(2), Member States should establish an independent monitoring mechanism to ensure 1) compliance with EU and international law, including the EU Charter, during the screening, 2) compliance with national rules on detention of the person concerned, in particular concerning the grounds and the duration of the detention, and 3) that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of *non-refoulement*, are dealt with effectively and without undue delay. Article 7(2) further provides that states should put in place adequate safeguards to guarantee the independence of the mechanism and may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring. The Regulation foresees a role for the FRA. The agency should issue "general guidance" for Member States on the setting up of such a mechanism and its independent functioning. Furthermore, Member States may request the FRA to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.

[33] The agreement was terminated by the police in 2017, see ECRE 2018: 16

This proposal is a positive first step towards addressing violations at the border. The mechanism should build upon existing monitoring arrangements and good practices developed by NHRIs and CSOs, discussed above, and not duplicate work and dissipate available funds. In line with the opinion of CSOs and academics, to be effective and independent, several amendments to Article 7 of the Screening Regulation are necessary.[cxxxix] First, the scope of the monitoring should be extended beyond the screening procedure at official border crossing points and cover all human rights sensitive activities during border management activities. Border guards should actively cooperate with the mechanism and monitors should have access to border crossing points and unannounced visits should be foreseen in the mechanism. Further, as victims of pushbacks often find themselves on the other side of the border, the mechanism should be able to act upon allegations received from individuals or organisations who find themselves abroad. Second, in order to be independent, the mechanism should be carried out by NHRIs complying with the Paris Principles and CSOs. International and regional monitoring bodies, such as CPT, can support the work of the mechanism. The role and the mandate of the involved organisations should be provided in a written document. Since NHRIs are to be involved, as least some of the monitors would be able to receive individual complaints. To perform these tasks, NHRIs and CSOs should be protected from threats and intimidation. They should have adequate capacities and funding for this mandate, including from Integrated Border Management Fund (IBMF). Third, the findings and conclusions should be publicly available and monitoring mechanisms should lead to accountability measures. Potential victims should receive legal advice and have effective access to justice. There should be an investigation carried out and potential sanctions for wrongdoers. Finally, to close the monitoring cycle, the office of the European Ombudsman should be involved to ensure regular assessment of the monitoring mechanisms in the Member States and share good practices across the countries.

## VII- Conclusions

This chapter discussed recent EU legislative and policy measures and some selected Member States' practices in the field of return/expulsion. Although return has been regulated under the Return Directive for over a decade, it was the 2015 refugee crisis which placed the EU return policy high on the EU agenda. The Commission has developed an argument that increasing the rate of return was necessary for the functioning of the whole EU migration and asylum system. Under this approach, several measures have been introduced. The 2018 proposal for the recast of the Return Directive, which was not based on an impact assessment, restricts procedurals safeguards, expands the legal basis for detention, adds new circumstances when an entry ban may be imposed, and limits the applicability of "voluntary" departure. Other return-related legislative proposals accompanied the new Pact on Migration and Asylum. Indeed, the revised proposal for APR lays down a border return procedure, characterised by limited procedural safeguards, and the proposal for RAMM introduces a return sponsorship mechanism, as a form of solidarity towards Member States under migratory pressure or who allowed disembarkation after a search and rescue operation. Further, the Pact emphasises cooperation with third countries in the area of readmission, which have been characterised in the past by a growing informalisation and lack of transparency. To be able to rely on the cooperation with third countries, the EU and its Member States designate them as "safe." The concepts of safe country of origin and safe third country give rise to human rights concerns as they entail accelerated asylum procedures and swift returns, trumping the requirement for individual assessment. Under the 2016 CEAS reform proposals, both concepts would be expanded in the APR.

Furthermore, the new Pact cements Frontex's role in returns, which had been expanded in 2019 with the new Regulation in any case. Besides growing mandate regarding return operations, Frontex acquired wide advisory functions in the area of return (and detention) and mandate to cooperate with third countries for identification purposes. The line between decision making powers by the Agency and the Member States is increasingly difficult to draw.

Alongside these legislative measures, some practices are a growing cause of concern, notably pushbacks and the so-called "voluntary" departures which are coercive in practice. To prevent human rights violations, human rights monitoring can play a key role. To be effective, removal monitoring foreseen under the Return Directive should be carried out by an independent actor (NHRI and/or CSO), on an ongoing basis, and should cover all stages of the operation, until the handover of the person. Possibilities should be explored to extend it to post-arrival phase and cooperate with local actors in order to shed some light on the fate of returnees. A novelty at the EU level, the Pact proposed establishing a border monitoring mechanism. However, for it to be effective in preventing pushbacks, several provisions need to be inserted in the legislation. Measures discussed in the chapter risk leading to various violations of human rights. Member States should be mindful that the implementation of EU legislation does not dispense them from their international human rights obligations.

# Recommendations

## Member States

-respect international and regional human rights obligations and relevant norms and standards when implementing the EU return policy;

-refrain from any pushback policy or measures and ensure access to individual procedure to anyone apprehended at the border;

- put in place an effective return monitoring mechanism, covering the pre-removal, removal and post-removal phases, starting the monitoring from the notification of expulsion and ending it, ideally, 3-4 months after the person was returned; expand the network of monitors on the national territory, thus involving more independent experts and local CSOs, and link it with the monitoring network in the country of return.

## European Union

### *European Commission DG HOME*

-reconsider the focus on return rate as the main indicator of the effectiveness of the EU return policy and include fundamental rights compliance and sustainability of return in the assessment of effectiveness;

-encourage measures of regularisation of non-returnable people, as an integral part of the return system;

-investigate allegations of pushbacks by the EU Member States;

-investigate allegations of Frontex's involvement in pushbacks;

-offer genuine partnerships beneficial for both sides rather than pressuring countries of origin or transit into cooperation with the EU on readmission;

-carry out a human rights impact assessment before concluding a readmission agreement and cease readmission cooperation with countries that do not respect human rights norms and standards;

-include human rights assessment in the monitoring of the implementation of readmission agreements;

- include and define a clearer post-return monitoring role for NHRIs/Ombudspersons in readmission agreements;

-opt for formal readmission agreements rather than informal arrangements;

-propose an amendment to the Frontex Regulation to involve European Ombudsman in the complaint mechanism.

### *European Commission DG DEVCO*

-ensure that development assistance is not used for migration management;

-resist migration control conditionality being attached to development assistance.

### *European Parliament LIBE Committee*

-In the context of the negotiations on the recast Return Directive, oppose amendments expanding detention and linking asylum and return procedures;

-In the context of the negotiations on the APR, oppose the proposal for the border return procedure;

-In the context of the negotiations on the RAMM, oppose the proposal for the return sponsorship mechanism;

-In the context of the negotiations on the Screening Regulation, propose amendments to ensure that the border monitoring mechanism is independent, effective, and properly funded;

-oppose informal readmission arrangements;

-regularly invite Frontex's Executive Director for hearings;

-request FRA to prepare Opinion on the human rights implications of the proposals for APR, RAMM and Screening Regulation;

-ensure that funding allocations under the EU Trust Fund for Africa comply with human rights.

### *European Court of Auditors*

In the context of the ECA's ongoing audit of readmission cooperation, investigate whether a human rights assessment is carried out within a monitoring of the implementation of readmission agreements.

### *European Ombudsman*

-via the European Network of Ombudsmen, support national Ombudspersons in their return and border monitoring work;

-via the European Network of Ombudsmen, liaise with Ombudspersons of the destination countries to ensure post-return monitoring;

-advocate for assigning the role of monitors in the new border monitoring mechanism to national Ombudspersons.

### *EU Fundamental Rights Agency (FRA)*

-ensure that the guidance to be prepared by the Agency under Article 7 of the Screening Regulation promotes independent and effective border monitoring mechanism;

-support the Member States in their setting up of the border monitoring mechanism;

-map out the bodies involved in border monitoring and systematically update this list (similarly to the list of return monitoring bodies).

### *Frontex: Executive Director*

-suspend return operations when allegations of violations of fundamental rights are reported;

-act upon Serious Incident Reports and complaints about human rights violations during Frontex's operations;

-hire the 40 fundamental rights monitors pursuant to the 2019 Regulation;

-cease supporting Member States engaging in systematic rights violations.

### *Frontex Fundamental Rights Officer*

- act upon Serious Incident Reports and complaints about human rights violations during Frontex's operations;

-ensure independency of the 40 fundamental rights monitors to be hired;

-liaise with the Consultative Forum on a regular basis;

-provide human rights training for the monitors and escorts.

## United Nations

### *Special Rapporteur on the Human Rights of Migrants*

-closely monitor EU developments in relation to the return policy and its implementation;

-promote his 2018 report on return with EU institutions and formulate recommendations concerning amendments to the Return Directive;

-promote his recent report on detention of children at the EU level;

-formulate recommendations to the EU on the migration-control conditionality attached to development assistance;

-in the framework of the current research into pushbacks, seek input from a variety of sources to address wide spectrum of pushback policies;

-invite the EU Delegation to the UN and other international organisations in Geneva for hearings.

### *Working Group on Arbitrary Detention*

-closely monitor EU developments in relation to the return policy and its implementation with the implications on detention;

-formulate recommendations to the EU as regards the amendments to the Return Directive which risk expanding detention;

-request information from the European Commission on how the return border procedure and return sponsorship will supposedly avoid detention;

-carry out visits to the EU Member States to assess their detention practices;

-invite the EU Delegation to the UN and other international organisations in Geneva for hearings.

## Council of Europe

### *Committee of Ministers*

-promote its 2005 *Twenty Guidelines on Forced Return* as a set of standards regulating expulsion/return in the context of upcoming negotiations on the recast Return Directive;

-promote its 2009 *Guidelines on human rights protection in the context of accelerated asylum procedures* in the context of upcoming negotiations on recast of the Return Directive and border return procedure under the proposal for the APR which would merge asylum and return procedures;

-exhort the governments to reject and prevent any pushback policy and action;

-draw up guidelines on human rights compliant border control and border surveillance, which would prevent pushbacks;

-prioritise swift implementation of ECtHR's judgments relating to pushbacks (such as *Sharifi v. Italy and Greece* and *MK. v. Poland*).

### *Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly and its recently appointed Rapporteur on pushbacks*

-urge EU Member States to refrain from pushbacks and ensure independent border monitoring;

-call on the European Commission to urge EU Member States to halt pushbacks and to investigate allegations of pushbacks;

-recommend that the Committee of Ministers prepare guidelines on human rights compliant border control and border surveillance;

-encourage its members from EU Member States to encourage their governments to accept border monitoring mechanism under the Screening Regulation to be independent, cover all border situation, and lead to accountability;

-disseminate and teach CoE standards precluding pushbacks among national parliaments.

### *Special Representative of the Secretary General on Migration and Refugees*

-carry out fact-finding missions to EU Member States with external EU borders (Greece, Italy, Spain, Croatia, Hungary, and Poland) to collect information on the human rights situation at the border;

-provide input to the Secretary General on ways to enhance CoE's assistance and advice to the states on human rights treatment of migrants in an irregular situation;

-keep alternatives to detention among the priorities and promote the 2018 *Legal and practical aspects of effective alternatives to detention in the context of migration* of the Steering Committee for Human Rights;

-promote CoE standards within Frontex Consultative Forum and support its activities;

-engage with the EU institutions to promote CoE standards on return, detention, and access to asylum procedures.

### *Commissioner for Human Rights*

-report on and condemn pushbacks, arbitrary or inadequate return and detention measures by the EU Member States;

-submit third party intervention to the ECtHR on EU Member States practices which violate the ECHR, such as pushbacks, arbitrary detention, and inadequate appeal procedure against return decisions;

-issue recommendations on access to territory and asylum compliant with CoE standards;

-visit EU Member States with a focus on detention and overall treatment of migrants in an irregular situation;

-support NHRIs involved in return or border monitoring and encourage all NHRIs to take up this mandate.

*Committee for the Prevention of Torture*

-keep focusing on immigration detention during its country visits;

-remain alert to testimonies of interviewed detainees alleging to have previously been pushed back;

-monitor issues of removal operations and Frontex's involvement during visits to EU Member States;

-support the future border monitoring mechanism under the Screening Regulation.

## List of interviews

1. Gabriel Almeida (European Network of National Human Rights Institutions (ENNRI))
2. Jean-Pierre Cassarino (College of Europe)
3. Marta Gionco (Platform for International Cooperation on Undocumented Migrants (PICUM))
4. Mariana Gkliati (Leiden University)
5. Josephine Liebl (European Council on Refugees and Exiles (ECRE))
6. Officer (European Union Agency for Fundamental Rights (FRA))
7. Officer (Office of European Ombudsman)
8. Mark Provera (Independent consultant)
9. Olivia Sandberg (European Policy Centre (EPC))

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EuroMed Rights
EuroMed Droits
الأورو-متوسطية للحقوق

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

## Chapter 2

## Returns from Spain to Morocco

*April 2021*

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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.

EuroMed Rights wish to thank all the people - experts, stakeholders, interviewees - who contributed to the finalisation of this report. A special thanks goes to the researchers for their extensive and detailed analyses and their unwavering commitment in seeking evidence and justice for human rights violations.

* * *

# Index

## 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 there[1]. The Organic Law on Rights and Freedoms of Aliens (LOEx 4/2000[2] 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 status[i]. Furthermore, returns orders include entry bans whose duration is extremely long - up to 10 years- implying a long prohibition of entry on the Spanish territory[4]. 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 life[5].

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.

[1]Due to the alien's law, even people who have born in Spain can still be a foreigner and not entitled to residence.
[2]Available at: https://www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf
[3]For 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'*.
[4]Provisions 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
[5]Art. 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 authorities[ii]. 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 remedy[6], the right to physical integrity and non-degrading treatment[7], 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 operations[iii].

[6]Art. 13 ECHR
[7]Art. 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 Spain[9] 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[iv] holding[10] 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 Child[11] 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.

[8]Ley 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
[9]ECtHR, CASE OF N.D. AND N.T. v. SPAIN, Available at: https://hudoc.echr.coe.int/spa#{%22itemid%22:[%22001-201353%22]}
[10]For 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
[11]OHCHR, 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%2FPPRiCAqhKb7yhslov9FOAeMKpBQmp0X2W981jys6vlyDSyoR8LS7SYlFVqDl%2FWaUq3xpOagVR7K%2FCPIrftUVjc4lU4jqsJBtYW%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 enacted[12]. 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 issues[13].

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 law[14].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.

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[12]Article 62 LOEx 4/2000

[13]Iridia, (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

[14]Article 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 contactand 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 Morocco[15]. 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 Morocco[16].

However, the Valletta Summit on Migration[17] (2015) and the creation of the EU-Emergency Trust Fund for Africa[18] 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.

[15]Council 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
[16]See, for instance: Kevin Kaiser (2019). *EU-Morocco Negotiations on a Readmission Agreement: Obstacles to a Successful Conclusion.*
[17]Valetta Summit on Migration Available at: https://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/
[18]EU 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 data[19] | 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 Court[20], 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 trafficking[21]. 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.

[19]Eurostat. Available at: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eirtn&lang=en
[20]Sentence nº 183/2008, Available athttp://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6415
and the sentence 184/2008 available at http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6416
[21]Acuerdo 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 life[22]and the right of children to remain with their parents[23]. Moreover, returnees have no means to appeal against the return decision, which constitutes a violation of the right to an effective remedy[24]. 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 Foreigners[25] 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].

[22]Art. 8 ECHR.
[23]Art. 9, Convention on the Rights of the Child. Available at: https://www.ohchr.org/en/professionalinterest/pages/crc.aspx
[24]Art. 13 ECHR
[25]Acuerdo 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
[26]This 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 NGOs[27].

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 place[28]. 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 Mauritania[29] 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].

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

[28]In 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

[29]Aplicación 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 Foreigners[30] (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.

[30]Comisaría 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 withouth 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 Algeria[31] 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.

[31]On 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)

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 points[32]. 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.

[32]Deputies 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 developped 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 orfines 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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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

*April 2021*

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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.

EuroMed Rights wish to thank all the people - experts, stakeholders, interviewees - who contributed to the finalisation of this report. A special thanks goes to the researchers for their extensive and detailed analyses and their unwavering commitment in seeking evidence and justice for human rights violations.

* * *

# Index

## Executive summary

This research focuses on France's forced return system, with particular attention to the return procedures to Morocco[1] 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[2]; 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.

[1] This chapter only contemplates deportations from mainland France, not overseas territories

[2] 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)[3]. Having transposed the EU Return Directive[4], the CESEDA establishes different legal typologies[5] 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[6] 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)[7].

This Code raises serious human rights concerns, mainly because of the lack of procedural guarantees and the excessive use of administrative detention[8].

[3] Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile (CESEDA)

[4] 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

[5] 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 Prefectorial Orders on Deportation (APRF) issued on the basis of an alert on the Schengen Information System (SIS).

[6] 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.

[7] Obligation de Quitter le Territoire Français (OQTF).

[8] 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[i].[9]

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[10] (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[ii], 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.[11] 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[iii].

# 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 frontiers* - PAF) with an undetermined legal status until s/he is returned, detained or released with an OQTF[12]. People can also be released without an OQTF, but rather a regularisation visa valid for 8 days (called a safe conduct).

[9] 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.
[10] *Défenseur des Droits.*
[11] 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
[12] 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[13].

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 discretional 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[14] 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[iv].

Waiting zones are spaces of impunity where fundamental rights are systematically violated., Moreover, independent organisations can't easily access them for monitoring purposes[v]. 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[vi].

[13] https://www.service-public.fr/particuliers/vosdroits/F11144.
[14] 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[vii].

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,[15] 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[16], 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[17] 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.

[15] 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.*

[16] 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.

[17] 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)[viii] 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[ix].

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[x]. 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%,[18] it gradually increased to 60%, 70% or even 90% in some centres[xi]. 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[xii].

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.*[xiii]

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*.

[18] 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[xiv]. According to the CGLPL, this extension constitutes an attempt to exercise psychological pressure on detainees to encourage *voluntary* returns (among other considerations).[19] However, different actors raised serious concerns about the actual *voluntariness* of these returns.[20]

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*

[19] 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).
[20] 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 casein 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.*[xv]

## 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[xvi]. 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[xvii].

According to the French Ombudsman[xviii], 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[21] (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.

[21] *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)[22]. 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.[23] 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[xix]. According to the French Ombudsman[xx], 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.

[22] 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.
[23] 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[xxi].

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[24].

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[xxii]. 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[25]. In 2019, 3.380 children were detained in French CRAs, more than double of the previous year - 1.429[xxiii].

[24] 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.
[25] 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)[26], the UN Committee on the Elimination of Racial Discrimination (2015)[27], the Human Rights Committee[28], the UN Committee on Enforced Disappearances (2013)[29], the Committee on the Rights of the Child (CRC)[30] and the *Contrôleure générale des lieux de privation de liberté*[31].

## 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,[32] 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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[26] Working Group on the Universal Periodic Review, "Draft Report of the Working Group on the Universal Periodic Review - France, A/HRC/WG.&/29/L.1," 17 January 2018, https://bit.ly/2uIjEcC

[27] 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

[28] Human Rights Committee, "Concluding Observations on the Fifth Periodic Report of France, CCPR/C/FRA/CO/5," 17 August 2015, https://bit.ly/2IvU8JF

[29] 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

[30] 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-EAC0-48FE-B58E-416146917EF1

[31] 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.

[32] This five NGOs are Ordre de Malte, Forum Réfugiés, La Cimade, France Terre d'Asile and Assfam.

## VI- Recommendations to the French government[33]

### *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.

[33] For recommendations addressed to Morocco, see: 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[34].

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.

[34] 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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[xxiii] 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 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

EuroMed Rights
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الأورو-متوسطية للحقوق

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

## Chapter 4

## The Policy of Forced Returns Between Italy and Tunisia

*April 2021*

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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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# Index

## Executive Summary

Cooperation in migration matters between Tunisia and Europe is dominated by (bilateral) agreements with EU member states. Regarding returns, and particularly forced returns, Italy is first with six readmission agreements. The most recent has reportedly been concluded in August 2020. But Italian migration diplomacy does not stop at the level of agreements, concluded or to be concluded. It also extends to the exercise of pressure leading Tunisia to review its migration policies. The main Tunisian instrument in the fight against illegal emigration is the result of this pressure. Indeed, the Organic Law No 2004-6 of February 3, 2004, was seemingly adopted at the insistence of Italy in exchange for economic support for Tunisia. This law mainly aims to criminalize departures from Tunisia. What followed was Tunisian case law that has not been harmonised. Overall, this case law weighs heavily in favour of its more oppressive characteristics.

For its part, Italy has put in place forced return procedures that violate the human rights of migrants, based on a system of weekly quotas for Tunisian citizens to be expelled. These practices, which seriously compromise the protections provided for the exercise of the right to asylum, seem to show an underlying desire to leave Tunisian migrants in a total information vacuum aimed at preventing them from leaving, and from taking any steps to assert their rights - such as access to international protection or to a lawyer - or to oppose or delay the immediate return process desired by the Italian authorities. And even if an appeal is brought against these decrees, it has no suspensive effect on the execution of the return.

Once in the country and upon their arrival at the airport, the "returnees" face a total lack of support from the Tunisian authorities, which likely reinforces their physical, psychological, economic and social vulnerability.

## I- The bilateral readmission agreements between Italy and Tunisia

In migration matters Tunisia is under double pressure: from the EU and from its member states.

At the European level, Tunisia concluded a political agreement on the partnership for mobility in March 2014, which should lead to the conclusion of two agreements: **the first on readmission** and a second on **the facilitation of visa formalities.** However, negotiations on these two agreements currently appear to be at a standstill. Civil society has expressed its opposition to any attempt to make the freedom of movement of individuals conditional on the signing of readmission agreements[1].

The situation is markedly different between Tunisia and the EU Member States. A number of countries have repeatedly concluded readmission agreements. Italy leads with six readmission agreements, most recently the one signed in August 2020.

[1] EuroMed Rights, State of Human Rights in Tunisia (2017). https://www.euromedrights.org/wp-content/uploads/2017/01/2017-01-16-EuroMed-Droits-Note-finale-en-vue-du-SCDH-2017.pdf (FR)

The first immigration cooperation agreements between Italy and Tunisia date from the 1990s and have evolved haphazardly according to political contingencies. Most of these agreements, worked out at the level of memoranda of understanding and operating protocols, retain an informal character, far from transparent and often private[2]. From a legal point of view, this situation is problematic. In addition, the vast majority of these agreements were stipulated in a simplified form although they are international treaties that are political in nature, which extracts them from parliamentary control and are therefore carried out in violation of the domestic law of the two countries.[i]

The first readmission agreement between Tunisia and Italy dates back to August 6, 1998. This agreement, which entered into force on September 23, 1999, was called "*Exchange of notes between Italy and Tunisia concerning the entry and readmission of persons in an irregular situation*". It provided for technical and financial assistance from Italy aimed at supporting Tunisian efforts in the fight against "irregular" immigration, as well as funding for the creation, on Tunisian territory, of detention centres in exchange for annual quotas for regular entry into Italy of Tunisian workers.[ii] In a tense international climate marked by the terrorist attacks of 2001, the Italian Minister of the Interior Giuseppe Pisanu and his Tunisian counterpart Hedi M'Henni on December 13, 2003 signed an agreement on police cooperation providing technical assistance from Italy to maritime border control training of Tunisian police forces. In exchange, a few days later, Italy pledged to increase entry quotas for Tunisians to Italy, increasing from 600 to 3.000 people per year. [iii]

In response to this steady increase of the flow of Tunisian migrants arriving in Italy, a third agreement was signed in 2009 by the interior ministers of the two countries. This provided for an accelerated readmission procedure for Tunisian migrants without a residence permit, bringing the readmission of readmitted Tunisians from 4 or 5 per month to around 200.[iv] It should be noted that, within the framework of this agreement, Tunisia undertook to take back its own citizens as well as third-country nationals who had entered illegally into Italian territory from the Tunisian coast. For its part, Italy agreed to finance the creation of detention centres in Tunisia.[v]

Following the fall of the Ben Ali regime, around 22.000 Tunisians landed on the island of Lampedusa during the first months of 2011. This situation led the then Italian Prime Minister to declare a state of humanitarian emergency and to urge his Tunisian counterpart to strengthen maritime border controls against departures, but also to agree to increased expulsions from Italy.[vi] This is the meaning of the agreement signed on April 5, 2011.[vii]

According to the European Court of Human Rights (ECHR), a press release published by the Italian Ministry of the Interior on April 6, 2011 specified that "Tunisia has undertaken strengthening the control of its borders with the aim of avoiding new departures of illegal immigrants, using the logistical means made available by the Italian authorities. In addition, Tunisia undertook to accept the immediate return of Tunisians who arrived irregularly in Italy after the date of conclusion of the agreement. Tunisian nationals could be repatriated through simplified procedures, providing for the simple identification of the person concerned by the Tunisian consular authorities".[viii]

[2] For a brief explanation of the process of ratification of international treaties in Italy and Tunisia, see the statements of Antonio Manganella, Mediterranean Regional Director of Avocats sans Frontières, in an article by Arianna Poletti, *Tra le righe dell'accordo tra Roma e* Tunisi, October 1, 2020, Tunisia in Red, http://www.tunisiainred.org/tir/?p=8166

In return, the Italian authorities granted "temporary humanitarian staying permits" to all Tunisian migrants who arrived irregularly in Italy between the beginning of January 2011 and April 5 of the same year.[ix] This 2011 agreement has been repeatedly identified by Italy as the legal basis of mass expulsions taking place today. It therefore seems likely that the figures for forced returns, which Italy claims to have agreed with Tunisia, stem from successive informal agreements that are inaccessible to the public and are constantly evolving.

During the visit of the Tunisian head of state to Italy at the beginning of 2017, a roadmap on the issue of migration was defined. This new agreement was also accompanied by a joint declaration signed by the foreign ministers of the two countries aiming at establishing, among other things, a concerted management of the migration phenomenon with the aim of strengthening the fight against irregular immigration through more effective controls of maritime borders. In any case, in February 2017, the media indicated that 1.500 Tunisian nationals in an irregular situation in Italy had been returned to their country.[3]

The renewed increase of sea crossings, especially during the health crisis linked to the Covid-19 pandemic, prompted Italy and the EU to put pressure on Tunisia in order both to strengthen the mechanisms for controlling departures and agreeing to double the number of forced returns. In fact, since spring 2020, Tunisia has recorded an exceptionally high number of departures of its nationals to the Sicilian coasts of Italy as well as to the island of Lampedusa. The vast majority are young men between the ages of 20 and 25.[x] According to official data from the Italian government, more than 12.430 Tunisian migrants arrived irregularly in Italy between January and November 2020.[xi] To this figure can be added 11.900 migrants intercepted at sea during the 999 patrol operations along the coasts and immediately brought back to Tunisia.[xii] The reasons for this increase in departures are manifold, but above all relate to the underlying political, social and economic crisis in Tunisia, which has deteriorated substantially due to the health crisis linked to the Covid-19 pandemic.

Following the influx of Tunisian migrants arriving on its coasts, Italy has stepped up diplomatic exchanges with Tunisia. In the space of two months, on July 27 and August 17, 2020, two ministerial visits were led by the Italian Minister of the Interior Luciana Lamorgese who was accompanied by the Minister of Foreign Affairs Luigi di Maio as well as by Oliver Varhelyi, European Commissioner for Neighborhood Policy and Enlargement, and by Ylva Johansson, European Commissioner for Home Affairs.[xiii] According to the press, the agreement reached during one of these meetings provides for Italian financial support of 11 million euros for the strengthening of border control systems and the training of security forces. The objective being both to prevent the departure of migrants and to reinforce the interception of vessels in Tunisian territorial waters.[xiv]

The resumption of forced return flights from Italy to Tunisia (interrupted at the height of the health crisis) was also on the table. These resumed in July 2020 at the pace agreed to before the Covid-19 crisis, namely 80 Tunisian nationals repatriated per week by two chartered flights.[xv] From November 2020, this rate has increased to 3 chartered flights per week.[xvi]

[3] CTR - Support the economic and social reintegration of returning Tunisian migrants, so as to guarantee the dignity of people and the sustainability of their reintegration projects.

The Italian government publicly congratulated itself on the success of the forced return programme, affirming that, since the start of 2020, 1.564 Tunisian nationals have been repatriated, including 1.200 as a direct result of the agreement reached with Tunisia during the visits organised in the summer of 2020[4].[xvii]

Regarding the agreement reached this summer, it seems that it is more of a verbal agreement concluded with the Tunisian president in the form of a *gentlemen's agreement* than of a legal text. Faced with this lack of transparency, Tunisian and Italian civil society organisations have filed requests for access to relevant dossiers with the respective competent authorities.[xviii] The responses so far have been very vague and at times contradictory. Hence, the Italian government has declared that during the meeting held in Tunis on August 17, 2020: "no bilateral agreement has been signed" and that "the necessary evaluations are still underway concerning possible initiatives to be financed", while the Tunisian authorities shared the sums relating to the purchase of equipment for the control of maritime borders without specifying the origin of this funding or the reference year.[xix] The recourse to “transgovernmental” and/or unwritten agreements allows the authorities of the two countries to escape the political control of their parliaments but also constitutional control of such arrangements. The need for transparency and clarity therefore remains essential.

## II- The criminalisation of departures in Tunisia[5]

As is the case with the conclusion of readmission agreements, the criminalisation of migration has also been influenced by a stick and carrot approach, for example from the side of the EU and/or its Member States. The strictest law in the entire normative body of migration remains Organic Law No. 2004-6 of February 3, 2004, amending and supplementing law No. 75-40 of May 14, 1975, relating to passports and travel documents[6]. It responds to international pressure following the terrorist attacks of September 11, 2001, in particular to pressure from Italy, which, since the 2003 agreement, has 'bought' Tunisia's cooperation, particularly the adoption of the 2004 Organic Law. The changes made by this law were supposed to remedy trafficking organised by smugglers. It provides for heavy penalties with doubling of penalties for repeat offenders, without forgetting the reference to other penalties provided for by other texts, such as the Penal Code or the law on the fight against terrorism. It also broadens its field of operation by means of vague formulations, confusing such categories as migrants and terrorists, migrants and smugglers, and smugglers and terrorists. Any form of aid, provided against payment, on a humanitarian basis or following an act of good faith has now been criminalised.

[4] For an overview of the number of Tunisian citizens repatriated in the period between 1 August and 30 November 2020, with specific reference to the methods of return (charter flight or scheduled commercial flight, escorted or unescorted), see: ASGI (2021), *Molti rimpatri, poche garanzie: un’analisi dei dati sui rimpatri dei cittadini tunisini degli ultimi mesi*. Available at: https://inlimine.asgi.it/molti-rimpatri-poche-garanzie-unanalisi-dei-dati-sui-rimpatri-dei-cittadini-tunisini-degli-ultimi-mesi/?fbclid=IwAR0fa4QfDhMAHkydT-GfDekG1wres5I7WDP5oTed9sMj7otBmfNt03AUEuU.

[5] For all the texts on migration in Tunisia, see: http://bit.ly/2LoBbPE (French & Arabic)

[6] Official Gazette of the Republic of Tunisia (Journal Officiel de la République Tunisienne - JORT), n° 11 of February 6, 2004, p.252. (French and Arabic)

On the other hand, the 2004 law broadens the scope of liability by establishing a **duty to report**; a fight against irregular migration through informing.[xx] Ascendants, descendants, brothers and sisters and the spouse are exempted, but not persons bound by professional secrecy such as lawyers, nursing staff and doctors.

According to a decision by the Tunisian Constitutional Court of February 16, 2007, the fact that a candidate for irregular immigration gives a sum of money to smugglers falls under the law of February 3, 2004. Two months later, the same Court opted for an opposite interpretation, more in line with the letter and the spirit of the law of February 3, 2004: it considered that the fact that migrants pay money to smugglers or supplying them with gasoline to cross the Sicily Canal did not constitute participation in an organisation of smugglers liable to the penalties provided for in Articles 38, 40 and 41 of the 2004 Law.

The jurisprudence of the Tunisian courts represents an additional problem, compounded by vaguely worded legislation. Case law is still interpreting and applying the texts differently to the point of contradiction within the same jurisdiction, in this case the Supreme Court.

Lawyer Rabeh Khraifi [xxi] notes that from it a rigid tendency has emerged on the part of Tunisian judges that goes in the same direction and confuses the categories of the organic law of 2014. The author also notes the absence, in Tunisian case law, of any reference to international human rights texts, particularly concerning migrants and refugees. According to him, this results in a manifest violation of the rights of migrants [xxii]. Finally, he notes that the recent trend (judgments dating from 2017 and 2018) of the Court of Cassation is to refuse to examine the provisions invoked by the defence on the pretext that the allegations relate to factual elements, which do not fall within its competence as a judge of the law. This has been confirmed, particularly in cases where the law on the fight against terrorism is invoked. [xxiii]

In short, the law of 2004 “in fact establishes specific penal legislation regarding aiding irregular migration” [xxiv]. Tunisian case law, for its part, tends not to take into account a long-cherished principle, namely that of the strict interpretation of criminal law.

Alongside the criminalisation by the texts and a harsh case law against people who have attempted an irregular departure, illegal practices that infringe on the freedom of movement and the freedom to leave the territory have proliferated. Amnesty International notes that “as part of their 'National Strategy to Combat Extremism and Terrorism', the authorities have been applying border control measures which have restricted the right to free movement of thousands of people since 2013”. In many cases, this constitutes a travel ban. Research carried out by Amnesty International shows that the authorities applied these measures in a discriminatory manner, based on the appearance of the targeted persons, their religious practices or their criminal record, without providing any justification and without a court ruling. These measures adversely affected the livelihoods of these people and led to arbitrary arrests and brief detentions. [xxv]

However, it appears from the judgments available to certain lawyers (the judgments are not published) that the ruled cases did not concern returning irregular migrants. It seems that only those involved and arrested before or during departure were tried on the basis of the 2004 Organic Law. The investigation conducted by Foued Ghorbali confirms that the returnees are released after an interrogation that focuses mainly on security issues, namely a criminal record in Tunisia or information on the networks organising the departures.[xxvi]

## III- The procedure of forced returns of Tunisian nationals in Italy

In order to explain the operation of this "return machine" implemented by the Italian authorities from October 2020, this section describes the different stages taken by Tunisian migrants who arrived in Italy by detailing the problematic instances.

Boats usually disembark independently on the island of Lampedusa. Once the migrants have been arrested by the authorities, they undergo the first health checks before being taken to the "hotspot"[7] of Contrada Imbriacola. The latter, officially considered a "government reception centre", is in reality a detention centre whose legal basis is very uncertain. [xxvii] Migrants are detained, in very precarious conditions,[xxviii] between 2 and 10 days depending on the number of places available in the structure or in other structures (or ships) intended to accommodate them during the quarantine period that awaits them after.

According to the testimony of the legal advisers of the *In Limine* project of the Association for Legal Studies on Immigration (ASGI), upon arrival in the hotspot and before proceeding with the taking of photos and digital fingerprints; a procedure for the pre-identification of the foreign national is carried out by police authorities, assisted by cultural mediators from the police. During this procedure, the migrant must complete an information sheet which has the value of a legal notice, on which is indicated the personal data declared by the foreign national, his country of origin, the reasons of his entry into Italian territory as well as whether he wishes to apply for some form of international protection. As the Italian deputy Erasmo Palazzotto reminds us, "the pre-identification interview for migrants takes place immediately after disembarkation, at a time of great vulnerability for the migrant, almost always in the absence of fundamental guarantees, despite the enormous importance that it has on the life of the migrant since it determines his legal status and his access –or refusal of access– to the request for international protection". [xxix]

On this subject, as relayed in a report presented in 2017 by the Senate Extraordinary Commission for the Protection and Promotion of Human Rights,[xxx] the Italian authorities delegate, out of habit, their obligation to provide information on international protection[xxxi], to the High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the non-governmental organisation Save the Children. These organisations are the only ones with systematic access to hotspots. However, this information transmission activity is not planned before the pre-identification procedure, where only a UNHCR information booklet in different languages is distributed to migrants, but after. The Extraordinary Commission therefore concludes that "the pre-identification procedure, as it is currently carried out, turns out to be a summary and superficial examination which does not involve humanitarian operators and which does not fully protect the right to request protection on the part of the refugees".[xxxii]

Indeed, according to testimonies gathered by ASGI's legal advisers, during or after the pre-identification procedure, the public security authorities as well as certain cultural mediators apply an almost "automatic" selection based on the individual's country of origin.

[7]The expression "hotspots approach" is introduced by *the European Agenda on migration* proposed on May 15, 2015 by the European Commission to provide the European Union (EU) with the means to manage the "migration crisis".

This treatment seems to have become common practice since Italy classified Tunisia in the list of “safe countries of origin” in October 2019.[xxxiii] Indeed, according to the Italian government, nationals of these countries do not have the right to international protection and could be repatriated in an accelerated manner. According to European Directive 2013/32 which introduces the possibility for Member States to adopt a list of "safe countries of origin", [xxxiv] the request submitted by a national of one of these countries may be considered manifestly unfounded if no proof is provided concerning the insecurity of the country of origin or the state of personal danger affecting the individual seeking protection. But, in principle, in all cases, the request must be examined and the possibility of having a personal interview must also be guaranteed. However, in the application of the directive at the national level, it seems that in the absence of evidence provided on the specific situation of danger of the national, a decision is taken on the lack of basis of his request for protection within a very short time, and without granting him an individual interview. This is contrary to European law and is normally a fundamental right regarding protection claims. [xxxv]

It is important to remember that, according to refugee law, the possibility of accessing a form of international protection is recognised on the basis of the individual examination of the personal circumstances that led the person's emigration. This possibility in no way judged on the basis of nationality. The denial of the right to access international protection and, consequently, the forced return in a situation of danger for the migrant, can lead, in the cases provided for by law, to the violation of the principle of non-refoulement. (among others) which is one of the foundations of refugee law.[8]

## IV- The use of "quarantine vessels" following the Covid-19 health crisis

Since April 2020, due to the health crisis caused by the Covid-19 pandemic, foreign nationals arriving in Sicily are subjected to an additional step in their journey. They are forcibly placed in quarantine in a dedicated structure or, given the lack of structures, in a “quarantine vessel”. These are boats moored off the Sicilian coast rented by the Italian Ministry of Infrastructure and Transport from private companies to accommodate migrants for compulsory quarantine. Today there are 5 quarantine ships positioned along the Sicilian coast with a total of around 2.730 people on board. [xxxvi] This phase, which can have an indefinite duration ranging from a minimum of 14 days to more than a month, is characterised by a legal vacuum and once again by a total absence of information on the duration of the stay or on subsequent stages.

As has been criticised by the National Guarantor of the Rights of Persons Deprived of Liberty, the migrants detained on these ships are completely cut off from the outside and deprived of the possibility of exercising their fundamental rights which are nonetheless guaranteed by the Italian legal system: “they cannot apply for asylum, they are not in fact –at least temporarily– protected as victims of trafficking or as unaccompanied minors, and they also cannot quickly access family reunification procedures under the Dublin Regulation, which have a specific time limit ”.[xxxvii]

[8] 1951 Geneva Convention, article 33; see also ECHR article 3.

These conditions are extremely hard for migrants to endure both psychologically and physically. Several desperate acts were noted such as the case of a 22-year-old Tunisian national who drowned after having thrown himself from the quarantine ship Moby Zazà to swim to Italian territory or the hunger strike started by a group of Tunisians following their detention for more than a month on a quarantine vessel, despite two negative PCR tests.[xxxviii]

The deprivation of liberty imposed on migrants, both in so-called "hotspot" structures and on quarantine vessels, characterised by a total lack of information towards victims as to its reasons, methods, and duration, poses a certain number of problems from a legal point of view. In fact, according to the Italian Constitution[9] as well as international law,[10] any deprivation of liberty must be subject to judicial control and must ensure fundamental guarantees such as the right of the person to be informed, in a language they understand, of the reasons for this restrictive measure as well as the right to an effective remedy before a judge. Given the lack of respect for these fundamental guarantees by the Italian authorities, both in the hotspots and in the quarantine vessels, one may conclude that these deprivations of liberty are very often carried out illegally and therefore seem arbitrary, as has been confirmed, in a similar case, by the European Court of Human Rights (ECHR). [xxxix]

## V- Issuance of an expulsion or deferred refoulement decree

Following the disembarkation from quarantined vessels, Tunisian migrants must complete a second information sheet. This measure is carried out once again without access to the necessary information as to the possibility and modalities of filing an application for international protection or without receiving an explanation of other situations, which would prevent expulsion (family reunification or other). These people are once more considered as "economic migrants" who do not have the right to stay on Italian territory and, as such, are subject to a deportation order with immediate effect. This measure may take the form of an expulsion decree or a deferred refoulement decree depending on the decision of the competent administrative authority.[11] The two types of decree entail the same consequences for Tunisian migrants, that is to say a ban on readmission to Italy and to the Schengen area, even legally, for a duration of at least five years. When the expulsion/deferred refoulement decree is issued, the administrative authority may decide to enforce the decree by ordering the detention of migrants in permanent removal centres (Permanent Centre for Repatriation - CPR) when it considers that there is a risk of flight, which is the case for the vast majority of Tunisian nationals, in particular since the resumption of forced return flights between the two countries. In the event that places are not available in the CPR centres, the administrative authority issues an expulsion notice, which obliges the migrant to leave Italian territory, by his own means, within 7 days. The Italian Cultural and Recreational Association (ARCI) has documented many cases of notification of expulsion and removal orders immediately after the release from quarantine and detention vessels, which also affected vulnerable people such as unaccompanied minors or people with mental disorders.

[9]See Art. 13 of the Italian Constitution.

[10]See article 5 of the European Convention on Human Rights (ECHR) and article 9 of the International Covenant on Civil and Political Rights.

[11]The normative reference framework in matters of immigration in Italy is the *Testo Unico sull'Immigrazione*, Decreto legislativo, testo coordinato, 25/07/1998 n° 286, GU 18/08/1998, see in particular articles 10 (2) and 13.

ARCI also reports a positive experience, through their work under a Toll Free Number, for an unaccompanied minor –in possession of identity documents proving their age– who was transferred to the CPR in Ponte Galeria (Rome). Following several reports received by the toll-free number, the operators intervened in support of the minor who, according to Italian law, should not have been detained in the CPR. Thanks to the collaboration of the organisations that operate, albeit in a limited way, within the centre, including "A Buon Diritto", the minor was subsequently released from the centre and was able to embark on the appropriate procedure.

Italian law provides for the possibility for foreign nationals who are subject of a deferred expulsion/refoulement decree to appeal against this measure before a judge. However, the appeal does not have a suspensive effect on the execution of the return. In practice, once more, migrants are not informed of this possibility, and access to a lawyer, provided for free by law, is made extremely difficult once the migrant is detained in a CPR, which hinders their right to an effective remedy.[12]

The detention in CPR centres, in appalling detention conditions, [xl] is subject to judicial control and can last up to 90 days. However, in recent months, following the renewal of agreements between the two countries, the procedure has undergone a substantial acceleration, and return can take place in the days following arrival at the centre. Maurizio Veglio, a lawyer from the Turin public prosecutor's office, says he has never seen so many Tunisian citizens repatriated so quickly from the Turin CPR centre: "The process is very fast: they enter the CPR centre, they attend the hearing before the justice of the peace and a few days later they are on the plane which takes them to Palermo for identification and then directly to Tunisia". The lawyer adds that "sometimes, it is impossible to guarantee the right of defence: to meet clients, due to the restrictions linked to Covid-19, access to the CPR centre is restricted, the cell phones of detainees are seized and Tunisian nationals are often repatriated before having had an adequate legal interview". According to ARCI, the confiscation of personal property and in particular of cell phones has led to informal communication networks between guardianship bodies and inmates: the direct relationship between inmates and guardianship agencies is mediated by families in the country of origin or by friends or activists in Italy. The last step before the forced return to Tunisia is the passage in front of the Tunisian consular authority at the airport of Palermo, which is responsible for identifying the individual as being a Tunisian national to validate their forced return.

Hence, according to testimonies collected by legal advisers from ASGI, Tunisian migrants very quickly find themselves in detention centres while awaiting repatriation without ever having been effectively informed of the possibility of requesting some form of international protection, of the reasons for their removal and detention, the possibility of having access to a lawyer and the expected date of return. Word of mouth between migrants and the work of lawyers associations (when it is possible to contact them) is their only way of understanding the procedure.

These practices, which seriously compromise the protections provided by the exercise of the right to asylum, seem to show an underlying desire to leave Tunisian migrants in a total information vacuum aimed at preventing them from taking any steps to assert their rights -such as access to international protection or to a lawyer, or to oppose or delay the immediate return process desired by the Italian authorities.

[12]See articles 5 and 13 of the European Convention on Human Rights (ECHR).

## VI- The socio-economic crisis after the return

"Tunisia is a safe country, it is not a country at war", declared the Italian Foreign Minister in August 2020. [xli] This declaration was followed by a new wave of expulsions of Tunisians, in agreement with the Tunisian authorities, in particular the President of the Republic Kais Saied.

In a context of political, economic and social crisis coupled with a global health crisis, imposing on Tunisia an agreement on the return of Tunisian migrants only complicates the social and security situation in the country. Young people who brave death every day, either crossing the Mediterranean or disembarking in a country devastated by the Covid-19 pandemic, send a strong signal about the state of despair in which they live. They try not only to flee a country, but above all to build a future for themselves and for their families. Return, whether forced or voluntary, is often interpreted as a personal failure and poses psychological problems for the 'returnee'. The voluntary returnee confronts a reality tahat is defined by difficult circumstances on all levels. Historically high unemployment continues to rise in recent decades. The social climate is tense and adequate public policies are non-existent. In this context, attempts of leaving are likely to be repeated.

Foreign return assistance programmes and project funding encompass only a tiny part of the "returnees" and precarious micro-projects. The French Office for Immigration and Integration (OFII) has funded 500 projects since 2011 for a total amount of 3.5 million euros [xlii].

In Italy, Assisted Voluntary Return and Reintegration (AVRR) programmes co-funded by the EU and the Italian government, are implemented by the IOM together with local organisations. They provide for pre- and post-return monitoring, which includes financial and logistical support to start an economic activity and promote social reintegration in the country of origin[13]. The Italian law, which regulates this procedure, stipulates that even foreign nationals who are subject of an expulsion decree can benefit from it. In reality, this turns out to be very difficult. It is in fact up to the foreign national to ask the competent authorities, before or at the time of receipt of the expulsion decree, for the granting of voluntary return, which implies the obligation on the part of the Italian authorities to inform migrants, in a language they know, of this possibility.[xliii]

In the case of Tunisian migrants, testimonies indicate that the authorities, contrary to their obligation, do not inform migrants of the possibility of requesting a voluntary return, and the local organisations responsible for AVRR who could do so have no access to migrants before the expulsion decree is issued. In practice, therefore, it is virtually impossible for Tunisian nationals who arrived irregularly in Lampedusa to access AVRR programmes.

The majority of released returnees face two alternatives: a new crossing attempt or marginalisation. The youngest are confronted with the difficulty of mastering the language, integration into school and into society in general.

[13] IOM, project Re.V.ITA. - Rete Ritorno Volontario Italia (Italy Voluntary Return Network), https://italy.iom.int/it/aree-di-attivit%C3%A0/ritorni-volontari-e-assistiti/progetto-revita-rete-ritorno-volontario-italia

## VII- The absence and need for a monitoring system in Tunisia following forced returns

**On the Italian side**, it is interesting to note the role of the National Guarantor of the Rights of Persons Deprived of Liberty, an independent state body, in monitoring forced return flights from Italy. As part of a project co-financed by the EU Asylum, Migration and Integration Fund (AMIF) with the objective of strengthening the protection of the rights of foreign citizens who are the subject of expulsion or refoulement decrees, the Guarantor is responsible for monitoring the implementation of forced returns, from the pre-return phase to the presence in return flights.[xliv] Each follow-up mission is duly documented in a public report also containing recommendations to the competent authorities.

**On the Tunisian side**, there is a general lack of information on the practices and measures planned by the Tunisian authorities on the arrival of Tunisians turned back or expelled by Italy. It is only through the testimony of returnees or the lawyers who represent them that it is possible to retrace their journey once they are back in Tunisia. At the institutional level, Tunisian authorities are rather passive and the return assistance and monitoring systems are initiated by international cooperation agencies, in particular the EU and its Member States. These mechanisms are "limited in time and financial scope" and are not known. [xlv] It must be said that this is a dilemma for the Tunisian authorities: how to participate in programmes that affect only a minority of returning migrants, but also don't correspond to the income that the migrant can guarantee for himself and his own family that stayed in Tunisia. It should be noted that migration represents a boon of 5% to Tunisian GDP. The Lemma project, which is implemented by the French Office for Migration and Integration (Office Français de l'Immigration et Intégration – OFII) and financed by the EU and whose objectives include the return and integration of migrants, recognises that the "return and reintegration schemes implemented by the European Member States generally offer limited assistance, both in terms of time and financial scope". [xlvi]

In fact, the Tunisian authorities seem to be interested exclusively in the security aspect of returns. In an interview, Romdhane Ben Amor of the Tunisian Forum for Economic and Social Rights (Forum Tunisien pour les Droits Économiques et Sociaux - FTDES) said[14], based on the 2018 FTDES survey [xlvii] that on arrival at Enfidha airport, returnees are subject to an identity check to identify persons wanted by the police or the Tunisian justice system. During these interrogations, he adds, they are subject to police violence before being released after having signed the minutes of the interrogation. In the same survey, returnees specify that police violence is verbal and not physical (Mnawer, 26).

They add that the questions were oriented towards the security aspect linked to terrorism (Hichem, 27 years old). For his part, Yassine (25) sums up the situation as follows: "*As expected from the Tunisian Police… bad word, disdain, orders; come here, go there… after half an hour they started asking us: from where and how did you migrate?... how did you get the money…who was the middleman… then we were released and returned home ». « We arrived to the airport… we found Tunisian police… they confiscated our mobile phone… they insulted us… they told us that we are not worth Europe… as if we were residing in Italy and illegally immigrated to Tunisia, as if Tunisia was not our country of origin… we left the airport at 9 PM… we were left downstairs… they quickly checked our passport…we crossed the airport and were taken to the police station*

[14] Interview conducted by the authors on December 02, 2020.

*of Enfidha airport… they left us in a corner… one of the police officers started hitting the wall as a way to threaten us… we were like slaves…we told them we want our mobile phones, they refused… they did not give us the mobile phone that the Italian police gave us.*"

Today the situation does not seem to have changed and, following identification by the police forces, the returnees are directed to buses destined for the south or the north of the country, without any other planned assistance.

In recent years, there have been isolated initiatives by Tunisian civil society, which tries to address this lack of monitoring of forced returns by the authorities. Since 2017, FTDES has been at the forefront of documentation and advocacy on the migratory journeys of Tunisians leaving for Italy and their subsequent repatriation. The organisation Terre pour Tous is also very active on social networks and maintains direct contact with many returnees. They also denounce their treatment during the various stages of their trip to Italy. A new project, started a few months ago by Avocats Sans Frontières (ASF) in Tunisia, in collaboration with a group of Italian lawyers from ASGI, is interested in providing legal follow-up after return. As Antonio Manganella, Regional Director of ASF, explains, the project aims to "defend the rights of Tunisian citizens who are victims of forced return, by improving protection and taking care of Tunisians repatriated from Italy via mechanisms of access to justice at the national and international level". ASF lawyers intend to provide, through a publicly available hotline, an initial legal consultation to returnees and, following an analysis of the cases if a legal recourse option is available, the organisation will provide support to applicants. If, on the contrary, the legal route seems to have no chance of success, the organisation will redirect applicants to request access to certain State services such as food support.

# VIII- Recommendations

## Recommendations for Italy

- Make public all the agreements concluded with Tunisia and ensure the full participation of the Italian Parliament in any negotiation of future agreements including clauses of forced return of Tunisian nationals;
- Ratify all existing agreements in accordance with article 80 of the Italian Constitution;
- Include clear guarantees of respect for the human rights of migrants and adequate monitoring mechanisms in any future bilateral agreement with Tunisia;
- Guarantee full access to procedures for applying for international protection to Tunisian nationals who have arrived in Italy in accordance with national, European and international law;
- Ensure that the recommendations put forward by the National Guarantor during the monitoring missions to places of confinement and forced return flights are duly taken into account and implemented.

## Recommendations for Tunisia

- Ensure full respect for the human rights of migrants and refugees, in particular through the adoption and effective implementation of legislative texts in full compliance with international conventions. Specifically:
    - Remove the penalties provided for in the event of unauthorized entry, stay or exit, and repeal the law of 3 February 2004;
    - Adopt migration laws in accordance with international treaties ratified by Tunisia and fight against all forms of discrimination, racism and exclusion towards foreign populations in Tunisia;
    - Establish an effective asylum system based on respect for human rights and the application of the principle of effective remedy and non-refoulement.
- Make public the agreements concluded with Italy;
- Refrain from resorting to "transgovernmental" agreements in order to allow parliamentary control and mechanisms for controlling their constitutionality;
- Invite the Immigration Committee in parliament to intervene through questions to the government or hearings so that the Tunisian executive can report on the management of the migration issue;

- Respect the right to free movement and make systematic the recourse to justice before imposing any limitation to this right;
- Put in place an appropriate mechanism to ensure the follow-up of persons returned to Tunisia;
- Make the document on the national migration strategy public so that civil society and experts can contribute to its formulation.

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[xxxix]European Court of Human Rights (ECHR), *Grand Chamber, Khlaifia and others v. Italy*, December 15, 2016, (req. N° 16483/12); for more details, see also Garante Nazionale dei diritti delle persone detenute o private della libertà personale, Relazione al Parlamento 2020, pp. 106-107, https://www.garantenazionaleprivatiliberta.it/gnpl/it/pub_rel_par.page; and ASGI, *Ombre in Frontiera: Politiche informali di detenzione e selezione dei cittadini stranieri, March 2020, pp. 15-16, http://www.asgi.it/wp-content/uploads/2020/04/Ombre-in-frontiera.Politiche-informali-di-detenzione-e-selezione-dei-cittadini-stranieri-2.pdf* (IT)

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EuroMed Rights
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الأورو-متوسطية للحقوق

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


## Chapter 5

## Egypt: a repressive environment, fertile ground for the EU's return obsession

*April 2021*

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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.

EuroMed Rights wish to thank all the people - experts, stakeholders, interviewees - who contributed to the finalisation of this report. A special thanks goes to the researchers for their extensive and detailed analyses and their unwavering commitment in seeking evidence and justice for human rights violations.

* * *

# Index

# Introduction

When it comes to irregular migration and management of border control, Egypt may seem to be the good student of the Mediterranean. In 2018, Egypt's internal development minister recalled that *"no illegal immigration boat has departed from Egypt since 2016 […] because Egypt has adopted a comprehensive strategy to address illegal migration"*. The EU-Egypt cooperation on migration is not new, but has intensified following the so-called 'migration crisis' of the summer 2015. It became a priority of the bilateral cooperation when both parts renewed their relationship with new partnership priorities added in 20171. In addition to development aid and institutional capacity building, Egypt benefits from EUR 89 million under the EU Trust Fund for Africa to support *"its efforts in enhancing migration management, addressing the root causes of irregular migration and sustaining local communities hosting refugees"2*.

The terms of cooperation mainly benefit the Egyptian authorities' interests in their search of political legitimacy at a time of increased criticism against the authoritarian ruling regime. Egypt's cooperation efforts were acknowledged during the second meeting of the migration dialogue between the EU and Egypt in 2019[3]. Several EU Member States also engaged in bilateral cooperation with Egypt regarding migration, in particular on the fight against human trafficking and migrant smuggling and on return policies. This is the case of Germany who signed an agreement with this country in 2017. Italy also decided to cooperate with the Egyptian authorities to tackle "illegal immigration" in 2018. Italy and Egypt had launched their dialogue in 2015 but it was interrupted after the murder, in Cairo in January 2016, of Italian PhD researcher Giulio Regeni[4].

In a country where human rights violations continue to worsen, the EU externalisation of migration control comes with important consequences for the rights of migrants and refugees, whether they are Egyptians or not. As said, the increasing violation of individual rights in Egypt has not stopped the EU and its Member States from engaging in bilateral cooperation schemes. This cooperation has a negative impact on the rights of asylum seekers and migrants, with reported police violence and collective forced returns. The return policies between Egypt and EU Member States deliberately result in the forced returns of migrants to a country where protection norms are much lower than within the EU, thus resulting in a violation of the non-refoulement principle guaranteed by the 1951 Geneva Refugee Convention[5].

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[3] The European Union Delegation to Egypt (2019), Joint Statement, *Second meeting of the Migration Dialogue between the European Union and Egypt*. Accessible at: https://eeas.europa.eu/delegations/egypt_en/65317/Second%20meeting%20of%20the%20Migration%20Dialogue%20between%20the%20European%20Union%20and%20Egypt

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This chapter explores the EU's cooperation scheme with Egypt on migration as well as schemes established by two Member States: Germany and Italy. It also reviews the impacts these agreements have on individual rights in Egypt. The chapter starts by introducing Egypt's current political and economic context before moving to EU-Egypt cooperation on migration, the cases of Germany and Italy concludes with the risks a return to Egypt represents for migrants.

# I- Political and economic background

The 25th of January 2021 marked the 10th anniversary of the Egyptian revolution. The emergency law, used for decades by the Mubarak regime to shut down the public sphere and silence peaceful opposition, was in place until the breakout of the 2011 revolution.

The overthrow of former President Hosni Mubarak on 11 February 2011 opened timid democratic reforms for the country. The presidential election organised in June 2012 brought to power Mohamed Morsi from the Freedom and Justice Party, the first democratically elected president of Egypt. However, the first year of his term was characterised by political unrest and an important economic crisis. Egyptians quickly returned to the streets and organised in a social movement called "*tamarrud"* (or "rebellion"). The army intervened to force President Morsi to leave office on 30 June 2013.

This military coup, led by then ministry of defence Abdel Fatah Al-Sisi, put an end to the democratic opening of the country, barring any political opposition from power. Al-Sisi won the presidential elections of July 2014 and was re-elected in 2018 with over 90% of the votes amid reports of vote-buying and without any real opposition. In 2019, he amended Egypt's constitution in order to extend his time in office until 2030.

## 1.1. Human rights violation and shrinking space for the Egyptian civil society

Since Al-Sisi accessed power, Egypt has experienced the worst human rights crisis of its modern history. Egyptians' personal rights have shrunk in all their aspects, while the daily living of human rights defenders and journalists is marked by repression, police violence, enforced disappearances and torture committed in total impunity. In 2017, the Egyptian government imposed a state of emergency[6] which has been regularly renewed every three months since.

The crackdown on the Egyptian civil society occurs via severe restrictions on non-governmental organisations (NGO)'s activities. Egyptian authorities have been investigating their work, notably in case 173/2011 known as the *"foreign funding case"*[7] in which 37 Egyptian organisations[8] are still investigated.

[6] Premium Times (2020), *Egypt renews state of emergency first declared in 2017*. Available at: https://www.premiumtimesng.com/foreign/africa/423126-egypt-renews-state-of-emergency-first-declared-in-2017.html.

[7] Case 173, referred to by Egyptian media as the "foreign funding case," looks into the registration and funding of Egyptian human rights organizations. See for instance: Amnesty International, Close Case 173 Campaign, available at: https://www.amnesty.org/en/latest/campaigns/2016/12/close-case-173/

[8] EuroMed Rights, *Alert/ Egypt: 43 defendants acquitted in infamous 'foreign funding' case*, 21 December 2018. Available at: https://euromedrights.org/publication/alert-egypt-43-defendants-acquitted-in-infamous-foreign-funding-case/

Some of their leaders and staff members have been summoned on charges including *"receipt of illegal foreign funding"* and *"working without legal permission"*. 34 human rights defenders are banned from travelling and 10 have their assets frozen[9].

In September 2019, peaceful protests denouncing corruption and poor socio-economic conditions were severely repressed. More than 4,000 people were arrested in the following days and many of them are still held in pre-trial detention today as is the case for instance of human rights defenders Mohamed El-Baqer and Alaa Abdel Fattah[10]. In November of the same year, Egyptian independent media Mada Masr's offices were raided and three members of their staff including their editor-in-chief Lina Attalah[11] were shortly detained. In February 2020, Patrick Zaki, a researcher with the Egyptian Initiative for Personal Rights (EIPR), was arrested and tortured upon his arrival in Cairo while traveling back from Italy where he was completing an Erasmus Mundus master's degree[12]. The crackdown on human rights defenders reached a peak in November 2020 when three senior staff members of EIPR, Karim Ennarah, Mohammed Basheer and Gasser Abdel-Razek were held in pre-trial detention for two weeks after they had met with European diplomats in Cairo. Their assets remain frozen today and their colleague Zaki has been imprisoned for more than a year for allegedly joining a terrorist group and spreading false news.

Also, the crackdown on alleged LGBTIQ+ people is particularly worrying in Egypt, where, for instance, in September 2017, a concert of the band Mashrou' Leila in Cairo, during which a rainbow flag was displayed, triggered a series of arrests: 49 people were sentenced to prison for "incitement to debauchery"[13].

The Egyptian government also used the Covid-19 outbreak to expand its power, for example, banning assemblies without reference to public health reasons, amending the emergency law and assigning the investigation of crimes to the military prosecution[14]. In the amended emergency law, for instance, a mere five out of the 18 amendments are related to public health emergencies, demonstrating that the focus is more on entrenching repression than tackling the virus and by extending the control of the President and the military over the justice system, judicial independence is *de facto* abolished[15].

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[9] EuroMed Rights, *Factsheet: crackdown on human rights in Egypt,* 31 May 2021. Available at: https://euromedrights.org/publication/factsheet-crackdown-on-human-rights-in-egypt/

[10] EuroMed Rights, *NGOs call for immediate release of HRDs El-Baqer & Alaa Abdel Fattah*, 29 September 2020. Available at: https://euromedrights.org/publication/egypt-international-ngos-call-for-the-immediate-release-of-human-rights-defenders-mohamed-el-baqer-and-alaa-abdel-fattah-on-the-first-anniversary-of-their-arrest/

[11] Human Rights Watch, *Egypt: Independent News Website Targeted*, 25 November 2019. Available at: https://www.hrw.org/news/2019/11/25/egypt-independent-news-website-targeted

[12] Amnesty International, *Egypt: Arbitrary arrest and torture of researcher studying gender in Italy*, 10 February 2020. Available at: https://www.amnesty.org/en/latest/news/2020/02/egypt-arbitrary-arrest-and-torture-of-researcher-studying-gender-in-italy/

[13] Amnesty International, *Égypte : 49 personnes présumées homosexuelles condamnées à de la prison ferme*, 8 December 2017, available at: https://www.amnesty.fr/discriminations/actualites/egypte-49-personnes-presumees-homosexuelles-condamnees-a-de-la-prison-ferme?gclid=EAIaIQobChMI8ILksMLn7wIV0u5RCh3O1wNVEAAYASAAEgIE6PD_BwE

[14] EuroMed Rights, *COVID-19: A new trojan horse to step up authoritarianism in Egypt*, 19 May 2020. Available at: https://euromedrights.org/publication/covid-19-a-new-trojan-horse-to-step-up-authoritarianism-in-egypt/

[15] *Ibidem.*

## 1.2. The economic crisis since 2011

The liberal turn in Egypt's economy in the 1970s negatively impacted the socio-economic well-being of the country. Instead of bringing modernisation and prosperity, the reforms increased corruption, reduced real income, deepened inequalities and caused under-employment.[16] As a consequence, many Egyptians turned to the Gulf region and Europe to seek better living conditions[17]. However, those who remained in the country did not see their situation improved over the years. On the eve of the revolution, 25% of the Egyptian population was living under the poverty-threshold of USD 1.3 per day, while it was roughly estimated that youth unemployment reached 30%[18]. The hope for better socio-economic conditions was at the heart of the 2011 revolution.

The political unrest that followed the ousting of President Mubarak has further worsened the economic crisis. The billion-worth investments made by Gulf countries in the government's real estate projects did not contribute to improve the well-being of the population. In 2016, President Al-Sisi negotiated a USD 12 billion loan with the International Monetary Fund (IMF) but the later came with strict conditionality and constrained the Egyptian government to devalue its currency and reduce its public spending including reducing subsidies for everyday commodities[19]. Overall the loan had negative impacts for the Egyptian people and in 2019 the national poverty rate was estimated at 32.5% of the population[20]. Furthermore, the country is also experiencing an important housing crisis that affects millions across the country[21].

The Covid-19 outbreak encouraged Egyptian authorities to turn again to international institution to seek financial support and contain the anticipated economic fallout[22]. The IMF has already agreed on a USD 5.2 billion stand-by arrangement with Egypt, but there are no commitments relating to the protection of individuals' economic power. The World Bank estimated that around 2.7 million jobs were lost during 2020 pushing unemployment to 9.6%[23].

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[16] Vi Nguyen, *Politics & History in 1970s Egypt*, 2014, available at: https://prezi.com/qv3uop_vdfzy/politics-history-in-1970s-egypt/

[17] In the beginning of the 2000s, it was estimated that 4 million of Egyptians migrants lived and worked abroad. IOM, Migration Aspirations and Experiences of Egyptian Youth, February 2011. Available at: https://egypt.iom.int/sites/default/files/Migration%20Aspirations%20and%20Experiences%20of%20Egyptian%20Youth.pdf

[18] Poverty rate rises in Egypt, widening gap between rich and poor: CAPMAS, Ahram Online, 29 November 2012. Available at: http://english.ahram.org.eg/NewsContent/3/12/59433/Business/Economy/Poverty-rate-rises-in-Egypt,-widening-gap-between-.aspx

[19] Egyptian Initiative for Personal Rights, *"Eye on Debt III", Egypt's government has executed 4 measures out of 14 during the third review period, all of which are hampering social and economic justice*, 21 October 2018. Available at: https://eipr.org/en/press/2018/10/%E2%80%9Ceye-debt-iii%E2%80%9D-third-series-shadow-reports-imf-experts%E2%80%99-visit

[20] Egyptian Street, CAPMAS: Egyptians Affected by Poverty Reach 32.5 Percent, 30 July 2019. Available at: https://egyptianstreets.com/2019/07/30/capmas-egyptians-affected-by-poverty-reach-32-5-percent/

[21] Achment Gonim, Hossam Abougabal, *Resolving Egypt's Housing Crisis Crucial to Long-Term Stability*, 27 June 2016. Available at: https://www.mei.edu/publications/resolving-egypts-housing-crisis-crucial-long-term-stability

[22] Egyptian Initiative for Personal Rights, Credit to government for measures to combat spread of coronavirus, but protecting individuals' income and mitigation of economic and social impacts of the virus prevention are necessary, 24 March 2020. Available at: https://eipr.org/en/press/2020/03/credit-government-measures-combat-spread-coronavirus-protecting-individuals%E2%80%99-income

[23] The World Bank, Egypt's Economic Update — October 2020. Available at: https://www.worldbank.org/en/country/egypt/publication/economic-update-october-2020

# II- Egypt as a "host" and departure country

According to the statistics of the Egyptian Ministry of Foreign Affairs, at the end of 2018 the number of Egyptians abroad reached more than 10 million with 64.4% of those living in Arab countries. The remaining 35.6% reside in Europe, North America, and Australia.[24]

Hundreds of thousands of Egyptians now work in Libya in the oil and gas industry or in the services sector (before 2011, the number ranged between 330,000 and 1.5 million)[25].

## 2.1. A sharp increase in the number of migrants and refugees

In parallel, the number of international migrants, including refugees, in Egypt increased from 300,000 in 2010 to reach 543,937 in 2020, with migrants primarily originating from the Syrian Arab Republic, Somalia, Sudan and the Palestinian Territories.[26] By mid-2020, of the total 543,937 migrants in Egypt, 324,736 were refugees and asylum seekers[27].

Egypt has a long history of cooperating with Sudan on migration control. In 2006, Egypt forcibly returned at least six hundred Sudanese migrants and refugees[28] and again in 2008 when it forcibly returned activists and refugees to Darfur[29]. In 2018, Egypt forcibly returned the well-known Sudanese activist Mohamed Boshi, one of the most vocal critics of the Sudanese government.[30] In the same year, Egypt and Sudan established joint military patrols to control the two countries' borders.[31] In November 2020, both countries agreed to enhance the military cooperation and to bolster joint work in rehabilitation, training and border security. [32]

Amid an increasingly racist and xenophobic climate against migrants and refugees in Egypt, especially against people from Sub-Saharan African countries but also Syrians, violence and discriminatory attacks are on the rise[33]. On 29 October 2020, a 12-year-old Sudanese child, Mohamed Hasan, was brutally killed by an Egyptian man. The killing sparked protests among the members of the Sudanese community, both where the child had lived in Cairo and in front of the UNHCR office in 6th October City, an area in the western part of Greater Cairo, which is home to a large number of refugees and migrants.

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[24] https://www.capmas.gov.eg/Admin/Pages%20Files/2017109144221Egy.pdf

[25] See also BPD, *The Egyptian Migration State*, 6 February 2020. Available at: https://www.bpb.de/gesellschaft/migration/laenderprofile/304864/the-egyptian-migration-state.

[26] International Migrant Stock 2019. UN DESA, Population Division, New York. Available at www.un.org/en/development/desa/population/migration/data/estimates2/estimates19.asp, in IOM, World Migration Report 2020, p. 67. Available at: https://publications.iom.int/system/files/pdf/wmr_2020.pdf

[27] United Nations Department of Economic and Social Affairs, Population Division (2020). International Migration 2020 Highlights (ST/ESA/SER.A/452), pag. 46. Available at: https://un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf.

[28] Peter Kenyon, *Egypt Set to Deport Hundreds of Sudanese*, 4 January 2006. Available at: https://www.npr.org/templates/story/story.php?storyId=5125739&t=1610856961883

[29] Forced deportation of the people of Darfur from the Republic of Egypt to Sudan, 2008 https://bit.ly/2OidZo8 (in Arabic)

[30] Human Rights Watch (HRW), Sudan: Exiled Activist Surfaces in Detention, 15 November 2018. Available at: https://www.hrw.org/news/2018/11/15/sudan-exiled-activist-surfaces-detention

[31] Reuters, Egypt and Sudan set up joint patrols against cross-border threats, 25 November 2018. Available at : https://www.reuters.com/article/us-egypt-sudan-defence-idUSKCN1NU0T2

[32] Egypt Independent, Egypt, Sudan agree to enhance military cooperation, 3 November 2020. Available at : https://www.egyptindependent.com/egypt-sudan-agree-to-enhance-military-cooperation/

[33] Sertan Sanderson, *Egypte : montée des violences racistes contre les migrants africains*, InfoMigrants, 14 January 2020, available at: https://www.infomigrants.net/fr/post/22025/egypte-montee-des-violences-racistes-contre-les-migrants-africains.

Protesters also voiced anger about violence and discrimination they have endured in Egypt, amid the state's failure to protect them.[34] Nevertheless, dozens of them have been arrested after the protests.[35] Egypt is considered as one of the main smuggling routes for migrants moving from Somalia, Sudan and Ethiopia, towards Egypt and Israel. However, smugglers have increasingly turned their activities towards the borders with Libya for two main reasons: firstly the Egyptian security forces don't hesitate to kill migrants trying to cross its Eastern borders with Israel[36]; and, secondly the deterioration of the political situation in Egypt, in addition to the dire socioeconomic conditions in the country[37].

## 2.2. Increased border controls

Autonomous crossing attempts from the Egyptian coast are an exception, contrary to what happens on the Algerian and Tunisian coasts. Until 2016, well-organised smugglers were mainly operating in the coastal governorates of Marsa-Matrouh, Alexandria, Beheira and Kafr-El Sheikh and had good contact with the Egyptian border security forces to ensure the departures proceeded smoothly in exchange for bribes.[38]

In September 2016, a fully loaded fishing boat sank near the small town of Rashid, east of Alexandria, known as the Rosetta disaster. At least 202 people died. Unofficially, the numbers assume up to 400 victims.[39] Immediately after this shipwreck incident, the Egyptian authorities tightened their control over the beaches and at sea and greatly restricted attempts to cross.

Cooperation on migration policy between the European Union and Egypt has greatly intensified since then as the Al-Sisi regime showed that it was capable and ready to close off the coast to migrants by boats. As a result, only a few boats carrying migrants have departed since 2017, but almost all have been intercepted.

Migration routes have shifted again to Libya and smugglers who previously worked in Egypt's governorates on the Mediterranean have since focused on transporting people across the land border to Libya. Egyptian security authorities have repeatedly arrested Egyptian and foreign migrants attempting to enter Libya illegally, but individual officers are presumed to profit financially from the smuggling trade into Libya.[40]

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[34] Sofia Aboudari, Anger after Sudanese teenager stabbed to death in Egypt, Middle East Eye, 3 November 2020. Available at : https://www.middleeasteye.net/video/anger-after-sudanese-teenager-killed-egypt

[35] Zeinab Mohammed Salih, *Dozens of Sudanese migrants held in Cairo after protests*, 12 November 2020. Available at : https://www.theguardian.com/global-development/2020/nov/12/dozens-of-sudanese-migrants-held-in-cairo-after-protests

[36] The times of Israel, *Egypt police kill 15 Sudanese migrants at Israel border*, 15 November 2015. Available at : https://www.timesofisrael.com/egypt-police-kill-15-sudanese-migrants-at-israel-border/

[37] Middle East Monitor, *Egypt arrests 274 who tried to illegally cross into Libya*, 4 February 2019. Available at: https://www.middleeastmonitor.com/20190204-egypt-arrests-274-who-tried-to-illegally-cross-into-libya/; Sarah El-Sheikh, *131 Egyptians arrested attempting to cross into Libya*, 9 November 2015. Available at : https://dailynewsegypt.com/2015/11/09/131-egyptians-arrested-attempting-to-cross-into-libya/

[38] EuroMed Rights (2019), *EU-Egypt migration cooperation. Where are human rights?*. Available at: https://euromedrights.org/publication/eu-egypt-migration-cooperation-where-are-human-rights/

[39] See IOM, Mediterranean Migrant Arrivals Reach 300,450; Deaths at Sea: 3,501, 23 September 2016, available at: https://reliefweb.int/report/italy/mediterranean-migrant-arrivals-reach-300450-deaths-sea-3501; Pesha Magid, *Report from Rashid: Where was the state when hundreds drowned?*, Madamasr, 13 October 2016, available at: https://www.madamasr.com/en/2016/10/13/feature/politics/report-from-rashid-where-was-the-state-when-hundreds-drowned/

[40] EuroMed Rights (2019), *EU-Egypt migration cooperation. Where are human rights?*. Available at: https://euromedrights.org/publication/eu-egypt-migration-cooperation-where-are-human-rights/

The Egyptian migrants who leave by boats almost exclusively depend on crossing to Italy, because Italy does not forcibly return Egyptian minors.[41] In 2016, Between 6 – 8 % of the migrants arriving in Italy by boat were Egyptians – the majority of them minors. In October 2020, the percentage decreased to 3%[42], with 1,264 Egyptians arriving by sea in Italy from January to December 2020[43], while Egyptian asylum applicants in 2019 in Italy were 802.[44] Greece also attracted the vast majority of applications from unaccompanied minors from Egypt (78 %) as seen in previous years, the overwhelming majority of unaccompanied minors applying for international protection in EU+ countries (EU and European Economic Area - EEA) reached 330 in 2019 – were male between the ages of 14 and 18 – compared to 190 in 2018.[45]

In 2019, asylum applicants in the EU from Egypt were granted refugee status far more often than subsidiary protection.[46] During 2018, considering asylum-seekers from Egypt, 5,110 asylum applications were lodged in EU+ while in 2011 there were 2,300 asylum applications[47].

# III- EU cooperation with Egypt

## 3.1. A key partner in the region for the EU

When it comes to preventing irregular migration and externalising migration policies to third countries, Egypt is one of Europe's key strategic partners. Indeed, if the EU and its Member States want to further externalise border control in the Mediterranean region, they absolutely depend on cooperation with Egypt due to the country's geographical location and its importance as a transit and origin country for migrants and refugees.[48]

The Project to Enhance Response to Migration Challenges in Egypt (ERMCE) is one of these forms of collaborations which is being implemented since 2017 in Egypt with a package of EUR 60 million and consists of seven different projects under the umbrella of the EU Emergency Trust Fund for Africa (EUTF)[49]. One of these is the EUR 3 million *"Strengthening of migration management through institutional support"* which is implemented by the Spanish Agency for International Development Cooperation (AIDC) with the National Committee for Combating and Preventing Illegal Migration (NCCPIM-TIP).

[41] ARCI, *Security and Migration Economic Interests And Violations Of Basic Rights The Cases Of Libya, Niger And Egypt*, May 2019. Available at: https://www.arci.it/app/uploads/2019/05/report-2019-inglese-normal.pdf.
[42] UNHCR, Italy Sea Arrivals Dashboard (October 2020). Available at: https://reliefweb.int/report/italy/italy-sea-arrivals-dashboard-october-2020
[43] Italian Interior Ministry, Cruscotto Statistico Immigrazione, 31 December 2020. Available at: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31-12-2020_1.pdf
[44] https://www.worlddata.info/europe/italy/asylum.php
[45] EASO Asylum Report 2020. Available at: https://easo.europa.eu/sites/default/files/EASO-Asylum-Report-2020.pdf
[46] *Ibidem.*
[47] *Ibidem.*
[48] EuroMed Rights (2019), *EU-Egypt migration cooperation. Where are human rights?*. Available at: https://euromedrights.org/publication/eu-egypt-migration-cooperation-where-are-human-rights/
[49] See European Commission, Enhancing the Response to Migration Challenges in Egypt (ERMCE), available at: https://ec.europa.eu/trustfundforafrica/region/north-africa/egypt/enhancing-response-migration-challenges-egypt-ermce_en.

Its aim is "*to contribute to enhancing migration governance and management in Egypt through institutional strengthening and capacity building"* and to combat and prevent "illegal" migration, as well as human trafficking[50].

Under the EU Trust Fund for Africa, Egypt is also playing an important role on the Regional Operational Centre in support of the Khartoum Process[51] and the African Union (AU)-Horn of Africa Initiative (ROCK). This EUR 5 million project, whose focus is mostly on focus on human trafficking and people smuggling aims to share information on migration and associated networks amongst the countries of the Khartoum Process. [52]

Another example is the launch, on 19 October 2020, by Egypt, the EU and Germany of the EUR 30 million project "*Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa"* (THAMM). This project is in line with several other jointly funded programmes by the EUTF and the German Federal Ministry of Economic Cooperation and Development (BMZ), in coordination with the ILO, IOM and GIZ.[53]

## 3.2. Strengthening border control

The Egyptian security apparatus is taking advantage of the highly controversial EU project "Euromed Police IV" which aims to strengthen strategic and operational cooperation with neighbourhood countries.[54]

Egypt has also recently intensified its cooperation with the European Union's border protection authority Frontex,[55] through the EUR 4 million programme *"Strengthening the Africa-Frontex Intelligence Community"* financed by the Instrument contributing to Stability and Peace (DG DEVCO)[56.] With over EUR 4 million, the project EU4BorderSecurity aims to enhance border security by fostering bilateral and regional cooperation and to enhance the capacity of Egypt, as a participating country to conduct tactical border and coast guard operations.[57]

Frontex also supports the International Training Centre at the Egyptian Police Academy (ITEPA). It's an EU-funded project led by Italy and Egypt aiming to deliver training to border police officers from 22 African countries.[58]

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[50] See Action fiche of the EU Emergency Trust Fund, Egypt 2017 T05-EUTF-NOA-EG-01, p. 7. Available at: https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/ad_t05-eutf-noa-eg-01_13072020.pdf. Last accessed: 23.03.2021.

[51] "The Khartoum Process is a platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe. It aims at establishing a continuous dialogue for enhanced cooperation on migration and mobility. The process also seeks to support member states in identifying and implementing concrete projects to address trafficking in human beings and the smuggling of migrants." (https://www.khartoumprocess.net/)

[52] European Commission, Regional Operational Centre in support of the Khartoum Process and AU-Horn of Africa Initiative (ROCK). Available at: https://ec.europa.eu/trustfundforafrica/region/horn-africa/regional/regional-operational-centre-support-khartoum-process-and-au-horn-africa_en

[53]EU Neighbours, *Egypt, the EU and Germany officially launch the "Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa" (THAMM) Project*, 20 October 2020. Available at : https://www.euneighbours.eu/en/south/stay-informed/news/egypt-eu-and-germany-officially-launch-towards-holistic-approach-labour; Arab International Turkey, Europe is negotiating with Egypt a "bigger role" in combating irregular migration, 26 December 2018; Available at: https://bit.ly/2PRwYGk

[54] EU Neighbours, EUROMED POLICE IV. Available at: https://www.euneighbours.eu/en/south/stay-informed/projects/euromed-police-iv

[55] El Watan News, *European Union: We support Egypt's efforts and commitment to confront illegal immigration*, 29 September 2019. Available at: https://www.elwatannews.com/news/details/4358419

[56] Frontex, Non-EU Countries Partners and Projects. Available at: https://frontex.europa.eu/partners/non-eu-countries/

[57] *Ibidem.*

[58] Frontex, Consolidated annual activity report 2019, 27 May 2020. Available at: https://frontex.europa.eu/assets/Key_Documents/Annual_report/2019/General_Report_2019.pdf

The project with Italy includes training on border control, return procedures, identification of forged identity documents as well as the establishment of a team of Egyptian-Italian experts and the delivery of equipment to Egypt.

Frontex has an essential role when it comes to return operations. The Agency has been involved in the coordination and conduct of forced returns of Egyptians since the early days of its mandate. For example, on 15 June 2016, it provided assistance, coordination and co-financing to return operations from Switzerland to Egypt and Sudan on a charter flight.[59] Frontex also stated that there were multi-return operations to Egypt from EU Member States via chartering of aircrafts and scheduling flights in 2018.[60]

*Security and bilateral arms sales*

Among the elements of the EU's cooperation with Egypt, it is worth mentioning the bilateral cooperation on security policy measures. This includes arms exports as well as armaments and training assistance to internal authorities, for which Italy and Germany have been standing out since the last few years.

For Italy, the cooperation started on 5th May 2010 when former Italian Minister of Interior, Roberto Maroni, delivered two patrol boats to Egypt in order to strengthen Italian cooperation to combat irregular migration flows.[61]

In 2019, Italy agreed to supply naval weapons, (including 4 "Corvette" ships[62] and about 22 lightning attack launches) to Egypt. This naval equipment is furnished with accompanying electronic material, radars and modern remote sensing devices.

Besides these talks, Egypt is also discussing with major Italian arms manufacturing companies such as Iveco, Fincantieri Marine Group and Fiocchi, regarding projects to establish major factories and workshops in Egypt to manufacture marine and land pieces for sale to the Arab Gulf states and Africa. The Italian company "Fincantieri", which manufactures the frigates "FREMM" and the Egyptian Ministry of Defence were also discussing cooperation in 2018. In 2019, the Italian Foreign Ministry approved arms deals with Egypt for a total value of EUR 870 million. This number is the largest in the history of military relations between the two countries.

As for Germany, the Ministry of Economy stated in a report that the value of German arms exports permits to Egypt for 2020 amounted to EUR 763.7 million. This ranks Egypt as second among the countries to which the German federal government issued permits for German arms exports in 2020.[63]

⇒ A partnership with Egypt, a country whose security services are judged “capable” and willing to significantly restrict border permeability, is deemed essential at EU level. This is also the case when it comes to returns and border management as shown in the example of Italy and Germany. ⇐

[59] Frontex Evaluation Report | Joint Return Operation, *Egypt and Sudan by Switzerland on the 15th of June 2016*, 22 September 2016. Available at: https://frontex.europa.eu/assets/Key_Documents/Frontex_Evaluations_Reports/Return/2016/Return_Operation_to_Egypt_15_06_2016.pdf

[60] Frontex Evaluation Report, *Return Operations 2nd Semester 2018 Operational Response Division European Centre for Returns Return Operations Sector*, 31 May 2019. Available at: https://frontex.europa.eu/assets/Key_Documents/Frontex_Evaluations_Reports/Return/2018/Return_operations_second_semester_2018.pdf

[61] European Migration Network (EMN), *Practical responses to irregular migration: the Italian case*, 2012. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/it_20120105_practicalmeasurestoirregularmigration_en_version_final_en.pdf

[62] Corvette" ships are small, fast frigate with an economical operating cost and suitable for small naval battles, countering submarines and carrying torpedoes.

[63] Federal Ministry of Economic Affairs and Energy, *The Federal Government’s policy on defence exports in the first semester of 2020 – provisional licensing figures*, 1 July 2020. Available at : https://www.bmwi.de/Redaktion/EN/Pressemitteilungen/2020/20200701-the-federal-governments-policy-on-defence-exports-in-the-first-semester-of-2020-provisional-licensing-figures.html

# IV- Collaboration on returns and border management

Italy and Germany are also very present and active European partners in return and border management.

## 4.1. Cooperation with Italy

The first bilateral agreement between Italy and Egypt in the field of return was signed in 2000. Two others followed in 2004 and 2007, the latter still in place. So far, these agreements have never been questioned in spite of the authoritarian trend in Egypt and the lack of collaboration on the Regeni case.[64]

As documented in a report by the Italian NGO *Italian Recreational and Cultural Association* (ARCI), the collaboration with Egyptian authorities covers both return policies and border management, an area in which Egypt is seen by European countries as a model that other North African States should follow.

- ⇨ When it comes to **border management**, the Italian government signed a "technical agreement" on migration with Egypt in September 2017. This agreement is to be implemented by the Italian State Police, and in particular the Central Directorship for Immigration and Border Police, financed with the Funds for Internal Security - Borders and Visa for a total amount of more than EUR 1.8 billion for two years[65]. This falls under the already-mentioned ITEPA Project, a joint Egyptian and Italian project which has been implemented in Cairo to train police officers and border police from 22 African countries on *"how to combat human trafficking and illegal immigration"*. The ITEPA project foresees the creation of an international training centre at the Egyptian police academy providing instruction in migration-related topics. Italy thus recognises Egypt as a model in border management to be exported to other African countries, without taking into account the dangerous symbolic value of the project.

- ⇨ **As for returns**, the 2007 agreement with Egypt allows Italy to return people without identifying them in the event that there is a strong evidence of Egyptian nationality. Egypt has only 7 days to respond to Italy's expulsion request and silence means consent. Only after their arrival in Cairo can Egypt return people to Italy if it turns out that they are not Egyptians. Consequently, there is a clear risk of using the agreement to illegally send non-Egyptians to Egypt, a country – as evidenced in the previous chapters – which does not respect fundamental human rights.

The number of expulsions towards Egypt indicates that the agreement is effectively working[66]: in 2018, 294 Egyptians were repatriated. Italy organised 3 charter flights to repatriate 60 people to Cairo. The remaining 234 were carried out using regular flights.

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[64] Egypt Watch, *Regeni timeline: 5 years of searching for the truth*, 15 December 2020. Available at: https://egyptwatch.net/2020/12/15/regeni-timeline-5-years-of-searching-for-the-truth/

[65] Privacy International, *New Report Underlines the EU's Strategy in the War on Migration: Border Externalisation*, 1! September 2019. Available at: https://privacyinternational.org/news-analysis/3224/new-report-underlines-eus-strategy-war-migration-border-externalisation#:~:text=In%20September%202017%2C%20the%20Italian,for%20a%20total%20amount%20of

[66] Readmission Agreements and Refugee Rights: From a Critique to a Proposal Mariagiulia Giuffré - *Refugee Survey Quarterly*, Volume 32, Issue 3, September 2013, Pages 79 111, https://doi.org/10.1093/rsq/hdt012 – Published: 02 July 2013

The same year the Italian National Guarantor of Prisoners' Rights, Mauro Palma, issued a strong comment on forced returns to Egypt, expressing strong reservations on organising forced return flights to countries such as Egypt and Nigeria, which have not established a national mechanism to prevent torture (Egypt has not signed the Optional Protocol to the Convention against Torture).[67] Again in February 2020, the Italian National Guarantor expressed concerns about the forced returns to Egypt, which in 2019 were 363. In this regard, he noted that the bilateral readmission agreement with Egypt should be revised, as the human rights situation in Egypt in 2020 is different from the 2007 situation when the agreement was signed.[68]

Although 2020 saw a decrease in expulsions to Cairo from Italy (mainly due to the pandemic), Italy never challenged the 2008 agreement, despite there being no monitoring mechanism in place to know what happens to people once they are expelled. The 2008 agreement is in direct violation ofArticle 16 of the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Italy in July 2015. This article specifies that return procedures cannot be carried out in countries where people are at risk of enforced disappearance[69]. Italy should be well aware, in light of the Regeni case and of the thousands of people detained in Egyptian prisons, that Egypt is on the list of such countries.

## 4.2. Collaboration on returns: the German example

### *The framework of the agreement with Egypt*

In July 2016, three years after the military coup had been put down, Germany and Egypt signed an agreement on security cooperation which was approved by the German Bundestag in 2017.[70] Earlier negotiations were stopped by Germany in 2012, because of the internal situation in Egypt, but despite the Egyptian military's recapture of state power, talks had resumed by 2014. The cooperation has been heavily criticised by the Die Linke and Die Grünen political parties. Andrej Hunko, elected official for Die Linke at the Bundestag, said the German government was acting as an *"accessory to repression and strengthening state terror in Egypt"*.[71]

[67] ARCI, *Security and Migration Economic Interests And Violations Of Basic Rights The Cases Of Libya, Niger And Egypt*, May 2019. Available at: https://www.arci.it/app/uploads/2019/05/report-2019-inglese-normal.pdf.

[68]Ristretti Orizzonti, Migranti. Rimpatri forzati: il Garante nazionale ha presentato le sue Linee guida, 19 February 2020. Available at: http://www.ristretti.org/index.php?option=com_content&view=article&id=87424:migranti-

[69] Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance reads as follows: "1. No State Party shall expel, return ("*refouler*"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law."

[70] Draft Law on the Agreement of 11 July 2016 between the Government of the Federal Republic of Germany and the Government of the Arab Republic of Egypt on Cooperation in the Field of Security, 13.03.2017. Available at: https://dip21.bundestag.de/dip21/btd/18/115/1811508.pdf

[71] Jefferson Chase, Naomi Conrad, *Will security deals with Egypt ignore torture, human rights abuses?*, DW, 28 September 2016. Available at: https://www.dw.com/en/will-security-deals-with-egypt-ignore-torture-human-rights-abuses/a-35915194

Germany committed to train the Egyptian border police on document security and usage of forged document readers. Germany also provided equipment and appointed a German liaison officer on border security at the German Embassy in Cairo.[72]

Article 4 of the agreement on security cooperation, which was signed in July 2016, specifically mentions that '[t]he Contracting Parties shall advance the necessary technical developments in order to incorporate biometric features into their travel documents.'[73]

When in March 2017 the president of Germany's criminal investigation unit, Bundeskriminalamt (BKA), met with the Egyptian ambassador in Germany, they agreed the main emphasis of the security cooperation needed to be on terrorism and "illegal" migration.[74] The German Federal Police *'committed itself to intensify cooperation with Egyptian border police authorities through measures for training and equipment assistance in the area of border protection* [...]'.[75] That same month, Chancellor Merkel visited Egypt and affirmed cooperation on migration, calling Egypt Europe's key southern Mediterranean guardian.[76]

## *The context of German return policy*

In 2018, Germany took part as an organiser or a participant in return operations coordinated and co-financed by Frontex. Overall, in 2018, Germany was the first country in organising charter flights and the third for scheduled flights. Also, it was amongst the top three EU Member States in terms of return pools experts, contributing with the highest number of working days.[77] Germany's involvement in the deportation of around 100 Egyptians in March 2018 led to an outcry and it has since avoided giving out any such information[78].

Returns from Germany have also decreased dramatically in 2020, due in part to the COVID-19 pandemic. In response to a question submitted by the Parliamentary Member of the Left Party, Ulla Jelpke, the German Undersecretary of the Interior Ministry responded that during the period from January 2020 to the end of October 2020, 8,802 people were forcibly returned from Germany.

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[72] Deutscher Bundestag, Bundestagsdrucksache 18-7274, Schriftliche Frage des MbB Andrej Hunko, Januar 2016, Frage Nr. 14; German Bundestag, Answer of the Federal Government to the Small Question of the Members of Parliament Andrej Hunko, Wolfgang Gehrcke, Sevim Dağdelen, further Members of Parliament and the parliamentary group Die Linke, Armed Conflicts and Measures of the European Union in Libya, Printed Paper 18/9563, 13 October 2016; German Bundestag, Answer of the Federal Government to the Small Question of the Members of Parliament Ulla Jelpke, Wolfgang Gehrcke, Frank Tempel, further Members of Parliament and the parliamentary group Die Linke, Police and Customs Operations Abroad (as of: fourth quarter 2016), printed matter 18/11218, 7 March 2017. Available at: https://www.frnrw.de/fileadmin/user_upload/MF-14-Zahl_Abschiebungen_2020.pdf

[73] Readmission Agreements and Refugee Rights: From a Critique to a Proposal Mariagiulia Giuffré - *Refugee Survey Quarterly*, Volume 32, Issue 3, September 2013, Pages 79 111, https://doi.org/10.1093/rsq/hdt012 – Published: 02 July 2013.

[74] German Bundestag, Federal Government's answer to the minor question from MPs Andrej Hunko, Jan van Aken, Christine Buchholz, other MPs and the DIE LINKE parliamentary group, cooperation with Libya to control land borders, printed matter 18. See also: https://twitter.com/bka/status/838777275214626816

[75] German Bundestag, answer from the Federal Government to the minor question of the deputy Irene Mihalic, Dr. Franziska Brantner, Claudia Roth (Augsburg), another MP and the parliamentary group BÜNDNIS 90 / DIE GRÜNEN, questions about police Collaboration on the occasion of recent trips the Federal Minister of the Interior and the Vice Chancellor and Federal Minister of Economics in the capital of Arab Republic of Egypt, printed matter 18/8449, 31 May 2016

[76]Mohamed Soliman, *Why Europe Is Floating Egypt's Navy. The Promise and Pitfalls of Arms Deals With Cairo,* 24 March 2017. Available at : https://www.foreignaffairs.com/articles/europe/2017-03-24/why-europe-floating-egypts-navy

[77] Frontex, Consolidated Annual Activity Report 2018, 12 June 2019. Available at: https://frontex.europa.eu/assets/Key_Documents/Annual_report/2018/Annual_Activity_Report_2018.pdf

[78] Germany deports Egyptian refugees, and there are conflicting numbers about their number, DW. Available at: https://p.dw.com/p/2u18s

For comparison, 22,097 people were forcibly returned in the whole of 2019[79]. According to the response, the main destination countries were Albania (733 people), Georgia (711 people), France (639 people), Serbia (608 people) and Moldova (525 people). 25,522 people are currently required to leave Germany, an increase of 10% compared to 2019[80].

There has also been a decrease in asylum applications this year most likely due to the COVID-19 pandemic. In 2019, 12,906 asylum applications had been registered while only 9,894 refugees had applied by November 2020. Most of the applicants came from Syria, Afghanistan and Iraq.[81]

Germany, as it is very well known, is the country hosting most refugees in the European Union, however, less is known about the characteristics of its returns policy.

This country is pursuing a different strategy to implement the returns of unwanted asylum seekers, including those suffering from health problems or unaccompanied minors, through the '**Assisted Voluntary Return and Reintegration' (AVRR)** programs[82] implemented through the International Organisation for Migration (IOM) in Europe since 1979. According to IOM, beneficiaries of the programmes may include stranded migrants in host countries, migrants and asylum seekers who decide not to pursue their claims or who are found not to be in need of international protection"[83]. AVRR assistance can also be provided to migrants in vulnerable situations, such as Victims of Trafficking (VoTs), unaccompanied and separated children (UASC), or migrants with health-related needs. Particular emphasis is placed on providing targeted and comprehensive support. Germany is the leading host country within the EEA with 13,053 people in 2018 and 15,942 people in 2019 who have been assisted by IOM through the AVRR program. [84]

According to the Federal Office for Refugees and Migration (BAMF), just under 166,000 new applications or continued asylum applications were filed nationwide in 2019. Returns of rejected asylum seekers are complex and expensive. This is why the federal government has been funding voluntary return trips since 2017 in addition to cash payments with the **Starthilfe Plus program**[85]. *Starthilfe Plus* was launched in early 2017 in response to the refugees' political crisis in order to encourage those who wish to return to their countries of origin and are ready to reintegrate into society. Those wishing to return to 45 countries can receive assistance from this programme. This means that returnees receive money for home furnishings or medicines depending on the country of return. Citizens of some countries like Iraq, Afghanistan, Eritrea or Egypt managed to receive the money after six to eight months following their return to their home countries.[86]$

[79] European Council on Refugees and Exiles (ECRE), Country Report: Germany, 2020, https://www.asylumineurope.org/sites/default/files/ report-download/aida_de_2019update.pdf, p. 105, in Migreurop, *Locked up and Excluded. Informal and illegal detention in Spain, Greece, Italy and Germany*, p. 44, available at: http://www.migreurop.org/IMG/pdf/gue_migreurop.pdf

[80] Question Time of the German Bundestag on 16.12.2020 to Ulla Jelpke, available at: https://www.ulla-jelpke.de/wp-content/uploads/2020/12/MF-14-Zahl_Abschiebungen_2020.pdf (in German)

[81] *Ibidem*

[82] *Two Egyptians deported from Germany arrive at Cairo airport*, 24 August 2017. Available at: https://www.masress.com/almasryalyoum/4182146

[83] IOM, World Migration Report 2020. Available at : https://publications.iom.int/system/files/pdf/wmr_2020.pdf

[84] *Ibidem*

[85] IOM, Starthilfe Plus programme, available at: http://germany.iom.int/en/starthilfeplus

[86] Federal Foreign Office, Rumors about Germany, Will Germany help you to return to your country of origin?, available at: https://rumoursaboutgermany.info/rumours/will-the-german-government-help-you-to-go-back-home/

### *REAG and GARP: return-oriented programmes*

In the 1970s and 1980s, Germany launched two different programmes: Reintegration and Emigration Program for Asylum Seekers in Germany (REAG) and Government Assisted Repatriation Program (GARP)[87].

REAG was launched in 1979 by the Federal Ministry for Family, Women, Youth and Health Affairs in cooperation with the International Organisation for Migration of the United Nations, while the GARP initiative was launched 1989 by the German Ministry of the Interior [88]. These two programmes were since combined in 2000. This joint initiative was created to help organise the return trip, including covering travel costs, and providing financial support for the returnee to start a small business in his/her country of origin. Deportees, people who obtained asylum and people who did not obtain asylum are entitled to obtain the services of this programme. More than half a million people have benefited from the programme since 2000.[89]

The German government provides reintegration assistance amounting to an additional EUR 3,000 for families (EUR 1,000 for individuals) for their housing needs under a new programme called **Your country. Your future. Now!**, extended from 1 December 2017 to 28 February 2018.[90] Those wishing to return to their country of origin can apply for funds to improve their housing situation. The programme was funded by the German government in coordination with the IOM office in the returnee's country of origin. After the return, the IOM office transfers the money to the builders, contractors, carpenters or furniture makers, to improve the residence of the returning person and not directly to the returnee. The German government and its partners want the person wanting to return to be aware of the merits of the decision to return before making it. To facilitate this process, the Federal Office for Migration and Refugees (BAMF) has set up a counselling program (ZIRF) in cooperation with the International Organisation for Migration which provides the person wishing to return the information s/he needs to help him make a decision to return and prepare for it. [91]

In 2019, Egypt has received 127 Egyptian citizens back through this programme.[92] As far as the federal government is aware, a total of 4,319 voluntary departures were allowed by October 2020, which were financed via the federal-state program REAG / GARP.

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[87] See IOM, REAG/GARP available at: http://germany.iom.int/de/reaggarp#_ftn1. See also information portal *ReturningfromGermany*, available at: https://www.returningfromgermany.de/de/programmes/reag-garp

[88] Federal Foreign Office, Rumors about Germany, Will Germany help you to return to your country of origin?, available at: https://rumoursaboutgermany.info/rumours/will-the-german-government-help-you-to-go-back-home/

[89] *Ibidem*

[90] Sertan Sanderson, *Voluntary return from Germany: financial help and other incentives*, Infomigrants, 21 December 2017. Available at: https://www.infomigrants.net/en/post/6676/voluntary-return-from-germany-financial-help-and-other-incentives

[91] ZIRF-Counselling Programme. Available at: https://www.returningfromgermany.de/en/

[92] Federal Foreign Office, Rumors about Germany, Will Germany help you to return to your country of origin?, available at: https://rumoursaboutgermany.info/rumours/will-the-german-government-help-you-to-go-back-home/

### *Monitoring mechanisms*

In terms of **monitoring mechanisms**, "return observers" have been present for several years in a few German airports (Frankfurt, Düsseldorf, Berlin and Hamburg). These are employees of charity organisations, who have access to all the areas used for return operations. These observers do spot checks and are not present at each return operation. In some return operations these observers were present during the pre-departure phase at the airport of departure, but they were not on board during the in-flight phase of the national return operations. While there are monitoring mechanisms at European level, which are too often systematised and limited at the arrival on the soil of the countries of origin, in the "destination" countries no monitoring mechanism are in place.[93]

## V- Criminalisation of departures and risks for returnees in Egypt

Egypt indirectly criminalises the attempt of migrants to leave the country since the law punishes the disclosure of rumours about Egypt's internal situation abroad. Therefore, such penal dispositions might also be used against returning migrants, especially failed asylum seekers who probably disclosed information about Egypt's internal situation during their asylum application process. Besides legal dispositions on the criminalisation of immigration, attention to the authorities' practices is required, whether these practices derive from legal dispositions or not. [94]

When returning to Egypt as a country of origin, migrants automatically face the national authorities' decisions and practices. Thus, it is relevant to underline the range of national authorities' usage that can involve serious human rights' violations for migrants.

There are three main kinds of threats: fines, imprisonment and physical violence.[95] Often, the returned migrants are kept away from their families. The Egyptian authorities have reportedly subjected detainees to physical violence.

More is known about threats that failed asylum seekers face upon return because of their asylum application process abroad. In Egypt, they are particularly persecuted because they are accused of betraying the national interest. The case of failed-asylum seekers tends to show the intertwined responsibilities of both countries, Egypt and countries of emigration.[96]

Egypt does not operate dedicated facilities for immigration-related detention, but there is a list of detention sites for this purpose monitored and documented through the efforts of the civil society[97].

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[93] Frontex, Consolidated Annual Activity Report 2018, 12 June 2019. Available at: https://frontex.europa.eu/assets/Key_Documents/Annual_report/2018/Annual_Activity_Report_2018.pdf

[94] Immigration and Refugee Board of Canada, *Egypt: Treatment of failed refugee claimants who return to Egypt* (April 2006). Available at: https://www.refworld.org/docid/45f1472c3.html

[95] Amnesty International (2007), *Egypt – Systematic abuses in the name of security*, 11 April 2007. Available at: https://www.amnesty.org/download/Documents/64000/mde120012007en.pdf

[96] Ireland: Refugee Documentation Centre, *Egypt: Information on failed asylum seekers*, 3 September 2009, Q10738, available at: https://www.refworld.org/docid/4aa60a426.html.

[97] Global Detention Project, Egypt. Available at : https://www.globaldetentionproject.org/countries/africa/egypt

However, according to Decree 659 (1986), the following prisons should be used for the temporary custody of foreigners awaiting deportation: Qanater El-Khairia Men's Prison, Qanater El-Khairia Women's Prison, Borg el Arab Prison in Alexandria.[98]

# VI- Recommendations

## 6.1. Recommendations to EU Member States involved in bilateral cooperation with Egypt, in particular Germany and Italy

- Considering the numerous violations of human rights refugees and asylum seekers face in Egypt, EU Member States should ensure there are no forced returns to Egypt.
- In the absence of a post-return monitoring mechanism in Egypt, Italy and Germany should suspend their bilateral agreements on migration with Egypt that contain a repatriation clause.
- EU Member States should better collaborate with civil society to prove the conditions in detention and waiting areas and to ensure the monitoring of returns.

## 6.2. Recommendations to the European Union

- The European Commission should develop guidelines for EU member states on protecting the people who face expulsions and stop forced returns to countries where protection norms are lower than within the EU, as it is stipulated in 1951 Geneva Convention.
- The EU Emergency Trust Fund for Africa should be equipped with an effective human rights monitoring system and it should include an assessment system on its allocation for refugees- and asylum seekers-related programmes.
- In the current context and regarding the recent crackdown on human rights, no cooperation on forced returns should be concluded between the EU or its Member States and Egypt as Egypt is not a safe country of return for refugees and asylum seekers.
- Cooperation between FRONTEX and the Egyptian military and police should be suspended given the systemic human rights violations these Egyptian institutions commit against migrants and refugees.

[98]EuroMed Rights (2019), *EU-Egypt migration cooperation. Where are human rights?*. Available at: https://euromedrights.org/publication/eu-egypt-migration-cooperation-where-are-human-rights/

## 6.3. Recommendations to Civil Society in Europe

- Those who are not affected by forced returns can become legal observers of detention and expulsions and advocates for ending detention and forced returns.
- Institutions across Member States - education, medical, social services–also serve an important role in creating safe access and equitable outcomes for all immigrants regardless of immigration status, and should create spaces where those who access services can feel heard, supported, protected, and valued.
- Report findings and highlight any mistreatment.

## 6.4. Recommendations to Civil Society in Egypt

Develop a network to monitor the situation of returnees in Egypt and the effectiveness of aid programmes in Europe.

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


## Chapter 6

## Pushbacks and expulsions from Cyprus and Lebanon:

## The risks of (chain) refoulement to Syria

*March 2021*

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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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# Index

# Executive Summary

This study maps different return policies and practices at the Cyprus-Lebanon and Lebanon-Syria border and analyses their impact on the rights of displaced Syrians to international protection. In the light of its empirical findings, the study provides concrete recommendations for action to the EU, its Member States, Lebanon, UNHCR and international donors.

Boat departures of predominantly Syrians from Lebanon to Cyprus have significantly increased in 2020. Smuggling routes to Cyprus reflect a lack of access to meaningful international protection in Lebanon, where only 20% of Syrians have a legal residence permit. Cypriot authorities, however, have repeatedly resorted to pushing back boats and denying individuals access to an asylum procedure. At least one Syrian pushed back by the Cypriot coastguards to Lebanon had serious protection needs there. Unable to gain access to a legal means to reach a safe asylum country from Lebanon, this person is currently in Syria, where because of his conscription refusal he is subject to a prison sentence.

In Lebanon, authorities have - despite promises to EU funders – undermined possibilities for Syrians to have access to legal residence, work and shelter, pressuring thus Syrians to accept return even if conditions for safe and dignified return are not yet met. Since 2018, Lebanese authorities have intensified pressure and created possibilities for both deportations and group returns facilitated by General Security (GSO). UNHCR Lebanon has limited capacity to conduct pre-return interviews with refugees who have signed up for GSO-returns. Lebanese return policies and practices do not take into account the security situation on the ground in Syria. The Government of Syria has since 2011 consistently created barriers for the return of Syrian refugees, including non-access to property and prison sentences for Syrian men who did not comply with military service requirements. Syrian refugees who want to return to Syria need to apply for security clearance with the regime's Intelligence Services beforehand, and can be arrested and detained despite prior clearance or reconciliation. The UN, researchers and civil society organisations have all documented how Syrians can be arrested, detained, tortured, killed and/or forcefully conscripted into the army upon return to Syria.

# List of abbreviations

| | |
|---|---|
| CoI | Independent International Commission of Inquiry on the Syrian Arab Republic |
| GSO | General Security Organization, Lebanon |
| HRW | Human Rights Watch |
| RPW | Refugee Protection Watch |
| SACD | Syrian Association for Citizen's Dignity |
| SNHR | Syrian Network for Human Rights |
| UNHCR | United Nations High Commissioner for Refugees |
| SAA | Syrian Arab Army |

# I- INTRODUCTION

25 years-old Mohamad from Idlib fled Syria in 2015.[1] In Lebanon, he was not registered with UNHCR, could not pay his rent and was barred from working due to stringent labour regulations. He feared being forcibly returned deported to Syria because he had no legal papers to stay in Lebanon: "I stayed in the same town all the time to avoid the police." In September 2020, he tried to seek asylum in Cyprus together with two other female family members. "We spent about 20 hours on the boat heading to Cyprus, but we never reached the shore. [Every time…] we tried to get near the shore, the Cyprus coast guard encircled us [causing waves]. […] We spent two days in their territorial waters. Eventually, they transferred us to another boat, saying they would bring us to Cyprus. Instead, the army surrounded us. […] My brother [in Cyprus] called UNHCR and a lawyer called me. I gave the lawyer's name to the Cypriot authorities on the boat, but they refused to take the call. I used their interpreter to explain that I was asking for asylum and that I wanted for them to talk to my lawyer. No one interviewed me, however. The Cypriot authorities just wrote our names on paper and turned us over to Lebanon General Security".[2]

Upon return to Lebanon, Mohamad had serious protection challenges, but was not able to access a legal means to reach a safe asylum country. When Human Rights Watch (HRW) tried to follow up on his well-being three months after the pushback, they found that Mohamad was no longer in Lebanon, but in Syria.[3] Too afraid to talk on the phone, HRW was not able to get further information about his safety.

Mohamad is one of 1.500.000 Syrian refugees in Lebanon and one of 500.000 who were not able to register with UNHCR. Even registration with UNHCR, however, does not grant Syrians a residence permit or protect them from receiving a removal order. Legal pathways to countries with effective international protection are extremely scarce. In 2019, for example, UNHCR was able to arrange for only 7.442 resettlement departures.[4] In 2020, newly accepted files decreased and departures got significantly delayed due to Covid-related restrictions.

The international community has not been sharing protection responsibilities equally with lower income countries in the Middle East ever since the start of the Syrian displacement crisis in 2012. Today, under six million Syrian refugees live in Lebanon, Turkey, Jordan, Iraq and Egypt[i]. Lebanon alone hosts roughly one million registered Syrian refugees, with Lebanese authorities claiming that the total number of all, i.e. also unregistered, Syrians is at 1.5 million. This makes Lebanon the host of the eighth largest refugee population worldwide in absolute numbers, and the country with the second highest refugee population relative to the national population in the world[ii].[5]

Instead of providing safe and legal pathways to refugee protection by opening up resettlement places, the EU has focused its response to the Syrian displacement crisis on trying to contain Syrians in the region. Its so-called "resilience building" approach was supposed to synchronize migration management tools with development objectives.

[1] All names are pseudonyms.
[2] Interview conducted by Bill Frelick (Human Rights Watch), September 2020.
[3] HRW does not have details about the personal circumstances and modalities of Mohamad's arrival to Syria.
[4] https://reporting.unhcr.org/node/22140
[5] The country with the highest refugee population worldwide is an island called Aruba, with a population of 100,000 in habitants just off the Venezuelan cost.

Even though Lebanon is not signatory to the 1951 Refugee Convention, the EU traded financial arrangements, capacity-building and trade facilitation schemes with the Lebanese state against promises to host Syrian refugees[iii]. Despite such promises in amongst others the EU-Lebanon Compact 2016-2020[iv], Lebanese governments have in practice consistently refused steps that could result in the integration of Syrians in Lebanon. This leaves Syrians in Lebanon in limbo without meaningful access possibilities to neither integration, nor remotely sufficient resettlement places.

Since 2019, Lebanon as one of the key host states for displaced Syrians is facing an unprecedented economic and political melt-down. In October 2019, a popular uprising illuminated that the political establishment had entirely lost its legitimacy. In March 2020, the country defaulted on its debt payments. Citizens lost their savings and the country's currency lost 80% of its value in the space of a few months. As a result, 50% of Lebanese citizens[6] and 91% of displaced Syrians in Lebanon are under the poverty line.[v]

Despite serious allegations of corruption and mismanagement in Lebanon, the EU's aid architecture for the refugee response in the region continues to channel funding to the power establishment.[vi] In fact, the EU's 2020 Pact on Migration and Asylum renews its commitment to externalizing protection responsibilities through partnership agreements with neighbouring countries. The EU Pact on Migration and Asylum also counts heavily on return policies, notably in the form of accelerated border procedures for asylum seekers, which is particularly problematic for Europe's Southern countries, such as Cyprus.[7]

Grouped together euphemistically as "return" policies, non-admissions (pushbacks) and readmissions (deportations) are in fact different kinds of expulsion practices. State officers can formally decide at a border that there are legal grounds not to admit a person into the territory (cf. Schengen Border Code). In the case of pushbacks, however, police officers do not assess whether the respective person has a right to access the territory. The Refugee Convention provides that people in search of international protection should in principle not be penalized for irregular entry and obliges state authorities to grant individuals access to an asylum procedure if thus requested.[vii] Art. 4 of Protocol 4 of the European Convention of Human Rights prohibits collective expulsions of aliens and thus requires police officers to individually assess reasons of arrival. Finally, the international human right to life overrules any administrative question of legal entry into state territory and thus also implies positive obligations for police authorities to rescue individuals at sea.[viii][8]

By contrast, readmission (deportation) procedures concern people who are already within the territory of a state. States are only allowed to forcibly readmit individuals after a careful assessment of international human rights, such as for example the principle of non-refoulement, which forbids a state from sending an individual to a place where they would be subjected to inhumane or degrading circumstances.[ix] Party to the Convention against Torture and the ICCPR, Lebanon is prohibited from forcibly returning a person to a country where there are substantial grounds for believing that the person would be subject to torture. In order to protect people from refoulement, readmission procedures need to be based on an official decision from a judge and grant the concerned individual meaningful access to challenge this decision with the help of a lawyer (cf. General Comments on Art. 3 of CAT).

[6] https://www.lorientlejour.com/article/1224000/la-communaute-internationale-espere-lever-26-milliards-de-dollars-pour-le-liban.html

[7] Cyprus has been divided since 1974 when Turkey invaded the North following a Greek-backed military coup by forces seeking to unify the country with Athens. For the sake of easy reading, this chapter will refer to the Republic of Cyprus as Cyprus. Hence any reference to Cypriot authorities refers to authorities in the Republic of Cyprus.

[8] https://hudoc.echr.coe.int/spa#{%22itemid%22:[%22001-109231%22]}

This study provides insights into Syrian experiences of pushbacks and expulsions at the borders between Cyprus and Lebanon, as well as between Lebanon and Syria.[9] By analysing state practices by an EU member state and by a country which is not signatory to the 1951 Refugee Convention, the study seeks to bring a regional dimension to the current return debate in Europe. Which international actors are pushing for the return of Syrians to Syria, and why? What return policies and practices exist at the Cyprus-Lebanon and Lebanon-Syria borders, and how are they to be assessed from a human rights perspective? What has and can happen after return to Syria? How could human rights monitoring improve EU migration and asylum practices, as well as protect Syrians from refoulement?

The chapter seeks to provide answers to the above questions by drawing on a desk review, 20 key informant interviews, as well as 13 interviews with displaced Syrians who were victims of pushbacks and (failed) expulsions. The chapter opens by first providing background to the Syrian displacement crisis, explaining how international actors have turned the question of "return" from a human rights issue into a political bargaining game. Second, the chapter analyses recent push-back cases from the Republic of Cyprus to Lebanon, illuminating how the return obsession in European policy-making is putting at risk fundamental human rights, such as the principle of non-refoulement. Third, the chapter analyses the pressured return[10] of Syrians from Lebanon to Syria, partially organized by Lebanese security forces themselves, as well as expulsions of refugees from air and land borders to Syria. Fourth, the chapter reviews practices of the Syrian regime in power that illustrate that testimonies of Syrian refugees who have endured human rights violations after their return to Syria are not isolated, but systematic. Fifth the chapter concludes by proposing concrete mechanisms for human rights monitoring in Cyprus, Lebanon and Syria.

## II- THE INSTRUMENTALISED QUESTION OF "RETURN" FOR DISPLACED SYRIANS

Since the start of the civil war in Syria in 2011, roughly 5,6 million Syrians have become refugees outside of their country, with a further 6,6 being internally displaced.[11] Since 2018 and 2019, armed conflict has shifted to smaller sections of the Syrian territory. Nonetheless, the war is not yet over. As the Syrian government, allied forces and other armed groups continue to commit war crimes and other serious violations of international humanitarian law[x], Syrians continue to flee regime-held areas.[xi] People are, for example, fleeing places, such as Daraa when re-taken by the government of Syria through so-called "reconciliation agreements."[12]

[9] Voluntary returns are outside of the scope of this research project.

[10] Refugees and other migrants can end up registering for returns because of economic, political or legal pressures by their destination countries. These returns are pressured because not fully voluntary or simply reluctant, but also not yet fully obliged through detention or removal orders, or fully forced. See also, Newland, K., and Salant, B., (2018), Balancing Acts: Frameworks for Migrant Return and Reintegration, Washington DC, Migration Policy Institute.

[11] http://data2.unhcr.org/en/situations/syria

[12] https://syacd.org/reconciliation-agreement-in-daraa-insecurity-continued-repression-and-collective-punishment/

In Syria, forced displacement of civilians has not been a mere consequence of the conflict, but also a deliberate strategy by parties to the conflict. As the UN's International Commission of Inquiry on the Syrian Arab Republic pointed out, the displacement of civilians in the Syrian conflict was perpetrated as part of a widespread and systematic attack against civilians, including the use of sieges as a weapon of war.[xii]

Over the years, the regime repeatedly used a "starve to surrender" policy to pursue its political and security objectives.[xiii] Up until today, the Syrian government continues to engage in demographic engineering[xiv], notably by preventing people from returning to their homes in areas that have been retaken[xv].

Syria has been a police state at least since the late 1970s, relying heavily on their Intelligence Services to exert control over citizens[xvi]. Both before and after 2011, the regime subjected citizens to enforced disappearances, torture and other-ill treatment causing deaths in detention, which according to Amnesty International amount to crimes against humanity[xvii]. In the face of highly fragmented authority structures in Syria today, the regime has been able to re-exert control over territory with the help of international allies, such as Russia and Iran. The president Bashar Al Assad's Intelligence Services remain pervasive and extremely powerful all throughout territory under the control of the government.[13] In fact, citizens also settle personal feuds by denouncing others through report-writing, contributing thus to the arbitrariness in state action and the general lack of rule of law.

Presidential election results in 2021 will not fundamentally alter realities on the ground in Syria, nor attitudes of the regime towards those who left the country and sought asylum abroad. Various high-ranking officials of the government of Syria have made it clear that all Syrians who have left the country (or even just areas under its control) are considered to be traitors.[14] The high-ranking Syrian general Issam Zahreddine, for example, went on state television in 2017 warning refugees never to set foot in Syria again: "We will not forgive them and never forget what they have done.[xviii]" Air Force Intelligence Head, Jamil al-Hassan, also went on record in 2018, saying that the regime only wants loyalists to return. In his words, "a Syria with 10 million trustworthy people obedient to the leadership is better than a Syria with 30 million vandals […] After eight years, Syria will not accept the presence of cancerous cells and they will be removed completely."[xix] Bashar Al Assad himself said that the loss of young people had helped to create a "healthier and more homogenous Syria"[xx].

Some international actors are nonetheless pushing for the return of Syrians to Syria also in the absence of a political solution in Syria. Who are these actors and what are their motives? Since 2018, Russia has sought to influence the government of Syria to move towards accepting the return of refugees. Isolated on the international stage, one strategy for Moscow and Damascus is to trade a shift towards accepting the return of Syrian refugees against a lifting of international sanctions and the activation of early recovery funds[xxi]. Humanitarian funds are tightly controlled by the regime[15] and early recovery funds would be financially beneficial also for Russian companies in government-controlled areas of Syria. By turning displaced Syrians

[13] A Higher Regional Court in Koblenz, Germany, will be judging two former officials of Assad's security apparatus who are charged with crimes against humanity. In the context of this trial, The German Federal Public Prosecutor is currently gathering evidence on torture and sexual violence by the Mukhabarat.

[14] Fares Shehabi: Tweets on his Twitter account, https://twitter.com/ShehabiFares/with_replies

[15] In a quest to tightly control humanitarian aid in Syria, the government of Syrian has increasingly closed off international border crossings. After the conflict between Bashar Al-Assad and Rami Makhlouf in the summer of 2020, a yet bigger share of UN contracts and funding streams in government-controlled areas are going through the Syria Trust, which is directed and managed by Bashar Al-Assad's wife, Asma Al-Assad. https://www.mei.edu/publications/battle-syrian-charity-giants-asma-al-assad-versus-rami-makhlouf and https://foreignpolicy.com/2020/06/24/how-to-aid-syria-without-aiding-assad/

into an international bargaining chip, Russia is trying to benefit from European desires to return Syrian refugees to Syria.

The Damascus conference on returns on 11 and 12 November 2020 is to be understood in this light. The conference did not discuss causes of displacement, nor hurdles to return.[xxii] On the ground, the conference did not alter practices. For example, Syrians who return to Syria continue to be obliged to have to exchange a minimum of 100$ into Syrian Pounds upon entering Syrian territory.[16] The EU abstained from attending, highlighting the barriers and risks that returnees face in practice.[17]

In Lebanon, political parties affiliated to the March 8 alliance have used the call for the return of Syrians instrumentally to win votes in elections, in particular advocating for the return of Syrians in coordination with the Government of Syria. Lebanon's key Shia parties, Amal and Hezbollah, Christian parties, such as the Free Patriotic Movement, independent Sunni coalitions and the Druze Democratic Gathering Party, have have been at the forefront of this movement. Historically, these parties have wanted Lebanon to consolidate ties with the Syrian regime. Hezbollah has even backed the regime by directly intervening in the conflict on the other side of the border. It is interesting to keep in mind this political landscape when looking at recent shifts in EU member states on access to international protection for Syrians in Europe.

The Danish government announced in June 2020 its intention to fast-track a review of residency permits for approximately 900 Syrian refugees from Damascus, claiming that conditions in the Syrian capital are no longer severe enough to warrant their "Temporary Protected Status". They did so although they had in February 2020 informed the Danish parliament that they would not actually implement expulsions to Syria.[xxiii] As a result, however, concerned Syrians are deportable and constrained to live in centres under restrictions of movement and withdrawal of financial support. In Sweden, too, the migration agency ended automatic residency to all Syrian asylum seekers in 2019, declaring parts of Syria safe and thus paving the way to a discussion on internal flight alternatives.

In Germany, the Federal Office for Migration and Refugees started in 2019 to provide financial support of 1,200 Euro to Syrians who voluntarily choose to return. At least two of the roughly 437 Syrians who relocated from Germany to Syria have been reported disappeared since they arrived in Syria[xxiv]. While the German Ministry of Foreign Affairs is clear about the security situation in Syria, the Ministry of Interior is contradicting this position, asking for the deportations of Syrians who have been charged with criminal matters in front of German courts. Criminals have human rights, too, however, and not all allegations of terrorist connections are based on well-founded evidence.

A principled approach to the question of return takes into consideration empirical evidence on the human rights consequences for refugee returnees in Syria. Human right standards on access to international protection are clear. A sense of security requires not only the absence of an active conflict, but also the absence of explicit or implicit threats from government, militias and other social groups.

[16] Email correspondence, Syrian Network for Human Rights, December 2020.

[17] Declaration by the High Representative on behalf of the EU on the refugee conference in Damascus, 10 November 2020: "While the decision to return must always be an individual one, conditions inside Syria at present do not lend themselves to the promotion of large-scale voluntary return, in conditions of safety and dignity in line with international law. The limited returns that have taken place illustrate the many obstacles and threats still faced by returning internally displaced persons and refugees, in particular forced conscription, indiscriminate detention, forced disappearances, torture, physical and sexual violence, discrimination in access to housing, land and property as well as poor or inexistent basic services." https://www.consilium.europa.eu/en/press/press-releases/2020/11/10/syria-declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-refugee-conference-in-damascus/#

Consequently, returns to Syria require a political solution to the Syrian crisis, as sought after by the Constitutional Committee and the UNSC Resolution 2254.

As preliminary steps to a human-rights based discussion on return, Syria needs to see its security apparatus dismantled, a political settlement needs to be found and citizens detained on political grounds need to be released.[18] Currently, conditions for safe and dignified returns to Syria are not yet met.[19]

## III- PUSHBACKS FROM THE REPUBLIC OF CYPRUS TO LEBANON

In September 2020, 30 years-old Abdullah from Idlib left Lebanon by boat to join his brother in Cyprus. Just a few kilometres off the coast, Cypriot coastguards intercepted the boat. During a two-day hold off, Cypriot coastguards not only impeded the boat from arriving at land, but also repeatedly put the lives of the 52 Syrians and 4 Lebanese individuals on board at risk by encircling their small boat at high speed, creating waves that risked capsizing the boat. "We were really afraid that the boat would sink. We had women and 12 children on the boat. One woman was pregnant."[20]

Abdullah sought to leave Lebanon because he was no longer able to send money to his wife and four children in a Syrian refugee camp close to the Turkish border. He had tried to legally travel to Turkey, but had not been able to get a visa because Syrians authorities refused to issue him with a paper certifying that he had a clean criminal record. Abdullah had not responded to his call for compulsory military service and Syrian authorities consider this a crime.

Abdullah was one of 229 individuals whom Cypriot authorities pushed back and expelled in at least five separate instances from Cypriot waters to Lebanon in September 2020.[xxv][21] Human Rights Watch (HRW) documented with the help of 15 testimonies that Cypriot coastguards repeatedly brandished weapons at incoming boats from Lebanon, encircled them at high speed, abandoned some at sea without fuel and food and in other instances proceeded to beat passengers on board.[22]

From July to October 2020, more than 700 individuals left or attempted to leave Lebanon irregularly by boat for Cyprus (based on triangulation of information available to UNHCR Lebanon). Roughly 80% of these individuals were Syrian and just under 20% Lebanese.[23] In comparison to 2018 and 2019, the number of individuals and boats that left, or attempted to leave, Lebanon for Cyprus sharply increased in 2020.[24]

[18] See also the conditions that displaced Syrians set for their return: https://syacd.org/we-are-syria/.
[19] https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24229&LangID=E
[20] Interview by the author, December 2020.
[21] See also data on the arrivals of refugees from Lebanon by boat provided by the Cyprus Police to the journalist Michalis Hatzivasili as published on 25th of September 2020 by Phileleftheros Newspaper: https://www.philenews.com/f-me-apopsi/arthra-apo-f/article/1025188/
[22] https://www.hrw.org/news/2020/09/29/cyprus-asylum-seekers-summarily-returned
[23] According to UNHCR Lebanon, based on information available for those whose profile could be verified, 57% of the individuals who left, or attempted to leave, by boat from Lebanon to Cyprus in the summer 2020 were men, 14% were women and 28% children.
[24] In addition to the above-mentioned boats from Lebanon, the Republic of Cyprus also receives boats from Turkey and from the Northern territories of the island. With the Covid-induced closing of the green zone between the Northern territories and the Republic of Cyprus, some Syrians also became victims of pushbacks by Cypriot coastguards from waters belonging to the Republic of Cyprus to the Northern territories. UNHCR Cyprus does not operate directly in the northern part of Cyprus, but implements a project through an NGO in to prevent refoulement. The NGO screens asylum seekers for international protection needs and assesses whether their forced return could amount to refoulement. Should this be the case, it intervenes to stop the forced return

This increase in sea departures can be explained by considering structural weaknesses of asylum policies in the EU, as well as the lack of meaningful protection for Syrians in Lebanon.

Cypriot authorities, for example, generally grant only subsidiary protection to Syrian refugees, barring them from reuniting with family members through legal channels. Some of those Syrians on the boats had family members in Cyprus.

With regards to the lack of meaningful protection for Syrians in Lebanon, one pushed back Syrian explained to HRW that he had opted to leave by boat to Cyprus after an attempted arrest by unidentified men and a subsequent warning to leave Lebanon[xxvi]. Ahmed had been unable to access resettlement in Lebanon and had already been imprisoned in Syria before seeking refuge in Lebanon. Other Syrians left on boats for Cyprus because they risked becoming homeless in Lebanon. With the increase in the cost of living, the loss of value of the Lira and the economic recession in 2020, an increasing number of Syrians are no longer able to earn enough money to eat sufficiently, let alone access health care or education for their children. 32 years-old Mustapha from Raqqa, for example, left on a boat for Cyprus because he was unable to receive UNHCR assistance in Lebanon even though he is blind in one eye and has shrapnel in his legs from an explosion that occurred when he was in Syria. His children are selling flowers on the streets in Tripoli[xxvii]. 46 years-old Hitam also left on a boat with his wife and four children because they were at risk of being expelled from their home for not being able to pay rent.[xxviii] Although, the entire family was born and raised in Lebanon, restrictions in Lebanese law prevented the children in the family from acquiring nationality and thus a permanent right to residency. International maritime law imposes a clear duty on all vessels at sea to rescue people in distress. A survivor interviewed by Human Rights Watch, however, testified that a Cypriot coast guard or naval vessel encountered an inflatable boat carrying five men that was in distress on September 4 and then abandoned it to drift without fuel.

> *"We told them we had no fuel and could not go back or go anywhere without fuel. We showed them our empty fuel containers. They only gave us two bottles of water, about three liters, and left us. They stayed about a kilometer away, watching us, then, at sunset, about 45 minutes later, they just left." […] "We were just pushed by waves. The sun was very hot. After two days, we started drinking sea water. We thought we would die. I gave up. I only thought of my children in Syria. Then, [… after six days] a Lebanese fishing boat saw us and reported us to Lebanese naval forces and we were finally rescued."*[25]

Cypriot authorities have publicly acknowledged that they have expelled individuals, such as Abdullah, Ahmed, Mustapha and Hitam from Cyprus to Lebanon in the summer of 2020. The Cypriot government, however, denies that individuals on the boats had expressed their intention to seek asylum.[26] In his interview with Human Rights Watch, Mohamad from Idlib explained how he was asking for asylum while on the boat: "I gave the lawyer's name to the Cypriot authorities on the boat, but they refused to take his call."[27] Other testimonies collected by the author confirm that Cypriot authorities systematically ignored explicit and repeated asylum requests.

[25] https://www.hrw.org/news/2020/09/29/cyprus-asylum-seekers-summarily-returned
[26] Interview with the Cypriot lawyer Nicoletta Charalambidou, November 2020.
[27] Interview conducted by Bill Frelick (Human Rights Watch), September 2020.

In his interview with the author, Abdullah, for example, testified that he and fellow passengers on his boat had explained to the translator of the Cypriot coast guard that they were Syrian and wanted to seek asylum in Cyprus. Although he also mentioned his brother in Cyprus as one of the reasons why he was coming, he had clearly used the Arabic word for asylum in his request to the Cypriot coastguard.[28]

In response, the coastguards told him that they had received instructions not to let any refugees enter the island. UNHCR Cyprus also has credible reports indicating that some of those pushed back had repeatedly asked for asylum.[29]

The European Court of Human Rights has ruled that an assessment of people's intentions to seek asylum needs to be individual and cannot take place at sea (cf. Hirsi v. Italy, as well as Sharifi and others vs. Italy and Greece). In the absence of an individualized assessment of nationality and reasons of arrival, readmission procedures constitute collective expulsions, forbidden under both national and international law[xxix].

In September 2020, the Cypriot police brought some new arrivals to the quarantine section of the Pournara camp. There was no vulnerability screening prior to the transfer and UNHCR did not have access to the quarantine section. A Syrian woman and mother of seven children explained to the author how they were called for a second PCR test, but then transferred onto a boat and expelled to Lebanon.

What happened with her, her children, Abdullah, Ahmed, Mustapha, Hitam and others after their pushback from Cyprus? UNHCR Lebanon was monitoring the situation closely to ensure that Syrians sent back by the Cypriot authorities would be readmitted to Lebanon.[30] Lebanon has a strict non-readmission policy for Syrians who have left the country. In addition, the Higher Defence Council, an inter-ministerial body headed by the President of Lebanon, had decided in 2019 that Syrians who had entered Lebanon after April 2019 could be expelled to Syria without judicial procedure or legal remedies. Lebanese authorities have also implemented this decision, deporting at least 2.700 Syrians from Lebanon in 2019.[xxx] Hence, it was entirely possible that pushed back Syrians would be put into an expulsion procedure to Syria by Lebanese authorities upon arrival at the port. Consequently, UNHCR Lebanon closely monitored reception procedures at the port in September and October. At the end of the day, none of the pushed-back Syrians were put into a deportation procedure to Syria following their re-admission to Lebanon. This practice is not embedded, however, in a legal framework that would constitute a guarantee for Syrians who are pushed back to Lebanese borders.

Following the first pushbacks to Lebanon, Cypriot authorities visited Lebanon on five October 2020. Interior Minister Nicos Nouris was cited by media outlets after the meeting: "We want to send out a clear message that we will not let traffickers exploit the current situation in Lebanon by bringing people into our country illegally."[31] People's right to seek asylum in Europe, however, is not affected by the regularity of their entry into EU territory. Hence, Cypriot police was obliged to grant Abdullah and others access to the asylum procedure once they had entered Cypriot waters.

[28] Interview by the author, December 2020.

[29] UNHCR Cyprus was able to talk with individuals who were admitted to the territory and asylum procedures in Cyprus and some family members of others in the concerned boats These individuals confirmed that many on the respective boats did express their intention to ask for asylum. Interview UNHCR Cyprus, November 2020.

30 Interview with UNHCR, December 2020.

[31] https://cyprus-mail.com/2020/10/06/cyprus-and-lebanon-discuss-shared-strategies-in-fight-against-illegal-arrivals/

Did these expulsions take place in the framework of a legally valid and human-rights compliant readmission agreement? It is not clear what Lebanese and Cypriot authorities agreed on during the October meeting. The meeting might have served to operationalize a 2002 bilateral readmission agreement between both countries.[32] The agreement does not contain an explicit non-refoulement clause, but Art. 11 provides that the agreement is subject to the obligation arising from the 1951 Refugee Convention and the European Convention on Human Rights. While the agreement does contain a third country national clause, Lebanon only ratified the agreement, but not its implementing protocol.[33] The fact that Lebanese authorities have not ratified the implementing protocol makes it questionable whether the readmissions occurred in a legally-valid framework.[34]

In conclusion, Cypriot authorities need to put the rescue of lives at sea before any other consideration and provide individuals who arrive at the coast access to territory and individualized assessments of their asylum requests. Agreements with third countries need to be human rights-compliant, negotiated in a transparent manner and fully ratified by respective parliaments.

## IV- EXPULSIONS AND PRESSURED RETURNS FROM LEBANON TO SYRIA

As regime forces recaptured his area of residence in Syria, Hamodi, a civil engineer, was afraid because he had been supporting relief efforts for internally displaced Syrians from Homs and Al-Qusayr. Weary of the regime's track record of targeting humanitarian workers, Hamodi fled with his wife, daughter and three sons to Lebanon in 2014. Wanting his three sons to get a university education, Hamodi tried to send them to Turkey to study in 2016. Turkish authorities, however, did not admit the three young men and sent them back to Lebanon. Upon arrival at Beirut airport, Lebanese authorities confiscated the boys' passports. At six am in the morning, Hamodi received a text message from one of his sons, saying that the police were deporting them to Syria. As a well-connected humanitarian worker in Lebanon, Hamodi was in no time able to mobilize the help of a lawyer, a journalist and UNHCR. A car accident between Beirut and Damascus delayed the arrival of the police car at the Masnaa border crossing by half an hour. Hamodi described how this delay was crucial for UNHCR to be able to negotiate with Lebanon's General Security Organisation (GSO) a two-hour suspension of the expulsion procedure. Following a social media campaign by a Lebanese journalist, the Minister of Interior eventually agreed to instruct General Security to stop the expulsion. An expulsion order had never been issued.[35]

In the aftermath of the failed refoulement attempt of his three sons, Hamodi mobilized himself on the matter of illegal expulsions from Lebanon. Between 2017 and 2018, he was able to document nine and prevent five refoulement attempts to Syria by Lebanese authorities. Out of the four expulsions that Hamodi was unable to stop, one individual forcibly disappeared after the expulsion. Until today, the parents of this young man have not heard about the whereabouts of their son.

[32] Agreement between the Government of the Republic of Cyprus and the Government of the Republic of Lebanon on the readmission of persons without unauthorized stay, 2002.

[33] Interview with UNHCR Lebanon, December 2020.

[34] Email correspondence with Nicoletta Charalambidou, December 2020.

[35] See Twitter account of Nohad Machnouk and Carol Malouf 19 October on 2015

In 2018, General Security did not renew Hamodi's residence permit in Lebanon and instead stamped his passport with a request for him to leave Lebanon in 14 days. When in 2019 Lebanese authorities further stepped-up pressure on Syrians to leave Lebanon, Hamodi received a phone call from a trusted contact at General Security, informing him that that the Lebanese politician and leader of the Free Patriotic Movement, Gebran Bassil, had personally given permission to a high-ranking officer to forcibly return him. UNHCR tried to intervene, but despite oral assurances, General Security did not withdraw the removal order or renew the residence permit.

At the end of the day, Hamodi's deportation was halted and he was able to access one of the very few resettlement places for Syrians in Lebanon. Today Hamodi, his wife and three sons are in Sweden with full access to international protection. The sons are following Swedish language classes in view of finally completing their university studies.

As this testimony illustrates, Hamodi and his sons faced a real risk of refoulement from Lebanon to Syria. They did not have access to international protection in Lebanon, nor did they have the option of legal travel to other places of safety. Their resettlement from Lebanon to Sweden is the exception to the rule. How does the case of Hamodi and his three sons fit into the broader picture of policy developments and legal frameworks for Syrians in Lebanon?

First, Lebanon is not a signatory of the 1951 Refugee Convention and access possibilities to legal stay for Syrians are extremely limited and often also very costly. Nonetheless, Article 323 of the "Law Regulating the Entry and Exit of Foreigners in Lebanon and their Exit from the Country" (1962) provides criminal charges and penalties, such as imprisonment of one to three months, payment of a fine, and expulsion from Lebanon, for individuals convicted of entering and staying in Lebanon without valid travel documentation and visas[xxxi].

In the aftermath of the popular uprising in Syria in 2011, Lebanese authorities first adopted a laissez-faire approach.[xxxii] Many Syrian workers had migrated to Lebanon to work in the agriculture, construction and service sectors since 1943.[xxxiii][36] In October 2014, however, Lebanon introduced visa requirements for Syrians, as well as other restricting measures for the entry and legal residence of Syrians in Lebanon[xxxiv]. In May 2015, Lebanese authorities de-facto asked UNHCR to stop giving registration cards to Syrian refugees. In practice, however, UNHCR registration cards do not grant Syrians access to a regular stay in Lebanon either, or protect them from receiving removal orders[37]. As 30 years-old A. from Rural Damascus testifies: "If I show this card at a checkpoint, the Lebanese police will laugh. The card doesn't have any power."With a change in conflict dynamics in Syria and a Russian return initiative in 2018,[38] the climate for rights-based laws and policies for Syrians in Lebanon further deteriorated. Discussions of UNHCR's three "durable solutions" started in practice to be limited only to return. In 2018, Lebanon's General Security Organisation (GSO) made an agreement with the Syrian government and started organizing group returns.

[36] As of 2013, Syrians were only allowed to work in manual professions, such as construction, cleaning and agriculture. "Occupations Restricted to Lebanese", Lebanese Ministry of Labour, Decision No. 19, 2 February2013 (Arabic).

[37] Following the 2019 Higher Defence Council decision, in principle, only individuals who have come irregularly from Syria after 24 April 2019 are at risk of deportation.

[38] See further details on the Russian initiative, see footnote 7 in (ICG 2020)

The Lebanese authorities present these as voluntary returns. While Syrians can opt out of the GSO-organized group returns, broader policies and practices by Lebanese authorities also create serious constraints for Syrians that do not allow for free and informed decision-making about returns.[39]

> *When 28 years-old Hassan went to General Security in Lebanon in an attempt to regularize his status in Lebanon, General Security gave him a removal order and confiscated his passport. In order to retrieve his passport, Hassan is supposed to pay 400.000 Lira and promise to leave Lebanon. Unable to go to Syria, Hassan and his family are trapped in Lebanon without access to rights and documentation. Hassan's marriage and the birth of his baby son are not registered, rendering thus his child de-facto stateless*[xxxv].

Racism and xenophobia have been mounting in Lebanon over the last few years and repeatedly result in violent instances. In an online panel carried out by *Refugee Protection Watch*, 72.3% of respondents feared how local authorities would address and treat them, including the discriminatory implementation of curfews, threat of expulsion and misconduct at checkpoints[xxxvi]. Lebanese lawyers have also observed that GSO at times confiscates passports or issues expulsion orders when Syrians try to regularize their legal situation or when making enquiries about GSO return operations.[40]

> *"When I went to General Security to renew my residence permit, they gave me an expulsion order. I'm registered with UNHCR, but when I told them about this, they said that they could not do anything to help me. They only gave me a hotline number in case I was to be deported. (…) I will kill myself if they take me by force to Syria, honestly. The Syrian regime killed my father, without any accountability. They arrested me twice before I came to Lebanon."*

Finally, levels of information about what happens with Syrian refugees after arrival to Syria remain notoriously low and do not currently allow for informed choices. Only 32.7% of respondents in a 2020 online survey with Syrian refugees in Lebanon, for example, reported to have reliable information on the situation in their area of origin inside Syria.[xxxvii]

UNHCR's possibilities to assess prior to GSO-organized group returns whether return decisions were made freely, however, are insufficient. In 2020 and 2019, UNHCR received the lists of individuals who had signed up for return to Syria just a couple of days prior to the actual return movement. In order to be able to provide information about conditions in Syria to concerned individuals and advice on legal documents, registration processes and medical support to concerned individuals, UNHCR Lebanon would instead require three to four weeks.

[39] Response by Lebanese authorities: "Any Syrian arriving in Lebanon who doesn't meet entry conditions is voluntarily and willingly asked to return to Syrian, expressing that he doesn't wish to stay as a resident for any reason and signing a responsibility pledge stating that he chooses to voluntarily return with facilitation from the GDGS". https://www.general-security.gov.lb/ar/news/details/707

[40] General Security only enforces expulsion orders for Syrians who came to Lebanon after 24 April 2019.

*Displaced Syrians and civil society organizations that advocate on their behalf criticise UNHCR for not fulfilling its mandate[xxxviii]. In fact, UNHCR Lebanon's work is based on a 2003 Memoranda of Understanding, which has been criticised for its pragmatic concessions, leaving the agency with a limited margin of manoeuvre[xxxix]. In 2018, for example, the then Minister of Foreign Affairs, Gebran Bassil,, threatened UNHCR with not renewing their employees' residencies after it had broadcasted text messages to all registered Syrian refugees clarifying certain elements of the General Security organised return program[xl].*

According to UNHCR, General Security returned 8.827 individuals to Syria in 2019, of which 48% were women[xli]. In the first half of 2020, GSO implemented one group return of around one thousand Syrian refugees to Syria, but then halted operations due to Corona between March and December.[41] On December 2, GSO opened up for new registrations for returns to Syria.On December 2, GSO opened up for new registrations for returns to Syria. In addition to GSO-organised return operations to Syria, Lebanese authorities have also created the legal framework for actual deportations to Syria. As mentioned above, the Higher Defence Council had announced that Syrians who entered Lebanon through irregular means after 24 April 2019 should be deported to Syria.

The Higher Defence Council decision creates a high risk of refoulement as it allows for expulsion orders to be issued and executed on the basis of a mere verbal order from Public Prosecution without any judicial oversight and procedural safeguards for concerned individuals.

Under this order, the Directorate General Security deported 2,447 Syrian refugees to Syria between May and August 2019.[42] In practice, General Security has in at least three cases deported also Syrians who had entered Lebanon before April 24[xlii], as well as Syrians who are fully registered with UNHCR[xliii]. At least three Syrians deported by Lebanon's General Security back to Syria have been detained by the authorities after their deportation[xliv].

In addition to rendering Syrians in Lebanon vulnerable to refoulement, Lebanese authorities have also continued to exert pressure on Syrians to accept GSO-organized returns. In June 2019, for example, General Security started to implement a decision by the Higher Defence Council, ordering them to demolish "semi-permanent structures" built by Syrian refugees in informal camps[xlv]. In 2019, security forces also increased raids of camps to detain male refugees, in most cases for lacking residency. UNHCR is on high alert and seeks to prevent deportations to Syria without due process guarantees, through interventions with the General Security and other Lebanese authorities, but is not always successful. In April 2019, for example, although UNHCR knew of this case and a delegation was present at the borders to negotiate with Lebanese authorities to suspend the removal order, General Security did not cooperate and the group of Syrians were deported[xlvi].

*One year after their marriage, Sham's husband went to the General Security department to enquire about their return program. He never returned from the trip. One year later, Sham got a phone call from Syria. A family member of her husband called to say he had met her husband in prison prior to his own release. Sham has not had news about her husband since.[43]*

[41] Interview UNHCR Lebanon, December 2020.
[42] https://www.amnesty.org/en/countries/middle-east-and-north-africa/lebanon/report-lebanon/
[43] Interview with the author, November 2020.

In July 2020, the Lebanese Ministry of Social Affairs announced a "Return Plan", which was discussed at the Damascus conference in November of the same year.[xlvii] The so-called plan is not built on a consultative process with neither protection and civil society actors, nor displaced Syrians. It urges Syrians to return to Syria and advocates for not linking the return of displaced Syrians to the political process in Syria. The plan also frames Syrians as a threat to Lebanon's public security and safety and proposes to carry out a national media plan, as well as awareness raising campaigns about return to Syria. Finally, the Ministry of Social Affairs seeks through the plan greater control by the Lebanese state over the work of international organizations, including by imposing a compulsory share of aid to be channelled to return and resettlement, rather than protection, access to services and integration measures in Lebanon.[44]

Just like Hamodi and his family, roughly 80% of all Syrians in Lebanon do not have legal residency[xlviii]. The above outlined law and policy frameworks thus render 80% of all Syrians in Lebanon vulnerable to potentially receiving removal orders. While mass deportations have not happened, Lebanon's police practice lacks judicial oversight. Any Syrian who receives an expulsion order or is put into an expulsion procedure needs to be able to access legal assistance. In the case of deportations, legal procedural safeguards that exist in the Lebanese law need to be fully implemented and respected.

# V- RISKS FOR REFUGEE RETURNEES IN GOVERNMENT-CONTROLLED AREAS IN SYRIA

When her husband was arrested in Syria in 2012, 39 years-old Tasnem from South West Damascus suddenly saw herself forced to flee the country and seek refuge in Lebanon. After four years of displacement in Lebanon and learning that her husband had died under torture in detention, Tasnem could no longer take living in a camp without any possibility to work and earn money and she thus decided to try and return to family property in Syria with her three children and her sister-in-law in 2016. Upon arrival at the border, however, Tasnem was to her surprise arrested and detained.

Thanks to her sister-in-law, her three children (6, 8 and 10 years-old at the time) could travel to the house of their grandparents. Security forces released Tasnem after two full months. When Tasnem was finally able to join her children, former neighbours and community members refused to talk with her and consciously kept a distance. They did not want to be associated with someone whose husband had died in prison and who had been imprisoned herself. The Intelligence Services and their community focal points continue to monitor those they release from prison. After less than a year, Tasnem gave up on living in her place of origin and instead went with her children to join displaced family members in a refugee camp in Idlib. From here, she is hoping to be able to move on to Turkey.[45]

[44] Ministry of Social Affairs, (2020), Policy Paper for the Return of Internally Displaced Persons.
[45] Phone interview with a former neighbour of Tasnem in Syria, November 2020.

Tasnem's testimony illustrates that Syria is not a safe country of return. This mirrors findings by the Independent International Commission of Inquiry on Syria, which has reported that returnees are subjected to harassment, arbitrary arrest, detention, torture, enforced disappearance and forced conscription.[46] OHCHR has also continued to receive reports of arbitrary arrests and enforced disappearances, including cases of returnees in areas controlled by the Government.[47]

Tasnem's testimony also illustrates how risk profiles are not individual, but need to be assessed in connection to people's family networks. Although she had not been politically active herself, security forces arrested her because of her late husband. Returns, as in this case, can also result in further cycles of displacement[xlix]. Unable to start a new life in her former place of residence, Tasnem moved on and is still in quest of a safe and dignified place of refuge. Finally, the return of a refugee to a country that has not seen a regime change poses particular challenges. What does it mean to return to a territory that is still under the control of the same president and security apparatus that was at the heart of the Syrian displacement crisis?

First, Syrian refugees who want to return to Syria need to apply for security clearance from Syrian security services prior to relocating[l]. Syrians in Lebanon can apply for security clearances through General Security in Lebanon, or try to use contacts or bribes to get information directly[li]. The Syrian government has rejected the return of some refugees[lii].

In the case of a rejection, the written responses are restricted to the correspondence between the security branches and the official authorities, and the person concerned does not receive any written response.[48]

In practice, authorities' definition and understanding of security issues is extremely broad. The Syrian Baath party has for decades relied on a system where citizens report on each other to security agencies. This practice continues today and includes Syrians living in Lebanon who seek either personal gains or wish to settle scores[liii]. As a result, approximately 15% of all citizens reportedly have security issues[liv].[49]

Second, refugees need to go through a so-called "reconciliation" process if they find during the security clearance process that their name is on a blacklist. Reconciliation committees consist of officers representing the regime's security branches and dignitaries, clerics and officials from the region, which are also partially appointed by the regime's security branches.[50] During this process, returnees have to share extensive personal information with the Syrian security apparatus, which according to SACD has used such data to blackmail or arrest individuals who are perceived as a "security threat"[lv].

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[46] UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 15 August 2019, www.ecoi.net/en/document/2016403.html, para. 8.

[47] UN Security Council, *Implementation of Security Council Resolutions 2139 (2014), 2165 (2014), 2191 (2014), 2258 (2015), 2332 (2016), 2393 (2017), 2401 (2018) and 2449 (2018): Report of the Secretary-General*, 16 December 2019, S/2019/949, www.ecoi.net/en/document/2022113.html, para. 17.

[48] Email correspondence with the Syrian Network for Human Rights, December 2020.

[49] The Syrian oppositional website "Zaman al-Wasl" maintains an online database containing 1.5 million entries of people who are wanted in Syria (Zaman al-Wasl: "1,5 Gesuchte vom Assad-Regime", https://en.zamanalwsl.net/news/article/33629/). The regime itself has indicated that it has compiled a database of wanted persons that is approximately twice as comprehensive (Middle East Monitor: "Syria regime prepares list of 3m wanted persons", MEMO, 02.08.2018,
https://www.middleeastmonitor.com/20180802-syria-regime-prepares-list-of-3m-wanted-persons/).

[50] According to the Syrian Network for Human Rights, reconciliation committees cannot perform any work without the approval of the regime's security branches. There is also a Russian Center for Reconciliation in Latakia, affiliated with the Russian Ministry of Defence and the Hmeimim Airbase headquarters and consisting solely of Russian officers. This center only intervenes when there are large protests by the people or when the Syrian regime enters and re-imposes control over a new area. Email correspondence with the SNHR, December 2020.

As Syrian intelligence services are divided into at least five branches and do in practice not coordinate with each other[lvi],[51] formal clearance prior to return or reconciliation is not a full guarantee of safety from arrests and detention. Despite prior reconciliation, the high-profile human rights activist and torture survivor, Mazen Al-Hamade, for example, was arrested and forcibly disappeared immediately upon his arrival at Damascus airport in February 2020[lvii].

Risks for returnees to regime-held Syria depend on personal profiles and places of residence prior to return, rather than just mere places of origin, but can also be arbitrary or evolve over time.[52] As explained earlier, the government of Syria considers Syrians who have left government-controlled areas as traitors. In addition, Syrian men are at risk of arrests and detention if amongst others they have not responded to calls for compulsory military service, if they have participated in demonstrations and protests after 2011, if they have otherwise voiced publicly a political opinion against the regime, as well as if they have lived in areas that have been under control of parties to the conflict other than the regime.

Male refugee returnees who have evaded the draft for compulsory military service in Syria will be arrested and detained upon return. According to the 1960 Military Criminal Code (revised in 1973), evaders face up to five years in prison during war time. In practice, deserters from the Syrian Arab Army (SAA) have been tortured during detention, physically assaulted and forcibly disappeared[lviii]. Serving in the military exposes Syrian men to the high risk of being forced to commit war crimes. The Independent Commission on Inquiry into Syria has documented that the SAA has committed war crimes and crimes against humanity[lix], has structurally infringed on human rights during the conflict, and has used chemical and prohibited weapons against civilians and civilian infrastructure and humanitarian personnel and facilities[lx].[53]

In theory, the Government of Syria had issued on 9 October 2018 a decree, granting amnesty for individuals accused of deserting or avoiding military conscription if they would turn themselves in within four - for those residing inside Syria - or six months - for those present outside of Syria[lxi]. Only one month after the above-mentioned amnesty was issued, however, the Government of Syria de facto nullified the amnesty by publishing a list of 400,000 males that could still be called for military conscription[lxii]. A study by *Refugee Protection Watch* documented how many refugees from Lebanon had been forcefully conscripted into the army upon arrival to Syria despite the amnesty. In November 2020, the EU Court of Justice has qualified that conscription refusal in the context of the Syrian war can be a form of political expression, thus paving the way for Syrian men to access one of the five grounds for asylum.[54]

With the exception of military service, Syrian women can also be arrested and detained for the same reasons as men. Importantly, women are also at risk if they merely have male relatives who have participated in revolutionary events, have voiced public opinions against the regime or have lived in opposition-held areas.

[51] The Syrian Intelligence Services consists of branches for amongst others military intelligence, air force intelligence, general intelligence, political intelligence, plus the military police.

[52] In early 2019, a number of pro-regime journalists were exiled or jailed, apparently for criticizing lawless behavior by pro-regime militias. "The regime punishes prominent Assad-supporting journalists", The Syrian Observer, 7 March 2019 (International Crisis Group 2020, 21)

[53] See also https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity

[54] Court of Justice of the European Union: "In the context of the civil war in Syria, there is a strong presumption that refusal to perform military service there is connected to a reason which may give rise to entitlement to recognition as a refugee." https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-11/cp200142en.pdf

The UN, for example, has documented how security forces at times arrest women as a means to put pressure on men to come and surrender.[55]

*What are the risks for refugee returnees to be arbitrarily arrested and detained?*

- *In a survey conducted by the Syrian Association for Citizen's Dignity (October 2019), 62% of respondents stated that they or one of their relatives have been subject to arbitrary detention upon return to Syria, while 68% said that they or their relatives are wanted for arrest.*
- *In 2020, the Syrian Network for Human Rights documented 62 cases of arrests and detention among returnees from Lebanon alone, of which 37 remained in detention at the time of publication (2020).*
- *In 2019, the Syrian Network for Human Rights documented 638 forced disappearances and 15 deaths as result of torture for refugee returnees (2019).*
- *Between 2014 and August 2020, the Syrian Network for Human Rights documented 1.916 cases of arrests and detention, including 219 children and 157 women, among refugee returnees. Some of these cases had received prior security clearances (2019).*

Empirical evidence of the detention of refugee returnees mirror broader dynamics of arbitrary arrests and summary detention under conditions that lead to the arbitrary deprivation of life in Syria.A September 2020 report by the UN Commission of Inquiry on Syria (CoI), for example, documented "ongoing patterns of arbitrary detention, enforced disappearance, and torture and death in detention" in government-held areas. In this report, the UN Commission of Inquiry on Syria stated, it has reasonable grounds to believe that acts of enforced disappearance, murder, torture, sexual violence and imprisonment are perpetrated "in pursuance of a continued State policy" and amount to crimes against humanity[lxiii].

Detention in Syria may amount to enforced disappearance. People are dying in custody even if very young and thus presumably in good health. Families do not hear about their deaths, or only after a very long time, or actually accidentally[lxiv]. The UN has also documented, there are no guarantees that refugee returnees can count on due to the general lack of rule of law in Syria and the strong security grip that intelligence forces hold over territory under the control of the government of Syria. The European Court of Human Rights has ruled in Othman v. the United Kingdom that lack of fair trial on criminal grounds also triggers non-refoulement obligations.

Finally, the Government of Syria has sought to cement displacements of the last eight years as permanent by systematically depriving individuals and communities perceived as government opponents from access to their property[lxv]. Under a series of laws and decrees passed during the armed conflict, the government of Syria has engineered demographic change whereby individuals are dispossessed if considered to be part of the political opposition, civically active, formerly detained, or internally or externally displaced.[56]

[55] Interview UN, December 2020.

[56] Gender-bias in Syrian inheritance laws furthermore creates additional difficulties for women to claim property in the absence of fathers, husbands or brothers upon arrival to Syria (A/HRC/42/51, para. 92).

*One-third of Syrian legislation and regulations have been adopted during the conflict[lxvi]:*

- *Law No. 11 (2011) and Decree No. 43 (2011) establish that people need security clearance for various property transactions.*
- *Decree 63 (2012) allows the Syrian Finance Ministry to confiscate the property of Syrians accused of an act of terrorism. Law 19 created a Counterterrorism Court, which is considered contrary to international and constitutional standards for providing a fair trial.*
- *Decree 66 (2012) allows the Syrian government to dispossess and forcibly relocate inhabitants of certain redevelopment zones and to transfer assets to private companies and regime cronies.*
- *Law No. 11 (2016), Law No. 12 (2016) and Law No. 33 (2017) create a series of obstacles for recovering or transferring property records.*
- *Law No. 35 (2017) allows for the confiscation of properties of people failing to perform military service.*
- *Law 10 (2018) designates certain areas as a redevelopment zone, paving the way to arbitrary property confiscations of above all those individuals who are displaced and thus unable to prove ownership with local authorities.*
- The amendment of Art. 97 of Syria's Military Conscription Law in February 2021 allows the Syrian Ministry of Finance to seize the property of all men who did not serve in the military and failed to pay the 8,000 USD exemption fee regardless. The Ministry of Finance can confiscate and sell property without providing notice or giving the respective owner an opportunity to challenge the decision. The law also enables the government to seize the assets of wives, children, and other immediate relatives of "military evaders".[lxvii]

While some of the Syrians who relocate to Syria from Lebanon on a genuinely voluntary basis do manage to overcome challenges, the World Bank has also pointed out that there is an overall lack of knowledge of whether returnees are able to return "to their original place or whether they were arrested, killed, or became displaced again[lxviii]." Just like all UN agencies, NGOs and humanitarian actors, the Independent International Commission of Inquiry on Syria and UNHCR face high limits in monitoring what happens with refugees who return to Syria. Like all UN agencies in Syria, UNHCR has limited operational space, requiring prior authorizations from the government of Syria for both access to territories and operations. Despite efforts, UNHCR Syria can only connect to a minority of those Syrian refugees who return through the operations organized by Lebanon's General Security Organisation. Next to access to territory, trust appears to also be an issue. When *Refugee Protection Watch* asked refugee returnees from Lebanon whether they would contact UNHCR if they were to face protection issues in Syria, respondents overwhelmingly reported that they would not do so due to their distrust in UNHCR's capabilities.[lxix] Indeed, it is very difficult also for Syrian civil society organizations and displaced Syrians themselves to have reliable information on conditions in Syria. As phone calls are regularly monitored, refugee returnees are unable to fully reveal instances of arbitrary arrest and forced conscription to family members and other actors abroad. If people have to risk their lives to document what happens to people like Tasnem after their arrival to Syria, then clearly returns are premature.

# VI- CONCLUSIONS

As narrated at the start of this chapter, 25 years-old Mohamad from Idlib ended up back in Syria after his failed attempt to access a safe protection space in both Lebanon and Cyprus. Mohamad's story illustrates well what the consequences can be for refugees when countries compromise on international human right standards and prioritize pushbacks and returns over access to asylum. When the Cypriot police pushes back boats with people who intend to seek asylum, it is violating the principles of non-refoulement. Pushbacks from Cyprus to Lebanon put Syrians at risk of chain refoulement to Syria and also bar Lebanese citizens from accessing asylum in case they fear persecution in Lebanon. Concretely, violations of these human right principles have life and death consequences for people. Mohamad faces the risk of arrest and detention in Syria for having evaded military service and the possibility of being persecuted on other grounds, exposing him in the Syrian context thus also to risks of torture and death.

The government of Syria deliberately created drivers of displacement for Syrians and continues to be an obstacle to safe and dignified return. Initial reasons for forced migration from Syria remain unchanged in the largest part of Syria and under risk almost everywhere else. If the international community wants safe and dignified returns, then it should abstain from indirectly channelling funds into the hands of the Assad regime. As documented above, fears by Syrian refugees to return to Syria are well-founded. There are documented risks that refugees can be arrested, detained, tortured, killed and/or forcefully conscripted into the army upon return to Syria.

In Lebanon, possibilities for Syrians to either integrate and legally reside, or get resettled to a third country have become increasingly less available ever since 2015. Instead, their vulnerability to receive expulsion orders and factors that oblige Syrians to leave Lebanon have increased since 2018. Syrian refugees who leave Lebanon for Syria are not in a position to make a free and informed choices, but return often simply due to economic, social and political pressures on them in their country of displacement. Both returns and smuggling routes from Lebanon in 2020 hence reflect a lack of access to meaningful international protection in Lebanon.

In the interest of international human right standards that were set in the aftermath of the catastrophe of mass scale displacement following the Second World War, Cypriot authorities need to grant access to the asylum procedure to any individual who expresses his or her intention to seek international protection. Lebanese authorities need to stop violating the principle of non-refoulement and offer blanket complementary or temporary protection for all. In turn, EU member states need to express their solidarity by putting into place relocation and resettlement mechanisms from both Lebanon and Cyprus, as well as by providing humanitarian support for refugees in Lebanon. Whether or not the principle of non-refoulement protects people and helps them to access asylum needs to be monitored by independent institutions who have full access to see, land and air borders.

In its Pact on Migration and Asylum, the EU is proposing to put into place an independent mechanism to monitor effective access to EU asylum procedures[lxx]. In line with this initiative, Cypriot coast guard boats should be equipped not just with translators, but also with fully independent human right monitors. In the context of the Lebanon-Syria border, UNHCR holds the mandate for the protection of refugees. Given that protection thresholds and parameters for refugee return to Syria set out by UNHCR have not been met, however, efforts of the agency should continue to focus on maintaining protection space in Lebanon and carrying out pre-return monitoring of factors that oblige Syrian refugees to return to Syria prematurely.[57]

[57] See also UNHCR's Lebanon Crisis Response Plan (LCRP).

# VII- RECOMMENDATIONS

## a) Common Mashreq recommendations

EU and EU Member States:

- In line with the EU's position that **Syria is not safe** for refugees to be returned,
    - Refrain from shifting national policies towards depriving certain categories of refugees from Syria from their protected status, or reverse this where they have already done so.
    - Refrain from financially supporting any programmes that may incentivize return, as it exposes individuals to risks and falsely gives the wrong impressions to others that it is safe to return.
- Provide more resettlement and complementary pathway opportunities for better **responsibility sharing**:
    - *Resettlement* should be activated as the ideal form of responsibility sharing, enabling also genuine collaboration with countries, such as Lebanon and Turkey. Given the Covid-related decrease in departures, resettlement countries should expand their quotas in 2021 and 2022.
    - Other complementary pathways – *humanitarian visas, family reunifications, third country scholarships* - should also be mobilized to improve responsibility sharing. In the light of travel restrictions in 2020, embassy resources to treat humanitarian visa applications need to be reactivated and enhanced.
- Better monitoring of the **human rights compliance of agreements with third countries**

## b) Recommendations connected to the Syrian context

- **Special Envoy to Syria** to raise the issue of human rights violations of refugee returnees on the basis of existing UN monitoring bodies, such as the Independent International Commission of Inquiry on the Syrian Arab Republic
- **Regime change** should be a prerequisite for any forced readmissions to Syria.
- Direct **participation of the displaced Syrians** in defining the conditions for a safe, truly voluntary and dignified return, and the definition of a safe environment necessary as prerequisites for assisted returns to Syria
- Close **monitoring of human right implications of funding for early-recovery and humanitarian funds** that flow into Syria so as to not rehabilitate a regime that is responsible for mass-scale human rights violations.

UNHCR:

- Put in place a well-funded **pre-return monitoring mechanism** that closely monitors the conditions for safe, voluntary and dignified return of displaced Syrians.
- Negotiate a tripartite agreement with state border authorities and human rights or Syrian-led NGOs at the Cyprus/Lebanon, Lebanon/Syria and Turkey/Syria borders to facilitate, fund and promote **human rights monitoring of border movements**.
- Communicate more clearly about the **limits of their access and monitoring capabilities** and highlight the gaps in knowledge and risks inherent in this lack of access and monitoring.
- Enable refugees to take free and informed choices on return by providing factual and up-to-date information about conditions in Syria, including about **protection risks for refugee returnees**
- UNHCR must highlight that returns should not be encouraged and that facilitation should not occur until the conditions exist under which safe, dignified and voluntary returns can take place

## c) Recommendations specific to the Cyprus and Lebanon chapter

EU, EU Member States and international donors:

- In the face of the economic and political meltdown in Lebanon, not just Syrian refugees, but increasingly also Lebanese citizens are without access to basic rights. Hence it is most urgent for EU member states to open up **resettlement places for displaced Syrians in Lebanon**.
- Use funding to have more tangible effects on improving the livelihoods and rights of both refugees and hosting communities, notably by
    - facilitating **access to legal residency** for Syrian refugees in Lebanon, as well as by
    - redesigning its **aid architecture** to provide support, resources and funding directly to organizations on the ground
- The European Commission should press the government of Cyprus to respect **the right to seek asylum and the principle of non-refoulement**, i.e. not returning people to a place where they could face threats to life and freedom and other serious harms.
- Support the creation of an **independent mechanism to monitor effective access to EU asylum procedures**, respect for fundamental rights and respect for the principle of non-refoulement at the EU's borders; and ensure that any such mechanism is truly independent from national authorities, well-resourced and able to act on information received from individuals from both sides of the border. In case of violations, the European Commission must be able to take effective measures to ensure accountability for rights violations. Findings should be publicly available and potential victims should receive legal advice and have effective access to justice.

Cypriot authorities:

- **Rescue vessels in distress** and stop endangering lives by using manoeuvres, such as high-speed circling of boats.
- Grant people on boats that arrive at their territorial waters or coast at least temporary **access to territory** so that the relevant authorities can establish people's nationality, as well as whether individuals came to Cyprus to seek asylum.
- Conduct a transparent, thorough, and impartial **investigation** into allegations that Cypriot coast guard personnel are involved in acts that put the lives and safety of migrants and asylum seekers at risk. Any officer engaged in illegal acts, as well as their commanding officers should be subject to disciplinary sanctions and, if applicable, criminal prosecution.
- Ensure full **transparency about cooperation agreements with third countries,** notably by informing parliament.
- Ensure asylum seekers have access to a vulnerability screening prior to being placed in quarantine, as well as **access to UNHCR** and service providers during the quarantine period.

Lebanese authorities:

- Uphold the **right to international protection** for Syrian refugees, as well as facilitate **access to legal residency** for Syrian refugees in Lebanon.
    - Allowing UNHCR to resume the registration of refugees.
    - Review local provisions relating to residencies and work permits in accordance with domestic laws and Lebanon's international obligations, including bilateral agreements in effect with Syria.
    - Honouring its commitments made by previous governments and expanding the residency fee waiver to apply to all refugees regardless of entry date, registration profile or border crossed and ensures consistent implementation of the waiver.
- **Respect the principle of non-refoulement**.
    - Annul the Higher Defence Council Decision No. 50 of 15/4/2019 and the General Director of the General Security decision No. 48380 of 13/5/2019 ordering the expulsion or deportation of Syrian nationals who entered Lebanon through unofficial border crossing after 24 April 2019 without the application of the necessary legal procedural safeguards to prevent refoulement
    - Immediately implement the State Council's ruling No. 421 of 8 February 2018 in order to ensure legality and public order in Lebanon and suspend the General Security regulations issued in 2015 and its subsequent amendments regarding the conditions of entry and residence for Syrian nationals in Lebanon;
- Commit to a **moratorium on deportations of Syrian refugees – particularly if without due process guarantees**, notably by

    - Ensuring the right of appeal against a removal order with an independent administrative and/or judicial body within a reasonable period of time from the notification of that order and with the suspensive effect of the appeal on the enforcement of the order
    - Committing to guarantee the right of the Syrian refugee to be assigned a lawyer to defend him or her, in accordance with Art. 47 of the Lebanese Code of Criminal Procedure, as well as the Universal Declaration of Human Rights and the United Nations Convention against Torture.

- Provide full clarity and transparency about the **modalities of the so-called "return plan"** issued by the Ministry of Social Affairs, and ensure that any such plan is based on Lebanon's international human rights obligations as spelled out amongst others in the Convention Against Torture, as well as taking into account the conditions for safe, voluntary and dignified return outlined in the UNHCR Protection Thresholds. Halt any further steps towards implementation of the plan before a clear dialogue with relevant stakeholders – including with UNHCR, humanitarian INGOs and local CSOs – is conducted.

- Lebanon's General Security Organisation needs to notify UNHCR of the names and contact details of individuals at least four weeks prior to implementing "voluntary" return operations so as to enable UNHCR Lebanon to carry out effective and **individualized protection monitoring** prior to any organized group returns.

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# *Return Mania. Mapping Policies and Practices in the EuroMed Region*

## Chapter 7

## Turkey's return policies to Syria & their impacts on migrants and refugees' human rights

*March 2021*

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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.

EuroMed Rights wish to thank all the people - experts, stakeholders, interviewees - who contributed to the finalisation of this report. A special thanks goes to the researchers for their extensive and detailed analyses and their unwavering commitment in seeking evidence and justice for human rights violations.

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# Index

## Executive Summary

This chapter focuses on policies implemented by Turkey to return Syrian nationals. It examines both the legal framework and practices regarding repatriation, including "voluntary" and forced returns. It also investigates the process in which returns occur as well as the experiences and consequences for refugees.

The report underlines the following key findings:

- The Turkish Government seeks ways to encourage Syrians to return due to the increasing political instrumentalisation of refugee policies. However, the strategy of the political authorities in Turkey regarding the timing, scope and volume of a possible mass repatriation remains highly unpredictable.
- In the last few years mounting problems arose regarding the exploitation of Syrians in the informal labour market, growing anti-Syrian stances in local communities and return campaigns which forced some Syrians to return.
- The Turkish administration has enormous discretionary powers when it comes to deciding what actions to take- or not - when implementing asylum laws. This includes the forced returns of foreigners.
- The legal basis of forced returns is complex and ambiguous. It includes a broad list of exceptions and derogations from the principle of non-refoulement.
- The common alleged reasons for forced returns include the cancellation of the temporary protection status due to registration-related problems. Syrian nationals are often accused of "threatening public order, security and having a link to terrorism". However, these grounds are very loosely defined and arbitrarily implemented.
- Turkish state officers use unlawful techniques to force the signature on "voluntary" return forms in order to manipulate, deny and block appeals that question the voluntariness of returns and the violation of the *non-refoulement* principle.

These findings are drawn from extensive desk research and analysis of the scholarly literature, legislative documents, as well as reports of international organisations, civil society, and media in English and Turkish. The findings also rely on fieldwork conducted from October to December 2020: 21 interviews, among them 7 individuals returned to Syria (3 forcibly returned, 4 voluntarily returned to Northern Syria) as well as 14 stakeholder interviews with lawyers, national and international human rights advocacy groups, humanitarian organisations and scholars. The study provides recommendations for international aid providers, the EU, UNHCR and the Turkish government based on empirical evidence.

# List of abbreviations

| | |
|---|---|
| AI | Amnesty International |
| CSOs | Civil Society Organisations |
| DGMM | Directorate-General for Migration Management \| Göç İdaresi Genel Müdürlüğü |
| EU | European Union |
| HRW | Human Rights Watch |
| IOM | International Organisation for Migration |
| I | Interview |
| IOs | International Organisations |
| LFIP | Law on Foreigners and International Protection \| Yabancılar ve Uluslararası Koruma Kanunu |
| PDMM | Provincial Directorate of Migration Management \| *Valilik il Göç İdaresi Müdürlüğü* local (provincial branches of DGMM). |
| PYD/YPG | Kurdish Democratic Union Party/People's Protection Units |
| SJAC | Syrian Justice and Accountability Center |
| TP | Temporary Protection |
| TPR | Temporary Protection Regulation \| Geçici Koruma Yönetmeliği |
| UNHCR | United Nations High Commissioner for Refugees |
| YTS | Foreigners Terrorist Fighter \| Yabancı terrorist savaşçı |

# I- Introductory framework on Turkey's return policies

Since 2012, Ahmad[1] had been living in Şanlıurfa[2], one of the border cities in Turkey. He was working in a small restaurant for a while with his brother. In the summer of 2018, both brothers got involved in a quarrel with a public bus driver on the way to their working place. When they went to the police station to settle the issue, they were transferred to the provincial branch of the Directorate General of Migration Management (DGMM) - the only institution responsible for governing migration issues. They were then confined in an "assembly area for three days, which was like detention". Ahmad recalled: "in general, they treated me well, but they forced me to sign a "voluntary" return document in Gaziantep and took away my *kimlik* (temporary protection identity card). Although my family found a lawyer from an association helping refugees, the process of deportation happened very quickly; the lawyer was not able to prevent it." In days, Ahmad found himself in Idlib and lived with the money that his refugee family in Turkey was sending. A year later, he was able to re-enter Turkey by paying smugglers.

Ahmad is only one of the 3,576,370 Syrian refugees in Turkey with temporary protection status. There are also another 100,000 Syrians with legal residency and 93,000 who have been granted citizenship in Turkey[i]. Besides Syrians, 581,614 displaced persons arrived in the country and officially applied for international protection from 2010 to 2019[3], mainly nationals of Afghanistan, Iraq, Iran and Somalia.[4] In 2019, Turkey granted international protection to 5,449 applicants (72,961 in 2018)[ii].

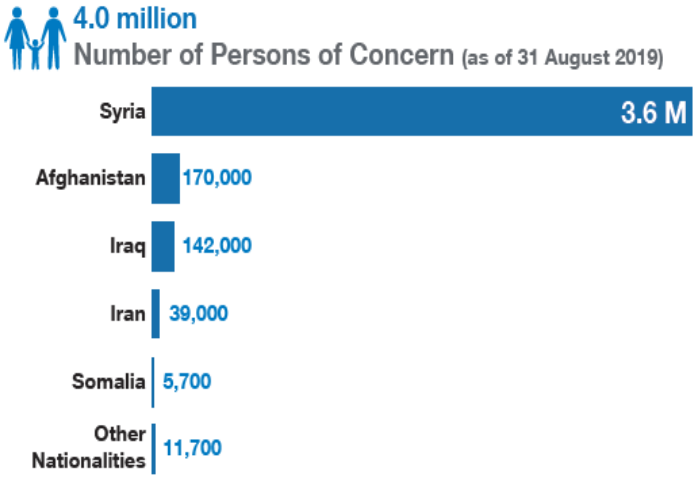


*Figure 1: UNHCR figures on the number of persons of concern in Turkey*[5]

[1] All names are pseudonyms.
[2] Şanlıurfa is a province sharing the longest border with Syria and has three official border gates in different towns of the province, namely Akçakale, Mürşitpınar, and Ceylanpınar. It has become an important site for the settling of Syrian refugees in Turkey since 2011. Although it is a relatively less visible and less studied province in the context of refugee research in Turkey (compared to Gaziantep), it hosts more Syrian refugees than Gaziantep. See: Mencütek Z. S. (2018), *Field-notes from a border province, Sanliurfa, Turkey*, available at: https://respondmigration.com/blog-1/sanliurfa (accessed 10 March 2021).
[3] https://www.goc.gov.tr/uluslararasi-koruma-istatistikler. November 2020.
[4] https://www.goc.gov.tr/uluslararasi-koruma-istatistikler. November 2020.
[5] Source: UNHCR (2019). "Turkey: Key Facts and Figures" August 2019, https://data2.unhcr.org/en/documents/download/7151> [Accessed 30 November 2020].

## 1.1. Politicisation of Refugees

Turkey is a vital transit country for migrants seeking to reach Europe via the Greek islands and land routes. Between 2015 and 2020, the official statistics from the DGMM note 875,070 irregular migrants[6] across the country.[7] The majority of irregular migrants in the country are Afghans, followed by Pakistanis, Iraqis and Syrians[iii]. A further 1,101,030 foreign nationals holding residency permits were present in Turkey as of December 2019, including humanitarian residence permit holders. All this makes Turkey one of the largest immigration, refugee and transit countries.

Being the largest migrant group in Turkey, Syrians are mostly under the temporary protection status as they arrived in large numbers since mid-2011. Although Syrians have, in theory, access to education, health and work, they have witnessed a growing anti-refugee stance from the host population in the last few years. Both the government and main opposition parties increasingly embraced populist return 'obsession'. This obsession was particularly reflected during local election campaigns in March 2019[8], which resulted in a three month-long crackdown and saw the quick deportations of thousands of irregular migrants, including Syrians. During this period, the police apprehended many migrants in Istanbul for several trivial reasons and sent them either to removal centers or refugee camps in the border regions, with the aim to forcibly return them[9].

Taking into account geopolitical concerns and voters' demands, the Government is seeking possibilities to set up measures to repatriate Syrian refugees by establishing a so-called "safe zone" and "refugee cities" in Northern Syria[iv]. With this in mind, following the military interventions of 2016, 2018 and 2019[10], the Turkish government has established humanitarian aid, security, economic and administrative structures in the areas it controls. This is mainly to create, in Syria, "an alternative local elite loyal to Ankara" against the emergence of any Kurdish self-administration areas close to its border[v]. They seek to keep control of a buffer zone close to the border under the sphere of influence of the Turkish military and the allied militias of the Syrian National Army.

Under these conditions, the return of refugees becomes a highly politicised and securitised issue in Turkey. The strategy of the political authorities in Turkey regarding the timing, scope and volume of a possible mass repatriation remains highly unpredictable. On the one hand, there is no doubt that return is an instrumental topic for political actors.

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[6] For the sake of easy reading, "irregular migrants" refers to "migrants in an irregular situation".

[7] https://www.goc.gov.tr/duzensiz-goc-istatistikler. November 2020

[8] Euronews. 2019. 'Ekrem İmamoğlu Suriyeli mültecilerle ilgili planını 3 adımda anlattı', 12 April 2019. https://tr.euronews.com/2019/04/12/ekrem-imamoglu-suriyeli-multecilerle-ilgili-planini-3-adimda-anlatti-bolu-ozcan-chp. Accessed 11 March 2021.

[9] AI 2019. Turkey: Sent to A War Zone: Turkey's Illegal Deportations of Syrian Refugees. 25 October. https://www.amnesty.org/en/documents/eur44/1102/2019/en/, accessed 29.11.2020;
HRW (2019) Turkey: Syrians Being Deported to Danger, 24 October. https://www.hrw.org/news/2019/10/24/turkey-syrians-being-deported-danger. Accessed 29.11.2020.

[10] See e.g. 'Operation Peace Spring', launched on 9 October 2019; the 'Euphrates Shield' (2016-2017) and 'Olive Branch' (2018) operations. https://www.europarl.europa.eu/EPRS/EPRS-Briefing-642284-Turkeys-military-operation-Syria-FINAL.pdf. See also https://academic.oup.com/jrs/advance-article/doi/10.1093/jrs/feaa121/6104112?searchresult=1, and Zeynep Sahin Mencutek, 2021 Governing practices and strategic narratives for the Syrian refugee returns", *Journal of Refugee Studies*, early view, feaa121, https://doi.org/10.1093/jrs/feaa121

At the same time, the international community (mainly the EU) strategically prefers remaining silent towards Turkey's rhetoric and actions about returns and its interventions in Northern Syria[11]. However, as many civil society organisations have pointed out, on the other hand, the conditions inside Syria have not yet proved conducive for sustainable, safe and dignified returns. Bombings by armed factions are ongoing as well as the destruction of civilian infrastructures and the killing of civilians[vi]. Political persecution and arbitrary arrests continue and there are still limitations in the access to functioning services (health, education, energy) and dire livelihood opportunities[vii].

One signal of the high politicisation of the return issue is represented by the highly contradictory numbers and terminology that the Government and its bureaucracy insistently disseminate. The Turkish migration agency (DGMM) reported that around 364,663 Syrians had voluntarily returned as of October 2019,[12] and the Minister of Interior noted in a speech in 2020 that there had been 414,061 "voluntary" returns to Syria.[13] It cannot be denied that some of these returns are decided by Syrian nationals themselves and based on personal motivations, belief in the normalisation of the situation in Syria, or because of limited opportunities in Turkey due to the deteriorating living conditions, poverty, and the rise in the rate of discriminatory acts.

Besides some "voluntary" returns, coerced "voluntary" returns occur too. Given the lack of official data, the numbers of forcibly returned Syrians reported by human rights organisations range from a few hundred[viii] to 6000 for 2019[ix]. One senior Turkish lawyer, who works for a civil society organisation (CSO) estimates that 20 to 25% of "voluntary" returns might be forced returns[14]. The Syrian Justice and Accountability Center (SJAC) reported 63,000 deportations in 2019 via Bab Al-Hawa border crossing near Antakya and 16,000 removals in 2020[x]. The SJAC's number is higher than other sources as it includes several categories of people. Firstly, individuals who illegally entered Turkey (possibly pushed back), secondly individuals who committed minor crimes or misdemeanours (forced to sign "voluntary" return forms), and thirdly individuals who returned voluntarily[xi]. The current numbers are based on estimated figures' and only cover the period 2018-2020. When asked about the possible deportation of Syrians, the Ministry of Interior and DGMM representatives fully deny, saying that "there is no deportation of any Syrians. We do not have the right nor the capacity to do this. We have neither a system nor a practice in this regard."[xii]. And this is despite numerous claims from human rights groups[xiii].

## 1.2. Other Groups Forcibly Returned

Syrians are not the only ones subject to forced returns: irregular migrants and rejected asylum seekers, including Afghans, Iranians, Iraqis, Uzbeks and others, are also subject to it (numbers and terminology are conflictual on this issue)[xiv], also due to the numerous readmission agreements signed by this country with its more or less close neighbours.

[11] See for instance, EU's failure to criticise Syrian refugees' return, here: https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2020)649327. See also Human Rights Watch's call to the EU to take action about forced returns, here: https://www.hrw.org/news/2019/11/07/repatriation-syrians-turkey-needs-eu-action.

[12] https://www.goc.gov.tr/uluslararasi-af-orgutunun-suriyelilerin-hukuka-aykiri-olarak-sinir-disi-edildigi-iddiasina-iliskin-basin-aciklamasi

[13] https://www.trthaber.com/haber/gundem/bakan-soylu-414-bin-61-suriyeli-gonullu-olarak-ulkesine-dondu-523516.html

[14] Interview, civil society organisation (CSO) representative, 10 Dec. 2020, Istanbul.

In 2018, according to international reports, "31,000 Afghan nationals were reportedly deported from Turkey"[xv]. In 2019, "at least 22,000 **Afghans** were also deported."[xvi]. According to the EU figures, Turkey returned 96,201 irregular migrants throughout 2019, among them reportedly around 55,000 migrants to Afghanistan. In 2019, 2,344 people were returned from Turkey through the IOM's assisted "voluntary" return and reintegration programmes[xvii]. However, Turkish sources[15] claim that forced returns are not recorded because migrants are forced into accepting to sign "voluntary" return forms due to the lack of other options and insufficient information, also related to the content of the "voluntary" return form, being provided in removal centers[16]. Despite more cases in 2019, forced returns slowed down in 2020 due to the pandemic, the exposure of unlawful practices in signing "voluntary" return forms, and small interventions by the judiciary (Constitutional Court decisions) to overcome administrative barriers[xviii].

## 1.3. Legal Justification for Forced Returns

The ambiguous Turkish asylum legislation has a long list of possible grounds for *refoulement*, cancellation of temporary protection status and restricting the asylum seekers' legal stay in the country, as explained in the following chapters. The most common legal justification for Syrians facing forced returns is to be considered as a danger to national security, public order or public security. These are all defined very loosely, and decisions are under the Administration's broad discretionary powers (Governorate, DGMM, PDMMs). Profiling, detention and return procedures lack transparency and clear guidelines, as they rely on *ad-hoc* internal orders of the Administration. Practitioners and human rights defenders observe unlawful practices such as the use of force and threat during custody, lengthy administrative detention and forcibly signed "voluntary" return forms. There are barriers to seeking justice via appeals and rapid deportations before courts can finalise decisions, while the options to challenge procedures in practice are limited.

## 1.4. Lack of checks and balances and the role of civil society

There is no systematic and independent monitoring mechanism for the pre-return phase, the actual returning process and the post-return phase. Testimonies of returnees provide evidence of the lack of safety and the lack of access to essential services and livelihoods upon return in Northern Syria. Many returnees attempt to re-enter Turkey but face high smuggling prices which often result in further precarity and vulnerability.

In this context, civil society organisations working on asylum issues play a vital role in exposing arbitrary practice and rights violations. They provide both awareness-raising activities for lawyers and refugees as well as offering legal aid. However, they have limited capacity and cannot monitor forced returns. They cannot publicly counter the return obsession in the political discourse as civil society in Turkey is under severe repression and pressure of the growing authoritarian practices, following the reactions to the failed coup of 2016.

[15] Turkish sources refer to news, interviews and civil society reports written/spoken in Turkish.
[16] Interview, CSOs, 08 Dec. 2020, Istanbul; Interview, lawyer, 10 Dec. 2020, Istanbul.

They are not allowed to exercise their right to freedom of speech freely or to take collective action such as protesting. Worryingly, the space available for civil society has been shrinking, and it is under the radar of the political regime and judiciary.

# II- National Legal Framework For Refugee Protection, Returns and Forced Returns

## 2.1. Law on Foreigners and International Protection

The Turkish asylum legislation is only partially aligned with international law and EU *acquis*. The primary legislation, the Law on Foreigners and International Protection (LFIP) [xix], maintained Turkey's geographical Reservation over the 1951 Refugee Convention and its 1967 Protocol[xx]. The reservation implies that only a person who arrives from European countries to Turkey is eligible for refugee status, others (in fact all potential asylum seekers) may be subject to conditional, subsidiary and temporary protection as noted in Figure 2.

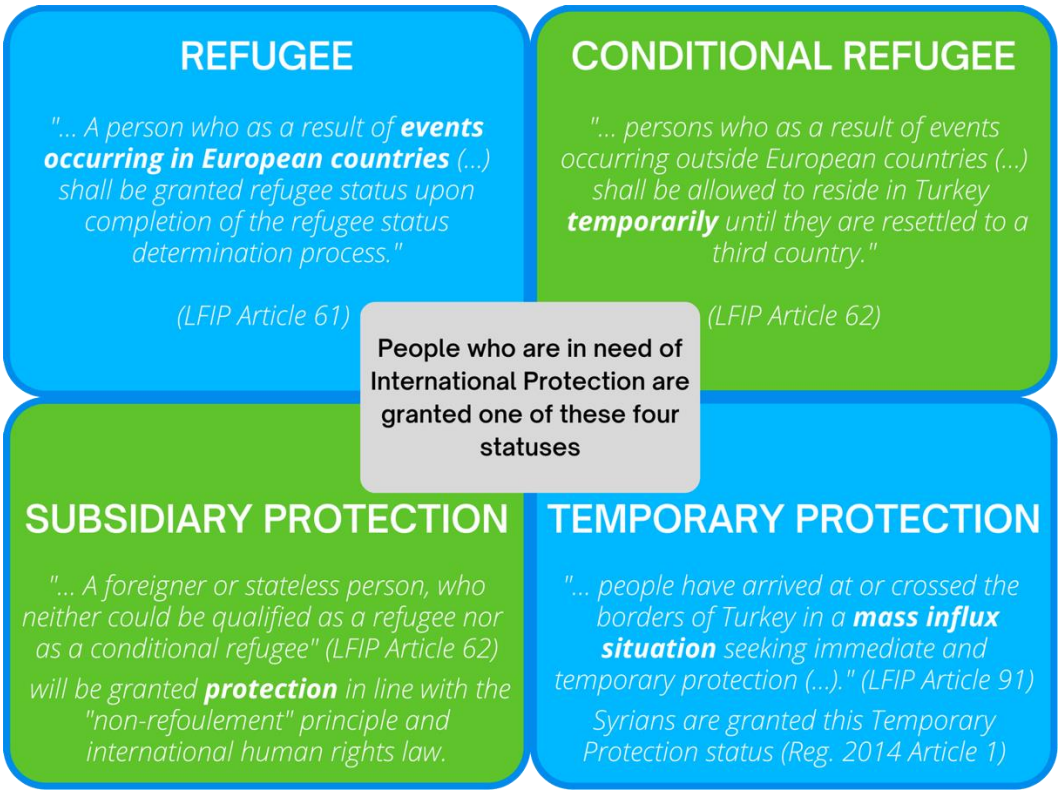


*Figure 2:. Different International Protection Statuses in Turkey*

The DGMM, which was created under the LFIP, decides whether to accept or reject asylum applications. Operationally, the DGMM has a branch in each province, known as the Provincial Directorate of Migration Management (PDMM, *İl Göç İdaresi*). The DGMM is an implementing migration agency, under the Ministry of Interior (MoI), while, like other public offices, the PDMMs are placed under the Provincial Governorate,. Neither DGMM nor PDMMs have authority regarding the design of migration policy, they are required to follow up on and coordinate policies determined by the Presidency.[17]

From 2011 to 2014, the Turkish Government's initial *ad hoc* response towards the mass arrival of Syrians was based on open-door policies. However, Syrians' protracted stay and fast-growing numbers led the Government to consider more regulative and restrictive refugee policies in 2014 with a stronger focus on temporality[xxi].

## 2.2. The Temporary Protection Regulation (TPR)

The Temporary Protection Regulation (TPR)[18] came into force on 22 October 2014 and regularised the status of Syrians nationals in the country.

The main pillars of the temporary protection (TP) include the principles of not punishing irregular entry and stay (Art 5), *non-refoulement* (Art.6), admission to the country (Art. 17), and registration (Art. 21). In 2014, temporary protection was granted to all Syrians who had fled to Turkey since 28 April 2011. Upon their registration to the PDMM's referral centres, Syrians were given temporary protection identity numbers and cards, known as *kimlik*. Temporary protection beneficiaries do not have a right to apply for international protection, and thus do not get the refugee status or resettlement options (except from specific arrangements or one-to-one formula or quotas) [19]. The temporary protection status enables the free access to the basic services, including health (Art. 27), education (Art. 28), social assistance and labour market (Art.29).

The two primary pieces of legislation set out the framework for foreigners' return, including Syrians: the Law on Foreigners and International Protection (LFIP) (2013) and the TPR (2014). Several pieces of secondary law (decrees, internal orders, etc.) and judiciary sample decisions guide return practices. The LFIP (2013) recognises the *non-refoulement* principle as follows:

> No one within the scope of this Law shall be returned to a place where he or she may be subject to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion (LFIP, Art 4(1), 2013:3).

[17] Presidential Decree # 4, 15/7/2018 – 30479, https://www.mevzuat.gov.tr/MevzuatMetin/19.5.4.pdf.

[18] Inspired by the 2001 EU directive[9] (EC 2001) on Temporary Protection and referred to in the 2013 Law on Foreigners and International Protection, (LFIP, Article 91)—

[19] From 2014 to 2020, only 16,561 were resettled to Canada, the US, the UK, Norway. through the one-to-one formula resettlement to EU countries, between April 2016 and June 2020, 26,835 Syrian refugees were resettled from Turkey to the EU, of whom more than 7,000 in 2019. (EC 2020). https://www.avrupa.info.tr/sites/default/files/2020-12/turkey_report_2020_0.pdf.

However, the TPR[20] carries the risk of mass repatriation. The Presidency has a right to decide, limit the scope and terminate the temporary protection regime at any moment.[21] The Law does not specify when or under which conditions the Presidency may propose to revoke the temporary protection. It does not require meeting the "safe country" criteria or the presence of a repatriation agreement. The TPR reflects a flexible approach concerning what will be implemented along with the possible revocation of the temporary protection regime. Under Article 11: 4-5, the TPR 2014, sets out three possible decisions:

> a) To fully suspend the temporary protection and to return persons benefiting from temporary protection to their countries;
>
> b) To collectively grant the status to people satisfying the conditions for the temporary protection, or to assess the applications of those who applied for international protection on an individual basis;
>
> c) To allow persons benefiting from temporary protection to stay in Turkey subject to conditions to be determined within the scope of the.

The TPR provides that the "temporary protection decision shall be taken by the President upon the Ministry's proposal" (Article 9, TPR 2014[22]). The content of the decision may determine the duration of the temporary protection and the conditions for extending and ending it (Article 10, TPR 2014[23]). Several experts interviewed for this research pointed to the conclusion that the TPR already provides legal ground to legitimise possible mass repatriation by the Presidency. The forced return of persons benefiting from temporary protection is however also very complicated from a legal perspective. Due to the *non-refoulement* principle in the LFIP, temporary protection holders should not be sent back to Syria under any conditions. However, the only legal basis for Syrians to be allowed to stay in the country is the temporary protection status and temporary protection IDs. Otherwise, they fall into irregularity. The Administration has a right to revoke the temporary protection status of a person if the person leaves Turkey, benefits from the protection of a third country, is admitted or resettled to a third country for humanitarian reasons, leaves for a third country or is deceased (TPR 2014, article 12: 5). Besides these reasons, the TPR provides also a long list of grounds for exclusion, legitimising the rejection or cancellation of status applications for Syrian nationals[24].

[20] TPR Article 8 Foreigners who will not be covered under the scope of temporary protection; Artice 9 Taking temporary protection decision; Article 11 Termination of temporary protection; Article 12 Individual termination or cancellation of temporary protection.

[21] Presidential Decree No 4 of 15 July 2018.

[22] Article 9 reads: "Temporary protection decisions shall be taken by the President upon the Ministry's proposal".

[23] Article 10 reads as follows: "(1) The President shall be authorised to determine the following in its temporary protection decision: a) Persons who will be covered under temporary protection; b) Effective date of temporary protection and its duration if considered necessary; c) Conditions for extending and ending of temporary protection".

[24] These grounds cover the following: persons who "have been guilty of acts defined in Article 1F of the 1951 Convention; have engaged in acts of cruelty, for whatever rationale, before arrival in Turkey; have participated in armed conflict in the country of origin; have not permanently ceased armed activities after arrival in Turkey; have engaged, planned or participated in terrorist activities; persons, who prior to their arrival in Turkey, committed crimes that would be punishable with a prison sentence in Turkey, and have left the country of origin or residence in order to avoid punishment; have been convicted of crimes against humanity by international courts; have committed crimes related to state secrets and espionage". (TPR 2014, Art. 8(1))

The legal grounds for revoking the temporary protection and other protection status were broadened in 2016. An emergency decree introduced a derogation to the principle of non-refoulement in the event the person was a threat to public order, public security or linked to terrorism[25]. The Law No 7070 consolidated the derogation in February 2018[xxii].

### *14 reasons for "removal"*

The TPR does not have a specific article on deportation (officially called "removal" in Turkish legislation) but refers to the Article 54 (1) of the LFIP which lists 14 reasons.

**LFIP, 2013, Art. 54[26]**

*(1) A removal decision shall be issued in respect of those foreigners listed below who/whose:*

a) are deemed to be removed pursuant to Article 559 of the Turkish Penal Code № 5237;
b) are leaders, members or supporters of a terrorist organisation or a benefit oriented criminal organisation;
c) submit untrue information and false documents during the entry, visa and residence permit actions;
ç) made their living from illegitimate means during their stay in Turkey;
d) pose a public order or public security or public health threat;
e) has overstayed their visa or the visa exemption period for more than ten days or, whose visas are cancelled;
f) residence permits are cancelled;
g) overstayed the expiry date of the duration of their residence permit for more ten days without an acceptable reason;
ğ) are determined to be working without a work permit;
h) breach the terms and conditions for legal entry into or exit from Turkey;
ı) are determined to have entered into Turkey despite an entry ban to Turkey;
i) international protection claim has been refused; are excluded from international protection; application is considered inadmissible; has withdrawn the application or the application is considered withdrawn; international protection status has ended or has been cancelled, provided that pursuant to the other provisions set out in this Law they no longer have the right of stay in Turkey after the final decision.
j) fail to leave Turkey within ten days in cases where their residence permit renewal application has been refused.
k) (Annex: 3/10/2016-KHK-676/36 article) are evaluated as being associated with terrorist organizatons which have been defined by international institutions and organizations.

[25] Article 54(2) LFIP, as amended by Article 36 Emergency Decree 676 of 29 October 2016. The provision cites Article 54(1)(b), (d) and (k) LFIP, the latter inserted by Emergency Decree 676. https://www.resmigazete.gov.tr/eskiler/2016/10/20161029-4.htm. Law No 7070, 1 February 2018 on the regulation of emergency provisions, is available at: http://bit.ly/2S5DZzL (TR).

[26] Official English translation from: https://www.refworld.org/docid/5a1d828f4.html, p. 19 (accessed 11 March 2021).

The Administration can base its decision upon one of these 14 reasons. As explained in an interview:

> *"Sometimes, the reason for the cancellation of temporary status might have been the reason for deportation, such as being a threat to public order and public security. These are both the reasons for cancelling status and subsequent removal. The decision of expulsion is taken drawing from the LFIP but not from the TPR. The cancellation of status means that this person does not have a right to legally stay in Turkey. The cancellation of the status means that this person might be deported due to illegal stay in the country. The deportation decision can be executed or not"*[27].

In early 2019, the DGMM introduced a new circular (2019/1) on the Cessation of Status of Syrians due to Voluntary Return. The circular states that temporary status for Syrians "may cease if they travel to Syria outside of permitted periods". DGMM is authorised to evaluate each case individually and grant or deny renewed access to temporary protection status upon re-entry into Turkey (TPR Art. 13). Provision of misleading information to DGMM is another ground for cancellation of temporary status. Although all these grounds require judicial assessment, the Administration has the primary responsibility to carry out and finalise the reviews of temporary status exclusions, revoking, re-issuing status and to inform the persons concerned about the decisions.

# III- Causes of "Spontaneous" Forced Returns

## 3.1. Poverty, Lack of Social Assistance, and Labour Rights

Although Turkey does not have an official, national integration policy, programmes are implemented by many national and international actors[xxiii]. Most programmes focus on education and health[xxiv], as Syrians have free and broad access to these services[xxv]. Despite Syrians having the right to work, obtaining permits is possible with the willingness of the employers, who, however, are reluctant to apply for permits, thus leaving many Syrians without formal work permits[28]. Despite these programmes, Syrians face precarity and vulnerability in their daily lives, notably poverty, lack of social assistance, and unemployment[xxvi]. Out of 3.6 million Syrians, around 1.5 million receive a small amount of monthly cash assistance (around 10-12 euros) on their debit cards.[29]

[27] Interview, lawyer, 4 Dec. 2020, Gaziantep.

[28] Only 16,783 and 65,000 work permits were granted to Syrians in 2018 and 2019, respectively. See: Barthoma et al. 2020, p. 20 available at https://respondmigration.com/wp-blog/integration-policies-trends-problems-challenges-integrated-report-9-country-cases.

[29] This programme, called Emergency Social Safety Net (ESSN) is funded by the European Union, in cooperation with World Food Programme, the Turkish Red Crescent and the Turkish Government. See: ESSN 2019 https://docs.wfp.org/api/documents/WFP-0000104792/download/. and ESNN 2020 https://ec.europa.eu/echo/essn_en.

Under these conditions, shutting down refugee camps located in border provinces (where the most vulnerable are located) forced refugees to return. The authorities gave them the options of either returning to Syria or going into the cities.

> *"When camps were closed down in 2017, 2018 and 2019, there were campaigns for returns. The refugees who had been staying in the camps were those who were unable to work in cities. They were aware that they would not be able to survive outside the camps. Thus, they accepted the financial aid given to them, signed "voluntary" return forms and left for Syria. However, now that they spent this limited financial aid in Syria, they have been trying to re-enter Turkey via illegal routes, often paying smugglers"*[30].

Most of the Syrian refugee population (97,5%) lives in urban areas. Over two million are of working age. Most of them rely on daily incomes from precarious jobs in the informal labour market. Approximately one million Syrian refugees are employed, 95% informally[xxvii]. They face hardships in working places due to labour law violations, including exploitation, low wages, long working hours, and refusal to pay salaries[xxviii]. There is no requirement for minimum wage, pension, paid overtime hours or unemployment benefits.

> *"I was working in construction and employers did not pay me a fair wage. No doubt that being Syrian means to start from a disadvantaged position, thus we encounter job discrimination". (Mahdi's testimony, who returned to Syria in 2019)*

Mahdi also mentioned some pulling factors in Northern Syria:

> *"we have properties, farms and houses in Syria. We, as a family, heard that if none of us are present in Syria, our properties would be seized by the armed groups or "entities". My real reason for returning was to protect my family's properties".*

Another interviewee, Mohammed, linked his decision to return in 2020 to Turkey's hard working conditions and his caring responsibilities:

> *"In Turkey, my working hours were too long. I did not have any pension. I did not have any rights. After the pandemic started, I was not able to find any job. The rent prices were too high. Electricity and water bills were high also, almost at the same level of rent. Unlike the first years, we were not able to get aid from humanitarian organisations. Moreover, my sick father in Syria passed away. My mother and siblings remained alone. I had to return due to all these reasons".*

As Mohammed said, the COVID-19 pandemic and its consequences have disproportionately affected Turkey's displaced communities[xxix]. The pandemic deepened the economic recession, increased unemployment, caused job closures in informal sectors and raised inflation rates as well as the cost of shelter and food. Like poor Turkish citizens, many Syrians faced the risk of not accessing adequate income to live in dignity[xxx].

[30] Interview, civil society representative, 1 December 2020.

The pandemic worsened the already growing challenges in having access to health, education, housing, basic needs and informal employment. Syrians who returned in 2020 explain how the pandemic, through its lack of opportunity, forced them to make this choice.

> *"During the pandemic, I lost my job. I had been working as a car washer. I had been making daily earnings. Then, things happened. I decided to return because of unemployment, my accumulated unpaid rent, electricity bills, failing to buy proper clothing for myself and my children. However, we do not have any hope for the future in Syria". (Abdullah's testimony)*

A Syrian humanitarian predicts that:

> *"More Syrians, particularly those owning land would be returning in the coming months because of pandemic-related restricted job opportunities in Turkey. Also, life in Syria is cheaper than Turkey, even in war conditions. They would return to low-risk areas, such as those under Turkey's control. But safety (undermined by car bombings and snipers) is still a severe challenge inside Syria"*[31].

## 3.2. Hate speech, discrimination and resentment

Besides economic pressures, the local communities' initial welcoming approach to Syrians turned into hate speech, discrimination and resentment[32] [xxxi]. As elsewhere, refugees are blamed for unemployment, rent inflation, pressure over health and education infrastructures, changes in urban market spaces, rise in petty crimes or employee-employer quarrels. In this context, the government and the main opposition party emphasise the discourse on return since 2018[xxxii] while anti-immigrant stances populate social media platforms[xxxiii].

As the IHD reports, "discrimination suffered in official institutions, hate speech, and the lack of feasible solutions offered by the state to bridge the language barrier also play an important role in this downward spiral."[xxxiv]. Testimonies of hate crimes against Syrian nationals reported in the media are on the rise. At least four Syrians were killed, and 20 were injured[33] as part of hate crimes in the first nine months of 2020[xxxv]. Retaliations also take place against other Syrian nationals' houses, businesses or cars when a crime is allegedly committed by a Syrian.[34]

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[31] Interview, 10 Dec. 2020, Gaziantep.

[32] According to the comprehensive survey Syrian Barometer prepared by Murat Erdoğan, 81.8% of Turkish society is unsympathetic to the idea of coexistence with Syrians and support the following solutions to varying degrees: "Syrians living in safe zones inside Syria" (37.4%); "leaving them in the camps" (28.1%); "deporting them" (11.5%); and "establishing a Syrian-exclusive city" (4.8%) (Erdogan, 2018).

[33] To see media accounts on hate crimes costing life of Syrians (often male and young) https://www.evrensel.net/haber/410688/irkci-saldirinin-adresi-bu-kez-kucukcekmece; https://www.evrensel.net/haber/413966/samsunda-oldurulen-hammaminin-ailesi-o-hepinizin-kardesi-adalet-istiyoruz?a=ad7;

[34] For tensions in Adana, 2019 see https://www.ihd.org.tr/wp-content/uploads/2019/09/20190919_AdanaSube_SuriyelilereSaldirilar.pdf. For tensions in İstanbul see, https://www.ihd.org.tr/istanbul-kucukcekmece-kanarya-mahallesinde-5-yasindaki-bir-cocuga-istismarda-bulunulmasi-ile-ardindan-gelisen-olaylara-iliskin-inceleme-ve-gozlem-raporu/ . For tensions in Sanlıurfa 2018 see Zeynep Sahin Mencutek, "Faith-Based Actors in Şanlıurfa, Turkey: Reducing Tensions Between Host Populations and Syrian Refugee Communities", *Civil Society Review*, 4:1, pp.76-198, July 2020.

Hitam's case illustrates how vulnerability in the informal working sector, public hate speech and discrimination in official institutions might cause the swift forced return of many Syrians:

> *"I got involved in a quarrel. I was working for a restaurant with two other Syrians. Every week, the business owner cut money out of our weekly wage, although we did our job very well. I only asked for my salary; this was my right. I started to discuss with him; he began to humiliate and insult us. Then I could not tolerate more and threw the piece of wood in my hand at him. As a result, I found myself in the police station, then imprisoned for one and a half years. I was given an acquittal decision, but I was deported".*

Ahmad's testimony also illustrates the discrimination and hate attacks targeting Syrians and the severe consequences of forced returns:

> *"My brother and I got on the public bus, but there was not enough credit in our transportation card, only 50 kuruş (cent) less than the necessary amount. We told the driver that we would put a credit at the last station, but the driver provoked us, asked us to get off the bus. My brother reacted. The driver pushed me, I fell, and hurt my hand. Then, my brother attacked the driver; we fought. Then I went to the hospital, took an X-ray and the doctor made a report. I made my way to the police station to complain about the bus driver. In the police station, I turned into a suspect, although the bus driver did not complain".*

These incidents, deportation threats, unjust removal and administrative detention sentences, force many Syrians to abstain from taking action and bringing their cases in front of the Courts. [35] Civil society organisations and the media report that the state authorities tend to defend citizens at the expenses of Syrian nationals.[36] Syrians are concerned that their informal employment may lead to their forced returns even before investigations or trials have been concluded; but they feel obliged to remain silent[37]. In some regions, employers commonly use the threat of police complaints and forced returns to avoid offering proper payment to Syrian workers, particularly the agricultural seasonal workers, making them the most vulnerable. The emergence of right-based grassroots movements among Syrians seems impossible in the increasing authoritarian environment if they do not align their discourse with the government[xxxvi]. Like Turkish citizens, Syrians cannot enjoy their right to freedom of assembly nor organise demonstrations against any act of the Government. They have to get permits from the Governorates to issue press releases, organise meetings or protests[xxxvii]. Such conditions entice government officials to forcibly return as many foreigners as possible.

[35] Many of the violations and hate crimes/attacks are not recorded due to this fear, but it has been rising at an alarming level (IHD 2020a). Journalists who report such hate crimes are under threat, 12 of them were arrested or detained in 2020. The same pressure is also exerted on lawyers and human rights defenders, one lawyer who provided legal support to refugees was obstructed from providing services (IHD 2020a).

[36] See https://www.ihd.org.tr/adanada-polisin-dur-ihtarina-uymadigi-gerekcesiyle-vurulan-ali-hemdan-hakkinda-ozel-ortak-rapor/; https://www.evrensel.net/haber/415018/bahcelievlerde-darbettikleri-suriyeliyi-7-metreden-atan-gaspcilar-serbest-birakildi.

[37] Interview, lawyer, 4 Dec. 2020, Gaziantep; Interview, CSO, 8 Dec. 2020, Istanbul.

### 3.3. Local Initiatives Encouraging Returns

Local initiatives, both formal (from municipalities or humanitarian organisations) and informal (Syrian grassroots initiatives) also encourage Syrian families to return to Northern Syria. One technique used in 2018-2019 was the organisation of municipal campaigns such as in Esenyurt, Istanbul in 2018.

The municipal authorities organised a return campaign, which included 30 trips to the Syrian border to support the return of 3,724 Syrians. For 2019, the municipality had a return target of 25,000 Syrians[xxxviii]. It is not clear whether the numbers were reached or not. After arrival at the border, returnees are assisted by Turkish agencies working inside Syria, who escort returnees under Turkey's military control to Syrian cities. According to sources familiar with the border, informal initiatives launched by Syrian and Turkish cultural brokers are multiplying. They seek to convince families in Turkey to return to Northern Syria where Turkish forces operate. The pro-government media in Turkey widely assert that Syrian cities under Turkey's control are safe places for return.

## IV- Main Grounds For Forced Returns In Practice

Human right advocacy organisations provide details about common grounds of forced returns as noted in the HRW 2019 report:

> *"Syrians said that police or immigration officials told them they were being detained for a variety of reasons, including that they did not possess protection permits [TP cards], that their permits had expired or contained clerical errors, that their permits were registered outside Istanbul, that they lacked work permits, or because of disputes with neighbours. Eleven of those interviewed were registered, and four were unregistered" (HRW, 2019).*

The Administration has multiples manoeuvres to forcibly return those who should not be returned to Syria. The alleged reasons used by authorities can be examined under the four following categories:

- registration-related problems;
- accusation for threatening public order or security;
- terrorism-related charges;
- and, compulsory signatures of return forms and loss of protection status.

The standard practice is that the person is apprehended during a police check, s/he is detained, s/he is forced to sign a "voluntary" return form under stress, and his/her temporary protection status is revoked.

## 4.1. Registration-related problems and the cancellation of temporary protection status of Syrians

The first group of forced returnees is composed of Syrians having problems with their official registration and their temporary protection cards. The PDMMs collect biometric information, including fingerprints, during registration or updates and store them in their Goc-net database: a digital identity system only available to DGMM staff. Some Syrians are not registered on this system (for instance if they have an intention of migrating further) or have not updated their registrations.

Losing the official temporary protection status and the lack of active registration may turn into a justification for apprehension, detention and deportation. Young male Syrians are the main targets: they are randomly stopped by plainclothes police officers who check the ID numbers from the digital identity database to determine whether it is still active.

Another problem related to registration involves Syrians who were first registered in a province other than where they were caught by police and/or detained. Indeed, Syrians in Turkey do not have full freedom of movement, until 2016 they could choose where to settle, but now they are no longer allowed to move or travel to any other province than the one where they first registered. This is an issue as those regions often offer less job opportunities than bigger cities such as Istanbul or Antalya.

⇒ Should they have or wish to travel, Syrian nationals have to secure a travel permit from the PDMM. If they plan to move, they have to prove it is a required movement for health, education and family unification reasons and they are obliged to change their address immediately. Those who moved without permits encountered problems in registering new provinces and accessing health and education services. They also face the risk of losing their temporary protection status or being forcibly relocated to the province they were registered in. Since late 2017, Istanbul and border provinces (Antakya, Gaziantep) suspended registration to deter arrivals (permanently and on an ad-hoc basis, with the oral order of Governorate). ⇐

The most notable crackdown was in the summer of 2019. The Istanbul Governor gave Syrians until 20 August to return to the cities in which they were first registered. Although the Governorate extended the period, internal controls for both Syrian and non-Syrian asylum seekers became stricter. According to the lawyers interviewed, the main grounds for deporting Syrians were denial of the renewed access to registration or not being present in the registered city. Amnesty International noted it as likely that hundreds of people were deported from Istanbul and apprehended while they were working or walking down the street[xxxix]. According to the lawyers and civil society organisations working on refugee rights, the summer of 2019 "*was terrible in rushing deportations, they sent full busses of people from Istanbul to border provinces, then Syria*"[38].

[38] Interview, CSOs, 08 Dec. 2020, Istanbul.

For many, the crackdown of 2019 was political and driven by the necessity to show to the Turkish electorate that the government was "solving the Syrian refugee problem, maintaining order and security" in Istanbul where more than a million migrants live irregularly.

⇒ The Presidency and Istanbul Governorate planned the crackdown without consulting the DGMM to appease the public. Syrians were used as scapegoats for the loss of Istanbul by the government party[39]. In Istanbul, relocations and forced returns are often justified on the apprehended migrants' lack of registration, not carrying identification cards with them or having a role in any other city than Istanbul. This crackdown created concerns in the Syrian refugee community. ⇐

As a human rights defender said, "*the return is like a sword of Damocles hanging over Syrian refugees head, it deepens their precarity and vulnerability. These are well-grounded severe fears in the Syrian community: if they go out without an ID card, they could be stopped by the police and sent to the border*"[40].

Besides registration issues, misdemeanours (such as working without a permit) creates a risk of apprehension and detention for Syrians as it violates Turkish labour law[xl]. However, deportation cases on this ground are quite limited; often, these acts are tolerated or punished with warnings or fines[41].

## 4.2. Accusations of threatening public order

Being a "threat to public security and order" is by far the most common legal ground for forcibly returning Syrian nationals according to lawyers and civil society organisations.

This threat is broadly interpreted by police and asylum authorities. It includes those involved in petty crimes (quarrels) or crimes subject to the penal code (domestic violence, drug, smuggling) and/or those who are subject to judicial investigation, court trial, or imprisonment due to any crime.

> *"Even if there is no actual crime, the suspicion or a complaint is enough for removal and then deportation. If a Syrian is imprisoned for a crime, this person is kept in a removal centre after release. If the person is caught while exiting Turkey by sea or air, this person is also confined in a removal centre"*[42].

Quarrels with a bus driver, an employer or a neighbour might turn into the reason for quick and unlawful relocation or deportation. Even in the absence of harm caused during quarrels, officers legitimise migrants' forced return on the ground of threat to 'public order' and carry out the actual removal extremely fast to prevent any legal intervention. Interviewees mentioned that in some cases even an acquittal decision does not suspend the deportation.

[39] Interview, CSOs, 11 Dec. 2020.
[40] Interview, CSO, 20 Nov. 2020, Gaziantep.
[41] Interview, lawyer, 17 Nov. 2020, Denizli.
[42] Interview, lawyer, 4 Dec. 2020, Gaziantep.

## 4.3. Alleged security threat or terrorism link

Syrians who are suspected of having links or having supported terrorist groups are easily and forcibly returned, even before a Court renders a final decision on the proceeding.

> "*I was detained with the accusation of being a member of an extremist, radical organisation. In fact, during a legal investigation and court process, it was decided that I was innocent. I do not have any close or distant link with any terrorist organisation. Despite the decision of acquittal, I was deported. I had a regular job; I lost everything*".

The Administration takes terror risks very seriously and develops a sophisticated but opaque system for surveillance. In addition to indicating whether the person has any court decisions and criminal proceedings, security codes (*tahdit*) are assigned to indicate multiple 'risky' issues. These include entry bans based on visa-residence permit violation, activities against national security, foreign terrorist fighters, threats to general security, and others[xli]. The codes are not based on publicly available information or legislation. They are instead governed by internal circulars and instructions within the Administration,[43] with data provided by law enforcement units, National Intelligence Organisation, PDMMs and removal centres. Even the mere complaints or social media posts are enough for profiling a person and assigning security-related codes such as "G89" for foreign terrorist fighters and "G87" for general security. Journalists and lawyers estimate that approximately 40,000 foreigners in 2016, and 100,000 in 2018 were issued such codes[xlii]. Syrians are the subject of these coding practices, too. Since March 2016, Syrians are obliged to do "a pre-registration phase to conduct security checks within 30 days, the modalities of which are set out in an unpublished circular"[xliii].

> *"Sometimes, during ID checks, the police notice the YTS code in the database, meaning foreign terrorist fighter. This means that this person is a threat to public order and security. I should say that this YTS code exists in practice. It is not in the Law, the deportation on the ground of YTS draws from the public order/security article (LFIP 54-1-d). Sometimes, when a person goes to the PDMM for renewal of the ID, the officers when they see the YTS code on the registration system, tell the applicant to "wait for a while, we will give your ID", meanwhile they call the police. Then the detention procedures start based on the code. Those who have YTS code in their file are treated differently. They are kept in removal centres up to maximum a year, and then they have to be freed due to the Law. But their IDs are taken. As they cannot be deported to Syria as it is not a safe country, but they are taken back to a removal centre, this time with the Governorate's order. Thus, the Administration tricks the Law"[44].*

As it happens for Turkish citizens, there is no transparency in issuing codes to foreigners. A complaint that "X person is linked to ISIS or YPG", made by anyone, is enough for profiling and assigning to the reported person a YTS code without any judicial assessment. It is almost impossible to change codes even following a lawyer's intervention.

[43] See deportation appeal case in Turkish before Constitutional Court to get insight about the source of G87 code: DGMM's circular dated : Göç İdaresi, 7/12/2015 http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/c16a48d0-0674-4821-a2f4-b1a85f1e9ba4?wordsOnly=False

[44] Interview, lawyer, 04 Dec. 2020, Gaziantep.

⇒ Also, CSOs providing free legal aid to refugees avoid looking after such cases, instead recommend people to find private lawyers, as the topic is sensitive and CSOs do not want to jeopardize their relations with the Administration[45]. ⇐

In these cases, the common practice is to keep apprehended foreigners in protective custody in police stations or in administrative surveillance in removal centres or camps to force the person to accept "voluntary" return due to the lack of any other option. "Voluntary" return forms will be discussed below.

## 4.4. Compulsory signatures of return forms and loss of protection status

Reports and testimonies illustrate that many of the apprehended Syrians had been coerced or misled by officers or translators in signing "voluntary return" documents[xliv]. One interviewed returnee, Hitam, explained:

> *"After the trial, the police sent me to the PDMM, then the refugee camp. After staying here for 5 days, I was given a "voluntary" return form. I had to sign it. I did not have any other option. I handed over the TP card; I have fingerprints. Then, I started to look at a new life in Syria".*

Jamal had a similar experience, "*I was given the "voluntary" return form. I did not have any other option than signing it. If I did not sign it, I would have stayed in that "assembly camp".*

Although Hitam and Jamal did not face physical violence, others did. When apprehended, some migrants who refused to sign the forms that they were not even allowed to read, were beaten and threatened with violence[xlv]. The Istanbul Bar Association reported that, at the time of the 2019 crackdown, they had received within two months (July and August) 180 complaints of police misuse of "voluntary" return forms[xlvi]. The Interviewed lawyers and CSO representatives in different provinces confirmed such unlawful practices, including using harsh detention conditions in police stations and removal centres to compel migrants into signing "voluntary" return forms. Occasionally, they even heard cases of officers signing forms on behalf of a foreigner in Istanbul's removal centres.

In general, Syrians are not aware of the content of the return form. CSOs representatives mentioned cases of Syrians who were cheated by border officers, who took their TP cards and forge their signature or coerced them into signing their return forms. However, in these cases, the persons concerned did not understand the content of the form.

CSO representatives denounced such practice, adding that there were even taken place during arrivals:

> *We met with a Syrian woman with two mentally disabled daughters. They sought our help in accessing health services because the girls were suffering from mange. At first, they managed to enter Turkey by paying smugglers, but they were apprehended by some unknown person and forced to sign a document. This document had a small paragraph giving the signatory's consent to return voluntarily. We had never seen ocument before. Due to this document, we*

[45] Interview, CSOs, 08 Dec. 2020, Istanbul; Interview, lawyer, 10 Dec. 2020.

*have not been able to help this family, who failed to complete their registration and access the health system. For a while, we found medicine by using our networks. After a short time, the police came to their house to deport them.*

According to state officers, the accusations about using force in signing "voluntary" return forms are not true. The DGMM explained that *"a UNHCR representative primarily signs the form but, in her/his absence, a representative from Kızılay (Turkish Red Crescent) signs it'. If both of them are not present, it is signed by a CSO representative who is approved by the Governorate of the Governorate's Human Rights and Equality Commission staff"* (DGMM 2019). The testimonies and statements of lawyers and CSOs refute this explanation:

*The Law only recommends the presence of organisations such as UNHCR and Kızılay for monitoring purposes, but PDMMs always interpret the Law in their favour and use discretionary power. I have never seen these organisations' signatures in the "voluntary" return forms in Gaziantep, Urfa and Istanbul. Maybe in Izmir, Kızılay's signature exists in the forms, perhaps in the past they did monitor the process, but since the obsession to return Syrians increased , neither Kızılay nor UNHCR representatives signed a paper. UNHCR has no presence in the PDMMs since 2018"*[46].

A CSO interviewee said that "*UNHCR, but not Kızılay, does monitor "voluntary" returns in general by collaborating with PDMMs*"[47]. Another one confirmed that UNHCR made occasional visits to PDMMs or removal centres for monitoring purposes, but only to give information to families planning returns. UNHCR representatives complain about not being informed about returns in due time.

Besides the lack of involvement of independent monitoring agencies, there are serious obstacles in accessing justice: migrants don't get information about their situation, can't easily get legal aid, and even when they do they often can't meet their lawyers in person. Moreover, the timeframe for lodging an appeal is very short (7 days) and there is no possibility to apply for asylum.[xlvii]

Signed "voluntary" return forms givethe Administration important safeguards during appeals, as reported by interviewed lawyers and CSOs representatives. One of them said that "the Constitutional Court neither examines the appeal folders very well, nor is involved in these issues. When the Court sees a "voluntary return form" signed by a Syrian, it does not even ask for any other pieces of evidence to object to the decision. And even if the administrative court annuls the decision, which might take weeks, the person has already been deported (I. lawyer, 17 Nov., Denizli). A CSO female representative confirmed that if there is a *""voluntary return form, it is very difficult to prove that the return was carried out against a person's will. She added that "the courts want to see evidence, testimonies are not enough, but the signed "voluntary" return forms seem to be an adequate evidence for the courts not to consider it a forced return*"[48].

[46] Interview, lawyer, 04 Dec. 2020, Gaziantep.
[47] Interview, CSOs, 08 Dec. 2020.
[48] Interview, CSOs, 08 Dec. 2020, Istanbul.

According to lawyers in Istanbul and Gaziantep, in 2020 there have been improvements regarding the "voluntary return forms": while some believe it is due to the pandemic, others relate it to the 2019 Amnesty International Report. A lawyer said that: "*after the Amnesty report, they (PDMM officers) do not push persons in detention to sign forms and do not manipulate them anymore. Before that, they were either hiding the part of the paper about return or cheating people. Lawyers and returnees also mentioned that the 7-day term, as in the legislation, was not respected before, and people were forcibly returned after 4 or 5 days. Now we do not hear of such practices. Before returning individuals, now they wait for seven days for possible appeals*"[49].

She added, *"as a lawyer, I used this report as a proof of unlawful practices. The court became anxious because of such reports. Perhaps this is the reason for improvements. The Administration is careful in deporting Syrians, they do not do it anymore; they do not push for "voluntary" return forms*"[50].

Her statement gives hope about the impact of international pressure on the treatment of migrants and asylum seekers in Turkey. Moreover, DGMM issued a public statement objecting to the report, showing that it takes the issueseriously. Informants consider that DGMM always has a defensive stance and objects to claims about refoulement. The interviewed Amnesty International representatives in Brussel told that they were invited by the DGMM for a conversation after their report, but the meeting was cancelled due to the pandemic.

Not only in forced returns but also in the **"voluntary" returns**, the lack of monitoring is clear. Testimonies from interviewees are illustrative. Mahdi, interviewed in Syria, said that:

> *"To return, I made my own decision; I did not consult anyone. I applied through the provincial PDMM, handed over my TP identity card, then started my journey to Syria".*

Farid, who is now living in a Syrian town, noted that:

> *"When I decided to return, I went to the gate at the border and told them my intention to go back to Syria. They asked me to hand over my TP card. I did it, gave my fingerprint, then they allowed me to exit".*

As seen, returnees do not mention any information session or the involvement of international NGOs in monitoring returns. Returnees often want to "*keep the option of re-entering Turkey*" but it is not easy as they have to pay large sums to smugglers. As Jamal said "*conditions in Syria were tough. I was seeking an opportunity to come back to Turkey. Then it happened, I returned to Turkey with the assistance of smugglers.*" Similarly, Hitam recalls "*I returned with the help of smugglers; it cost me 1500 dollars. I reactivated my TP card.*" Hitam was lucky in being able to reactivate his TP card with the special permit of the Governorate for returnees, while Ahmad had to pay for the service: "*Finally, I returned to Turkey. I applied to reactivate my TP card. There were brokers for this issue; they asked 3000 Turkish Liras (TRY)*."

[49] Interview, Lawyer, 5 Dec. 2020, Gaziantep.
[50] Interview, Lawyer, 5 Dec. 2020, Gaziantep.

⇒ Some interviewed CSOs and lawyers said, however, that "*if there is a deportation order or a "voluntary" return signature, there is no way that this person can reactivate their TP card, making them irregular migrants."* Testimonies of Syrians who have re-entered show it is possible. ⇐

A CSO in Istanbul reported that since 2017 they had helped 300 applicants to reactivate their TP cards after they returned to Syria for several reasons (family, expired travel permits, checking properties) and re-entered Turkey and came back to Istanbul. CSOs make individual applications to the Istanbul PDMM, after interviews they often receive a positive response for the reactivations of TP cards for women and children if they had no security code issued over their registration. The positive answer rate is lower for men, sometimes PDMM did not respond at all[51]. Also, 'brokers', as Ahmad paid, might have assisted reactivating TPs with payment.

## V- The Lack of Post-Return Monitoring Mechanisms and Protection for returnees

Conditions inside Syria are not yet conducive for safe, sustainable and dignified returns. Syria meets neither the safe country standard nor the UNHCR protection threshold.[52] Full political protection is not available. Initial reasons for forced migration from Syria remain the same in the largest part of Syria. Fighting and violence continue [53], access to decent livelihoods are limited, the service infrastructure in and health, sanitation, education, sanitation, and housing infrastructures haves not yet been yet rebuilt to enable sustainable returns. Therefore, advocating for returns to Syria is still premature.

Moreover, Turkey's intervention in Syria, particularly in Northern Syria continuously shapes its return and post-return policies. Indeed, Turkish military cooperated with the Syrian National Army on four operations[54], aimed at removing Kurdish Forces from the border region- forces who are deemed to be a terrorist organisation by Turkey. So-called 'safe regions' under Turkish military control were created after each operation, to enable border control[xlviii]. The safe regions are also used to keep internally displaced people (IDPs), thereby providing humanitarian aid with the support of international organisations like UNHCR, thus preventing new refugee flows to Turkey. The last operation, in October 2019, explicitly intended to speed up Turkey's plan to create a "safe zone" in Northern Syria where Syrian refugees might be repatriated[xlix]. Through these operations, Turkey has built a zone of control and rebuilt Syrian towns at the border. Turkish state agencies and a few CSOs, cooperating with local Syrian actors, provided services in camps for internally displaced people and rebuilt hospitals, schools, mosques, universities and other infrastructure as well as local councils.

[51] Interview, CSOs, 08 Dec. 2020, Istanbul.

[52] *Protection Thresholds and Parameters for Refugee Return to Syria*, issued by the UN in February 2018. https://www.consilium.europa.eu/en/press/press-releases/2020/06/30/brussels-iv-conference-on-supporting-the-future-of-syria-and-the-region-co-chairs-declaration/#.

[53] https://www.consilium.europa.eu/en/press/press-releases/2020/06/30/brussels-iv-conference-on-supporting-the-future-of-syria-and-the-region-co-chairs-declaration/#

[54] code-named *Fırat*/Operation Euphrates Shield (August 2016–March 2017); *Zeytin Dalı*/Olive Branch (2018) and *Barış Pınarı*/Peace Spring (October 2019)

Turkey seeks to create a political and societal order and "permanent buffer zones" under its control in Northern Syria due to its own geopolitical interests and ideational visions. As a consequence, Turkey controls returns selectively by, for example, preventing Kurds to return to their places of origin while resettling IDPs from other regions on the lands of Kurds[l].

With these interventions, Turkey turned into "the main international actor engaged in actual reconstruction in Syria"[li]. Its actions are mainly unilateral with the tacit approval of EU, international organisations and other global powers such as Russia. The **EU progress report** notes that Turkey "brought in further reinforcements to the region after the last operation". The Report adds that "Turkey cooperated with the UNHCR and initiated a regional dialogue regarding the conditions for safe, voluntary and dignified return of Syrian refugees."[lii]. Turkey-UNHCR cooperation for returns has not been mentioned in any other document. Humanitarian workers serving inside Northern Syria said that "*UNHCR collaborated with CSOs from Turkey in the education field for meeting needs of IDPs, but we have not observed any intervention from the UNHCR regarding returns*"[55]. Additionally, a scholar working closely with the UNHCR said that the UN agency is not involved nor monitors any returns. Still, they have other projects in Northern Syria such as EU Member States' funded projects to reconstruct housing in Northern Syria in cooperation with the Turkish authorities and government supported CSOs[56]. EU countries, such as Germany, do not react to Turkey's control inside Syria, either having no other option or pragmatic approach for the deportation of Syrian criminals from EU countries back to Syria.[57] Observers predict that the EU would not seriously object if Turkey decides any repatriation, and Turkey will not decline if international organisations offer help[58].

Many returnees do not feel safe and do not leave their homes in peace. Farid said that:

> *Particularly at nights, there is no safety. There are robberies, kidnappings, lootings. No electricity either, we only have it four hours a day. Due to safety issues, people are afraid to send their kids to school. Only wealthy families can hire private teachers.*

Mohammed added that:

> *Attacks in crowded places continued. PYD affiliates use car bombs to attack markets. Free Syrian Army members with weapons walk among people, causing fear and panic, particularly for our children.*

Abdullah witnessed that:

> *When I returned to Syria, I found terrible living conditions, poverty, weapons, fear and much worse things. Day by day, life gets worse. We have not been able to find security and refuge. My children live in fear and are illiterate. There is no education, only the sound of shelling and shootings.*

[55] Interview, 10 Dec. 2020, Gaziantep.
[56] Interview, CSOs, 11 Dec. 2020.

[57] https://www.dw.com/tr/su%C3%A7lu-suriyeliler-t%C3%BCrkiyenin-kontrol-etti%C4%9Fi-b%C3%B6lgelere-g%C3%B6nderilsin/a-55895190; https://www.dw.com/tr/almanyada-suriyenin-kuzeyine-s%C4%B1n%C4%B1r-d%C4%B1%C5%9F%C4%B1-uygulans%C4%B1n-%C3%A7a%C4%9Fr%C4%B1s%C4%B1/a-55757856

[58] Interview, 11 Dec. 2020.

Not only is there a lack of safety, but there are also difficulties in accessing livelihoods due to the high prices of basic needs items, limited working opportunities, low income, lack of and inadequate essential services (electricity and water). International organisations report that "the COVID-19 and economic crises further aggravated the already dire livelihoods situation in northwest Syria". Livelihoods were reported to be the highest priority needs for each population group (host communities, IDPs, returnees) according to a September report by a UN partner. Another risk is also the further reduction of purchasing power[liii].

Interviewed returnees inside Syria mentioned the same problems. Mahdi told that:

> *"When I returned to Syria, I found that food, hygiene products, and basic needs are quite expensive. There is no water and electricity. If you do not have any relatives abroad who can support you, the financial side is terrible. To meet our needs, we have to work days and nights. Bombings continue, we are not able to go out freely. …I want my children to be able to continue their education. But schools are not working.*

Similarly, Abdullah mentioned his experience,

> *"I may list difficult living conditions including hunger, high prices in basic needs, lack of safety/security, the inadequate services at hospitals and the lack of proper medical equipment. Life is very challenging. We do not expect to stay here; we only want protection from God".*

Returnees do not have access to any return assistance. They can only count on their social networks inside Syria and relatives in the diaspora to survive Mahdi said that "my relatives and brother who live in Turkey and Germany send me money to rebuild my house, rent a store to start to work and cultivate our lands." Some Syrians adapt to the conditions upon return and emotionally feel better in Syria: "*in Syria, at least, I live in the house of my own family. I do not pay rent. There are no job opportunities, but we have agricultural land, we cultivate it to make livelihoods. At least, we do not encounter humiliating glances anymore*."

### *Women Returnees*

Although the majority of returnees are young men, there are also women. In the 2019 crackdown, authorities did not differentiate between men, women and children. A interviewed lawyer said:

> *The majority of deportees are men. But I also observed women who got involved in prostitution, being deported. It can also happen that the entire family, including women and children, gets involved in a street fight, so the police place all of them in the PDMM to be deported.*

A human rights advocate reported two cases concerning women returnees. The first case happened in Bursa, a city in north-western Turkey:

> *A Syrian family -parents and three kids- was working as shepherds and housekeepers in a farmhouse. We know them from our network. Someone, probably a neighbour complained about them for an unknown reason. They were taken to the Osmaniye camp, a deportation order was issued for the wife, the husband and the small kid, but not for the young boys of 14 and 16 years old. Luckily, the order was not executed. Now, we are trying to help this family. They are not able to move, travel or do anything due to this deportation order. We mobilised the lawyers, consulted with the DGMM, but there have been no results so far.*

The second concerned a returnee who eventually re-entered Turkey:

> *I interviewed a woman in Maras a year ago, learned that she had been deported to Syria, then she managed to re-enter Turkey as she had siblings who needed her to take care of them. Now, she doesn't have any documents. She works as a cleaner in a CSO to earn a little money. She is not able to travel at all; she is not able to access any services.*

The risk of forced return of Syrian sex workers over the ground of threatening public health is evident, but not reported. Sex workers remain invisible. Many of them are not registered and do not have any documents. They avoid encounters with the police as much as possible. It is almost impossible for them to claim their rights when they face violence. They are terrified that if they are apprehended when doing sex work, they might be immediately deported. If they were deported, life in Syria would be worse, even impossible (risk of rape, murdering)[liv].

# VI- Conclusions

This research started with the story of Ahmad, who had been living in Idlib upon his return from Turkey. Since his forced removal, however, he was dreaming of returning to Turkey and eventually succeeded. Ahmad was relatively luckier than some fellow Syrians as he did not face persecution. According to journalistic accounts, a Syrian young man, who was deported from Istanbul to Syria in August 2019, was taken hostage by Al-Nusra in Idlib. He was released when his family paid a ransom and re-entered Turkey, then in a few months he was detained again by the police and deported to Azez, Syria.[59] Another Syrian refugee, Musaab, father of two, was deported on the ground of "being a threat to public security" before the finalisation of his Court case. He is now in prison in Damascus, while his family remained in Turkey.[60]

While it is easy for Turkish administrators to apprehend Syrians, make them sign "voluntary" return forms under threat, cancel their temporary protection status and escort them on the other side of the border, this process is a matter of life and death for Syrian refugees like Mosaab. The stories of Ahmad and others show that Syria is not a safe place to return tod because there is still a clear risk of persecution. The ongoing fight between the Syrian government and other militant groups and the lack of proper services and infrastructure constitute an obstacle to plan any safe, "voluntary" and dignified returns. The choice of returning to Syria is never really "voluntary": those who make it are forced to do so because of the obstacles they encounter in accessing sustainable livelihoods, dignified life, and hope for a future in Turkey or because they are misled by Turkish authorities.

# VII- Recommendations

The following recommendations are directed at the political authorities of Turkey, to international actors including the United Nations and European Union.

## 7.1. Political authorities in Turkey

- Turkey must implemented more structured integration policies and urgent measures to avoid social tensions and growing discrimination against Syrians. This includes stopping the scapegoating of Syrians through political rhetoric and discourse.
- When conditions for safe and dignified returns mature inside Syria, Turkey, in cooperation with the international community, including the UN and the EU, will have to seek for international collaboration and transparency in "voluntary" returns of Syrian and non-Syrian asylum seekers. Rather than a unilateral approach, as Turkey adopts in Northern Syria, international cooperation at all stages of the return process is a prerequisite to achieving a sustainable return.

[59] https://multecimedyasi.org/2020/03/14/turkiyenin-sinir-disi-ettigi-multeciyi-el-nusra-rehin-aldi/.

[60] https://www.dw.com/tr/g%C3%B6n%C3%BCll%C3%BC-d%C3%B6nd%C3%BC-denilen-suriyelinin-cezaevinde-sonlanan-hikayesi/a-54088800.

### *Specific: Legislative related*

- Temporary protection status carries an inherent risk of mass returns. There is a need for more precise status (refugee status) or an adjustment of the temporary protection status to ensure access to basic services and guarantee the right of residence and to avoid precarity.
- The derogation from the *non-refoulement* principle on the ground of being a threat to "public security, public order and public health" (in the asylum law) is used by Turkish migration authority (DGMM) to justify forced returns of Syrian and non-Syrian asylum seekers in Turkey since 2016. There has to be transparency, consistency and accountability in deciding about and acting upon these exceptions to the principles of *non-refoulement*.
- The Administration has extraordinary discretionary power that should be limited to enhance justice, fairness and rights-based perspectives. The interventions of the Constitutional Court can have a positive impact over restricting this power.
- Detention of asylum seekers under the banner of removal should only be used as a last resort (only in the cases of proof of severe criminal activity) and should be in full compliance with international human rights law.
- Restrictions over internal mobility and renewing registrations should be eliminated. Syrians should be given rights to move and register in provinces they find jobs and other opportunities.
- Migration bureaucracy should avoid creating legal limbo, irregularity, exploitability and conditions for forced returns by cancelling Syrians' IDs (using any trivial reasons to do so, such as being involved in a quarrel or returning voluntarily and later re-entering Turkey.).
- Rights-based CSOs should be supported, instead of being the targets of attacks and retaliation for their activities, in order to increase their capacities, awareness, and expertise in monitoring, making campaigns, and pushing for the access to justice regarding returns.
- The government needs to revise the restriction for registration: for example, in some provinces like Istanbul, where many Syrian and non-Syrian asylum seekers live, the registration is critical for accessing education and health services as well as to lessen precarity and to avoid, to a certain extent, being apprehended, detained or forcibly returned;
- The government needs to revise the procedures for obtaining required permits, such as work and travel permits, and for the functioning of CSOs working with refugees and migrants, such as removing intense paper work imposed on CSOs for recruiting staff and control/barriers in their field work, e.g. requirement of taking permission from the Governorate for house visits.

### *Specific: Practice related*

- In the case of any forced returns, authorities should ensure full, independent judicial oversight of deportation decisions and proceedings. No one should be forcibly returned before the end of the judicial trial process. Officers should respect the suspensive effects of appeals against removals.
- Human rights lawyers and independent observers should be granted full and unconditional access to detention centers, camps and police states.

- Barriers over registrations of newly arrived Syrians in some provinces, such as in Istanbul, should be eliminated to prevent irregularity (lack of documentation) of asylum seekers, increasing the risk of tensions with local populations and the risk of forced return.
    - The DGMM must allow access to CSOs, NGOs and UNHCR to monitor the signing procedures of return forms.
    - The right to return should be respected, but adequate information about the home country conditions should be provided to those planning to return.
    - Some Syrian refugee community organisations, particularly those in the border cities developed good relations with the local CSOs which collaborate with the local government from the Government Party. They should be given voice in discussions around returns and return monitoring mechanisms.

## 7.2. International Actors

***Urgent need for monitoring mechanisms:***

Spontaneous returns of Syrians continue from Turkey, Jordan and Lebanon. An estimated 15,000 refugees and 223,000 IDPs returned to some areas in Syria in 2020 (Brussels IV, 2020). The Syrian Government made calls for refugee returns in a Russian-sponsored conference on returns (on 11-12 November 2020) by claiming that large parts of Syria are relatively peaceful for returns and rebuilding (Cook, 2020). There is a lack of national and international monitoring and post-monitoring mechanisms, while neighbouring hosting countries seek to speed up premature returns. Conditions inside Syria are not yet conducive for safe, sustainable and dignified returns. Immediate political resolution and development initiatives for Syria are necessary.

***Provide more resettlement and complementary pathway opportunities for better responsibility-sharing:***

Among three durable solutions, resettlement should be promoted the most as it is an ideal form of responsibility-sharing by the international community and Syria's neighbouring host countries. Resettlement quotas, which are extremely low now, have to be reactivated to seek genuine collaboration with these countries in hosting refugees and avoiding this 'return obsession.' Other complementary pathways – humanitarian visas, family reunifications, third country scholarships-[61] can be also mobilised to ease the burden for refugee hosting countries.

[61] https://reliefweb.int/sites/reliefweb.int/files/resources/63759.pdf

### *United Nations*

**The UNHCR** should take a more active role in the whole return process. Specifically, it should be involved in ensuring the voluntary character of repatriation (via information campaigns, interviewing, counselling) as well as returnee monitoring and reintegration.

**The IOM** should increase its involvment by:

- implementing its framework for voluntary return and reintegration;
- using its leverage and resources for ensuring 'safe, dignified and voluntary returns'.

### *European Union*

**The EU** has played an important, yet ambiguous, role in Turkey's migration governance and continued its relevance via extensive funding and agreements for supporting Syrian and non-Syrian asylum seekers.

- The EU's increasing obsession of returns, as reflected in the New Pact on Asylum and Migration, and its equation of "protection and returns" undermines its credibility vis-à-vis Turkey if it intends to object forced returns from Turkey to Syria. The EU should revise ongoing mechanisms and practices, such as the 2016 EU-Turkey statement, hotspots in Italy and Greece, pushbacks in the Mediterranean, readmission agreements, which are worsening the situation in frontline countries (such as Turkey and Lebanon) and risk increasing returns and chain *refoulements*.
- Collaborate with Bar Associations' Refugee Rights Commissions and their Legal Clinics, by actively engaging with them, as they have a good understanding of informal and unlawful practices about forced and so-called "voluntary" returns.
- The EU funding is critical for national human rights organisations to be able to provide legal assistance to asylum seekers via lawyers. The EU projects for legal aid, including those related to following up on deportation orders, treatment in removal centres and seeking justice, have to be continued, their durations should not be limited to 8 months in order to enable sustainability and expertise accumulation given Turkish lawyers interest in asylum cases.
- The EU should use its diplomatic tools to put pressure on Turkish government to stop shrinking the civic space of political and human rights organisations working with migrants.

# Annex: Research methodology/Data Collection

For the desk-based component, researchers consulted: the Turkish language media and civil society reports, documents published by the migration authorities, as well as UN and EU reports, international NGO reports, Syrian and Turkish NGO sources, academic studies and international media sources, formal legislations texts, the statistics of Turkish migration authority (DGMM), and publicly available decisions from the Constitutional Court regarding forced returns.

For the field research, two sets of interviews were conducted in November and December 2020 with the support of the local research assistant. Firstly, we conducted semi-structured interviews (n=7) with four persons in Northern Syria who returned from Turkey in the last two years, three persons who forcibly returned to Syria and then re-entered Turkey using irregular channels. Lawyers and CSOs were also asked to share the stories of their beneficiaries who were returned. Secondly, we conducted 14 background interviews with lawyers (3), national human rights advocacy/solidarity groups (3), humanitarian organizations operating cross-border operations (3), scholars (2), informal local Syrian-led initiatives (2), international human rights groups (1). All interviews are anonymised. As there are partial or competing pieces of information from different sources about actual practices, the triangulation strategy is followed up to test validity through information convergence.

The data collection has some limitations for three reasons. First, there are no official statistics on the returns to Syria except the numbers occasionally shared by the Ministry of Interior or DGMM officers during press releases. Second, as refugees' returns to Syria are a sensitive topic, relevant actors, like the lawyers and CSO staff, are hesitant to share their experiences and observations due to confidentiality and safety concerns. Securing interviews with staff from IOM, UNHCR, EU development agencies was not possible. Authors listened to some representatives in webinars and raised questions about returns and asked CSOs about these IOs interventions. Thirdly, due to the pandemic and related lockdowns, access to refugee informants are more limited than ‘normal’ times.

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