

# IMMIGRATION DETENTION IN FRANCE: LONGER, MORE WIDESPREAD, AND HARDER TO CONTEST



GLOBALDETENTIONPROJECT



## **COUNTRY REPORT**

### **IMMIGRATION DETENTION IN FRANCE:**

LONGER, MORE WIDESPREAD, AND HARDER TO CONTEST

*OCTOBER 2018*

## THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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**Front cover image:** Activists from La Cimade stage a protest against France's controversial new legislation—dubbed the *Code de la honte* ("code of shame")—outside the Paris National Assembly, April 2018. © Célia Bonnin

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## GLOSSARY

<b>CESEDA</b>	<i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> (Code for Entry and Residence of Foreigners and Right of Asylum)
<b>CGLPL</b>	<i>Contrôleur général des lieux de privation de liberté</i> (Controller-General for Places of Deprivation of Liberty)
<b>CPT</b>	European Committee for the Prevention of Torture
<b>CRA</b>	<i>Centre de rétention administrative</i> (Administrative detention centre)
<b>CRC</b>	Committee on the Rights of the Child
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>JLD</b>	<i>Juge des libertés et de la détention</i> (Judge of liberty and detention)
<b>LRAs</b>	<i>Locaux de rétention administrative</i> (Places of administrative detention)
<b>NGO</b>	Non-governmental organisation
<b>OFII</b>	<i>Office français de l'immigration et de l'intégration</i> (French Office of Immigration and Integration)
<b>OFPRA</b>	<i>Office français de protection des réfugiés et des apatrides</i> (French Office for the Protection of Refugees and Stateless Persons)
<b>OQTF</b>	<i>Ordre de quitter le territoire français</i> (Order to leave the French territory)
<b>PIE</b>	<i>Pôles interservices éloignement</i> (Interservice removal hubs)
<b>PAF</b>	<i>Police de l'air et des frontières</i> (Border police)
<b>UAM</b>	Unaccompanied minor
<b>UN</b>	United Nations
<b>UPR</b>	Universal Periodic Review



## KEY CONCERNS

- New legal provisions double the maximum length of immigration detention to 90 days and allow for the re-detention of people shortly after being released from a previous stay in detention.
- The new provisions fail to prohibit the detention of accompanied children, contrary to recommendations from national and international human rights bodies.
- A new asylum law adopted in 2018 lacks important safeguards for people seeking protection, which observers fear could lead to widespread detention of asylum seekers.
- Increased recourse to videoconferencing presents serious obstacles to mounting effective detention appeals.
- In the overseas territory of Mayotte, which deports thousands of people annually, there are exceptions in the application of immigration law, limiting procedural safeguards and leaving people vulnerable to abusive detention conditions.





## 1. INTRODUCTION<sup>1</sup>

France has one of Europe's oldest—and largest—administrative immigration detention regimes. Since 1981, the year it adopted its first law explicitly providing for immigration detention, the country has passed some 30 immigration laws.<sup>2</sup> In 2017, the country placed 46,857 people in immigration detention, 42 percent of whom were held in overseas territories<sup>3</sup> (by way of comparison, in the United Kingdom, during the year ending in March 2018, approximately 29,000 people “entered detention”).<sup>4</sup> Detainees in France spent on average 12.8 days in detention, far below the 45 days legal limit in place at that time. France operates 24 long-term immigration detention centres, euphemistically labelled *centres de rétention administrative* (“administrative retention centres”), which have a total capacity of 1,543 beds.<sup>5</sup> The country also operates 26 short-term administrative detention facilities called *locaux de rétention administrative*. In 2018, the Interior Ministry announced plans to boost bed space in CRAs by 450 during 2019.<sup>6</sup>

Although European Union (EU) law allows member states to detain migrants for up to 18 months for deportation purposes,<sup>7</sup> France retained—until recently—one of the lowest limits among EU member states (along with [Iceland](#) [42 days] and [Spain](#) [60 days]). In 2018, however, the situation changed significantly—prompted by Europe's “migration crisis”—with the adoption of controversial new legislation

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<sup>1</sup> The Global Detention Project would like to thank Romane Auzou for providing research assistance for this report.

<sup>2</sup> F.N. Buffet, “Rapport n° 716 (2014-2015) fait au nom de la commission des lois, déposé le 30 septembre 2015, Projet de loi relatif au droit des étrangers en France: Annexe 4 - Les lois sur l'immigration depuis 1980,” Sénat, 30 September 2015, <http://www.senat.fr/rap/14-716/14-716.html>

<sup>3</sup> Unless otherwise indicated, detention statistics in this report come from the latest joint NGO report: Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>4</sup> Home Office, “National Statistics - How Many People are Detained or Returned?” 24 May 2018, <https://bit.ly/2AgQaTl>

<sup>5</sup> République Française, “Budget général, Annexe au projet de loi de Finances pour 2019: Immigration Asile et Intégration,” <https://bit.ly/2Czn1Wk>

<sup>6</sup> République Française, “Budget général, Annexe au projet de loi de Finances pour 2019: Immigration Asile et Intégration,” <https://bit.ly/2Czn1Wk>

<sup>7</sup> European Parliament and the Council of European Union, “Directive 2008/115/EC of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals,” <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>



which, *inter alia*, doubles the detention limit to 90 days and reduces the time frame to apply for asylum from 120 days to 90 days.

Many civil society organisations and national human rights institutions challenged the new law, with some critics calling it the *Code de la honte* (“code of shame”). The French ombudsman said, “Contrary to the discourse that everything should be done in favour of asylum seekers, they are in fact badly treated by this project.”<sup>8</sup> According to the ombudsman, the accelerated asylum procedures will “impose impossible deadlines on asylum seekers ... which risks causing asylum seekers to lose their rights to appeal.”<sup>9</sup>

Another recently adopted law, the March 2018 asylum bill, also came under sharp criticism because of fears that it may lead to widespread detention of asylum seekers who are awaiting transfer to another EU country under the Dublin III procedure. The law, which allows for the detention of people who have not yet been served an expulsion order, represents a major departure from previous French asylum protection policies.

French NGOs are present on a daily basis inside the *centres de rétention administrative* (CRAs) to provide legal and other forms of advice to detainees.<sup>10</sup> Each year, they publish joint authoritative analyses of laws, policies, and practices, as well as detailed information on every detention facility. While having a permanent civil society presence in immigration detention centres is not wholly unique to France (in [Lebanon](#), for instance, Caritas has had an office in the country’s main immigration detention centre), the French system seems to stand apart from others in the breadth of involvement of NGOs inside its 24 long-term facilities. As a result, there is a tremendous amount of readily available information about operations at detention centres, which is exceedingly rare.

In the French overseas territory of Mayotte (part of the Comoros archipelago in the Indian Ocean), the French Constitution and successive immigration laws authorise important derogations to the application of immigration law. Local authorities expelled some 60 people a day from Mayotte during 2016 (with most denied access to a lawyer or judge before their expulsion)<sup>11</sup> in defiance of the French ombudsman’s recommendations as well as the European Court of Human rights’ jurisprudence on

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<sup>8</sup> “Pour faciliter l’éloignement, on va désormais pouvoir placer en rétention administrative des personnes qui sont en situation régulière et ne font pas l’objet de mesures d’expulsion,” in M. Baumard, “Pour Jacques Toubon, “le demandeur d’asile est mal traité” par le projet de loi sur l’immigration,” *Le Monde*, 23 February 2018, <http://bit.ly/2tERa2H>

<sup>9</sup> “Pour faciliter l’éloignement, on va désormais pouvoir placer en rétention administrative des personnes qui sont en situation régulière et ne font pas l’objet de mesures d’expulsion,” in M. Baumard, “Pour Jacques Toubon, “le demandeur d’asile est mal traité” par le projet de loi sur l’immigration,” *Le Monde*, 23 February 2018, <http://bit.ly/2tERa2H>

<sup>10</sup> Ministère de l’Intérieur, “Les associations intervenant dans les centres de rétention administrative (CRA),” 3 March 2014, <https://bit.ly/2lCdsoZ>

<sup>11</sup> E. Carver, “Mayotte: The French Immigration Frontline You’ve Never Heard of,” *IRIN News*, 14 February 2018, <https://www.irinnews.org/feature/2018/02/14/mayotte-french-migration-frontline-you-ve-never-heard>



*Toulouse detention centre's open communal space, with an NGO's office (La Cimade) in the background. (DDM, F. Charmeux)*

the right to access an effective remedy.<sup>12</sup> Although it has a population of less than 250,000, Mayotte manages to deport nearly 20,000 people each year: 17,934 in 2017 and 19,488 in 2016.<sup>13</sup>

In many countries the language of immigration detention can appear to be opaque or misleading.<sup>14</sup> In the case of France, it crafted the terminology *rétention administrative* (“administrative retention”) as early as 1981, when it adopted its first immigration detention provisions. While some countries, including [Argentina](#), have adopted this language, French-speaking countries like [Belgium](#), [Canada](#), and [Switzerland](#) continue to employ the word *détention*.<sup>15</sup> A joint ministerial audit in 2005 found that this language created a “paradoxical” situation because “the alien placed in retention remains a free person, against whom no charge has been laid; he is only momentarily ‘retained,’ for the time required for organising his return. The whole paradox of retention lies in this principle. Before the judge of liberty and detention (JLD) the

<sup>12</sup> European Court of Human Rights (ECtHR), “De Souza Ribeiro v France [GC], Application No. 22689/07,” <https://bit.ly/2vE5Mk8>; Another case is also pending before the ECtHR: “Moustahi v. France (application no. 9347/14),” <https://bit.ly/2KaaMA8>

<sup>13</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>14</sup> M. Grange, “Smoke Screens: Is There a Correlation Between Migration Euphemisms and the Language of Detention?” *Global Detention Project*, 17 September 2013, <http://bit.ly/2FXm2gK>

<sup>15</sup> Interestingly, while the United Nations uses “détention” in French versions of official documents, the Council of Europe’s Committee for the Prevention of Torture has opted to use “rétention.”

procedure is civil even if it borrows aspects of criminal law, in particular because the JLD can challenge the conditions of the arrest and the regularity of the custody.”<sup>16</sup>

While many leading French advocates and academics have argued that detention centres should be called "camps" and denounced the use of euphemistic language when referring to places of deprivation of liberty,<sup>17</sup> French civil society for the most part seems not to have specifically challenged the use of the word *rétenion*. However, the impact of this “paradoxical” phrasing is often clear in public and official discourse. For instance, during the debate over the 2018 legislation, the Minister of Justice misleadingly characterised the detention of families as allowing “children to be in an administrative centre with their parents.”<sup>18</sup>

Civil society protest against immigration detention is common. Non-violent silence protests (*cercles de silences*) have been regularly held in many French cities since 2011.<sup>19</sup> Many NGOs have argued that detention is a disproportionate response to irregular migration and that it largely fails in its stated purpose of enabling removal since less than half of the country's detainees are expelled following detention (40 percent of immigration detainees in mainland France were expelled in 2017, 42 percent of whom were expelled to another EU country).<sup>20</sup> In contrast, officials bemoan that the high proportion of expulsion orders cancelled by judges creates obstacles, even though these judgements are based on respect for the rule of law.<sup>21</sup>

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<sup>16</sup> GDP translation from: B. Jullien et al., “Mission d'audit de modernisation – Rapport sur la garde des centres de rétention administrative,” *Ministère de la justice, Ministère de l'intérieur et de l'aménagement du territoire et Ministère de la défense*, PAM-05-004-01, December 2005, <https://bit.ly/2KFJBfX>

<sup>17</sup> Migreurop, “Derrière le mot camp,” 16 November 2004, <http://www.migreurop.org/article675.html?lang=fr>

<sup>18</sup> A. Baddou, “Nicole Belloubet: “Nous voulons des jugements beaucoup plus rapides pour les crimes,”” *France Inter*, 22 April 2018, <https://bit.ly/2HWm4XW>

<sup>19</sup> Cercles de silence, <http://www.cercledesilence.fr/index.php>; La Cimade, “Prochain cercle de silence à Marseille jeudi 18 octobre,” 18 October 2018, <https://bit.ly/2P4KYKU>

<sup>20</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>21</sup> Sénat, “Projet de loi de finances pour 2018: Asile, immigration, intégration et nationalité - B. Les centres de rétention administrative et les mesures d'assignation à résidence : des dispositifs perfectibles, dont le financement pose question,” <http://www.senat.fr/rap/a17-114-2/a17-114-26.html>



## 2. LAWS, POLICIES, PRACTICES

**2.1 Key norms.** The *Code de l'entrée et du séjour des étrangers et du droit d'asile* (Code of Entry and Residence of Foreigners and of the Right to Asylum) (CESEDA) provides the main legal framework for asylum procedures, reception conditions, and detention. It was amended by the July 2015 *Loi relative à la réforme du droit d'asile* (Law on the Reform of the Right to Asylum)<sup>22</sup> and the March 2016 *Loi relative au droit des étrangers en France* (Law on the Rights of Foreigners).<sup>23</sup> The reform of the asylum system transposed the recast European Union Asylum Procedures Directive and Reception Conditions Directives.

Two laws adopted in 2018 further expand detention powers and amended CESEDA. In September 2018, Parliament adopted Law N° 2018-778 “*pour une immigration maîtrisée, un droit d'asile effectif et intégration réussie*”<sup>24</sup> (“Law for Controlled immigration, effective right to asylum and successful integration”), which removes some safeguards, doubles the length of detention, and fails to prohibit the detention of children.<sup>25</sup> Additionally, a new asylum law adopted in March 2018, concerning the “*bonne application du régime d'asile européen*” (“effective implementation of the European asylum system”), broadly expands the detention of people in Dublin procedures (see Section 2.3 Asylum seekers).

The 2016 Law on the Rights of Foreigners strengthened control measures by transferring responsibility for the verification of detention orders from the administrative judge to the JLD. It also provides for the use of house arrest instead of detention and clarifies the conditions for the detention of minors (see Section 2.4 Children). A 2017 Ministerial Instruction emphasised the use of house arrest during Dublin procedures.<sup>26</sup>

<sup>22</sup> “Décret n° 2015-1166 du 21 septembre 2015 pris pour l'application de la loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile,”

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031194603>

<sup>23</sup> “LOI n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France (1), NOR: INTX1412529L,”

<https://www.legifrance.gouv.fr/eli/loi/2016/3/7/INTX1412529L/jo/texte>

<sup>24</sup> “LOI n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie,” <https://bit.ly/2IJYxd3>

<sup>25</sup> Assemblée Nationale, “Immigration maîtrisée, droit d'asile et intégration réussie,” *Travaux préparatoires*, <https://bit.ly/2JWWcfi>

<sup>26</sup> Ministre de l'Intérieur, “Instruction du 20 novembre 2017 relative aux objectifs et priorités en matière de lutte contre l'immigration irrégulière, NOR : INT/V/17/30666/J,” 20 November 2017, <https://www.gisti.org/spip.php?article5767>

**2.2 Grounds for detention.** Grounds for administrative immigration-related detention are provided in CESEDA Articles L551-1 to L563-1.<sup>27</sup> The March 2018 Asylum Law provides a list of grounds for the administrative detention of asylum seekers (see section 2.3 Asylum seekers) and CESEDA provides grounds for the criminal prosecution of immigration-related violations (see section 2.15 Criminalisation).

As per CESEDA Article L551-1, the “administrative authorities” are empowered to arrest and detain unauthorised migrants who are awaiting final determination of their status, as well as those who are subject to a deportation order (referred to as an “OQTF”) or to a Schengen readmission. According to several French NGOs, 73.7 percent of immigration detainees were subject to an OQTF in 2017 on the grounds of their irregular status, and 14.7 percent were detained within the Dublin procedure.<sup>28</sup> Another set of detainees (8 percent in 2017) are held after serving penal sentences and pending expulsion (see sections 2.7 From prison to immigration detention, and 2.15 Criminalisation).<sup>29</sup>

**2.3 Asylum seekers.** Departing from the long established principle in French law that only people served an expulsion order can be detained, the March 2018 asylum bill authorised the detention of asylum seekers pending transfer to another EU state under the Dublin III procedure. Initially, France authorised the detention of asylum seekers according to three of the grounds permitted in European Union (EU) law.<sup>30</sup> Specifically, France could detain: (a) people requesting asylum at the border; (b) asylum seekers pending transfer under Dublin III rules under limited conditions only (CESEDA Article L742-2); and (c) people applying for asylum when held in detention after receiving a return order (CESEDA Article L551-3).<sup>31</sup>

In September 2017, the French Supreme Court (*Court de cassation*) ruled against the detention of people in the Dublin procedure due to the lack of a legal definition of the risk of absconding.<sup>32</sup> This prompted the adoption of the March 2018 law, which defines 12 grounds establishing the risk of absconding, which could lead to more

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<sup>27</sup> CESEDA Book V, “Mesures d'éloignement” (removal measures), Title V (Rétention d'un étranger dans des locaux ne relevant pas de l'administration pénitentiaire) and Title VI (Assignation à résidence).

<sup>28</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” June 2017, <https://bit.ly/2rVQ7HN>; Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>29</sup> La Cimade, Observatoire international des prisons, and Gisti, “Contestation des obligations de quitter le territoire français notifiées en prison,” December 2017, <https://bit.ly/2JmEoJa>

<sup>30</sup> European Parliament and Council of the European Union, “Directive 2013/33/EU of the European Parliament And of the Council of 26 June 2013,” 26 June 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0033&from=EN>

<sup>31</sup> “Instruction NOR: INTV1618837J du 19 juillet 2016 relative à l'application du règlement (UE) n°604/2013 dit Dublin III – Recours à l'assignation à résidence et à la rétention administrative dans le cadre de l'exécution des décisions de transfert,” <https://bit.ly/2NmyuKW>

<sup>32</sup> Cour de cassation, “Arrêt n° 1130 du 27 septembre 2017 (17-15.160) - Cour de cassation - Première chambre civile - ECLI:FR:CCASS:2017:C101130,” [https://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civile\\_568/1130\\_27\\_37725.html](https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/1130_27_37725.html)



widespread detention of people in the Dublin procedure.<sup>33</sup> The French Ombudsman (*Défenseur des droits*) denounced the law for removing the legal safeguard whereby only those who are served an expulsion order due to their irregular situation can be detained.<sup>34</sup> The ombudswoman further argued that placing asylum seekers in detention ahead of transfer decisions infringes upon individual freedom, and that reducing the deadline for appeal against removal decisions—from 15 to seven days—violates the right to an effective remedy (amended CESEDA Article L742-4).<sup>35</sup>

The 2018 immigration and asylum law also re-introduced non-suspensive appeals for safe countries of origin;<sup>36</sup> asylum seekers can now be removed from the country before their appeal is determined.<sup>37</sup>

Statistics regarding the number of individuals detained prior to Dublin transfers already reflect this toughened stance, with 3,723 asylum seekers placed in detention in 2017 as opposed to 834 in 2015.<sup>38</sup>

The asylum reforms adopted in 2015 provide that a foreigner who applies for asylum while in detention can continue to be detained if the prefecture (local authorities under the Interior Ministry) has reason to believe that the asylum claim has only been lodged to frustrate removal.<sup>39</sup> At the same time however, the 2015 reform urges administrative authorities to stop placing individuals in administrative detention as an automatic procedure and to instead apply a form of house arrest for a maximum duration of six months (renewable once for a further six months) (CESEDA Article L561-1).<sup>40</sup> (See section 2.11 Non-custodial measures.)

In 2016, 1,293 people lodged asylum applications while in administrative detention—25.9 percent of whom were rejected asylum seekers who were appealing

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<sup>33</sup> “LOI n° 2018-187 du 20 mars 2018 permettant une bonne application du régime d’asile européen (1), NOR: INTX1734902L,” <https://www.legifrance.gouv.fr/eli/loi/2018/3/20/INTX1734902L/jo/texte>

<sup>34</sup> “Pour faciliter l’éloignement, on va désormais pouvoir placer en rétention administrative des personnes qui sont en situation régulière et ne font pas l’objet de mesures d’expulsion,” in M. Baumard, “Pour Jacques Toubon, “le demandeur d’asile est mal traité” par le projet de loi sur l’immigration,” *Le Monde*, 23 February 2018, <http://bit.ly/2tERa2H>; La Cimade, “Rétention des personnes Dublinées: publication de la loi permettant sa généralisation,” 21 March 2018, <https://bit.ly/2pvIW8H>

<sup>35</sup> Défenseur des droits, “Décision 2018-090 du 8 mars 2018 portant observations devant le Conseil constitutionnel dans le cadre de l’examen de la loi permettant une bonne application du régime d’asile européen,” <https://bit.ly/2rhErPT>

<sup>36</sup> Cour nationale du droit d’asile, “La liste des pays d’origine sûrs,” <http://www.cnda.fr/Ressources-juridiques-et-geopolitiques/La-liste-des-pays-d-origine-surs>

<sup>37</sup> J. Humbly, “Cut-Price Justice at the French National Asylum Court,” *Border Criminologies*, 2018, <https://bit.ly/2jKRepW>

<sup>38</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>39</sup> Article L556-1 CESEDA, as amended by the Law of 29 July 2015.

<sup>40</sup> Asylum Information Database (AIDA), “National Country Report – France,” December 2015, <http://www.asylumineurope.org/reports/country/france>

decisions.<sup>41</sup> In 2017, 1,030 people requested asylum while in detention (one percent of asylum seekers).<sup>42</sup>

Upon arrival in detention, foreigners are informed that they have five days to lodge an asylum application (CESEDA Article L551-3). The French Office for the Protection of Refugees and Stateless People (*Office français de protection des réfugiés et des apatrides*) (OFPRA) must process requests within 96 hours (CESEDA Articles L556-1 and R723-4).<sup>43</sup> Because of the complexity of these administrative procedures, asylum seekers in detention may receive legal and linguistic assistance.<sup>44</sup>

French NGOs have reported cases of new asylum seekers being placed in administrative detention (in the Paris area in particular) who were served an expulsion order while the official registration of their asylum request was still pending.<sup>45</sup>

In 2017, the French Office for the Protection of Refugees and Stateless People (*Office français de protection des réfugiés et des apatrides* – OFPRA) registered 73,689 new asylum applications.<sup>46</sup> Disaggregated figures are not available for 2017, but in 2016 OFPRA registered 474 applications from unaccompanied minors. That same year OFPRA registered some 900 applications in waiting zones.<sup>47</sup> French law includes special procedural guarantees (*garanties procédurales particulières*) to screen asylum seekers in waiting zones to determine those who are vulnerable (CESEDA Article L-221-1). However, only 0.5 percent of the 953 people seeking asylum at the border in 2016—and none of the 555 asylum seekers in the first half of 2017—were recognised as "vulnerable."<sup>48</sup> According to the NGO network for assisting foreigners at the border (Anafé), this very low recognition rate of vulnerable individuals demonstrates that the country's screening process serves purely as a smoke screen (*écran de fumée*).

According to the French NGO La Cimade, OFPRA processed approximately 2,000 requests from non-nationals in administrative detention in 2016 through the "accelerated procedure" (a process which is permitted for applicants who come from

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<sup>41</sup> Asylum Information Database (AIDA), "Country Report: France - 2017 Update," 28 February 2018, <http://www.asylumineurope.org/reports/country/france>; and OFPRA, "Rapport d'activité 2016," April 2017, [https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport\\_dactivite\\_ofpra\\_2016\\_1.pdf](https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_ofpra_2016_1.pdf)

<sup>42</sup> La Cimade, "Cartographie de la demande d'asile en 2016," 15 April 2017, <http://www.lacimade.org/cartographie-de-la-demande-dasile-en-2016/>

<sup>43</sup> "Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA)," as amended in March 2016, <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

<sup>44</sup> "Article L551-3 CESEDA," as amended by the Law of 29 July 2015.

<sup>45</sup> Asylum Information Database (AIDA), "Country Report: France - 2017 Update," 28 February 2018, <http://www.asylumineurope.org/reports/country/france>

<sup>46</sup> Office français de protection des réfugiés et apatrides (OFPRA), "Les données de l'asile 2017 à l'OFPRA," 8 January 2018, <https://www.ofpra.gouv.fr/fr/l-ofpra/actualites/les-donnees-de-l-asile-2017-a-l>

<sup>47</sup> Office français de protection des réfugiés et apatrides (OFPRA), "Rapport d'activité 2016," April 2017, [https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport\\_dactivite\\_ofpra\\_2016\\_1.pdf](https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_ofpra_2016_1.pdf)

<sup>48</sup> Anafé, "Aux frontières des vulnérabilités – rapport d'observations dans les zones d'attente 2016-2017," February 2018, <http://bit.ly/2FCfUhW>



"safe" countries, those who submit an application which is unfounded or irrelevant, or whose applications were filed more than 120 days after irregular entry or stay).<sup>49</sup>

**2.4 Children.** French law can appear to be contradictory regarding the immigration detention of children. Under CESEDA Article L554-1, foreigners can only be held in custody after they have been ordered to leave French territory and for the time strictly necessary for their departure. According to CESEDA Articles L511-4 and L521, minors cannot be served an expulsion order.<sup>50</sup> Hence, under French law, it would seem that children cannot be detained for immigration purposes.

On the other hand, CESEDA Article L553-1 states that records in detention centre registries must indicate the status of minor children who accompany adult individuals placed in detention.<sup>51</sup> Further, the Law of 7 March 2016 on the right of foreigners amended CESEDA Article L551-1 and authorised the detention of children with a parent in three instances: 1) failure to respect a home arrest measure, 2) absconding during removal or refusing to be removed; and 3) bearing in mind the best interest of the child, detention during the 48 hours prior to "programmed removal" that preserves the person concerned and the accompanying minor from the constraints related to the necessities of transfer. The text also provided that detention should take place in specially equipped premises.

A subsequent ministerial circular confirmed this official shift authorising the detention of children and clarified that the detention of accompanied children was not prohibited in principle but should remain exceptional.<sup>52</sup> (Interestingly, software used in detention and authorised under CESEDA Article L553-1 includes records regarding the number of minor children accompanying their parents.)<sup>53</sup>

An important implication of France's ambiguous child detention provisions is that children lack legal status in detention except in relation to their accompanying detained parent. Experts have pointed out how French law maintains a fiction that children are not detained but only "accompany" their parents and are therefore not legally deprived

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<sup>49</sup> La Cimade, "Cartographie de la demande d'asile en 2016," 15 April 2017, <http://www.lacimade.org/cartographie-de-la-demande-dasile-en-2016/>

<sup>50</sup> "Ne peuvent faire l'objet d'une obligation de quitter le territoire français :1° L'étranger mineur de dix-huit ans," CESEDA Article L511-4, 1° ; "L'étranger mineur de dix-huit ans ne peut faire l'objet d'une mesure d'expulsion," CESEDA Article L521-4.

<sup>51</sup> CESEDA Article L553-1: "Il est tenu, dans tous les lieux recevant des personnes placées ou maintenues au titre du présent titre, un registre mentionnant l'état civil de ces personnes ainsi que les conditions de leur placement ou de leur maintien. Le registre mentionne également l'état civil des enfants mineurs accompagnant ces personnes ainsi que les conditions de leur accueil."

<sup>52</sup> Ministre de l'Intérieur, "Circulaire du 2 novembre 2016: Application de la loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France - dispositions applicables à compter des 1er novembre 2016 et 1er janvier 2017," 2 November 2017, <https://www.gisti.org/spip.php?article5521>

<sup>53</sup> See also: "Arrêté du 6 mars 2018 portant autorisation du registre de rétention prévu à l'article L. 553-1 du code de l'entrée et du séjour des étrangers et du droit d'asile et d'un traitement automatisé de données à caractère personnel dénommé "logiciel de gestion individualisée des centres de rétention administrative"" (LOGICRA), NOR: INTC1733506A, <https://www.legifrance.gouv.fr/eli/arrete/2018/3/6/INTC1733506A/jo/texte>

of liberty.<sup>54</sup> As a consequence, children cannot benefit from any of the procedural safeguards that apply to immigration detainees under the EU Return Directive, since the nature of their detention does not feature in the immigration law as such.

(The GDP has documented similar problems in other countries: In [Canada](#), children are “housed” as “guests” of their parents in immigration detention, rendering them “invisible” to the law; in [Spain](#) the law says that children should not be placed in immigration detention but says that detainees have the right “to be accompanied by their minor children.”)

The new immigration and asylum bill adopted in September 2018 fails to prohibit the detention of children despite a proposal for amendment during the extensive parliamentary debates and growing opposition to this practice.<sup>55</sup>

In July 2016, the European Court of Human Rights (ECtHR) issued five judgments concerning complaints similar to the pivotal *Popov v. France* case regarding the detention of “underage children” accompanying their parents. Although the Court did not find the detention of children to be contrary to domestic law, judges found that it violated Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment or punishment) on account of three combined factors including their age, the duration of their detention, and conditions inherent to their detention.<sup>56</sup>

Since the 2012 Circular on the removal of families accompanied by children,<sup>57</sup> enacted following the ECtHR’s ruling in *Popov v. France*,<sup>58</sup> prefects have been encouraged to use their discretionary powers to ensure that families are placed under house arrest rather than in detention facilities (see section 2.11 Non-custodial measures).<sup>59</sup>

With the exception of Mayotte, where this circular is not applied and other rights are disregarded because of derogations in relevant law, there was a substantive drop in the number of families with children placed in administrative detention between 2011 and 2013. However, between 2015 and 2016, NGOs registered a 70 percent increase, with 182 children detained in metropolitan France in 2016 and 304 in 2017—19 percent of whom were below the age of two, 33 percent were aged between two and six, 24

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<sup>54</sup> C. Severino (ed.), *La transposition de la “directive retour”: France, Espagne et Italie*, Bruylant, April 2015.

<sup>55</sup> F. Lepage and H. Lucas, “Projet de loi asile et immigration: enfermer les enfants non, les protéger oui!,” 30 March 2018, UNICEF, <https://bit.ly/2qXwMGB>

<sup>56</sup> A.B. and Others v. France (no. 11593/12) [Articles 3, 5 §§ 1 and 4, 8], 12 July 2016; A.M. and Others v. France (no. 24587/12) [Articles 3, 5 §§ 1 and 4, 8], 12 July 2016; R.C. and V.C. v. France (no. 76491/14) [Articles 3, 5 §§ 1 and 4, 8], 12 July 2016; R.K. and Others v. France (no. 68264/14) [Articles 3, 5 §§ 1 and 4, 8], 12 July 2016. R.M. and Others v. France (no. 33201/11) [Articles 3, 5 §§ 1 and 4, 8], 12 July 2016.

<sup>57</sup> Ministère de l’Intérieur, “Circulaire INTK1207283C of 6 July 2012 sur la mise en oeuvre de l’assignation à résidence prévue à l’Article en alternative au placement des familles en rétention administrative,” [http://circulaire.legifrance.gouv.fr/pdf/2012/09/cir\\_35851.pdf](http://circulaire.legifrance.gouv.fr/pdf/2012/09/cir_35851.pdf)

<sup>58</sup> European Court of Human Rights, “Popov v. France, Nos 39472/07 and 39474/07,” 19 January 2012, [http://www.echr.coe.int/Documents/CP\\_France\\_FRA.pdf](http://www.echr.coe.int/Documents/CP_France_FRA.pdf)

<sup>59</sup> European Court of Human Rights, “Popov v. France, Nos 39472/07 and 39474/07,” 19 January 2012, [http://www.echr.coe.int/Documents/CP\\_France\\_FRA.pdf](http://www.echr.coe.int/Documents/CP_France_FRA.pdf)

percent were aged between seven and 12, and 16 percent were aged between 13 and 17.<sup>60</sup> According to the *Contrôleur général des lieux de privation de liberté* (Controller-General for Places of Deprivation of Liberty, or CGLPL), 77 children were placed in detention in Metropolitan France during the first four months of 2018.<sup>61</sup> Mayotte detains the largest number of children; it detained 4,285 in 2016 and 2,493 in 2017.<sup>62</sup>

Observers have also documented the detention of 147 families with 304 children in 2017 in mainland France.<sup>63</sup> Some jurisdictions stand out: In Mesnil-Amelot, detention orders involving families rose from 16 in 2016 to 62 in 2017.<sup>64</sup>

The CGLPL reported in 2018 that evidence showed that the detention of children was not linked to their families' behaviour, but to local authorities' practices. While most local authorities (*préfectures*) do not place families in detention, this does not result in failed removals, thus the CGLPL concluded that the detention of children, even for a single night, constitutes deprivation of liberty and should not be used for organisational expediency. The report concluded: "The confinement of children, even for a short time, necessarily has negative consequences for them: immersed in an almost penitentiary and anxiety-provoking universe, surrounded by walls, railings and barbed wire, they witness all events inside the CRA (detention centre). Evidence shows that many of the children exposed to such treatment have sustained long-term anxiety and experienced problems with sleep, language or diet." The report recommended that confinement of children in immigration detention facilities should be prohibited and that only home arrest should be implemented for families with children.<sup>65</sup>

The conditions of detention of children can vary widely. There are reports, for instance, of new-born infants being detained in near-freezing temperatures.<sup>66</sup> On the other hand, some prefects have decided to stop detaining children, even though the CRAs under their jurisdiction are authorised to detain minors. For instance, no children were detained at [Lille-Lesquin](#) CRA since 2012, and since 2017, no children have been detained at centres in [Marseille](#) or [Nîmes](#).<sup>67</sup>

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<sup>60</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>61</sup> La Cimade, "Enfant en rétention: le degré zéro de l'humanité," 6 March 2018, <https://bit.ly/2FdQ8v1>

<sup>62</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>; Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>63</sup> Contrôleur général des lieux de privation de liberté (CGLPL), "Avis relatif à l'enfermement des enfants en centres de rétention administrative," *Journal Officiel*, 14 June 2018, <https://bit.ly/2wi2HUM>

<sup>64</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>65</sup> Contrôleur général des lieux de privation de liberté (CGLPL), "Avis relatif à l'enfermement des enfants en centres de rétention administrative," *Journal Officiel*, 14 June 2018, <https://bit.ly/2wi2HUM>

<sup>66</sup> M. Campistron, "On n'a jamais vu autant d'enfants en centre de rétention," *L'Obs*, 2 March 2018, <https://www.nouvelobs.com/monde/migrants/20180302.OBS2976/on-n-a-jamais-vu-autant-d-enfants-en-centre-de-retention.html>

<sup>67</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

There have been various official Circulars<sup>68</sup> that clarify regulations regarding unaccompanied minors (UAMs), which are hosted by local authorities. The numbers of UAMs have increased dramatically, from 4,000 in 2010 to 25,000 in 2017. Recognised as a vulnerable population due to their often traumatic background, UAMs are cared for through child protection programmes. These programmes are, however, under heavy strain due to a 294 percent increase in the number of UAMs in the past five years.<sup>69</sup>

Boys represent 94.9 percent of UAMs and are mostly aged between 15 and 17 years. 70 percent come from West Sub Saharan Africa, while other countries of origin include Bangladesh, Afghanistan, and India. While only 475 of the 85,000 asylum seekers were UAMs in 2016, the costs of caring for them until they come “of age” are high. According to official statistics, local authorities spent 920 million EUR in 2017—out of a total 1.9 billion EUR budget (up from one billion EUR in 2016).<sup>70</sup>

According to one French NGO, “The official policy of the French Dublin Unit is that it does not transfer unaccompanied children under the Dublin Regulation. Unaccompanied children can however be placed under a Dublin procedure by Prefectures.”<sup>71</sup>

Under French law, UAMs may only exceptionally be held in waiting zones for the time strictly necessary to assess whether they come from a “safe” country, if their asylum claims are not inadmissible or manifestly unfounded, or to determine whether they represent a threat to public order (CESEDA Articles 221-1 and L723-2). If they do not claim asylum, they can be detained for a maximum length of four days in the waiting zone (CESEDA Article L221-3). In 2015, 211 UAMs were held in waiting zones, including 187 at Charles de Gaulle Airport.<sup>72</sup>

The public prosecutor assigns an “ad hoc guardian” (*administrateur ad hoc*) to UAMs for the duration of their stay in transit zones (CESEDA Article L221-5), and their stay can be extended by the JLD from 20 to 26 days.<sup>73</sup> According to Human Rights Watch,

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<sup>68</sup> Ministère de la Justice, “Circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers: dispositif national de mise à l’abri, d’évaluation et d’orientation NOR: JUSF1314192C,” [http://www.textes.justice.gouv.fr/art\\_pix/JUSF1314192C.pdf](http://www.textes.justice.gouv.fr/art_pix/JUSF1314192C.pdf); Ministère de la Justice, “Circulaire interministérielle du 25 janvier 2016 relative à la mobilisation des services de l’Etat auprès des conseils départementaux concernant les mineurs privés temporairement ou définitivement de la protection de leur famille et les personnes se présentant comme tels,” [https://www.gisti.org/IMG/pdf/circ\\_norjuf1602101c.pdf](https://www.gisti.org/IMG/pdf/circ_norjuf1602101c.pdf)

<sup>69</sup> Sénat, “Prise en charge des mineurs non accompagnés, 15e législature, Question écrite no 03250 de Mme Isabelle Raimond-Pavero (Indre-et-Loire – Les Républicains) publiée dans le JO Sénat,” 15 February 2018, <https://www.senat.fr/questions/base/2018/qSEQ180203250.html>

<sup>70</sup> J. Bruté de Réaumur, “Mineurs non accompagnés : bientôt 1,9 milliard de coûts pour les pouvoirs publics,” *IFRAP*, 11 July 2017, <https://bit.ly/2q2sygm>

<sup>71</sup> Asylum Information Database (AIDA), “Country Report: France – 2017 Update,” 28 February 2018, <http://www.asylumineurope.org/reports/country/france>

<sup>72</sup> S. A. Bisiaux and M. Doisy, “Privation de liberté en zone d’attente: les Maintenus face à la Justice,” *Anafé*, July 2017, [http://www.anafe.org/IMG/pdf/rapport-les\\_maintenus\\_face\\_a\\_la\\_justice.pdf](http://www.anafe.org/IMG/pdf/rapport-les_maintenus_face_a_la_justice.pdf)

<sup>73</sup> Premier Ministre, “Maintien d’un étranger en zone d’attente - Direction de l’information légale et administrative, Vérifié le 5 avril 2018,” *Service-Public.fr*, <https://www.service-public.fr/particuliers/vosdroits/F11144>

“Children are physically in France, yet not in France in the eyes of French law, and this legal trick denies them protection.”<sup>74</sup>

The detention of children in France and their confinement in transit zones have been the subjects of numerous reports and recommendations from international human rights bodies. In 2018, a dozen countries raised the issue of the treatment of unaccompanied minors during the Universal Periodic Review (UPR) of France at the UN Human Rights Council. Zambia recommended that UAMs should not be placed in transit zones, while [Canada](#) emphasised the need for alternative solutions to the deprivation of freedom.<sup>75</sup> In 2015, the UN [Committee on the Elimination of Racial Discrimination](#) asked France to “devote greater attention to the reception of unaccompanied minors and the examination of their situation while avoiding their removal from its territory.”<sup>76</sup> That same year, the [Human Rights Committee](#) called on France to “prohibit the deprivation of liberty of minors in transit areas and all administrative custody centres in metropolitan France and overseas territories.”<sup>77</sup> The UN [Committee on Enforced Disappearances](#) has recommended that France should repeal provisions on detention procedures in ad hoc holding areas.<sup>78</sup> The [Committee on the Rights of the Child](#) (CRC) has recommended that France avoid the detention of children in waiting zones and put an end to the use of bone tests as an age-determination method.<sup>79</sup>

Concerning age determination procedures, a 2016 law—adopted shortly after the CRC issued its recommendation on this issue—restricts the use of x-rays and forbids sexual maturity observations to determine the age of people who say they are under the age of 18.<sup>80</sup> Numerous expert bodies have denounced these types of age-determination medical procedures, including the National Consultative Ethics Committee<sup>81</sup> and the French Public Health Council.<sup>82</sup> (Section 3.2 Detention

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<sup>74</sup> Human Rights Watch (HRW), “France: Unaccompanied Children Detained at Borders,” 8 April 2014, <https://www.hrw.org/news/2014/04/08/france-unaccompanied-children-detained-borders>

<sup>75</sup> Working Group on the Universal Periodic Review, “Draft Report of the Working Group on the Universal Periodic Review - France, A/HRC/WG.2/29/L.1,” 17 January 2018, <https://bit.ly/2uljEcC>

<sup>76</sup> Committee on the Elimination of Racial Discrimination, “Concluding Observations on the Combined Twentieth and Twenty-First Periodic Reports of France, CERD/C/FRA/CO/20-21,” 10 June 2015, <https://bit.ly/2golsOM>

<sup>77</sup> Human Rights Committee, “Concluding Observations on the Fifth Periodic Report of France, CCPR/C/FRA/CO/5,” 17 August 2015, <https://bit.ly/2lvU8JF>

<sup>78</sup> Committee on Enforced Disappearances, “Concluding Observations on the Report Submitted by France Under Article 29, Paragraph 1, of the Convention, Adopted by the Committee at its Fourth Session (8–19 April 2013), CED/C/FRA/CO/1,” 8 May 2013, <http://uhri.ohchr.org/document/index/767FC455-2B5A-4372-9FE4-A92B8A72D7F4>

<sup>79</sup> Committee on the Rights of the Child, “Concluding Observations on the Fifth Periodic Report of France, CRC/C/FRA/CO/5,” 23 February 2016, <http://uhri.ohchr.org/document/index/2C6F3E71-EAC0-48FE-B58E-416146917EF1>

<sup>80</sup> European Asylum Support Office (EASO), “Practical Guide on Age Assessment (Second Edition),” 2018, <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf>

<sup>81</sup> National Consultative Ethics Committee for Health and Life Sciences, “Opinion No. 88: Age determination methods for legal purposes,” 23 June 2005, <https://bit.ly/2ylqJ28>

<sup>82</sup> Human Rights Watch, “‘C’est la loterie.’ Traitement arbitraire des enfants migrants non accompagnés à Paris,” 4 July 2018, <https://bit.ly/2OsJuuH>



facilities, below, discusses cases where people who declared themselves to be minors were nevertheless considered as adults).

## 2.5 Other vulnerable groups

**2.5a People with disabilities.** The September 2018 immigration and asylum bill includes an amendment to CESEDA Article L551-1 on the need to take into consideration the situation of vulnerability and any handicap when placing people in detention.

**2.5b Women.** Immigration law contains no specific clause in relation to women in immigration detention, except CESEDA Article R. 553-3 (10), which provides for gender segregation (*interdiction de la mixité*) in sleeping rooms (except for families). In 2017, eight percent of immigration detainees in mainland France were women.<sup>83</sup> In prisons, women comprise 3.5 percent of detainees.<sup>84</sup> In 2016, the Controller-General for Places of Deprivation of Liberty (CGLPL) noted that women often report feeling insecure in detention and stressed the need to provide specific detention spaces for women in all CRAs—in particular in the south of France—in order to respect their right to maintain family links and reduce geographical distances.<sup>85</sup>

**2.6 EU citizens.** While French and EU law provide EU citizens residence rights in all member states, they can still be subject to detention and deportation measures in France. Under CESEDA Article L121-4-1, EU citizens, nationals from member states of the European Economic Area, and Swiss nationals (and members of their families) can reside in France for a maximum length of three months. Article L511-3-1, in conformity with the EU Freedom of Movement Directive (Directive 2004/38/E), specifies that French authorities may order an EU citizen to leave France (under an expulsion order - or "OQTF") if the individual remains on French territory for successive spells of less than three months (to benefit from social assistance beyond the maximum period of three months) or his or her conduct represents a threat to the interest of society.

Since 2016, an OQTF for EU citizens may also include a ban on free movement on French territory (*interdiction de circulation sur le territoire français*/ICTF) for one to three years (CESEDA Article L511-1). This prohibition has far reaching consequences: in principle it applies to the entire Schengen territory so that EU citizens removed from France might effectively be barred from residing in other EU states.<sup>86</sup>

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<sup>83</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>84</sup> World Prison Brief (WPB), "France," 1 January 2018, <http://www.prisonstudies.org/country/france>

<sup>85</sup> Contrôleur général des lieux de privation de liberté, "Avis du 25 janvier 2016 relatif à la situation des femmes privées de liberté, NOR: CPLX1604501V," *Journal Officiel de la République Française*, 18 February 2016, <http://www.cglpl.fr/2016/avis-relatif-a-la-situation-des-femmes-privées-de-liberté/>

<sup>86</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," June 2017, <https://bit.ly/2rVQ7HN>

In 2017, 1,168 EU citizens (4.7 percent of all immigration detainees in mainland France) were expelled to their countries of origin, 79 percent of whom were Romanians (929 people).<sup>87</sup> Romanians represented 28.1 percent of detainees in the Paris-Palais de Justice CRA and 11 percent in Nîmes.<sup>88</sup> Those deported have included a substantial number of Roma, which has led to criticism from many UN member states during the UN Universal Periodic Review.<sup>89</sup>

**2.7 From prison to immigration detention.** Interior Ministry circulars in October and November 2017 prioritised the removal of third country nationals and, in particular, foreigners who threaten public order or who recently completed a prison sentence.<sup>90</sup> According to data from NGOs, 1,895 people were held in immigration detention after serving penal sentences in 2016, rising to 2,233 in 2017, often in a context that violates the right to appeal.<sup>91</sup> Out of 100 foreigners detained upon release from prison at the [Lyon-Saint-Exupéry CRA](#) in 2016, 55 were informed about the expulsion order while still in prison and 30 on the day they left the prison. Foreigners have often experienced renewed deprivation of liberty as a double penalty (*double peine*), especially after living in France for decades (see section 3.2a [Bordeaux detention centre](#)).

It can be very difficult for prisoners to challenge expulsion decisions—largely due to the fact that they have just 48 hours to challenge expulsion orders upon termination of their prison sentence. Reports also indicate that orders can be served just before weekends in an express manner and in a language not understood by prisoners.<sup>92</sup>

Unlike at immigration detention centres, NGOs are not present in prisons to provide legal advice, and prisoners often do not have sufficient time to request legal assistance. This generates an uneven access to procedural safeguards.<sup>93</sup> (See section 2.15 Criminalisation.)<sup>94</sup> Observers argue that the government could avoid this additional deprivation of liberty by organising expulsions directly from prison. In 2017, in [Palaiseau](#), a detention centre close to the large Fleury-Merogis prison, 34.4 percent of detainees were former prisoners, and in Marseille 25 percent were recorded as such—

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<sup>87</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>88</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>90</sup> Ministère de l’Intérieur, “Eloignement des personnes représentant une menace pour l’ordre public et des sortants de prison,” 16 October 2016, <https://bit.ly/2pArsXR>; Ministère de l’Intérieur, “Instruction du 20 novembre 2017 relative aux objectifs et priorités en matière de lutte contre l’immigration irrégulière, NOR : INT/V/17/30666/J,” 20 November 2017, <https://www.gisti.org/spip.php?article5767>

<sup>91</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>92</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

<sup>93</sup> L’Observatoire international des prisons, Gisti, and La Cimade, “Contestation des obligations de quitter le territoire français notifiées en prison,” December 2017, <https://oip.org/communiqu/e/eloignement-des-etrange rs-detenus/>

<sup>94</sup> L’Observatoire international des prisons, Gisti, and La Cimade, “Contestation des obligations de quitter le territoire français notifiées en prison,” December 2017, <https://bit.ly/2JmEoJa>



both centres where NGOs report a high incidence of self-mutilation among the detainee population.<sup>95</sup>

**2.8 Length of detention.** The legal maximum length for detention of irregular immigrants awaiting deportation was doubled to 90 days in September 2018 as per CESEDA Article L552-7 (effective as of 1 January 2019).<sup>96</sup> This remains well below the maximum of 18 months permitted by European law, but it has nevertheless been criticised by national human rights institutions and NGOs as disproportionate. Immigration detainees spent an average of 12.8 days in detention in metropolitan France in 2017 (and less than one day in Mayotte, which holds 43 percent of people detained by France). During 2017, only a tiny fraction (less than five percent) of all detainees were held for the entire legal limit at that time, 45 days.<sup>97</sup>

Observers contend that given this context, there was little reason to raise the legal detention.<sup>98</sup> The French parliament's Law Commission agreed to this 90-day extension in April 2018, but refused the 135-day limit requested by the Interior Minister in case of "obstruction" by the detainee. The draft law elicited 900 amendments.<sup>99</sup> It was adopted amidst tense debates and opposition by a "humanist" parliamentary minority.<sup>100</sup>

The draft was heavily criticised by NGOs, lawyers, parliamentarians, and national human rights institutions. In a letter to the French parliament in March 2018, the Council of Europe Commissioner for Human Rights expressed concern at the proposal to increase the maximum duration of administrative detention "as this constitutes a far-reaching interference with migrants' right to liberty." Statistical data collected by NGOs also illustrates that the longer the detention, the lower the percentage of people removed.<sup>101</sup> The Commissioner thus urged members of the National Assembly "not only to reject this proposal, but also to put an end to the detention of minors and to find alternatives to the detention of adults."<sup>102</sup> Likewise, the position of CGLPL is that 45 days is ineffective in facilitating more removals. Instead, the CGLPL, together with

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<sup>95</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>96</sup> Legifrance, "Code de l'entrée et du séjour des étrangers et du droit d'asile," Upcoming version (1 January 2019), <https://bit.ly/2CAajGK>

<sup>97</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>98</sup> Gisti, "Projet de loi "pour une immigration maîtrisée et un droit d'asile effectif,"" 13 March 2018, <https://www.gisti.org/spip.php?article5841>; La Cimade, "Décryptage du projet de loi asile et immigration," June 2017, <https://www.lacimade.org/decryptage-projet-de-loi-asile-immigration/>; and Legifrance, "Code de l'entrée et du séjour des étrangers et du droit d'asile," 30 June 2018, <http://bit.ly/2GqENTL>

<sup>99</sup> M. Rescan, "Loi sur l'asile: Collomb évoque des régions "submergées par des flux de demandeurs,"" *Le Monde*, 4 April 2018, <https://bit.ly/2q4ORBM>

<sup>100</sup> M. Kagni, "Asile et immigration: le texte adopté en commission des lois," *LCP*, 6 April 2018, <http://www.lcp.fr/actualites/en-direct-asile-et-immigration-la-commission-des-lois-poursuit-lexamen-du-texte>

<sup>101</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>102</sup> Commissioner for Human Rights, "The Commissioner is Concerned by Certain Provisions of the Draft Law on Immigration and Asylum in France," *Council of Europe*, 13 March 2018, <https://bit.ly/2u3yg2x>

many French NGOs, recommended that immigration detention should revert to the previous 32-day limit of 2003.<sup>103</sup>

With the introduction of the 2016 Law on the Rights of Foreigners, jurisdictional control of detention was placed under the authority of the Judge of Liberty and Detention (JLD) who could decide on the prolongation of detention prior to deportation within 48-hours of detention.<sup>104</sup> The new 2018 law maintains this 48 hour deadline (CESEDA Article L551-1), after which the JLD may order the extension of an individual's administrative detention for an additional 28 days (CESEDA Article L552-7) in cases of absolute urgency, serious threat to public order, or obstruction of expulsion order because of loss or destruction of travel documents, concealment of identity or voluntary obstruction to removal. The judge can also order this first extension if removal cannot be executed because of delays in delivery of travel documents by a consulate or the lack of means of transport. Additional extensions can be ordered in certain cases, including if a non-citizen deliberately obstructs return or has filed an asylum request to prevent the expulsion. However, once the 90-day limit is reached any non-citizen who has not been removed must be released.

In 2014, French NGOs registered instances in which foreigners were re-detained (*réitération de placements en rétention*) in Rennes, Bordeaux, Marseille, Toulouse, and Perpignan, and criticised such action for its absence of any new reasonable prospects of removal.<sup>105</sup> In 2016, 19 percent of the 902 non-citizens detained in Rennes had previously been detained.<sup>106</sup> In 2017, over 100 people were repeatedly detained at Coquelles, after being released for a few days or weeks.<sup>107</sup>

The 2018 amended CESEDA Article L551-1-III appears to allow re-detention after a period of seven days has elapsed following release from a previous placement in detention. The seven-day waiting period can be waived if the foreigner had previously been placed in detention for non-respect of conditions when placed in an alternative measure to detention.<sup>108</sup> This would appear to undermine the 90-day limit and enable

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<sup>103</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), "Communiqué sur le projet de loi pour une immigration maîtrisée et un droit d'asile effectif," 21 February 2018, <https://bit.ly/2q5ldM6>; Contrôleur Général des Lieux de Privation de Liberté (CGLPL), "Rapport d'activité 2013," 11 March 2014, <http://www.cglpl.fr/2014/rapport-dactivite-2013-2/>

<sup>104</sup> CESEDA, L552-1 as amended by the Article 36 of the Law on the Rights of Foreigners, March 2016; and CESEDA Article L521-1-III.

<sup>105</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, and Ordre de Malte, "Centres et locaux de rétention administrative – Rapport 2014," <http://www.lacimade.org/publications/102>

<sup>106</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>107</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>108</sup> See the French text of CESEDA Article L551-1(III): "En toute hypothèse, la décision de placement en rétention ne peut être prise avant l'expiration d'un délai de sept jours à compter du terme d'un précédent placement prononcé en vue de l'exécution de la même mesure d'éloignement. Toutefois, si le précédent placement en rétention a pris fin après que l'étranger s'était soustrait aux mesures de surveillance dont il faisait l'objet, l'autorité administrative peut décider d'un nouveau placement en rétention avant l'expiration de ce délai."

much longer total detention periods. The Global Detention Project has found few similarly explicit re-detention provisions in other countries.

**2.9 Procedural guarantees.** CESEDA Article L551-2 lists the procedural guarantees that are afforded to foreigners while in immigration detention. Detainees are also informed of their rights—including the right to apply for asylum—while in detention<sup>109</sup> in a language they can understand and in a timely manner, as well as information regarding the reason for their detention and why their removal order cannot be implemented immediately.<sup>110</sup> Under CESEDA Article L551-2, detainees can request the assistance of an interpreter, a legal counsel, and a doctor, and they may also communicate with their consulate as well as a person of their choosing. However, according to the CGLPL, the right to information is not always respected. This is partly because police officers operating inside the centres are insufficiently trained, and they instead tend to adopt an excessively security-oriented approach to their work.<sup>111</sup> Safeguards are also considerably weakened for individuals issued expulsion orders after serving prison sentences (see section 2.7 From prison to immigration detention) or transferred to detention centres from short-term detention premises (LRAs) after the short 48 hour time-frame to challenge detention has elapsed.

Detention decisions can be challenged before administrative courts within 48 hours, and an appeal has a suspensive effect. In 2017, however, the CGLPL received complaints about detainees being deported from metropolitan France before their 48-hour appeal period had expired or before a judge had ruled on their suspensive appeal. The Controller-General also observed that the right to appeal appeared ineffective in French overseas territories (see section 2.19 Transparency and access to information). NGOs assist detainees in exercising their rights during detention procedures—from their hearing in front of a judge to their appeals in front of the JLD or administrative court (see section 2.13 Domestic monitoring).

For many, especially those held near airports, videoconferences inside detention centres are often used for appeals in lieu of physical attendance before administrative courts—the purpose of which is supposedly to expedite appeal processes. However, following an Interior Ministry circular on 20 November 2017 that prioritised removals of foreigners who threaten public order or who have completed a prison sentence, as well as third country nationals,<sup>112</sup> NGOs, lawyers, and magistrates (*Syndicat des avocats de France*, *Syndicat de la magistrature*) issued a joint statement denouncing the growing reliance upon videoconferences as it reportedly violates the legal requisite that courts should be open to the public. The signatories also argued that a CRA is not a court, that the videoconference system offers no guarantee for fair trial, and that it severely

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<sup>109</sup> Article L551-3 CESEDA, as amended by the Law of 29 July 2015.

<sup>110</sup> Articles L551-2, L111-7 and L111-8 CESEDA.

<sup>111</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Rapport d’activité 2017,” <http://www.cglpl.fr/2018/publication-du-rapport-dactivite-2017/>

<sup>112</sup> Ministre de l’Intérieur, “Instruction du 20 novembre 2017 relative aux objectifs et priorités en matière de lutte contre l’immigration irrégulière, NOR : INT/V/17/30666/J,” <https://www.gisti.org/spip.php?article5767>

prejudices right to defence.<sup>113</sup> Previously, in 2011, the CGDPL had emphasised that the use of videoconferences should remain an exceptional practice that requires the consent of the detainee.<sup>114</sup> The 2018 immigration bill removes the need for a detainee's consent for a videoconference (CESEDA Article L552-12).

The CGLPL has also described issues of under-staffing at times of peak activity—for example, at the end of 2015 when large numbers were apprehended in Calais.<sup>115</sup> Insufficient staff can generate shortcomings including: "the rights are notified in an expeditious and partial manner, without any concern for confidentiality, nor for ensuring that detainees have effectively understood; information on rights are provided simultaneously to several people and translated into different languages without time for translating the answers of the detainees; there is no time to contact lawyers, family members or doctors; and some daily services are not provided."<sup>116</sup>

**2.10 Detaining authorities and institutions.** Ministers of the interior, justice, defence, and social affairs are jointly responsible for establishing detention centres.<sup>117</sup> The list of detention centres is published and publicly available (CESEDA Article R553-1). Ministerial decrees indicate which CRAs can accommodate families.<sup>118</sup> When non-citizens cannot immediately be placed in a CRA, local authorities (*préfets*) can open holding facilities—known as places of administrative detention (*locaux de rétention administrative* (LRAs)—on a permanent or temporary basis. Both forms of facility are under the responsibility of the territorially competent prefects, except in Paris where the prefect of police is responsible. The management of detention facilities, however, is under the authority of the national police (see section 3.3 Conditions in detention).

Prefecture support cells—called interservice removal hubs (*Pôles interservices éloignement* (PIE)—were first set up in 2009 in order to improve the removals process.<sup>119</sup> According to official sources, an indicator—known as the CRA performance rate—can be used to measure the effectiveness of the PIE system. It is “calculated by relating the number of irregular migrants placed in administrative detention with the

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<sup>113</sup> Syndicat des avocats de France, “La justice par visioconférence: des audiences illégales au sein même des centres de rétention [Action collective],” 18 January 2018, <http://lesaf.org/la-justice-par-visioconference-des-audiences-illegales-au-sein-meme-des-centres-de-retention/>

<sup>114</sup> European Court of Human Rights, “Marcello Viola v. Italy, 5 January 2007, No 45106/07, § 72,” <http://www.legal-tools.org/en/doc/e227cb/>

<sup>115</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Recommandations en urgence du Contrôleur général des lieux de privation de liberté du 13 novembre 2015 relatives aux déplacements collectifs de personnes étrangères interpellées à Calais, JO du 2 décembre 2015,” <https://bit.ly/1TjMPDK>

<sup>116</sup> Global Detention Project translation from the French: Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Recommandations en urgence du Contrôleur général des lieux de privation de liberté du 13 novembre 2015 relatives aux déplacements collectifs de personnes étrangères interpellées à Calais, JO du 2 décembre 2015,” <https://bit.ly/1TjMPDK>

<sup>117</sup> Sénat, “Immigration -la gestion des centres de rétention administrative peut encore être améliorée - B. L'encadrement juridique des centres et locaux de rétention,” <https://www.senat.fr/rap/r08-516/r08-51610.html>

<sup>118</sup> “Arrêté du 1er mars 2018 modifiant l'arrêté du 30 mars 2011 modifié pris en application de l'article R. 553-1 du code de l'entrée et du séjour des étrangers et du droit d'asile,” <https://bit.ly/2NwzWtT>

<sup>119</sup> Sénat, “Projet de loi de finances pour 2013: Immigration, intégration et nationalité,” 31 December 2008, <http://www.senat.fr/rap/a12-154-11/a12-154-1113.html>

number of detainees removed. ...The performance rate... of CRAs in mainland France without a PIE was 37% in 2010. That for CRAs with a *Pôle interservices éloignements* is noticeably higher at 42% for 2010, i.e. a 5 point increase.”<sup>120</sup> As of November 2017, there were six PIEs in Lille, Lyon, Rennes, Toulouse, Marseille, and Metz.<sup>121</sup>

**2.11 Non-custodial measures.** CESEDA Article L561-1 provides for house arrest (*assignation à résidence*) as an alternative to administrative detention for non-citizens for whom leaving French territory is impossible or who cannot return to either their country of origin or an alternative country. The administrative authorities may place a non-citizen under house arrest until: they are able to leave the territory; a transfer to another EU country (or an expulsion from the EU) under Schengen regulations is arranged; a transfer to another EU country under Dublin regulations is arranged; or the individual is removed as a result of an administrative or penal re-entry ban. This type of house arrest can be ordered for six months. It can be renewed once—or, when the person is issued a re-entry ban or a circulation ban on the territory, several times—as long as the transfer, removal, or expulsion orders remain enforceable.

Furthermore, in cases where a non-citizen cannot immediately leave the territory, but there is a reasonable prospect of removal, CESEDA Article L561-2 provides for house arrest for 45 days. This can also be renewed once—or, when an EU member state asks for transfer under Dublin regulations, up to three times. This measure has been encouraged for families since the 2012 Circular on the implementation of alternatives to the detention of families. However, if a non-citizen under house arrest voluntarily obstructs the removal process, the administrative authorities can ask the JLD to either order their expulsion or place them in detention (CESEDA Article L561-2-II).

According to reports to the Senate, the use of house arrest as an alternative to detention is gradually increasing.<sup>122</sup> In 2011, there were 373 placements. This rose to 1,595 in 2013, 2,998 in 2014, and 4,687 (out of 46,000 detainees) in 2016. During the first half of 2017, prefects ordered 4,887 house arrests: a 74 percent increase from the same period in 2016.<sup>123</sup> (At the time of publishing, house arrest and detention statistics for the whole of 2017 were not available.)

French law does not impose an obligation to justify the impossibility of alternative measures before deciding to detain non-citizens. Instead, the decision is left to the discretion of the administration. Under CESEDA Article L512-1-III, people under house arrest can challenge the decision before the administrative judge within 48 hours of

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<sup>120</sup> European Migration Network (EMN), “Practical Measures for Reducing Irregular Migration – Study Carried Out by the French Contact Point of the European Migration Network (EMN),” October 2011,” <https://bit.ly/2reFWOM>

<sup>121</sup> Ministre de l’Intérieur, “Instruction du 20 novembre 2017 relative aux objectifs et priorités en matière de lutte contre l’immigration irrégulière, NOR : INT/V/17/30666/J,” 20 November 2017, <https://www.gisti.org/spip.php?article5767>

<sup>122</sup> Sénat, “Rapport d’information n°773 du Sénat sur les centres de rétention administrative par Mme Assassi et M. Buffet,” 23 July 2014, <http://www.senat.fr/notice-rapport/2013/r13-773-notice.html>

<sup>123</sup> Sénat, “Projet de loi de finances pour 2018: Asile, immigration, intégration et nationalité. B. Les centres de rétention administrative et les mesures d’assignation à résidence: des dispositifs perfectibles, dont le financement pose question,” <http://www.senat.fr/rap/a17-114-2/a17-114-26.html>



placement. The judge must give a ruling within 96 hours. NGOs and the French Senate have raised some concerns with regard to the (lack of) access to legal and social support for people placed under house arrest upon release from immigration detention after the 45 days legal limit.<sup>124</sup> According to NGOs, many non-citizens released from detention by the judiciary judge in Guadeloupe are subsequently placed in administrative home arrest, an act which contravenes provisions in the law for home arrest to be considered before detention.<sup>125</sup>

In 2015, the government launched a pilot “pre-return” programme (*dispositifs de préparation au retour*, or DPAR) that is purportedly intended to provide social support and accommodation for people in return procedures. However, observers report that this programme is based on a 2015 Circular that encourages prefects to create pilot schemes “under the form of home arrest.” The circular does not provide any detail about the scheme and any other arrangement is left to the prefects’ discretion.<sup>126</sup> In its 12 July 2017 plan to “guarantee the right to asylum and better control migratory flows,” the government aimed to build at least one DPAR in each of the 13 regions in mainland France.<sup>127</sup> As of early 2018, there are DPARs in the Bas-Rhin, Bouches-du-Rhône, Moselle, Paris, Rhône, Seine-et-Marne, and Seine-Saint-Denis areas, primarily for rejected asylum seeking families.<sup>128</sup> The current capacity is 471 people and the daily cost is estimated at 27 EUR per person. In 2017, eight percent of expulsions (1,165 people) were carried out through DPARs.<sup>129</sup> According to the Interior Minister, DPARs will remain in operation during 2019.<sup>130</sup>

According to French authorities, DPARs are open facilities and non-citizens housed in them are free to leave. In practice, however, entry is prohibited for civil society organisations and outside visitors. In January 2017, community groups denounced the treatment of at least five families of rejected asylum seekers (most of which were from the Balkans) at the 22 rue de l’Effort, Gerland facility in the Lyon area. The families had been led to believe that they were being placed in an emergency shelter for the homeless. However, the adults found themselves under a form of house arrest for 45 days, which was renewed once, and had to report to the police station

<sup>124</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

<sup>125</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>126</sup> L. Burlet and C.G. Dorrey, “A Lyon, on expérimente “DPAR,” le retour au pays ou la remise à la rue,” *Rue89Lyon*, 9 January 2017, <https://bit.ly/2KDccDI>

<sup>127</sup> Sénat, “Projet de loi de finances pour 2018: Asile, immigration, intégration et nationalité. B. Les centres de rétention administrative et les mesures d’assignation à résidence: des dispositifs perfectibles, dont le financement pose question,” <http://www.senat.fr/rap/a17-114-2/a17-114-26.html>

<sup>128</sup> Ministre de l’Intérieur, “Instruction du 20 novembre 2017 relative aux objectifs et priorités en matière de lutte contre l’immigration irrégulière, NOR : INT/V/17/30666/J,” 20 November 2017, <https://www.gisti.org/spip.php?article5767>

<sup>129</sup> La Cimade, “Statistiques 2017: ce que disent les chiffres de l’expulsion des personnes exilées,” 25 July 2018, <https://bit.ly/2KIFp4m>

<sup>130</sup> “Projet de loi de finances pour 2019 – Mission Immigration, asile et integration,” “PLF 2019 - Extrait du bleu budgétaire de la mission : immigration, asile et integration - Version du 02/10/2018 à 08:58:42,” <https://bit.ly/2QBjSlq>

twice a week. Civil society groups claimed that the families had been blackmailed into accepting placement in these facilities. They also reported that they were prevented from accompanying the families, and providing them with interpretation, despite the fact that the families clearly did not understand the situation they were in during interviews with the Interior Ministry's *Office français de l'immigration et de l'intégration* (OFII).<sup>131</sup> Some families were eventually allowed to leave the premises.

**2.12 Regulation of detention conditions.** CESEDA Article R553-3 regulates requirements for the management of, and conditions in, detention centres. Although the phrasing of the Article's title suggests that facilities offer foreigners hotel-type equipment and catering services (*offrent aux étrangers retenus des équipements de type hôtelier et des prestations de restauration collective*), observers have commented that the conditions and atmosphere inside detention centres are more akin to prison conditions.

Standards for detention centres include capping maximum capacity at 140; ensuring that each detainee has a minimum 10m<sup>2</sup> of usable floor space including bedroom and common space accessible during working hours (*heures ouvrables*); ensuring that gender segregated collective bedrooms do not exceed six people per room; providing all detainees with free access to sanitation facilities (one for 10 people) and a telephone (one for 50 people); allocating space for visits from lawyers and medical staff, as well as allocating premises for the NGO operating in the centre; and providing common space, including outdoor space, for recreation. Detention centres that are likely to receive families must also include specially designed rooms.

**2.13 Domestic Monitoring.** A specific characteristic of the French system concerning administrative detention is the presence of NGOs in long-term detention facilities (CRAs) in order to provide legal and social assistance to detainees (CESEDA Article R-553-14). This was first pioneered in 1984 by La Cimade who commenced operation in multiple centres. In 2009, the government permitted other NGOs to operate in detention facilities. This was a bid to try and reduce NGO presence to a mere information mandate and the draft ministerial decree initially threatened to impose financial sanctions on NGOs who communicated externally about what was going on in the centres.<sup>132</sup> La Cimade challenged the decision in court: the legal mandate was restored, but this was the end of La Cimade's 25-year monopoly.<sup>133</sup> As of 2018, NGOs operating in detention centres include Assfam (Paris), Forum réfugiés-Cosi (Lyon, Marseille, Nîmes, Nice, Perpignan, and Sète),<sup>134</sup> France Terre d'Asile (Palaiseau, Coquelles, Plaisir, and Rouen-Oissel),<sup>135</sup> La Cimade (Bordeaux, Mesnil-Amelot, Rennes-Saint-Jacques-de-la-Lande, Toulouse, Hendaye, Guyane, Guadeloupe, and la

<sup>131</sup> L. Burlet and C.G. Dorrey, "A Lyon, on expérimente "DPA", le retour au pays ou la remise à la rue," *Rue89Lyon*, 9 January 2017, <https://bit.ly/2KDccDI>

<sup>132</sup> P. Charrier, "Les associations négocient leur présence en centres de rétention," *LaCroix*, 2 January 2013, <https://bit.ly/2BBfAOO>

<sup>133</sup> Radio France Internationale (RFI), "Aide en rétention: la justice donne raison à la Cimade face à Besson," 31 May 2009, [http://www1.rfi.fr/actufr/articles/113/article\\_81488.asp](http://www1.rfi.fr/actufr/articles/113/article_81488.asp)

<sup>134</sup> Forum réfugiés-Cosi, "Appui juridique en centre de rétention," 30 January 2018, <https://bit.ly/2Le6x70>

<sup>135</sup> France Terre d'asile, "Contacter le service rétention," <https://bit.ly/2vuEQTC>



Réunion),<sup>136</sup> Ordre de Malte (Lille, Metz, and Geispolsheim) and Solidarité Mayotte (Mayotte). These NGOs are present in the facilities for five to six days a week, and an agreement with the Interior Ministry permits them to remain for five years (renewable for the same period of time.)

A decree adopted in June 2014 also provides the possibility for humanitarian NGOs to undertake visits to CRAs and LRAs as per CESEDA Article R553-14-4.<sup>137</sup> Such agreements are valid for five years, and are renewable. Accredited NGOs may nominate a maximum of five national and local representatives for each detention centre. CRA authorities must be informed at least 24 hours in advance and LRAs must be notified at least 12 hours in advance. During visits, NGO representatives can meet with detention centre managers, officials from the French Office for the Protection of Refugees and Stateless People and the French Office of Immigration and Integration, representatives of NGOs authorised to deliver legal advice and social assistance inside CRAs, and medical staff. They can also meet with detainees in a confidential manner.

National (and European) members of parliament may also visit sites of immigration detention and can, if desired, be accompanied by journalists (CESEDA Article R553-15). Other institutions enjoying free access to the CRAs include the CGLPL, the prefects, and the JLD.

A 2015 decree provides a list of associations entitled to propose representatives to access waiting areas (*zones d'attente*).<sup>138</sup> The following accredited NGOs listed in the Interior Ministry's decision of May 2018 may access waiting zones for a period of three years: Amnesty International France, Anafé (National Association of Border Assistance to Foreigners - Association Nationale d'assistance aux frontières pour les étrangers), La Cimade, the French Red-Cross, France Terre d'Asile, Forum réfugiés-Cosi, GAS (Groupe accueil et solidarité), GISTI (Groupe d'informations et de soutien des immigrés), the Human Rights League, MRAP (Mouvement contre le racisme et l'amitié entre les peuples), and Ordre de Malte œuvres hospitalières françaises.<sup>139</sup> The Association française de soutien à Human Rights Watch also received a three-year authorisation on 30 August 2016.<sup>140</sup>

**2.14 International monitoring.** CESEDA Article L 223-1 provides for UNHCR and humanitarian associations to access waiting zones. France ratified the European Convention for the Prevention of Torture in 1989. Since then, the [European Committee](#)

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<sup>136</sup> La Cimade, "En région – accueil," <https://www.lacimade.org/en-region/>

<sup>137</sup> Ministre de l'Intérieur, "Décret n° 2014-676 du 24 juin 2014 relatif à l'accès des associations humanitaires aux lieux de rétention, NOR: INTV1406903D," 1 January 2015.

<sup>138</sup> Ministre de l'Intérieur, "Arrêté du 3 juin 2015 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente, NOR: INTV1511516A," <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030680936&categorieLien=id>

<sup>139</sup> Legifrance, "Arrêté du 29 mai 2018 fixant la liste des associations humanitaires habilitées à proposer des représentants en vue d'accéder en zone d'attente," NOR: INTV1813160A, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000037097024&dateTexte=20181012>

<sup>140</sup> Legifrance, "Arrêté du 29 juillet 2016 portant habilitation d'une association à proposer des représentants en vue d'accéder en zone d'attente," NOR: INTV1621861A, <https://bit.ly/2C4X2F0>

[for the Prevention of Torture](#) (CPT) has carried out 12 on-site visits. During its last visit in 2015, CPT delegates visited some 20 places of deprivation of liberty (*lieux de privation de liberté*) but no immigration detention centres.<sup>141</sup> The most recent CPT monitoring visits to immigration detention centres were in 2010—to the Paris-Vincennes and Rouen-Oissel CRAs—before the legal length of detention was extended from 32 to 45 days.<sup>142</sup> After the visit, the CPT requested detailed information about new legislation, foreseeing the creation of waiting zones (*zones d’attente ad hoc*) as per CESEDA Article L221-2 (see section 3.2 Detention facilities). The CPT programme of periodic visits for 2019 includes France among eight European countries. However, the CPT does not provide information on the facilities it will visit.<sup>143</sup> The GDP has encouraged the CPT to include visits to CRAs in 2019, in particular to assess the situation in such sites following the 2018 detention limit extension.

France is also party to all core international human rights treaties, excluding the Convention on the Protection of the Rights of Migrant Workers. United Nations independent treaty monitoring bodies—including the [Committee on the Elimination of Racial Discrimination](#),<sup>144</sup> the [Human Rights Committee](#),<sup>145</sup> the [Committee on Enforced Disappearances](#)<sup>146</sup> and the [Committee on the Rights of the Child](#)—have therefore visited detention centres (among other sites) and presented multiple recommendations to France in relation to its detention policies and practices.<sup>147</sup> UN member states have also submitted recommendations to France during the Council on Human Rights Universal Periodic Review (UPR) cycles in 2013 and 2018, encouraging the country to limit its use of immigration detention.<sup>148</sup> (Section 2.4 Children provides a list of recommendations from human rights bodies concerning the treatment of children in detention.)

<sup>141</sup> Council of Europe, “Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 15 au 27 novembre 2015, CPT/Inf (2017) 7,” 7 April 2017, <https://www.coe.int/en/web/cpt/france>

<sup>142</sup> Council of Europe, “Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 novembre au 10 décembre 2010, CPT/Inf (2012) 13,” 19 April 2012, <https://www.coe.int/en/web/cpt/france>

<sup>143</sup> European Committee for the Prevention of Torture, “Council of Europe Anti-Torture Committee Announces Visits to Eight States in 2019,” 12 April 2018, <https://bit.ly/2rlmTMk>

<sup>144</sup> Committee on the Elimination of Racial Discrimination, “Concluding Observations on the Combined Twentieth and Twenty-First Periodic Reports of France, CERD/C/FRA/CO/20-21,” 10 June 2015, <https://bit.ly/2golsOM>

<sup>145</sup> Human Rights Committee, “Concluding Observations on the Fifth Periodic Report of France, CCPR/C/FRA/CO/5,” 17 August 2015, <https://bit.ly/2lvU8JF>

<sup>146</sup> Committee on Enforced Disappearances, “Concluding Observations on the Report Submitted by France under Article 29, Paragraph 1, of the Convention, Adopted by the Committee at its Fourth Session (8–19 April 2013), CED/C/FRA/CO/1,” 8 May 2013, <http://uhri.ohchr.org/document/index/767FC455-2B5A-4372-9FE4-A92B8A72D7F4>

<sup>147</sup> Committee on the Rights of the Child, “Concluding Observations on the Fifth Periodic Report of France, CRC/C/FRA/CO/5,” 23 February 2016, <http://uhri.ohchr.org/document/index/2C6F3E71-EAC0-48FE-B58E-416146917EF1>

<sup>148</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review – France, A/HRC/23/3,” 21 March 2013, <http://uhri.ohchr.org/document/index/8D7D23F7-5408-4618-8ED1-7CBD7069F1D1>; Working Group on the Universal Periodic Review, “Draft Report of the Working Group on the Universal Periodic Review - France, A/HRC/WG.2/29/L.1,” 17 January 2018, <https://bit.ly/2uljEcC>

**2.15 Criminalisation.** CESEDA Article L621-2 criminalises unauthorised entry into Metropolitan France and overseas territories, as well as failure to depart after a removal order is issued. Irregular entry is punishable by a prison sentence of up to one-year and a 3,750 EUR fine. Non-citizens who remain irregularly on the territory after an expulsion order, or an administrative or judiciary interdiction from the territory, can also be sentenced to one year of imprisonment and a 3,750 EUR fine in-line with Article L624-1. Those who attempt to breach a re-entry ban may be sentenced to up to three years in prison (Article L624-1-1).

Non-citizens who fail to remain in the place of residence assigned to them within the prescribed period, or who left the place of residence without authorisation, can be sentenced to three years' imprisonment. Meanwhile, those who fail to respect the requirements of electronic monitoring linked to an interdiction from the territory (for acts of terrorism as provided in Title II of Book IV of the Penal Code) are liable to a one-year prison sentence according to Article L624-4. CESEDA Article L571-3 also allows the administrative authorities to order a non-citizen to be placed under mobile electronic surveillance if they are sentenced to a prohibition of the territory for acts of terrorism, or if a deportation order has been pronounced against them for a behaviour related to terrorist activities. This measure requires the non-citizen to consent, and may last for a period of three months (extendable for a maximum of two years). According to official information, this has never been used.<sup>149</sup>

CESEDA Articles L621-2 and L624-3 provide that sanctions can also include a re-entry ban for up to three years. If a ban is ordered, it may be carried out immediately after the non-citizen has served their prison sentence. (See section 2.7 From prison to immigration detention.) The administrative authorities should adapt the length of the ban, depending on the length of presence on the territory and the nature and length of links with France (CESEDA Article L 511-1). According to NGOs, some local authorities have repeatedly been sanctioned by the administrative courts for systematically imposing return bans irrespective of the person's history (*Gironde prefecture*). Under certain conditions, re-entry bans can last up to ten years (Article L624-2).

Non-citizens in an irregular situation ordered to leave the territory, or unauthorised non-citizens apprehended at a border with a Schengen state, can be fingerprinted under CESEDA Article L611-3. Refusal to do so is punished by a 3,750 EUR fine and, following the adoption of the 2018 immigration bill, a ban of up to three years.

CESEDA Article L552-7 imposes a specific regime for non-citizens who are served a return ban for terrorist acts under Title IV of the Penal Code. The JLD of the Paris Grand Instance Tribunal (*Tribunal de grande instance de Paris*) can prolong detention for up to six months if there are reasonable grounds to carry out the expulsion (*mesure d'éloignement*).<sup>150</sup> Further, in the wake of the October 2017 terrorist attack in Marseille,

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<sup>149</sup> Assemblée Nationale, "Sécurité intérieure et lutte contre le terrorisme – (N°164), Amendement N° 255," 21 September 2017, <https://bit.ly/2u3O6dG>

<sup>150</sup> The Global Detention Project would like to thank Mathias Venet, Responsable National, Coordination CRA, Ordre de Malte, for his assistance producing this section.

a ministerial instruction<sup>151</sup> expanded the concept of “threat to public order” to include an assessment of future risks (*menace... dans l'avenir*) an individual poses—over and above any past actions – so as to order expulsion as a “preventative measure.”<sup>152</sup> The Minister also recommended that expulsion orders should include a return ban under CESEDA Article L511-1.

**2.16 Privatisation.** Private contractors provide food, laundry, and general maintenance at detention facilities in mainland France and French overseas territories. One of the most important contractors is GEPSA, a French subsidiary of the company Cofely, which is part of the multinational energy company ENGIE (formerly GDF Suez). GEPSA, which also provides management services in detention centres in [Italy](#), provides services at some eight CRAs as well as at several dozen French prisons.<sup>153</sup> Other contractors at detention centres include ONET, ARCADE, SCOLAREST, Passion Gourmande, SORI, SODEXO, NETIBIS/Guyanaise de propreté, Compass, VINCI, Nickel Chrome, Panima, ANETT, ELIOR, and EUREST. The management and security of facilities is, however, overseen by governmental entities throughout mainland France and overseas territories.<sup>154</sup>

**2.17 Cost of detention.** The French draft budget law (*loi de finances*) for 2019 provides disaggregated data for detention. It earmarks 35.56 million EUR for operating expenditure at 27 CRAs,<sup>155</sup> four LRAs managed by the police and the Paris prefects, and the waiting zone at Charles de Gaulle Airport. This covers catering, laundry, preventative maintenance and repairs, and fire safety (as well as 3.5 million EUR for telephone translation services). The budget also includes 56.3 million EUR in investment expenditures for a substantive increase in the number of beds in CRAs and to improve conditions due to the extension of the length of detention to 90 days. Delivery of medical care in CRAs amounts to 16.32 million EUR. A further 8.13 million EUR covers humanitarian assistance to non-citizens including unaccompanied minors

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<sup>151</sup> Ministère de l’Intérieur, “Instruction n° NORINTK17018905: Eloignement des personnes représentant une menace pour l’ordre public et des sortants de prison,” 16 October 2017, <https://bit.ly/2pArsXR>

<sup>152</sup> Global Detention Project translation: “La notion de “menace pour l’ordre public” ne se fonde pas exclusivement sur les troubles à l’ordre public déjà constatés, comme le ferait une sanction, mais constitue une mesure préventive, fondée sur la menace pour l’ordre public, c’est-à-dire sur une évaluation de la dangerosité de l’intéressé dans l’avenir. Cette appréciation prend naturellement en considération des faits déjà commis par le passé mais demeure, en droit, indépendante des condamnations pénales prises à l’encontre de l’intéressé.” Ministère de l’Intérieur, “Instruction n° NORINTK17018905: Eloignement des personnes représentant une menace pour l’ordre public et des sortants de prison,” 16 October 2017, <https://bit.ly/2pArsXR>

<sup>153</sup> Global Detention Project, “Statement to the Working Group on the Use of Mercenaries Panel on PMSCs in places of deprivation of liberty and their impact on human rights,” 27 April 2017, <https://www.globaldetentionproject.org/statement-to-the-working-group-on-the-use-of-mercenaries-panel-on-pmscs-in-places-of-deprivation-of-liberty-and-their-impact-on-human-rights>

<sup>154</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>155</sup> There are 24 CRAs as of 11 October 2018 and it appears that the “27” figure is a typo as the draft budget law refers to the existing 24 CRAs in another part of the document and does not indicate that new CRAs would be created in 2019.

under the age of 13 at the Charles de Gaulle waiting zone and NGO legal assistance to detainees inside CRAs.<sup>156</sup>

Altogether these various budget items add up to 116.31 million EUR. However, this amount does not appear to include the cost for security and police services. There is also an additional 30.99 million EUR earmarked for removal/expulsion.

**2.18 Externalisation, readmission, and third-country agreements.** France is bound by 17 multilateral readmission agreements signed by the EU between 2004 and 2014 (in chronological order: Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, FYROM, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, and Cape Verde). These agreements “set out clear obligations and procedures for the authorities of the non-EU country and of EU Member States as to when and how to take back people who are irregularly residing.”<sup>157</sup>

France has also concluded bilateral readmission agreements with more than 50 countries around the world—many of which were signed in the 1990s.<sup>158</sup>

France has contributed financing for legal and sanitary services, "housing," and forced returns of irregular migrants through the European Asylum, Migration and Integration Fund (AMIF).<sup>159</sup> AMIF's criteria for funds for the "return" strand cover conditions of detention and socio-legal and linguistic assistance to vulnerable people. The available data, however, does not provide disaggregated information on the allocation of funds.<sup>160</sup>

**2.19 Transparency and access to information.** The government publishes information on its legal framework, policies, and places of immigration detention, which is included in reports to the Senate on the implementation of immigration detention policies. NGOs authorised to provide legal and social assistance to people in immigration detention publish a yearly authoritative report with analysis of policies, trends, and statistical data, as well as detailed information on places of detention in mainland France and overseas territories.<sup>161</sup>

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<sup>156</sup> République Française, “Budget général, Annexe au projet de loi de Finances pour 2019 : Immigration Asile et Intégration,” <https://bit.ly/2Czn1Wk>

<sup>157</sup> Migration and Home Affairs, “Return & Readmission,” European Commission, <https://bit.ly/2thDUfe>

<sup>158</sup> Point de contact français du Réseau européen des Migrations, “Deuxième étude ciblée 2014 - Bonnes pratiques en matière de retour et de réinsertion des ressortissants de pays tiers en situation irrégulière: Interdictions de retour et accords de réadmission entre la France et les pays tiers,” *European Migration Network*, July 2014, <https://bit.ly/2MOJU9n>; J.P. Cassarino, “Inventory of the Bilateral Agreements Linked to Readmission,” 2018, <http://www.jeanpierreccassarino.com/datasets/ra/>

<sup>159</sup> See: Ministère de l'Intérieur “III. Le volet immigration...l'accompagnement des étrangers en situation irrégulière (juridique, sanitaire, hébergement...)” in Ministère de l'Intérieur, “La deuxième conférence des acteurs du Fonds Asile, Migration et Intégration (FAMI) et du Fonds Sécurité Intérieure (FSI) s'est tenue le 19 juin 2015,” 15 July 2015, <https://bit.ly/2w5hB2M>

<sup>160</sup> “FAMI, PSI, Fonds Asile Migration Intégration – Fonds Sécurité Intérieure: programmes nationaux 2014-2020,” République Française, Ministère de l'Intérieur, <https://bit.ly/2A2yzjX>

<sup>161</sup> La Cimade, “Publications et ressources / Rapports sur la rétention administrative,” <https://bit.ly/2EYB44D>



French authorities can be less forthcoming in their reporting on overseas territories, including in particular Mayotte, where there are important derogations in the application of immigration laws.<sup>162</sup> NGOs, for example, have noted that official detention-related data from Mayotte are not as “detailed” as those provided for the rest of the country.<sup>163</sup>

In 2015, the GDP and Access Info Europe, a transparency organisation based in Spain, jointly [published a report](#) detailing results from freedom of information requests they submitted to several dozen European countries. The requested information included basic data about where and how many people are detained, as well as disaggregated statistics concerning the detention of asylum seekers and children. France responded to the request by providing a “link to a 237-page report that is required by law to be presented to parliament every year,” and which only included information about one of the questions—the numbers of people placed in detention annually.<sup>164</sup>

**2.20 Trends and statistics.** In 2017, France placed 46,800 people in immigration detention.<sup>165</sup> Immigration detainees in mainland France rose to 26,055 that year.<sup>166</sup> On average, women constituted five percent of immigration detainees in 2015, six percent in 2016, and eight percent in 2017.<sup>167</sup> Only 0.5 percent of the 953 people seeking asylum at the border in 2016 were deemed to be “vulnerable,” and none of the 555 asylum seekers in the first semester of 2017 were deemed as such.<sup>168</sup> Expulsion levels have remained unchanged since 2013 in mainland France. Out of 14,859 people removed in 2017, less than half were expelled to non-EU countries and 71 percent were directly expelled out of detention. In 2017, 22,541 people were expelled from overseas territories.<sup>169</sup>

**2.21 The case of Mayotte.** The French Constitution and successive immigration laws authorise important derogations in the application of immigration law in Mayotte, a

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<sup>162</sup> Point de contact français du Réseau européen des Migrations, “Rapport annuel 2016 sur les politiques d’asile et d’immigration,” *European Migration Network*, April 2017; <https://bit.ly/2HKvu0D>

<sup>163</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte France and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2017,” Juin 2018, <https://www.lacimade.org/publication/rapport-2017-sur-les-centres-et-locaux-de-retention-administrative/>

<sup>164</sup> Global Detention Project (GDP) and Access Info Europe, “The Uncounted: The Detention of Migrants and Asylum Seekers in Europe,” 2015, <https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe>

<sup>165</sup> See: Global Detention Project (GDP), “European Union Data & Analysis,” <https://www.globaldetentionproject.org/organisations-alliances/european-union-eu>

<sup>166</sup> Assemblée Nationale, “Etude d’impact – Projet de loi pour une immigration maîtrisée et un droit d’asile effectif, NOR : INTX1801788L/Bleue-1,” 20 February 2018, <http://www.assemblee-nationale.fr/15/projets/pl0714-ei.asp>

<sup>167</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Avis du 25 janvier 2016 relatif à la situation des femmes privées de liberté, NOR : CPLX1604501V,” *Journal Officiel de la République Française*, 18 February 2016, <http://www.cglpl.fr/2016/avis-relatif-a-la-situation-des-femmes-privees-de-liberte/>; Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>168</sup> Anafé, “Aux frontières des vulnérabilités – rapport d’observations dans les zones d’attente 2016-2017,” February 2018, <http://bit.ly/2FCfUHW>

<sup>169</sup> La Cimade, “Statistiques 2017: ce que disent les chiffres de l’expulsion des personnes exilées,” 25 July 2018, <https://bit.ly/2KIFp4m>

French overseas territory in the Indian Ocean. Nearly half its population (approximately 250,000) are foreigners who do not have proper residence documents, including large numbers of people from the Comoros Islands who cross a strip of the Mozambique channel to reach Mayotte aboard fishing vessels. The derogations in immigration law on this territory have important impacts on vulnerable migrants. For example, in 2013, when French authorities issued a Circular intended to harmonise reception and assistance for unaccompanied children,<sup>170</sup> it did not apply in Mayotte, which detains thousands of children every year.<sup>171</sup>

In 2017, 17,934 people were detained in Mayotte (accounting for nearly 40 percent of all detainees in France that year), including 2,493 children. According to NGOs, tensions with Comorans in 2016 resulted in “*décasages*” (the destruction of houses and shelters), which spurred a large number of “voluntary” returns.<sup>172</sup> Authorities deported 22,677 foreigners—on average 60 a day—with few procedural checks, contravening European Court of Human Rights legal judgements<sup>173</sup> and recommendations from the French ombudsman for places of deprivation of liberty and civil society groups.<sup>174</sup> The large number of removals also appears to have a negative impact on the morale of police forces. After a 2016 visit to the territory, the Controller-General for Places of Deprivation of Liberty reported that this was leading to a sense of “uselessness” among police officers and the “development of inappropriate discourse or even behaviour.”<sup>175</sup>

Diminished procedural safeguards take many forms. For instance, Mayotte arbitrarily detains minors with unrelated adults who are arrested at the same time.<sup>176</sup> The child is placed in detention as an “accompanying minor” and can be quickly removed from the island. During an Anafé monitoring visit to Mayotte in 2016, the police (*Police de l'air et des frontières, PAF*) described how, when boats used by migrants in the Indian Ocean are intercepted, they arbitrarily assign children to the nearest adult before they board a

<sup>170</sup> Ministère De La Justice, “Circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers : dispositif national de mise à l’abri, d’évaluation et d’orientation, NOR : JUSF1314192C,” 3 May 2013, <http://bit.ly/1GUI4sG>

<sup>171</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, la Cimade, and Ordre de Malte, “Centres et locaux de rétention administrative, Rapport 2016,” <https://bit.ly/2EYB44D>; and La Cimade, “Rapports sur la rétention administrative,” <https://bit.ly/2EYB44D>

<sup>172</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>; Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>173</sup> European Court of Human Rights, “De Souza Ribeiro v France [GC], Application No. 22689/07,” <https://bit.ly/2vE5Mk8>; Another case is also pending before the European Court of Human Rights: “Moustahi v. France (application no. 9347/14),” <https://bit.ly/2KaaMA8>

<sup>174</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

<sup>175</sup> GDP translation from: Contrôleur Général des Lieux de Privation de Liberté, “Rapport de visite: Centre de rétention administrative de Pamandzi (Mayotte) Entre le 9 et 22 juin 2016,” June 2016, <https://bit.ly/2lucvvh>

<sup>176</sup> C. Escuillié, “Un encadrement cosmétique du renvoi des mineurs étrangers arbitrairement rattachés à des adultes accompagnants,” *La Revue des Droits de l’Homme*, February 2015, <https://journals.openedition.org/revdh/1067>; Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>



French navy vessel.<sup>177</sup> The NGO further reported that a round-the-clock service delivers expulsion orders without the legal voluntary departure deadline as soon as the PAF intercepts a boat. PAF officers process 30 people within two hours without any justification in either fact or in law. According to the PAF, “the law does not apply in the same way in Mayotte.”

In two orders in 2014 and 2015, the State Council (*juge des référés du Conseil d’Etat*) sanctioned this practice, in spite of the lawful presence of the children's parents in Mayotte, but reiterated the rights of minors and the specific guarantees surrounding the detention of children.<sup>178</sup> The judges argued that non-citizens established in Mayotte should apply for family reunification. In one instance reported by Anafé representatives, an administrative judge ruled that it was in the best interest of a five-year old child to be sent back to the Comoros with an unrelated adult, even though his mother was already legally residing in Mayotte. Anafé stated that “Migration removals policy has prevailed on the principle of family unity and the best interest of the child.”

In mainland France, the JLD must rule on whether to extend detention 48 hours after an individual is placed in detention (CESEDA Article L552-1). In 2017 however, parliamentary representatives from Mayotte pushed for an amendment to the law so that the JLD need only rule on the matter after five days (CESEDA Article L832-1-18°).<sup>179</sup> In the ensuing parliamentary debates, a Mayotte Senate member justified this downgrading of guarantees by calling for funds to be directed instead towards the appointment of two more magistrates and the creation of an additional courtroom. NGOs observed that the budgetary argument did not seem to hold in 2015 when 44 extra PAF officers were recruited in Mayotte.<sup>180</sup>

This five-day rule is particularly damaging as, on average, removals occur less than 24 hours after detention in Mayotte.<sup>181</sup> Furthermore, appeals are non-suspensive, meaning that the Mayotte prefecture can remove a non-citizen without waiting for the judge to rule on their case (CESEDA Articles L514-1 and L514-2). While it is possible to lodge an urgent suspensive appeal, termed “*référé liberté*,” from a detention centre so that removal cannot take place before a decision of the administrative tribunal, detainees rarely access this safeguard as removals are so swift. Few detainees in Mayotte are aware of their rights, and Solidarité Mayotte, the NGO present at the [Padmanzi detention centre](#), only manages to meet ten percent of the detainees before their

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<sup>177</sup> Anafé, “976: Au-delà des frontières de la légalité – Rapport de mission de l’Anafé à Mayotte et à la Réunion en 2016,” 27 March 2017, <http://www.anafe.org/spip.php?article409>

<sup>178</sup> State Council’s Orders n°385173 of 5 October 2014 and n°386865 of 9 January 2015.

<sup>179</sup> L’Assemblée nationale et le Sénat, “LOI n° 2017-256 du 28 février 2017 de programmation relative à l’égalité réelle outre-mer et portant autres dispositions en matière sociale et économique (1),” <https://bit.ly/2pFST12>

<sup>180</sup> La Cimade, “Défendre ses droits au centre de rétention de Mayotte: actualités et conseils pratiques,” 3 June 2017, <https://bit.ly/2jp024y>

<sup>181</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

express removal and the local authorities usually go ahead with removals despite the urgent appeal.<sup>182</sup>

In 2015, the UN [Committee on the Elimination of Racial Discrimination](#) recommended that appeals against first instance decisions should have “suspensive effect throughout its territory, including in the overseas collectivities.”<sup>183</sup> In 2018, during the Universal Periodic Review of the Human Rights Council, France was advised by Venezuela to “Guarantee the right of suspensive appeal for all migrants and asylum seekers held in waiting areas, and allow them legal assistance.”<sup>184</sup>

This express removal policy resists legislative changes imposed by the European Union—even though Mayotte joined the outermost EU “ultra-peripheral” region in January 2014 as per the Treaty on the Functioning of the European Union.<sup>185</sup> Contrary to the European Commissioner for Human Rights’ advice, France justifies its decisions on the grounds of “important migratory pressure.”<sup>186</sup> In 2016, the French CGLPL denounced the time frame extension for detention, labelling it inequitable and observing that removals have to be organised in a “quasi-industrial” way.<sup>187</sup> She further observed that conditions in two of the three LRAs, which are used as surge capacity, are below standards.

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<sup>182</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

<sup>183</sup> Committee on the Elimination of Racial Discrimination, “Concluding Observations on the Combined Twentieth and Twenty-First Periodic Reports of France, CERD/C/FRA/CO/20-21,” 10 June 2015, <https://bit.ly/2goisOM>

<sup>184</sup> Working Group on the Universal Periodic Review, “Draft Report of the Working Group on the Universal Periodic Review -France, A/HRC/WG.2/29/L.1,” 17 January 2018, <https://bit.ly/2uljEcC>

<sup>185</sup> Franceinfo, “Mayotte: ce qui va changer au 1<sup>er</sup> janvier 2014,” 26 December 2013, <https://bit.ly/2Fy3IcP>

<sup>186</sup> Commissioner for Human Rights, “Nils Muiznieks’s Report, Commissioner for Human Rights for the Council of Europe Following his Visit to France from 22 to 26 September 2014, Report CommDH(2015)1,” 17 February 2015, [https://rm.coe.int/ref/CommDH\(2015\)1](https://rm.coe.int/ref/CommDH(2015)1)

<sup>187</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Rapport d’activité 2016,” 29 January 2017, <http://www.cglpl.fr/2017/rapport-dactivite-2016/>



### 3. DETENTION INFRASTRUCTURE

**3.1 Summary.** Administrative detention facilities for non-citizens were officially created by the Law of 29 October 1981. Immigration detainees are held in two types of secure facilities in mainland and overseas territory: administrative detention centres (*centres de rétention administrative* (CRAs)) for up to 90 days, and places of administrative detention (*locaux de rétention administrative* (LRAs)) for shorter periods. CESEDA does not describe the legal nature (*statut juridique*) of CRAs and LRAs, but does list a number of safeguards (see section 2.9 Procedural guarantees). Immigration detention centres are controlled and managed by the border police (*Police aux Frontières*), who are under the authority of the Interior Ministry but who are not part of the regular prison administration (which is instead under the authority of the Justice Ministry). The country does not use prisons for the purpose of immigration detention.

There are 24 CRAs (the Paris CRA is sub-divided into three facilities and the Mesnil-Amelot CRA is sub-divided into two facilities)<sup>188</sup> and more than 20 LRAs.<sup>189</sup> The CRAs are located in the country's main cities: Bordeaux, Coquelles, Hendaye, Lille-Lesquin, Lyon Saint-Exupéry, Marseille, Mesnil-Amelot, Metz-Queuleu, Nice, Nîmes, Palaiseau, Paris-Palais de Justice, Paris-Vincennes Perpignan, Plaisir, Rennes-Saint-Jacques-de-la-Lande, Rouen-Oissel, Sète, Strasbourg-Geispolsheim, and Toulouse-Cornebarrieu. Another four are located in the overseas territories of Guadeloupe, Guyane, Mayotte, and Réunion. In both metropolitan France and its overseas territories, the total immigration detention capacity is 1,900 beds. Mainland LRAs are mostly located in smaller cities: Ajaccio, Bastia, Brest, Chateauroux, Cherbourg, Choisy-le-Roi, Dreux, Epinal, Modane, Nice-Côte d'Azur Airport, Pontarlier, Saint-Louis, Soissons, Tours, and Troyes. Overseas LRAs are located in Saint-Martin, Pamandzi and Dzaoudzi (Mayotte), Les Abymes (Guadeloupe), and at the CSP Lamentin Airport (Martinique).<sup>190</sup>

**CRAs (*centres de rétention administrative*).** In a November 2017 Circular, the Interior Minister announced the creation of 200 additional detention beds by adding 59 to the Vincennes CRA for men, refurbishing (*remise en état*) various CRAs, converting places dedicated to women and families into places for men, and re-opening the

<sup>188</sup> Legifrance, “Arrêté du 30 mars 2011 pris en application de l'article R. 553-1 du code de l'entrée et du séjour des étrangers et du droit d'asile, NOR :IOCL1107366A,” <https://bit.ly/2qJ9ILv>

<sup>189</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

<sup>190</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>

Strasbourg-Geispolsheim (34 places) in January 2018.<sup>191</sup> In order to significantly increase the availability of places in detention, the Minister also urged prefects to expedite maintenance of facilities that have been damaged. In 2017, a number of facilities—including Vincennes 3 and Perpignan—had to be temporarily closed for repairs after fire incidents, many of which were due to tensions and unrest. One wing in the Marseille CRA was also temporarily closed in April 2017 due to a rat infestation.<sup>192</sup>

Article R553-3 CESEDA states that each centre's capacity should not exceed 140 places. This is respected in practice and is much less than other EU countries with large detention estates such as [Greece](#) and the [United Kingdom](#) where detention facilities can hold several hundred people at once. According to NGOs working in detention facilities, a number of CRAs registered an increase in occupancy level in 2017—including a 26 percent increase in Coquelles and 24 percent in Lille—as the authorities were using detention as a means to keep non-citizens away from Calais. Both of these CRAs are located in the North of France in the Pas-de-Calais region, and jointly detained 6,514 people throughout 2017.<sup>193</sup> There are currently no plans to open new CRAs but the government has budgeted a three million EUR extension at the Lille-Lesquin centre, which will increase capacity from 86 to 100 beds by 2020 (see section 2.17 Cost of detention).<sup>194</sup>

Eleven CRAs—Rouen-Oissel, Marseille, Metz-Queuleu, Toulouse-Cornebarrieu, Saint-Jacques-de-la-Lande, Hendaye, Le Mesnil-Amelot 2, Lille-Lesquin, Lyon-Saint-Exupéry, Nîmes, and Mayotte—are authorised to detain accompanied children and families.<sup>195</sup> In 2016 meanwhile, women could be held in nine out of 25 CRAs.<sup>196</sup>

During the debate for the adoption of the 2018 budget (*loi de finance*), a rapporteur to the French Senate denounced the constant under-occupation of CRAs—reportedly at 60.9 percent in 2016.<sup>197</sup> He observed that in the wake of the 1 October 2017 terrorist attack in Marseille, the Interior Ministry pressed security officials to examine room availability in the nearest CRA when controlling a foreigner in an irregular situation who

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<sup>191</sup> Ministre de l'Intérieur, "Instruction du 20 novembre 2017 relative aux objectifs et priorités en matière de lutte contre l'immigration irrégulière, NOR : INT/V/17/30666/J," 20 November 2017, <https://www.gisti.org/spip.php?article5767>

<sup>192</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>193</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>194</sup> Sénat, "Projet de loi de finances pour 2018: Asile, immigration, intégration et nationalité. B. Les centres de rétention administrative et les mesures d'assignation à résidence: des dispositifs perfectibles, dont le financement pose question," <http://www.senat.fr/rap/a17-114-2/a17-114-26.html>

<sup>195</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>196</sup> Contrôleur général des lieux de privation de liberté (CGLPL), "Avis relatif à l'enfermement des enfants en centres de rétention administrative," *Journal Officiel*, 14 June 2018, <https://bit.ly/2wi2HUM>

<sup>197</sup> Sénat, "Projet de loi de finances pour 2018: Asile, immigration, intégration et nationalité. B. Les centres de rétention administrative et les mesures d'assignation à résidence: des dispositifs perfectibles, dont le financement pose question," <http://www.senat.fr/rap/a17-114-2/a17-114-26.html>

may present a threat to public order.<sup>198</sup> The Rapporteur commented that the occupation rate of CRAs rose to nearly 100 percent following the publication of the ministerial instruction. In September 2018, La Cimade called on the government to take urgent measures to put an end to mounting situations of violence and tensions in CRAs resulting from increased detention rates.<sup>199</sup>

**LRAs (*locaux de rétention administrative*).** Detention in LRAs is limited to short-term detention (24 hours in the case of Mayotte and less than 48 hours for others). In practice, however, NGOs have reported several instances of detention in LRAs exceeding this limit.<sup>200</sup> LRAs are created permanently or for a fixed temporary term by a prefectural decree, and they are dedicated exclusively to the administrative detention of non-citizens when they cannot immediately be transferred to a CRA. According to NGOs, authorities detained close to 2,000 people in LRAs—including 73 children—in 2016, in conditions that resembled police custody.

The Mayotte prefect regularly opens LRAs to provide makeshift surge space, when and as needed. At times, LRAs have been used for longer than the allotted 48 hours—such as on four occasions between 5 March and 6 March 2018 at the Maritime station of Dzaoudzi, the Pamandzi *gendarmerie*, the waiting zone of Mayotte, and on premises of the Dzaoudzi hospital.<sup>201</sup>

**Waiting zones.** The Interior Ministry defines 67 waiting zones (*zones d'attente*) at various ports of entry such as airports, train stations, and harbours open to international traffic (CESEDA Article L221-1). In 2016, 8,402 people were held in waiting zones (including 6,789 at Charles de Gaulle Airport and 666 at Paris Orly Airport) and 5,175 people were held during the first six months of 2017 (including 4,299 at Charles de Gaulle Airport).<sup>202</sup> The French asylum agency (OFPRA) registered 902 asylum requests at the border in 13 waiting zones in 2016.<sup>203</sup> On average, people were held for four days at Charles de Gaulle Airport, 45 hours in Orly Airport, and less than 24 hours in other waiting zones.<sup>204</sup>

According to civil society, academics, and jurists, French authorities entertain a “legal fiction” that strictly speaking, waiting zones are not located on French territory and that

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<sup>198</sup> Ministère de l'Intérieur, “Instruction n° NORINTK17018905 du 16 octobre 2017, Eloignement des personnes représentant une menace pour l'ordre public et des sortants de prison,” 16 October 2017, <https://bit.ly/2pArsXR>

<sup>199</sup> La Cimade, “Situation explosive dans les centres de rétention,” 27 September 2018, <https://bit.ly/2RWbhm7>

<sup>200</sup> Article R-551-3 CESEDA.

<sup>201</sup> Cabinet du Préfet, “Edition spéciale CRA – LRA N°11, March 2018 n° 2018/cab/142,” <https://bit.ly/2FaRYwJ>

<sup>202</sup> S.A. Bisiaux and M. Doisy, “Privation de liberté en zone d'attente: les Maintenus face à la Justice,” *Anafé*, July 2017, [http://www.anafe.org/IMG/pdf/rapport-les\\_maintenus\\_face\\_a\\_la\\_justice.pdf](http://www.anafe.org/IMG/pdf/rapport-les_maintenus_face_a_la_justice.pdf)

<sup>203</sup> Office Français de Protection des Réfugiés et Apatrides (OFPRA), “Rapport d'activité 2016,” April 2017, [https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport\\_dactivite\\_ofpra\\_2016\\_1.pdf](https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_ofpra_2016_1.pdf)

<sup>204</sup> Anafé, “Aux frontières des vulnérabilités – rapport d'observations dans les zones d'attente 2016-2017,” February 2018, <http://bit.ly/2FCfUhW>



foreigners are only “maintained” and not “retained” or “detained.”<sup>205</sup> But observers argue that French law does apply to the “*zones d’attente*.” According to CESEDA Article L211-1, the French Border Police (PAF) “hosts” non-citizens who do not meet conditions to enter France or another Schengen state; who apply for asylum at the border; or whose transit is interrupted because they do not meet requirements to travel to a non-Schengen destination.

The Interior Ministry does not publish a full list of waiting zones, however it is known that the key zones are located within the international airports of Charles de Gaulle and Orly, just outside Paris. Others are located in harbours including Marseille and Calais, or at train stations including Paris-Gare du Nord, Lille-Europe, Strasbourg, Nice, and Modane.<sup>206</sup> However, waiting zones can also be “mobile and temporary,” and can be created when at least 10 non-citizens arrive in an area not more than 10km away from a border crossing point (CESEDA Article L221-2). Non-citizens are held in a waiting zone for an initial duration of four days—although this time frame may be extended with court orders to a total of 26 days.<sup>207</sup> Under French law (CESEDA L221-1) “maintaining” unaccompanied minors in waiting zones must remain exceptional (see section 2.4 Children).

CESEDA Article L223-1 provides access to waiting zones for UNHCR and humanitarian NGOs providing legal assistance to foreigners. However, some of the procedural standards that are available for detainees in CRAs do not apply to waiting zones. For instance, although immigration law prohibits the deportation of foreign minors, minors are deported from the border and no frameworks exist to challenge this type of deportation.<sup>208</sup>

**3.2 Detention facilities** Unless otherwise indicated, most of the information below is based on the joint NGO yearly reports on detention centres.<sup>209</sup> This list primarily details the characteristics and situation of facilities with the highest number of detainees, as well as smaller facilities that illustrate particular patterns or specific local realities.

**3.2a The Bordeaux Detention Centre (*CRA de Bordeaux*)** first opened in 2003 and, following refurbishment, was re-opened in June 2011. It has a capacity of 20 and throughout 2017 it held 365 men, a 42 percent increase over 2016 (including five

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<sup>205</sup> Anafé, “Rapport d’observations dans les zones d’attente et Rapport d’activité,” November 2015, [http://www.anafe.org/IMG/pdf/anafe\\_-\\_rapport\\_des\\_zones\\_d\\_attentes\\_aux\\_droits.pdf](http://www.anafe.org/IMG/pdf/anafe_-_rapport_des_zones_d_attentes_aux_droits.pdf); S.A Bisiaux and M. Doisy, “Privation de liberté en zone d’attente: les Maintenus face à la Justice,” *Anafé*, July 2017, [http://www.anafe.org/IMG/pdf/rapport-les\\_maintenus\\_face\\_a\\_la\\_justice.pdf](http://www.anafe.org/IMG/pdf/rapport-les_maintenus_face_a_la_justice.pdf)

<sup>206</sup> Premier Ministre, “Maintien d’un étranger en zone d’attente,” 27 July 2016, <https://www.service-public.fr/particuliers/vosdroits/F11144>

<sup>207</sup> Articles L222-1 and L222-2, CESEDA; Premier Ministre, “Maintien d’un étranger en zone d’attente,” July 2016, <https://www.service-public.fr/particuliers/vosdroits/F11144>

<sup>208</sup> Anafé, “Politique de protection des enfants,” 7 March 2018, <http://www.anafe.org/spip.php?Article463>

<sup>209</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

people who declared themselves minors but were deemed adults by the administration) in five rooms with four beds; one isolation cell with one bed; a common area with a TV set as well as two showers and two toilets at both ends; a dining area with two TV sets; and a fenced courtyard with table football facilities. Both the common area and the courtyard are accessible at all times. Nurses are available every day and doctors are available three half-days per week. In 2017, the average detention time was 13.5 days, and most detainees came from North Africa. According to La Cimade, the NGO present in the CRA, in April 2017 asylum seekers were removed from a state shelter and placed in detention, although most of them had not opposed their transfer under Dublin proceedings.

In 2017, 18.6 percent of detainees in the centre were held upon completing prison sentences (as opposed to 11.3 percent in 2016), thus experiencing renewed deprivation of liberty as a double penalty (*double peine*)—despite having lived in France for, at times, decades. (Some former prisoners who could not be expelled in 2016 were, at times, held up to 45 days in the cramped basement of the Bordeaux police station, and were freed without any possibility of regularising their situation.)<sup>210</sup>

**3.2b The Coquelles Detention Centre (CRA de Coquelles)** was opened in 2003, and is located on the outskirts of Calais within close proximity to the Eurotunnel Calais terminal. Originally it had a capacity of 79, but this was expanded to 99 between 30 September and 15 November 2016 when the Calais camp known as the “jungle” was dismantled, and again in 2017 between 7 March and 4 May. In 2017, the CRA held 3,786 men (a 26 percent increase over 2016 which had been a record year), including 322 people who declared to be minors but were considered as adults by the administration (compared to 33 people in 2016). Of these detainees, 35.3 percent were Albanian and 22.3 percent were Afghan. The average length of detention was particularly low in 2017—just 6.5 days. Mass detention included 300 asylum seekers in Dublin proceedings, then deemed illegal by the French Supreme Court (*Cour de cassation*). According to France Terre d’Asile, the NGO present in the CRA, more than half the detainees in 2017 were released by order of the judiciary judge: most detainees came from situations of conflict or persecution, thus ruling out possibilities of removal.

There are 25 rooms with two to five beds, sanitation facilities in each of the three sectors, and one toilet per room. Each sector has a TV room and a common space—to which detainees have free access—with one phone booth; as well as a cement courtyard with several benches. Two medical staff—doctors or nurses—are available every day.

In 2015, a CGLPL team made an unannounced visit and noted a high rate of detainee turnover. When the team requested documents, they had to wait for two days before the officials handed them over—prompting the team to remind officials and their central

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<sup>210</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

director that the law must prevail over internal service instructions. They also observed that the registers were very badly maintained, and that a team of guards displayed unjustifiable and inappropriate behaviour towards the detainees. According to the CGLPL team: “the very humanity of the foreign person is trampled upon by totally dehumanised behaviour that cannot be justified by the high number of operations carried out by staff.”<sup>211</sup>

France Terre d’Asile, the NGO present in the CRA, as well as the CGLPL team, have reported that the CRA is derelict with poor living conditions. Many detainees have complained about the cold, they often have to wait for hours to be able to access telephones, and NGOs and other personnel—including medical staff—often have to wait at length for guards to open doors to the various shared zones due to the doors regularly being damaged. NGOs have denounced the weakened access to rights, lack of interpreters, and long delays before judges confirm detention orders. Furthermore, they have criticised local authorities’ illegal actions, including simultaneously issuing orders to leave the territory while filing Dublin transfers that have been regularly cancelled by the administrative tribunal. In October 2016, a CGLPL team carried out monitoring visits during the dismantling of the Calais camp known as the “jungle.” They noted that people were examined case-by-case and observed a steep increase in detainee numbers and, subsequently, cramped living conditions. The public prosecutor visited the CRA in 2016.<sup>212</sup>

**3.2c** The **Guadeloupe Detention Centre** (*CRA de Guadeloupe*) was opened in 2005. It has a capacity of 40 and held 263 people in 2017—91.3 percent of whom were men—for an average of 3.3 days. La Cimade, the NGO present in the CRA, has denounced the absurd discrepancies in French migratory policy within the free movement zone (CARICOM) of the Lesser Antilles, and the detention of individuals, over 95 percent of whom were from neighbouring Caribbean islands. In particular, they highlight weakened safeguards, lack of access to appeal, and discriminatory expulsions of Dominicans compared to Haitians. La Cimade reports that people transferred to the CRA from LRAs in Saint Martin are often not informed of their rights, face obstacles when accessing legal counsel, and are at times abused by police prior to their transfer. There are also concerns regarding the lack of adequate health care access in the centre and unchecked mosquito infestations. One improvement since 2016 has been

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<sup>211</sup> Global Detention Project translation of original (French): “La personne étrangère est niée en sa qualité même de personne humaine par certains comportements totalement déshumanisés que la multiplicité des missions ne peut justifier,” - Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Rapport de visite Centre de rétention administrative de Coquelles (Pas de Calais), Deuxième visite 29 juin - 2 juillet 2015,” July 2015, <https://bit.ly/2IKRHXd>

<sup>212</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

the facilitation of appealing removal orders with a suspensive effect (*référé-liberté*). However, according to La Cimade, this can only be activated in exceptional cases.<sup>213</sup>

**3.2d The Guyane Detention Centre** (CRA de Guyane) in French Guyana, South America, was first opened in 1995, and a new replacement facility was subsequently opened in 2008. The new facility has a capacity of 45 (33 spaces for men and 12 spaces for women) and held 1,486 individuals in 2017. 85.6 percent of detainees were men, and 92 percent of detainees came from neighbouring countries including Brazil, Haiti, and Surinam. La Cimade, the NGO present in the centre, has reported that individuals are arrested based on a derogatory regime applicable to land and sea borders. Similar to Mayotte, detention tends to be very short (1.8 days on average) and 35 percent of detainees expelled from the CRA in 2017 were removed to countries other than their own, as for instance Haitian nationals expelled to Brazil or Surinam, although there is no readmission agreement with the latter. Moreover, La Cimade has reported that access to suspensive appeals, medical assistance, and asylum can be very difficult, especially given that the possibility of seeking asylum in French Guyana has been severely curtailed.<sup>214</sup>

**3.2e The Lille-Lesquin Detention Centre** (CRA de Lille-Lesquin) was opened in 2006. It has a capacity of 86—although the government plans to extend this to 100 by 2020.<sup>215</sup> Like many other CRAs, the facility is located far from the city centre and has few public transport connections, forcing visitors to walk for at least 20 minutes from the nearest public transport. In 2017, 2,728 people were detained at the CRA (a 29 percent increase on 2016) for an average of 7.7 days: 92 percent of detainees were men, including 28 people who declared themselves as minors but were considered adults by the administration. Throughout 2017 over half of the detainees were arrested at the border, and the main nationalities were Albanian and Iraqi. In 2017, the Ordre de Malte France, the NGO present in the centre, welcomed the fact that no families had been detained since 2011. They also noted a sharp increase in the number of detentions, as well as a fast turnover from November onwards. This was the result of the 2016 law reform, which transferred authority from the administrative judge to the JLD, who was able to order a large number of releases (50.1 percent). In the case of Afghan and Iraqi nationals, who represented 22 percent of detainees in 2017 and were arrested on the Calais seafront, 83 percent were released following orders from the judiciary judge of the court of appeal. (However, local authorities continued to arrest non-citizens from

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<sup>213</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>214</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>215</sup> Sénat, "Projet de loi de finances pour 2018: Asile, immigration, intégration et nationalité. B. Les centres de rétention administrative et les mesures d'assignation à résidence: des dispositifs perfectibles, dont le financement pose question," <http://www.senat.fr/rap/a17-114-2/a17-114-26.html>

these countries.) This reform was partly in response to some prefects issuing expulsion orders (OQTF) without indicating the destination country—contrary to requisites in CESEDA Article L511-1—an unhelpful practice as people remain in detention without any hope of being removed other than by being freed. Moreover, the JLD ordered young people who had undergone illegal age-assessment puberty tests to be freed. However, some prefects also ordered the detention of unaccompanied minors in contravention of regulations (see section 2.4 Children). The public prosecutor visited the CRA in 2016.<sup>216</sup>

**3.2f** The **Lyon-Saint-Exupéry Detention Centre** (CRA de Lyon-Saint-Exupéry) was opened in 1995 in a former low-cost hotel with premises ill-suited for detention, close to the airport tarmac—leaving visitors commuting from the city centre facing an expensive journey (27.50 EUR for a return ticket). The CRA has a capacity 104 and in 2017, it held 1,395 people (a 15 percent increase from 2016)—92 percent of whom were men—for an average of 16 days. That same year, there was a sharp decrease in the number of families detained in the facility: in total, three families, including five children, were detained, compared to 11 families in 2016. The number of asylum seekers in Dublin proceedings placed in detention doubled in 2017 and reached 125 people. The Auvergne-Rhône-Alpes regional authority (*préfet*) visited the CRA in October 2017.<sup>217</sup>

Forum réfugiés-Cosi, the NGO present in the CRA, reports that some shutters were added to windows in 2017 to reduce flight risks, but that this strengthened detainees' perception that they are being held in prison. As per usual regulations, detainees can keep their mobile phones so long as they do not include a camera. However, as most phones now have cameras, the majority of detainees have to deposit theirs with the police (CRA guards). Detainees must also report to the CRA guards when they wish to check their phones, or if they wish to buy phone cards for the public telephone booth. In 2017, 16.3 percent of detainees at the CRA were held upon serving a prison sentence and prior to their expulsion. The NGO reports that in 2016, non-citizens informed of this additional detention and their expulsion while still in prison were generally not able to challenge such a decision, generating significant frustrations (see section 2.7 From prison to immigration detention). On the other hand, some former prisoners who wanted to return to their countries of origin immediately after serving their sentences resented their renewed deprivation of liberty—which was often due to the penitentiary administration's lack of diligence. In early 2018, the CRA chief told a visiting parliamentarian that the profile of detainees had significantly changed since the terrorist attack in Marseille, and that 30 percent of them now arrived directly from prisons and 30 percent from police custody. The centre was nearing maximum capacity, with an

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<sup>216</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>217</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>



average of 80 detainees and the building, with its four-bedroom structure, was not adapted to this situation.<sup>218</sup>

Forum réfugiés-Cosi also reports a case of serious ill treatment of a detainee by police officers in 2017 that prompted a judge to trigger an investigation by the General Inspectorate of the National Police following a medical examination. However, the police officers then filed a complaint against the detainee, who was subsequently charged with insults and death threats and was sent to prison.<sup>219</sup>

**3.2g** The **Marseille Detention Centre** (CRA de Marseille) was opened in 2006 and has a capacity of 136. In 2017, 1,289 people (an eight percent decrease from 2016)—of whom 94.1 percent were men—were held at the CRA for an average detention time of 17 days. The majority of detainees came from Algeria, Tunisia, and Morocco, and 25 percent arrived at the CRA after serving a prison sentence. Forum réfugiés-Cosi, the NGO present in the CRA, also reported that 2016's prolonged state of emergency resulted in an increase in the detention of asylum seekers in the Dublin procedure and that 60 percent of detainees were arrested during random ID controls on the streets in the context of migratory pressure at the Italian border. However, random ID controls dropped down to 37 percent in 2017.

Throughout 2016 and 2017, the centre faced problems with floods and low temperatures, (and even a rat infestation) forcing many detainees to sleep with their coats on. The right for detainees to receive visitors was severely curtailed because often only one of the four rooms for visits was opened and visiting time was cut back. Forum réfugiés-Cosi raised this with the CRA management and the judiciary judge, and by the end of 2017 the situation had finally improved. Just like other CRAs, Marseille Detention Centre prohibits mobile phones with cameras, and public booths are often out of order. Conditions of access to rights by detainees are often not respected, and the Interior Ministry's *Office français de l'immigration et de l'intégration* (OFII) present in places of detention to deliver services and sell petty goods to detainees often does not respect some contractual engagements, including collecting detainees' belongings up to 50km from the CRA. Such systemic malfunctions worsened in 2017 as Forum réfugiés-Cosi was no longer able to access some parts of the facility and was not correctly informed about decisions relating to detainees.

On top of the difficulties inherent to the deprivation of liberty, the CRA's environment has prompted feelings such as humiliation and anxiety. An Albanian national died after a suicide attempt in December and another eight people attempted to take their lives in the last two months of 2017. There have also been instances of self-mutilation by detainees who arrive at the CRA immediately after serving a prison sentence and often

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<sup>218</sup> S. Diffalah, "A Lyon, le centre de rétention ressemble de plus en plus à une prison," *L'Obs*, 24 March 2018, <https://bit.ly/2rvPww5>

<sup>219</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

do not have time to challenge their renewed deprivation of liberty and perceive this as a form of administrative violence. The JLD sits in an annex to the court directly adjacent to the CRA, and it has been suggested that the visibility of the detaining authority's representatives conversing with magistrates before and after court sessions affects detainees' trust in the justice system.

The Marseille CRA is the only facility to hold women in the Mediterranean region. According to a doctor at the facility, the proportion of women remained at three percent between 2012 and 2016, but rose to 5.27 percent in 2017. On average, women are approximately 31 years old and many suffer psychological trauma and incomprehension at suddenly being treated as criminals.<sup>220</sup>

**3.2h Mayotte Detention Centre** (CRA de Mayotte) first opened in 1995, and registered chronic overcrowding for years. In 2012, the Administrative Court of Mamoudzou found that the living conditions at the CRA were inhuman and degrading for detainees. A new centre was therefore opened in September 2015 in Pamandzi with a capacity of 136—plus 12 in the waiting zone. In 2017, the Mayotte prefect detained 17,934 people, constituting 42 percent of French immigration detainees. This included 2,493 children (compared to 4,285 children in 2016).<sup>221</sup> According to NGOs, violent expulsions (*décasages*) of irregular migrants by the local population in 2016 might account for the higher number of children detained in 2016.<sup>222</sup> According to Solidarité Mayotte, the NGO active in the centre, many people migrating to Mayotte come from countries with failed or inexistent health systems and hope to receive medical assistance.<sup>223</sup>

Most detainees were from the Comoros and were detained for less than 24 hours. Solidarité Mayotte was only able to attend to 1,829 detainees in 2017—including 49 children—as the majority of non-citizens are only briefly held in a transit zone before being removed, many were not aware of their rights and, at times, the authorities removed people before they could physically access the parts of the building where the NGO and the medical staff are located. The large number of detainees, and the swift process removing individuals to the Federal Islamic Republic of Comoros, are both the result of the derogatory regime applicable to Mayotte (see section 2.21 The case of Mayotte), illustrating the paradoxical context of an island that has become one of the outermost regions of the EU but which retains a strong sub-regional identity. Since 2016 it has theoretically been possible to appeal removal orders with a suspensive

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<sup>220</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>221</sup> This figure included 265 individuals held in LRAs.

<sup>222</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>223</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

effect (*référé-liberté*) but according to Solidarité Mayotte, the NGO present in the CRA, this can rarely be activated due to the very short detention time frame.

In a 2016 visit, the CGLPL observed the “exceptional intensity of migration flows” and noted that the new CRA is in very good and satisfactory condition. The Controller reported that “the police are obsessed by the organization of the return, its effectiveness rather than by the respect of the rights of the people whom they take care of ... and demonstrate a feeling not always justified, of insecurity on the island attributed to the presence of the Comorians. This state of mind is even less understandable that, contrary to what we can see in the metropolitan CRA, these officials are willing to come to Mayotte whose context they know.”<sup>224</sup> French civil servants posted in overseas territories generally benefit from extra pay in the form of a geographical dependency allowance (*indemnité de sujétion géographique*). In fact, since January 2017, police staff in Mayotte are paid 40 percent more than their counterparts in mainland France.<sup>225</sup>

**3.2i** Opened in 2011, the [Mesnil-Amelot Detention Centre](#) (*CRA de Mesnil-Amelot*) is a twelve-story building located approximately three kilometres from Charles de Gaulle Airport, and is France's largest CRA. The centre is comprised of two facilities—n° 2 and n° 3—each with 120 beds. CRA n° 2 includes 16 beds for women and 24 for families, while CRA n° 3 holds men only. In 2017, a total of 3,476 people were held at Mesnil-Amelot for an average of 17.7 days (a 22 percent increase compared to 2016): 2,037 in CRA n° 2 (88.5 percent men, and 11.5 percent women) and 1,439 men in CRA n°3—including 124 people who declared themselves as minors but who the administration considered to be adults. La Cimade, the NGO present in the centres, observed an “explosion” of detention rates: from 16 families in 2016 to 62 in 2017 (including 122 children aged between 2 months and 16 years). Further, 21.2 percent of detainees in 2017 were detained upon completion of prison sentences. The NGO also refers to a special section, which is devoted to terrorist suspects and has “special reinforced security”—NGO representatives do, however, have access to people held there.<sup>226</sup> Visiting the facility in February 2014, the CGLPL highlighted the centre’s living conditions, stating that they had deteriorated since her previous visit in 2011.<sup>227</sup>

In 2017, a young man who had been detained at the centre for several weeks told journalists accompanying parliamentarians on a visit to the facility: “Here we are not men. We are numbers. 101H, it's my mattress. 1462 is my PV number. The guards call me that.” Despite this, however, he spoke well of the police at the centre: “They do their

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<sup>224</sup> GDP translation from: Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Rapport de visite: Centre de rétention administrative de Pamandzi (Mayotte) Entre le 9 et 22 juin 2016,” June 2016, <https://bit.ly/2lucvih>

<sup>225</sup> La CGT Educ’action, “Rémunérations dans les DOM, TOM, Mayotte, St Pierre et Miquelon,” <https://bit.ly/2Lb4W1T>; France Info, “Les policiers en poste à Mayotte verront leurs salaires majorés de 40 %,” 1 July 2015, <https://bit.ly/2KCrGXE>

<sup>226</sup> Assfam, Forum réfugiés-Cosi, France Terre d’asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

<sup>227</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), “Rapport de la troisième visite des centres de rétention administrative 2 et 3 du Mesnil-Amelot (Seine-et-Marne),” February 2014, <https://bit.ly/2rKKblo>

job and honestly they are rather kind. ...It's them who separate people when they fight. Some people here have lost part of their mind."<sup>228</sup> Throughout 2017, La Cimade observed that since the 2016 reform whereby the control of the legality of detention was transferred from the administrative judge to the JLD, the local magistrate in Meaux appeared to take a restrictive interpretation of his prerogatives, systematically demanding that detainees produce a valid passport to release them from detention (above evidence of a stable address, established family life etc), and confirming detention of people in the Dublin proceedings despite the jurisprudence of the Supreme Court. Likewise, the local bar association in Meaux at times did not take into consideration the arguments brought forward by detainees in their written appeals (drafted with La Cimade's assistance). According to the NGO, the differentiated treatment of people detained in Mesnil-Amelot breached the principle of equality before the law (as compared to other parts of France).<sup>229</sup>

**3.2j** The **Metz-Queuleu Detention Centre** (*CRA de Metz-Queuleu*) was opened in 2009. It has a capacity of 98 and in 2017, 1,768 people (a 53 percent increase on 2016)—90 percent of whom were men—were held here for an average of 11.4 days. Following the terrorist attack in Marseille, there was a surge in the number of detainees and the 70 beds for men were constantly occupied, which created many tensions. However, proceedings were often hastily wrapped up so that 44 percent of non-citizens detained between September and December were ordered to be released by the JLD.

In 2017, 99 people arrived at the CRA from an LRA following the expiry of the legal deadline to challenge their detention order. The Ordre de Malte, the NGO present in the CRA, reported that the detention of families had more than doubled in 2016, and that the number of detained families rose from 51 in 2016 to 73 in 2017—including 162 children (92 were infants or children under the age of six). This is the highest level of family detention in mainland France. Forty-seven individuals declared themselves as minors but were considered adults by the administration, at times after spontaneously reporting to police stations that took them into custody, based on bone age assessment tests. Judiciary and administrative courts at times sanctioned the relevant authorities for failure to provide grounds for challenging age claims.

Most families arrived in the evening and were detained for less than one day. Often, they were woken up during the night and transported to the airport in Paris in order to be transferred to another EU member state (58 percent of families were in Dublin proceedings). This process takes place at night as states tend to require asylum seekers to arrive before the end of the morning. NGOs have questioned this practice, even though detention is short, highlighting that all families were arrested while at home

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<sup>228</sup> T. Stadius and Y. Castanier, "Derrière les grilles de la plus grande prison pour sans-papiers de France - Ici on est pas des hommes, On est des numéros," *StreetPress*, 14 November 2017, <https://bit.ly/2GtOuba>

<sup>229</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

and that it is not in the best interest of the child (and that detention may exacerbate levels of trauma).

Access to medical staff is often hindered at the centre, as detainees have to be "filtered" through a four-tier system in which the Ordre de Malte must first write to the local authority who subsequently hand the case to the medical unit in the detention centre (UMCRA) which can finally refer the case to the physician of the immigration office (OFII).<sup>230</sup>

**3.2k** The **Nice Detention Centre** (**CRA de Nice**) was opened in 1986 and has a 38 bed capacity. In 2017 1,029 men were detained (a seven percent increase on 2016) for an average of 12 days. The centre has long been derelict and according to Forum réfugiés-Cosi, the NGO present inside the centre, detainees regularly complain about the cramped and dirty environment. Throughout 2017, there were no doors to showers, toilets, and visiting parlours—a serious breach of privacy—and both phone booths were out of order. The NGO observed shortcomings in police and local authorities' behaviour: detainees were pressed to retract appeals challenging detention, and asylum-seekers spontaneously reporting to the police were detained and served expulsion orders irrespective of their asylum requests, a move sanctioned by the administrative tribunal.<sup>231</sup>

**3.2l** Since opening in 2007, the **Nîmes Detention Centre's** (CRA de Nîmes) capacity has been extended to 66. In 2017, 927 people were detained for an average of 11 days, 88.4 percent of whom were men. Forum réfugiés-Cosi, the NGO present in the CRA, reports ongoing problems due to understaffing including limitations to visiting time—with relatives waiting hours outside the centre for a 20-minute visit. A series of dramatic escapes in July 2017 triggered a strengthening of security measures, with systematic handcuffing of detainees during moves inside and outside the centre and individual searches before every meal. As witnessed in some other CRAs in mainland France, people often arrive at Nîmes CRA from LRAs in Corsica after the deadline to challenge their detention has passed.<sup>232</sup>

**3.2m** The **Palaiseau Detention Centre** (CRA de Palaiseau) was opened in 2005 and has a 40-bed capacity. In 2017, 600 men (an 18 percent increase on 2016) were

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<sup>230</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>231</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>232</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>



detained at the facility for an average time of 15.8 days, including nine who declared themselves as minors but were considered as adults by the administration. According to France Terre d'asile, the NGO present in the centre, over one third of detainees came straight from prison and argued that conditions were worse at the detention centre (see section 2.7 From prison to immigration detention). The 2017 increase in detention rates was due to a high number of people in Dublin proceedings, as well as the placement of significant numbers of Afghans and Sudanese nationals in detention by the Pas-de-Calais *prefecture*. Poor living conditions due to repeated heating and hot water breakdowns and high anxiety levels amongst detainees at the centre have led many to self-harm or go on hunger strikes.<sup>233</sup>

**3.2n The Paris-Vincennes Detention Centre** (*CRA de Paris-Vincennes*) includes CRA 1, which opened in 1995 and has a 62-bed capacity; it was due to include a 59-bed extension in 2018. CRAs 2 and 3 both opened in 2010 and were renamed CRA 2-A and CRA 2-B in 2017; both of them have 58 beds. In 2017, 3,648 men—ten of whom had declared themselves as minors but were considered as adults by the administration—were detained for an average of 16.4 days. The NGO present in the CRA, Assfam-groupe SOS solidarités, reports that following a fire CRA 3 was temporarily closed and detainees were briefly transferred to the CRA 1 new extension scheduled to open in 2018 from which 17 managed to escape. Throughout 2017 the number of asylum seekers in Dublin proceedings placed at the centre substantially increased due to their alleged risk of absconding. (See section 2.3 Asylum seekers). Assfam-groupe SOS solidarités observed that such detentions were rarely grounded, if not groundless, and that the administrative tribunal cancelled numerous expulsion orders for detainees with documents proving that they could reside in other Schengen states. At the time of their release from detention, many non-citizens detained at the CRA were not returned ID documents that had been seized upon detention. While CESEDA Article L611-2 provides that detainees are given a receipt (*récépissé*) with their names, date of detention, and the terms of return for documents, people released often have no information about the administration to which they should apply to get their ID back. In some instances, local authorities asked for a return ticket to the person's country of origin as a pre-condition to reconstitute their ID documents.<sup>234</sup>

**3.2o The Rennes-Saint Jacques-de-la-Lande Detention Centre** (*CRA de Rennes*) was opened in 2007 and has a capacity of 56 beds—six of which are for women and four for families. In 2017, 1,072 people were detained (a 19 percent increase on 2016) for an average of 8.6 days. Women constituted 1.9 percent of detainees, 47 people declared to be minors but were considered adults by the administration, and two

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<sup>233</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>234</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

families were detained. There have been many cases of people who have criminalised after refusing to be fingerprinted (see section 2.15 Criminalisation).<sup>235</sup>

According to La Cimade, the NGO present in the centre, following the October 2017 ministerial circular pressing local authorities to detain any person in an irregular situation, there was a surge in detention at the centre and 35 percent of people detained in 2017 were held between 16 October and 31 December. However, many such cases were found to be illegal and 52.6 percent of people were released after a few days due to procedural flaws. As occurs in some other CRAs in mainland France, people often arrive at Rennes from LRAs in Tours, Brest, and Cherbourg—in 2017, LRA transfers represented 20 percent of detainees at the CRA—after the deadline to challenge the JLD repeatedly sanctioned this practice in 2017. In 2018, the surge in detention rates at the centre continued. Between January and July, 719 were detained in the facility, compared to 479 during the same period of 2016. Media sources reported that 30 staff suffered professional burnouts in 2016 and 2017 due to the government's migratory policy.<sup>236</sup>

**3.2p** The **Rouen-Oissel Detention Centre** (CRA de Rouen-Oissel) was opened in 2004 and has a capacity of 72 beds—53 of which are for men, and 19 are for women and families. In 2017, 1,167 people were detained for an average of 12.8 days, including 80 women, one of whom was accompanied by her two-year old child, and 45 people who claimed to be minors but were considered adults by the administration. France Terre d'asile, the NGO present in the CRA, reports that the facility is located in a forest within the precinct of the police academy, and is out of the reach of public transport (only women who are freed are driven to the nearest station a few kilometres away). The NGO recorded allegations of abuse, provocations, and humiliation by police and witnessed the frequent placement of detainees in isolation cells as a punishment—in defiance of Article 17 of the internal rules according to which isolation should only be used as a measure to maintain public order. The NGO also denounced the systematic use of handcuffs during transfers. Since November 2017, Court-appointed lawyers before the JLD rarely argue against the grounds for detention, and the appeal jurisdiction does not accept such cases. Lawyers also often do not assist detainees who want to lodge an appeal and instead expect France Terre d'asile staff to provide such assistance, despite the fact that the NGO does not have access to detainees' files.

Ahead of the dismantling of the Calais “jungle” in the last week of October 2016, the centre was virtually emptied: few people were detained that week, but from November onwards 42 percent of people detained in the centre were sent by the Pas-de-Calais prefect. People placed in detention after serving prison sentences or who were

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<sup>235</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative, Rapport 2017,” <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, “Centres et locaux de rétention administrative - Rapport 2016,” <https://bit.ly/2rVQ7HN>

<sup>236</sup> J. Vallée, “Le nombre de détenus explose au centre de rétention administrative,” *Le Mensuel de Rennes*, 2 August 2018, <https://bit.ly/2Q1ZqRs>

transferred from LRAs often cannot exert their right to challenge detention (see sections 2.7 From prison to immigration detention, and 2.9 Procedural guarantees).<sup>237</sup>

**3.2q The Toulouse-Cornebarrieu Detention Centre** (CRA de Toulouse-Cornebarrieu) was opened in 2006 and has a capacity of 126. It is divided into five zones (*secteurs*): three for men, one for women, and one for families. In 2017, it held 1,069 people (a 24 percent increase over 2016) for an average time of 18.7 days—the longest detention period in mainland France. Of these, 4.4 percent were women and 12 were people who declared themselves as minors but were considered adults by the administration. Seven families with 12 children aged between 11 months and 14 years were also held at the centre. Four of the five European Court of Human Rights condemnations of France relating to the detention of children concerned families held at the Toulouse-Cornebarrieu CRA between 2011 and 2014 (see section 2.4 Children). Yet, in 2017 local authorities around Toulouse made expulsion and detention decisions that separated parents from young children. These were later overturned by judges.

Most detainees at the facility came from Algeria, Morocco, and Tunisia, and 13.4 percent arrived after serving prison sentences in 2017. According to La Cimade, the NGO present in the CRA, the Haute-Garonne prefect regularly separates families, and detains and expels men who have children and wives living in France. Other prefects in the region refuse to register asylum requests, systematically apply the Dublin procedure, and refuse to activate the discretionary clause that would enable asylum seekers to remain in France. Like other CRAs, detainees who arrive after serving a prison sentence are often unable to challenge the detention decision (see section 2.7 From prison to immigration detention). La Cimade observes that "everything is complicated in detention": detainees cannot use mobile phones unless they do not have a camera, some are detained hundreds of kilometres away from their families, and often were not able take any luggage or documents necessary to challenge detention at the time of arrest (the OFII (the French immigration administration) can only collect those in a short perimeter around Toulouse). This generates further problems as people released find themselves totally destitute. Material conditions at the centre are very bad with low-levels of maintenance, and extremely hasty cleaning over the 30-minute period when detainees are eating dinner. Security measures increased in 2017 and the daily searches often generate tensions, as does the systematic practice of behind the back handcuffing during transfers.<sup>238</sup>

**3.3 Conditions in detention.** Throughout 2017, the Controller-General for Places of Deprivation of Liberty (CGLPL) commented that CRAs often have deplorable hygiene

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<sup>237</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>238</sup> Unless otherwise indicated, this section is based on Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>; and Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

conditions, cramped facilities, prison-like security, a lack of respect for private life, a lack of access to open air (or restricted access depending on the availability of police staff), random access to medical treatment—both physical health care and mental health care—, overly restrictive communications practices, and a near absence of activities in detention.<sup>239</sup>

According to NGOs working in detention centres, detainees often feel helpless and have a sense of injustice, which at times leads them to desperate and violent acts including swallowing products and objects such as batteries, screws, and razor blades; self-mutilation; and attempts at hanging.<sup>240</sup> Although medical services are present in all detention centres, there are many reports highlighting obstacles and lengthy screening procedures for those wishing to obtain treatment or even to access doctors. There are also NGO reports of nurses and physicians with prison environment experience only, who thus fail to grasp the specificities inherent to administrative detention for migration status—for example, deprivation of liberty that is not based on a crime against people or property, uncertainty about the detention time frame, fear of expulsion to countries of origin left behind at a very early age, and re-detention and expulsion after serving prison sentences. Numerous detainees suffer mental health and psychiatric pathologies, which the immigration detention environment exacerbates and is ill-equipped to take into consideration.<sup>241</sup>

The CGLPL has studied the situation regarding staff inside CRAs and reports that police officials working in detention centres rarely choose such a posting, and are instead assigned to immigration detention facilities straight out of the police academy. Staff regularly report suffering a heavy psychological burden as a result of their work detaining individuals who are not delinquents, especially children. The CGLPL also recorded that some working environments, such as the sanitary facilities in some detention centres, can be "particularly unbearable." Moreover, many of those who are attracted to police work feel alienated at having to work in closed environments when they had originally expected to serve on police missions related to judicial or public security issues.<sup>242</sup> As a result, there is a high rate of absenteeism as well as staff turnover in immigration detention facilities—something that inevitably negatively impacts detention conditions, as there are insufficient staff to supervise open air recreation in some centres, and more frequently in waiting zones.

Quite different observations were, however, submitted to the GDP by one NGO representative working in a French CRA.<sup>243</sup> For over 20 years, he observed that CRA

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<sup>239</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), "Rapport d'activité 2017," <http://www.cglpl.fr/2018/publication-du-rapport-dactivite-2017/>

<sup>240</sup> Assfam, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative - Rapport 2016," <https://bit.ly/2rVQ7HN>

<sup>241</sup> Assfam-groupe SOS solidarités, Forum réfugiés-Cosi, France Terre d'asile, La Cimade, Ordre de Malte, and Solidarité Mayotte, "Centres et locaux de rétention administrative, Rapport 2017," <https://bit.ly/2u1AnEb>

<sup>242</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), "Le personnel des lieux de privation de liberté," *Editions Dalloz*, 2017, <http://www.cglpl.fr/2017/le-personnel-des-lieux-de-privation-de-liberte-2/>

<sup>243</sup> Leo Claus, ("Toulouse Retention Team Leader" - La Cimade), telephone conversation with Mariette Grange (Global Detention Project), May 2018.

staff rarely come from the police academy—instead, they tend to be recruited into the police force through the unemployment office, commonly at the age of 20 to 25. Although police work is rarely their preferred call, they sign a three-year contract (upon termination of which they are prioritised within police academy selection). The representative also explained that NGOs have been approached to provide training to young recruits who initially show some understanding of the specific situation surrounding immigration detention. But soon after they integrate teams of other guards, the new recruits often change their behaviour and become less sensitive to the plight of detainees. Furthermore, long-term civil servants working in CRAs actually often ask to be assigned such a posting, often due to family reasons. Addressing the issue of high staff turnover, the NGO representative explained that there have been cases when the head of a CRA has appreciated the tediousness of working as a guard in a detention facility, and thus regularly rotated staff to ensure a degree of job satisfaction.

Ahead of parliamentary debates regarding the 2018 draft bill for “controlled immigration and an effective right of asylum,” various groups of MPs visited detention centres. Many were surprised at the prison-like conditions of detention,<sup>244</sup> with some observing that conditions were worse than in prison given the lack of recreational activities available. Many thus concluded that serious work would be needed if the government wants to increase the length of detention. For instance, after her visit to the Mesnil-Amelot CRA, the Chair of the Law Commission, Ms. Yaël Braun-Pivet (who is from the government majority), noted how dirty the premises were and observed that if the duration of immigration detention is extended, places of detention would need to be adapted in order to become suitable spaces for those detained for long periods. Another MP also denounced the “afflictive and infamous character” of detention facilities holding those who are neither delinquents nor criminals.<sup>245</sup> The need to improve conditions in detention was eventually included in the 2019 budget proposals by the Interior Ministry (see Section 2.17 Cost of detention).

In August 2018, 64 opposition members of parliament challenged some provisions in the 2018 bill before the Constitutional Council including on the length of detention. The Constitutional Council upheld the constitutionality of the 90-day limit in September 2018 and ruled that it did not constitute a punitive sanction with a caveat that: “the judicial authority retains the possibility of interrupting the continuance of detention at any time, on its own initiative or at the request of the alien, where the circumstances of law or of fact justify it.”<sup>246</sup> An official note to that effect features in the 2018 Bill at the bottom of CESEDA Article 552-7.<sup>247</sup>

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<sup>244</sup> E. Jacob, “Centres de rétention: Je ne pensais pas que cela ressemblait autant à une prison,” *Le Figaro*, 16 February 2018, <https://bit.ly/2jeDeEJ>

<sup>245</sup> “Logique répressive du passage en centre de rétention administrative, 15<sup>e</sup> législature, Question écrite n° 03528 de M. Henri Cabanel (Hérault - SOCR) publiée dans le JO Sénat, 1 March 2018, <https://bit.ly/2KJGGdKM>; Baumard, “En visite en centre de rétention, trois députés constatent entorses à la loi et locaux dégradés,” *Le Monde*, 13 February 2018, <https://bit.ly/2q6RORJ>

<sup>246</sup> Conseil Constitutionnel, “Décision n° 2018-770 DC du 6 septembre 2018, Loi pour une immigration maîtrisée, un droit d’asile effectif et une intégration réussie,” <https://bit.ly/2ycobmW>

<sup>247</sup> Legifrance, “Code de l’entrée et du séjour des étrangers et du droit d’asile, Section 2 Nouvelle saisine du juge des libertés et de la détention aux fins de prolongation de la détention, version à venir au 1 janvier 2019,” upcoming version will be published on 1 January 2019, <https://bit.ly/2pNWooj>





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