

STUDY 2020

Detention and alternatives to detention in
international protection and return procedures

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DETENTION AND ALTERNATIVES TO DETENTION IN INTERNATIONAL PROTECTION AND RETURN PROCEDURES

Study conducted by EMN France

April 2021

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ACRONYMS

- AAR: House arrest (*assignation à résidence*)
- ARV: Voluntary return assistance (*aide au retour volontaire*)
- CESEDA: Code on entry and residence of foreign nationals and the right of asylum (*code de l'entrée et du séjour des étrangers et du droit d'asile*)
- CGLPL: General Controller for Detention Facilities (*contrôleur general des lieux de privation de liberté*)
- CNDA: National court of asylum (*cour nationale du droit d'asile*)
- CRA: Administrative detention center (*centre de rétention administrative*)
- DDD: Human Rights Ombudsman (*défenseur des droits*)
- DGEF: General Directorate for Foreign Nationals in France (*Direction générale des étrangers en France*)
- DNA: National Reception System (*dispositif national d'accueil*)
- DPAR: Preparation centers to return schemes (*Dispositif de préparation au retour*)
- ECHR: European Court of Human Rights
- ITF : Entry ban (*interdiction du territoire français*)
- JLD: Judge on liberties and detention (*juge des libertés et de la détention*)
- OFII: French Office for Immigration and Integration (*Office français de l'immigration et de l'intégration*)
- OFPRA: French Office for the Protection of Refugees and Stateless Persons (*Office français pour la protection des réfugiés et des apatrides*)
- OQTF: Removal order / return decision (*obligation de quitter le territoire français*)
- PAF : Border police (*Police aux frontières*)
- SDLII: Sub-Directorate for Combating Irregular Immigration (*sous-direction de lutte contre l'immigration irrégulière*)
- SNADAR: National plan for the reception of asylum seekers and the integration of refugees (*schéma national d'accueil des demandeurs d'asile et d'intégration des réfugiés*)
- TCN: Third-country nationals

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Detention and alternatives to detention in international protection and return procedures

National Contribution from FRANCE

The 2020 EMN study on detention and alternatives aims to identify similarities, differences, practical challenges and best practices concerning the use of detention and alternatives used in France, i.e. house arrest and preparation centers to return schemes.

Categories of third-country nationals considered in the study will include international protection applicants and individuals who have been issued a return decision. The study will focus on detention for asylum/return purposes only and will not include in its scope detention of third-country nationals who have committed a criminal offence. The study will give special attention to the possibility of detaining and/or providing alternatives to detention to vulnerable persons such as minors, families with children, pregnant women and persons with special needs.

The study will consider legal and practical approaches related to provision of detention and alternatives **available during the reporting period January 2015- December 2020**.

In France, regardless of the removal measure to which the third-country national is subject, the law on the rights of foreign nationals makes **detention subject to certain conditions**. If, after examination of the individual situation, it is established that detention is necessary, the person is placed in specialized facilities distinct from prisons: administrative detention centers (CRA) (in principle) or administrative detention facilities. The conditions under which people are held in these facilities are governed by the law and its implementing acts.

Therefore, French law has implemented several changes in its legislative and policy framework on detention and the use of its alternatives. Until the law n° 2011-672 of June 16, 2011 on immigration, integration and nationality, administrative detention was the only measure for the *ex officio* execution of the removal order. **Law n°2016-274 of 7 March 2016** on the right of foreign nationals in France has enshrined in national law the principle of prioritising alternative measures to detention over detention. This important legislative development, which this study presents, therefore **makes house arrest the common law measure for depriving foreign nationals of their liberty**, in accordance with European obligations.

In addition, this study examines the gradual development and experimentation of the **preparation centers to return schemes** since mid-2015. These centers have a dual objective: to develop alternatives to detention in the context of the removal of third-country nationals on the one hand, and to facilitate the asylum process on the other, particularly by targeting rejected asylum seekers.

The study is structured around four distinct sections.

The **first section** is reviewing the national policy and legal framework regarding detention and alternatives to detention, since 2015.

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The **second section** is exploring the availability and practical organization of alternatives to detention.

Then, the study examines in a **third section** the assessment procedures and criteria used to detain third-country nationals.

Finally, the **last section** analyses the impact of detention and alternatives to detention on the effectiveness of return and international protection procedures.

The Code for the entry and stay of foreign nationals and the right of asylum (CESEDA) was modified with the new version brought into force as from 1 May 2021.

This new version of the CESEDA does not modify the French regulation but provides a more readable and consolidated version of the applicable right for the foreign nationals.

All references in this study are issued from the previous version of the CESEDA (before 1 May 2021).

Section 1: National policy and legal framework: development since 2015¹

This section aims at providing an update about the legal and policy framework on detention and the use of alternatives to detention since 2015 and until December 2020. As such, it gives an overview of the main legal and policy changes since 2015 and until December 2020, as well as an overview of the categories of third-country nationals that can be placed in detention in France according to national law and practice.

Q1. Please report any **changes** on the legal and policy framework on **detention concerning both international protection and return procedures** since 2015.

Please provide a short description of national provisions, grounds for detention or different typologies of detention, from 2015 onwards and the rationale for any changes introduced.

Since 2015, three main pieces of legislation on asylum and the right of foreign nationals have clarified and reformed the legal framework applicable to the use of detention and alternatives to detention:

- **Law No.2015-925 of 29 July 2015²** on the reform of the right of asylum, transposed into national law the new "reception"³ and "procedures"⁴ European directives adopted in June 2013, with the dual aim of "strengthening the guarantees of persons in need of international protection and reaching decisions on asylum applications quickly".
- **Law No.2016-274 of 7 March 2016⁵** on the rights of foreign nationals in France, aimed to improve the reception and integration of regularly-admitted foreign nationals, but also the effectiveness of the fight against illegal immigration, while respecting fundamental rights.
- **Law No.2018-778 of 10 September 2018⁶** for controlled migration, an effective right of asylum and successful integration, focussed on three objectives: "reducing the time taken to process asylum applications, strengthening the fight against illegal immigration, and improving the reception of foreign nationals admitted for residence due to their skills and talents".

Since 2015, the provisions of Article L551-1 of the Code on Entry and Residence of Foreign Nationals and the Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile* – CESEDA) have been clarified by various legislative

¹ The latest EMN study on detention and alternatives to detention was published in 2014, therefore the study will cover the period between 2015-2020.

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf

² <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000029287346/> (in French).

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:FR:PDF> (in French).

⁴ <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:32013L0032> (in French).

⁵ <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000029287359/> (in French).

⁶ <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000036629528/> (in French).

texts. Detention is no longer justified by the need for “surveillance with a view to removal”, but by the lack of **“the provision of effective assurances”**, which implies a risk of evading the removal order. Evaluation of these effective assurances, as mentioned in Article L551-1, includes three possibilities: *“the possibility of identifying the person concerned, the possibility of locating the person concerned, the degree of confidence that the person concerned will comply with the obligations incumbent on them as a result of their administrative situation”*.⁷

The law of 7 March 2016 decreased the initial length of detention from five days to 48 hours.⁸ In addition, the law clearly mentions the **last resort nature of detention**, and **priority is now given to house arrest and alternatives to detention** (see Q.2). In the reasons it gives for the decision to place an individual in detention, the administrative authority must show that it has sought an alternative measure.

- **Reform of the litigation regime for detention**

The law of 7 March 2016 clarified and modified the procedures and possible appeals against detention for both the third-country nationals in question and the prefects and established a new division of competences between the administrative judge and the judicial judge in terms of controlling detention and its alternatives. This law, which came into force on 1 November 2016, **transfers the review of the legality of the detention decision from the administrative court to the judge on liberties and detention (*juge des libertés et de la détention - JLD*)** (Article 33 of the law).

A circular issued by the Keeper of the Seals (Minister of Justice)⁹ clarified the impact of these changes on the litigation regime for detention: the law gives the judicial judge (JLD) a set of judicial powers to review measures to deprive a third country national of their liberty. Henceforth, the JLD may be called upon in two possible ways: firstly by a detainee challenging their detention and secondly by a prefect wishing to extend the detention measure beyond 48 hours. This must be requested within 48 hours of the initial detention.

The administrative judge remains competent for controlling the legality of the decision to keep a foreign national in detention when the prefect considers that the foreign national has submitted an asylum application in detention with the sole aim of preventing the execution of the removal order.

The law of 10 September 2018¹⁰ extended the time limits for the JLD and the administrative judge from 24 to 48 hours.

This reform of the legal regime for detention was implemented to **make deportation decisions more effective, to facilitate “joined-up working” between judicial and administrative judges in the context of detention, and to re-establish more rapid control of the situation of third-country nationals placed in administrative detention** by the judicial judge.

⁷ Impact study, “Projet de loi pour une immigration maîtrisée et un droit d’asile effectif” [Draft law for controlled immigration and an effective right of asylum], 28 February 2018. https://www.assemblee-nationale.fr/dyn/15/textes/l15b0714_etude-impact# (in French).

⁸ In Mayotte, this period remains five days.

⁹ Circular of 31 October 2016 on the rights of foreign nationals in France and implementing decree No.2016-1457 of 28 October 2016, https://expat-elan.fr/images/10-textes-de-lois/circulaires/2016/circu_2016-10-31_NOR-JUSC1631527C_droit-des-etrangers-en-france.pdf (in French).

¹⁰ Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d’asile effectif et une intégration réussie.

<https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000036629528/>

- **Increase in the maximum length of detention**

One of the major developments in the legislative framework on detention is the increase in its maximum legal duration, which was initiated with the law of 10 September 2018 and became effective on 1 January 2019. Article 29 of the law of 10 September 2018 extends the maximum duration of detention from 45 days to 90 days and modifies Article L.552-7 of the CESEDA. The aim of this extension is to **improve how the removal chain operates, in particular by ensuring sufficient time for obtaining consular laissez-passers.**

This increase marks an in-depth reform of the methods for extending detention (Articles L552-1 to L552-13 of the CESEDA). An initial extension of 28 days is possible if it is granted by the JLD upon request of the prefect. At the end of this period, the prefecture may refer the matter to the judicial judge for a second maximum period of 30 days.

The new provisions introduced by the law of 10 September 2018 allow for the period of detention beyond 60 days to be exceptionally extended for two further periods of 15 days: the JLD may authorise an extension, renewable once. The judge will have to invoke four exceptional reasons for this extension (Article L.552-7 of the CESEDA):

- If the foreign national has obstructed the *ex officio* execution of the removal order.
- If the foreign national has applied for protection against removal on the basis of their state of health, and this is done solely for the purpose of preventing the removal order.
- If the foreign national has applied for asylum with the sole purpose of evading the removal order.
- If the removal order could not be enforced due to the consulate failing to issue travel documents to the detained foreign national.

- **Increase in detention capacity**

In addition, since 2015, the French authorities have progressively and significantly increased the capacity of detention facilities. At the end of 2020, the detention capacity in metropolitan France is 1,689 places. A plan to increase the number of places by 480 was established for the period 2018/2021; this target is provided in the annex to the 2021 Finance Bill on credits for the "immigration, asylum and integration" mission.¹¹

In addition to increasing the capacity of detention facilities, since 2015, the French authorities have been working to improve the material conditions of reception in administrative detention centres (*centres de rétention administrative* - CRA) given the increase in the length of detention. This development is illustrated by the creation of recreational activities and improvements in leisure activities within detention centres.

- **Assisted voluntary return in detention**

Voluntary return has been encouraged since 2015. While foreign nationals placed in administrative detention could not previously benefit from assisted return, this mechanism was extended to irregular third-country nationals in detention through the law of 10 September 2018 (Article 25). By modifying article L.512-5 of the CESEDA, the law **expressly opens up assisted return to persons placed in**

¹¹ <https://www.budget.gouv.fr/documentation/file-download/6145> (in French).

detention in order to encourage quicker departures and, above all, greater compliance. Since 15 July 2019, assisted return in administrative detention centres (CRAs) has been fully effective.

- **Rights and asylum applications in detention**

First, it should be recalled that third country nationals cannot be detained solely on the basis of having applied for asylum. Asylum seekers in the normal procedure are granted temporary residence while their asylum applications are examined.

The law of 29 July 2015 led to an in-depth reform of the regime applicable to asylum in detention, ensuring **a balance between respect for the rights and guarantees of asylum seekers and the need to ensure that removal measures are executed.**

Upon arrival at the detention centre, third-country nationals are notified of the rights they can exercise in terms of applying for asylum (Article L.551-4 of the CESEDA). After being placed in detention, they may submit an application for asylum within five days. Since the law of 29 July 2015 (Article 14), a foreign national placed in detention who has submitted an asylum application can receive legal and language assistance with this process.

Furthermore, Article 57 of the Act of 7 March 2016¹² supplemented Article L.551-3 of the CESEDA by specifying: *"In the case of an applicant from a country considered as a safe country of origin, the administrative authority may declare an asylum application inadmissible if it is lodged after the first five days of detention with the sole purpose of preventing the effective and imminent execution of the removal order."*

The law of 10 September 2018 specified, in the second paragraph of Article L551-2 of the CESEDA, the conditions intended to guarantee the exercise of the right of communication of persons detained during transfers. Thus, foreign nationals may benefit "in the place of detention" from the right to request the assistance of an interpreter, to communicate with their consulate and with "any person of their choice".

- **Rejected asylum seekers and the Dublin procedure in detention**

The Law of 10 September 2018 **ended the automatic suspensive nature of appeals before the national court of asylum (*Cour nationale du droit d'asile - CNDA*) against decisions by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) to reject certain categories of asylum seekers placed under the accelerated procedure and, in particular, those from safe countries of origin.** Thus, asylum seekers whose applications have been rejected may be issued with a return decision (*obligation de quitter le territoire français - OQTF*) at this stage and may therefore be subject to house arrest or detention.

Article 28(2) of the Dublin III Regulation¹³ allows for the use of detention for third country nationals under the Dublin procedure, but only in order to ensure transfer procedures in accordance with the Regulation to address a **"significant risk of absconding"**.

¹² Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France.
<https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000029287359/>

¹³<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

This was transposed into national law through Law No. 2018-187 of 20 March 2018 to ensure the proper application of the European asylum system.¹⁴ It allows for detention from the beginning of the phase to determine the Member State responsible for examining the asylum application, before any transfer decision. The law thus completes Article L.554-1 of the CESEDA by adding the following paragraph: “*Foreign nationals may only be placed or kept in detention under paragraph 1 bis of Part I of Article L. 561-2 for the time strictly necessary to determine the State responsible for examining their asylum application and, where applicable, to execute a transfer decision.*” House arrest is also provided for in Article L.561-2 of the CESEDA.

Q2. Please report on any **legal and policy changes regarding the use of alternatives to detention** concerning both international protection and return procedures since the last EMN study on detention and alternatives to detention (2014)

- **House arrest**

Since 2015, the legislative and policy framework on the use of alternatives to detention has been strengthened and thoroughly reformed.

The law of 7 March 2016¹⁵ **enshrined in national law the principle of prioritising alternative measures over detention** in accordance with the European Return Directive,¹⁶ which calls for a gradual application of control measures regarding the deprivation of liberty of foreign nationals awaiting expulsion. This law thus makes house arrest the common law measure for depriving foreign nationals of their liberty and strengthens the tools for combating illegal immigration.¹⁷

It also allowed the administrative authority, with the authorisation of the JLD, to request that the police intervene at foreign nationals’ residences. In addition, the reform also provides new powers for the JLD, including the authorisation of home visits at the request of the administrative authority in the context of house arrest.

The JLD may order foreign nationals to be placed under house arrest (*assignation à résidence* - AAR) if they have provided effective assurances, after handing over their original passport. Such cases are referred to as “judicial house arrest”. When a prefect submits a request for detention to be extended to the JLD, the JLD may substitute detention with this less restrictive house arrest measure for a period equivalent to that of detention, provided that the foreign national has provided effective assurances.¹⁸

The new provisions of the law of 10 September 2018 aim to make **house arrest more effective**. Article 31 of the law provides for the establishment of a three-hour time period during which the foreign national must be present at their home every day of the week. Furthermore, to address foreign nationals under house arrest from deliberately obstructing the automatic enforcement of a removal order,

¹⁴ <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000036171159/> (in French).

¹⁵ Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France.

<https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000029287359/>

¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0115>

¹⁷ Article L561-2 of the CESEDA.

¹⁸ Article L.552-4 of the CESEDA.

the administrative authority may, under the law of 7 March 2016, refer the matter to the JLD for the purpose of visiting the home.

Third-country nationals who are subject to a house arrest order are obliged to reside in the places identified by the prefectural authority or the court. Generally, the decision requires the third-country national to reside at **the address** they have declared as their home until the date of their expected departure. It is possible to be **accommodated by a third party** or in a **hotel**, as long as the legal conditions are met. Third-country nationals must also report periodically to the police or gendarmerie stations, up to a maximum of **once a day**. As specified in Article R.561-3 of the CESEDA, they may also be required to hand over to the administrative authority **their original passport** or any other identity or travel document in their possession. In exchange, **a receipt which is valid as proof of identity** will be issued until the execution of the removal order to which they are subject. A note of the house arrest shall be made on the receipt.

- **Preparation centers to return schemes (*dispositifs de préparation au retour* - DPAR)**

Since the middle of 2015, the experimentation with and gradual development of DPARs has also taken place to facilitate the return of rejected asylum seekers and to develop an alternative to detention.

A DPAR is a temporary accommodation facility for foreign nationals in an irregular situation, who have chosen to comply with a voluntary return programme to their country of origin, implemented by the French Office for Immigration and Integration (*Office français de l'immigration et de l'intégration* - OFII).

This development is part of a political drive for reform, which was reaffirmed by the action plan of 12 July 2017 drawn up by the Council of Ministers.¹⁹ There are two main objectives of these measures: to **develop alternatives to detention in the context of the removal of third-country nationals on the one hand, and to facilitate the asylum process on the other, particularly by targeting rejected asylum seekers.**

These measures are aimed primarily at people who have exhausted their entitlements and who have been issued with a return decision (*obligation de quitter le territoire français* - OQTF). People who enter the scheme are willing to or likely to be willing to return. These preparatory centres have the two-fold objective of developing alternatives to detention for the removal of third-country nationals in an irregular situation and improving the asylum process by freeing up places in accommodation centres for asylum seekers that are currently unduly occupied by people who have definitively been refused asylum. These centres offer assistance with preparation for return (presentation of voluntary return measures, individualised administrative support, etc.) and offer accommodation and daily financial aid to cover their needs.

These facilities are adapted for people in irregular situations, who often find themselves in highly vulnerable situations after their asylum application has been rejected, forming a secure space where willing families and individuals are provided with accommodation and support with their preparations for return, in dignified and appropriate conditions.

¹⁹ <https://www.immigration.interieur.gouv.fr/fr/content/download/103999/821936/file/DP-Garantir-droit-asile-mieux-maitriser-flux-migratoires-Juillet-2017.pdf> (in French).

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As of December 2020, 17 DPARs were operational, including four in the Paris region and 13 in the other regions, with a total capacity of 1,051 places. Five DPARs opened in 2019: in Aisne (60 places, opened 01/01/2019), in Gironde (30 places, opened 16/04/2019), in Ille et Vilaine (50 places, opened 28/10/2019), in Doubs (34 places, opened 01/12/2019), and in Loire-Atlantique (60 places, opened 24/10/2019). One DPAR opened in 2020, in Côte d'Or (21 places, opened 01/03/2020). The national plan for the reception of asylum seekers and the integration of refugees (*schéma national d'accueil des demandeurs d'asile et d'intégration des réfugiés* - SNADAR), published on 17 December 2020 for the period 2021–2023, mentions the planned opening of 1,300 new places within the DPARs.²⁰

The Ministry of the Interior has defined three areas of action for 2021 within the DPARs:

- “to continue the roll-out of the DPAR places financed under the relaunch plan;
- to optimise the removal of foreign nationals accommodated in these facilities;
 - to involve the budget services from the very beginning of the project.”

Q3. Please complete the table below with regard to the **categories of third-country nationals that can be detained** in France.

Note: Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q5) after the table.

Table 1. Categories of third-country nationals that can be detained

	Categories of third-country nationals	Can third-country nationals under this category be detained?	If yes, what is the legal basis for detention?	Which alternatives to detention are available for this category?	What are the (judicial and non-judicial) authorities involved in the decision about placing the person in detention or instead using an alternative to detention?
<i>International Protection</i>	<i>Applicants for international protection in ordinary procedures</i>	No, an applicant for international protection using the standard procedure cannot be detained.	N/A ²¹	N/A	N/A

²⁰ <https://www.immigration.interieur.gouv.fr/content/download/125575/1004750/file/Snadar-17dec2020.pdf> (in French).

²¹ N/A : not applicable

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	Applicants for international protection in border procedures	<p>No, a person seeking asylum at the border cannot be detained on this ground alone.</p> <p>They can be held in the waiting zone for a maximum of 20 days while it is checked whether the asylum application falls within the jurisdiction of another state, whether the application is inadmissible, or whether it is manifestly unfounded.</p> <p>The TCN may apply for permission to enter the country on the basis of asylum.</p>	<p>Holding asylum seekers in a waiting zone at the border is provided for in Article L. 221-1 of the CESEDA.</p>	N/A	N/A
Return procedures	Irregular migrants detected in the territory	<p>No, an irregular migrant arrested within the country cannot be detained on this ground alone.</p> <p>However, if they are issued with a removal order following their arrest,</p>	<p>The possibility of detaining a third-country national who has been issued with a removal order is provided for in Article L. 551-1 of the CESEDA.</p>	<p>House arrest and preparation centers to return schemes (DPAR) are two alternatives to detention for persons issued with a return order.</p>	<p>The decision to detain is taken by the administrative authority.</p> <p>The decision on house arrest can either be taken by the administrative authority (prefect) or by the judicial judge (JLD).</p>

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	and if they have not provided effective assurances, and if there is a significant risk that they will abscond, then they may be placed in detention.			<p>The JLD may extend the period of detention if requested to do so by the prefect.</p> <p>The JLD (judicial judge) is competent to review the legality of the detention decision.</p>
Persons who have been issued a return decision	Yes, a third-country national who has been issued with a return order may be detained if there is a risk of absconding.	Yes, the possibility of detaining a third-country national who is the subject of a removal order is provided for in Article L. 551-1 of the CESEDA.	House arrest (AAR) as well as preparation centers to return (DPAR) schemes are two alternatives to detention for persons issued with a return order.	<p>The decision to detain is taken by the administrative authority.</p> <p>The decision on house arrest may either be taken by the administrative authority (prefect) or by the judicial judge (JLD).</p> <p>The JLD may extend the period of detention if requested to do so by the prefect.</p> <p>The JLD (judicial judge) is competent to review the legality of the detention decision.</p>
Irregular migrants detected at the border	<p>No, an irregular migrant detected at the border cannot be detained.</p> <p>However, they may be placed in a waiting zone while waiting to find out whether they may enter France.</p>	Holding irregular migrants detected at the border in a waiting zone is provided for in Article L.221-1 of the CESEDA.	N/A	N/A

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Q4. Is it possible, within the French national legal framework, to detain (or to impose an alternative to detention to) persons belonging to **vulnerable groups**, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

In some cases, persons belonging to vulnerable groups may be detained, but only under specific conditions defined by the law. Vulnerability is a criterion that is taken into account in the context of administrative detention.

Regarding the detention of pregnant women or people with special needs, the compatibility of their health with residence in a detention centre is examined on a case-by-case basis by the prefect (administrative authority), informed by medical advice, and as part of the individual examination of the situation prior to the decision to place them in detention. This decision is controlled and may be extended by the judicial judge (JLD) in the context of an oral hearing. The court may terminate this extension at any time upon its own initiative or at the request of the foreign national.

The law also guarantees that detainees have a right free medical care for the duration of their detention, in accordance with article R.553-12 of the CESEDA.

The legislation takes into account the vulnerable condition of persons in detention. Article L.551-1 of the CESEDA, amended by the law of 10 September 2018, thus states that *"the motor, cognitive or psychological disabilities and support needs of foreign nationals are taken into account to determine the conditions under which they are placed in detention."*

This consideration of the condition of vulnerability also applies during the procedure relating to protecting foreign nationals who are ill from expulsion, which came into force on 1 January 2017, as provided for in the information issued on 29 January 2017²² on the application of Law No.2016-274 of 7 March 2016 relating to the rights of foreign nationals in France²³. Decree No.2018-528 of 28 June 2018²⁴ introduced the possibility for third country nationals or asylum seekers placed in detention to benefit, at their request, from an assessment of their state of vulnerability by OFII agents or by a doctor from the medical unit of the CRA (Article R.553-13 of the CESEDA). Article 2 of the decree states that, following this assessment, *"the OFII officer and the doctor responsible for the assessment may formulate opinions on the possible need to adapt the conditions of the foreign national's detention or their continued detention when this is incompatible with their vulnerability."*²⁵ Third-country nationals who are minors may not be issued with an OQTF pursuant to Article L.551-1 of the CESEDA, nor with a deportation order pursuant to Article L.521-4 of the same code. They cannot therefore be detained. Article L.551-1 on detention states that *"the best interests of the child shall be a primary consideration in the application of this article."* If third-country nationals declare themselves to be an unaccompanied minor (UAM), they fall under the

²² <https://www.legifrance.gouv.fr/circulaire/id/41763> (in French).

²³ Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France.
<https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000029287359/>

²⁴ Taken in application of Article 1 of Law 2018-187 of 20 March 2018 ensuring the proper application of the European asylum system
<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037116276> (in French).

²⁵ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037116276/> (in French).

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common law of child protection and, as such, benefit from the national assessment (of age and isolation) and guidance system.

While the CESEDA provisions prioritise house arrest over administrative detention regardless of the foreign national's family situation, the legislator prioritises house arrest for families due to the very restrictive conditions for placing them in administrative detention. Since the decision of the European Court of Human Rights (ECHR) of 19 January 2012²⁶ and the circular of 6 July 2012,²⁷ families have been placed under house arrest rather than in detention. In this case, it is the criterion of **protecting the best interests of the child** that justifies the implementation of this alternative to detention. Families may thus only be placed in administrative detention in the event of non-compliance with a house arrest order, if they abscond during the execution of the removal order, or for a very short time before departure. Families are placed under house arrest either in their own homes or in facilities to prepare for return (DPARs).

As mentioned above, asylum seekers cannot be detained while their asylum application is being processed.

Under which conditions can vulnerable persons be detained?

	International protection procedures <i>Please indicate if the persons belonging to these vulnerable groups can be detained and under which circumstances. Please also indicate whether alternatives to detention are provided</i>	Return procedures <i>Please indicate here if the persons belonging to these vulnerable groups can be detained and under which circumstances. Please also indicate whether alternatives to detention are provided</i>
Unaccompanied Minors	N/A ²⁸	No.
Disabled people	N/A	Yes, the prefect conducts a case-by-case examination of whether the person's condition is compatible with residence in a CRA, in the light of medical opinions. Some CRAs have rooms which are accessible to people with reduced mobility (<i>personnes à mobilité réduite</i> - PRM).
Elderly people	N/A	Yes, the prefect conducts a case-by-case examination of whether the person's conditions is compatible with a stay in a CRA, in the light of medical opinions.
Families with children and	N/A	Yes, in dedicated family units.

²⁶ European Court of Human Rights (ECHR), 19 January 2012, Popov v. France, No. 39474/07.

²⁷ Circular No. NOR INTK1207283C relating to the implementation of house arrest provided for in Article L. 561-2 of the CESEDA, as an alternative to placing families in administrative detention on the basis of Article L. 551-2 of the same code, http://circulaire.legifrance.gouv.fr/pdf/2012/09/cir_35851.pdf (in French).

²⁸ N/A : not applicable

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single parents with minor		Placement within DPARs and house arrest are prioritised.
Persons with serious illnesses and persons with mental disorders	N/A	Yes, the prefect conducts a case-by-case examination of whether the person's condition is compatible with residence in a CRA, in the light of medical opinions.
Victims of human trafficking	N/A	Yes, the prefect conducts a case-by-case examination of whether the person's condition is compatible with residence in a CRA, in the light of medical opinions.
Pregnant women	N/A	Yes, the prefect conducts a case-by-case examination of whether the person's condition is compatible with residence in a CRA, in the light of medical opinions.
Other vulnerable persons	N/A	

Section 2: Availability and practical organisation of alternatives to detention

This section explores the availability of different types of alternatives to detention for different categories of third-country nationals. For each, it explores the practical organisation of the alternative, including information on the authorities/organisations responsible for managing the implementation of the alternatives; the conditions that must be met by the third-country national to benefit from an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions.

This section also provides information on the challenges associated with the implementation of the alternatives, and examples of good practice in France.

Q5. Please indicate whether any **alternatives to detention for third-country nationals are available in France** and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Table 2. 1 Available alternatives to detention for third-country nationals

	Alternatives to detention	Yes/No
A1	Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	House arrest
A2	Obligation to surrender a passport, travel document or identity document	House arrest
A3	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)	House arrest
A4	Requirement to reside at a designated place (e.g. a facility or specific region). Please specify if you also consider house arrest as an ATD.	House arrest
A5	Release on bail (with or without sureties)	No
A6	Electronic monitoring (e.g. tagging)	House arrest ²⁹
A7	Release to a guardian/guarantor	No
A8	Release to care worker or under a care plan	No Supervision through house arrest and reporting obligations (within

²⁹ A house arrest measure can be issued for a third-country national who has been issued with a removal order or who has been banned from entering French territory (*interdiction du territoire français* - ITF) for acts related to terrorist activity (Article 571-3 of the CESEDA).

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		the facility or in another facility such as a prefecture or police station).
A9	Community management programme (i.e. programmes where individuals live independently in the community and are attached to a case manager) or Case management- based programme (where participants are provided with individualised tailored support)	No
A10	Other alternative measure available	DPARs

Q5.1 Amongst the alternatives above indicated, please could you indicate which ones (amongst those defined by law) are the **most used and why**? Please indicate as relevant the specific time frame

Since 2015, DPARs have been piloted in several regions. From a legal point of view, the existence of DPARs is mentioned in the information issued on 18 January 2018 regarding "managing the number of accommodation places in preparation for return" (not published in the Official Bulletin).

The national plan for the reception of asylum seekers and the integration of refugees, published on 17 December 2020 for the period 2021–2023, mentions the forthcoming opening of 1,300 new places within the DPARs.³⁰ The Ministry of the Interior's instruction n°INTV2108042J of March 31, 2021 on preparation centers to return schemes, sent to the police prefect and departmental prefects, specifies the DPAR's regime. The instruction sets out the objectives of the scheme, the target public for DPARs and the actors involved.

House arrest is the most commonly used alternative to detention and has seen a significant increase since 2018. The 2018 report to Parliament on foreign nationals in France states that the number of house arrests rose from 8,781 in 2017 to 18,302 in 2018, i.e. an increase of 108%.³¹

Q5.2 Please briefly describe each of the alternatives indicated above.

Table 2.2 Description of available alternatives to detention for third-country nationals

House arrest	
<i>In what it consists, and maximum duration</i>	House arrest is a measure of deprivation of liberty imposed on a third-country national who has been issued with a removal order. The

³⁰ <https://www.immigration.interieur.gouv.fr/content/download/125575/1004750/file/Snadar-17dec2020.pdf> (in French).

³¹ Les étrangers en France – Rapport au Parlement sur les données de l'année 2018 [Foreign nationals in France – report to Parliament on data from 2018] https://www.immigration.interieur.gouv.fr/content/download/120916/970212/file/rapport_DGEF_2018.pdf (in French).

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	<p>measure obliges the foreign national to stay in a specific place to be monitored.</p> <p>Short-term house arrest is imposed for a maximum of 45 days and is renewable once, i.e. a maximum of 90 days in total.</p> <p>A decision on long-term house arrest may be made for a maximum of six months, renewable once for the same period.</p>
<i>Legal basis (law, soft law, other guidance).</i>	Articles L.561-1 to L.563-1 of the CESEDA
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	4,020 house arrests in 2015, 8,781 in 2017 (+117% compared to 2015), ³² 18,302 in 2018 (+108% compared to 2017), ³³ 14,287 in 2019 (-21.9% compared to 2018), ³⁴ and 12,913 in 2020. ³⁵
<i>National authorities responsible to administer the alternative</i>	<p>Decisions on house arrest are taken by the prefect of the department where the accommodation is located.</p> <p>When a request to extend the detention is submitted to the JDR by the prefect, the JDR may substitute detention with this less restrictive house arrest measure for a period equivalent to that of detention, provided that the foreign national has provided effective assurances. (Article L.552-4 of the CESEDA).</p> <p>In the Paris region, it is the <i>Préfet de Police (Police Prefect)</i> who takes this measure.</p> <p>The measure is monitored by officers from the police or gendarmerie.</p>
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	N/A

³² Les étrangers en France, Rapport au Parlement 2017 [Foreign nationals in France, Report to Parliament 2017], <https://www.immigration.interieur.gouv.fr/Info-ressources/Actualites/Focus/Les-etrangers-en-France-Rapport-au-Parlement-sur-les-donnees-de-l-annee-2017> (in French).

³³ Les étrangers en France, Rapport au Parlement 2018 [Foreign nationals in France, Report to Parliament 2018], <https://www.immigration.interieur.gouv.fr/fr/Info-ressources/Actualites/Focus/Les-etrangers-en-France-Rapport-au-Parlement-sur-les-donnees-de-l-annee-2018> (in French).

³⁴ Les étrangers en France, Rapport au Parlement 2019 [Foreign nationals in France, Report to Parliament 2019], https://www.immigration.interieur.gouv.fr/content/download/126541/1011698/file/2048131_rapport_DGEF_2019_WEB.pdf (in French).

³⁵ VSA- DSED, DGEF, Ministry of the Interior.

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<i>Obligations attached to the granting of the alternative</i>	<p>Third-country nationals (TCN) must hand over their passports or other identity documents.</p> <p>TCNs must reside at the premises mentioned in the decision.</p> <p>TCNs must report periodically to the police or gendarmerie (up to once a day, other than in exceptional cases).</p> <p>TCNs must report to the consular authorities in order to be issued with a travel document.</p>
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	<p>Third-country nationals who do not return to their assigned residence within the prescribed time limit or who subsequently leave their assigned residence without the permission of the administrative authority are liable to a three-year prison sentence. Those who have not complied with the obligation to attend the police or gendarmerie stations are liable to a one-year prison sentence (Article L.624-4 of the CESEDA).</p>
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions</i>	<p>A compulsory time period during which the person must be present at the site of the house arrest may be set.</p>
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	<p>Monitored by the JLD.</p>
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention?</i>	<p>No</p>

Preparation centers to return schemes (*dispositifs de préparation au retour, DPAR*)

<i>In what it consists, and maximum duration</i>	<p>The DPARs are based on two pillars: accommodation in group or individual facilities, managed by an NGO that has signed an agreement with the State, and personalised administrative support provided by OFII. The DPARs should give priority to accommodating rejected asylum seekers and</p>
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	<p>families in an irregular situation, particularly those accompanied by minors.</p> <p>During their stay in the DPAR, residents receive a subsistence allowance of €4 per person per day. When they leave, they receive paid air fares and voluntary return assistance (<i>aide au retour volontaire</i> - ARV), financial aid the amount of which depends on the country of origin and the composition of the family. OFII representatives are on duty at the DPAR at least half a day a week to prepare and organise the return. Foreign nationals are subject to internal regulations within the centre, with freedom of movement. However, they are subject to house arrest during their stay, which cannot exceed 45 days, , renewable if necessary up to a maximum of 90 days, to allow for departure to be organised. The arrangements for checking in with the authorities may be made more flexible.</p>
<p><i>Legal basis (law, soft law, other guidance).</i></p>	<p>The ministerial instruction³⁶ of 22 July 2015 is at the origin of experimentation with these facilities and has since been repealed. The Ministry of the Interior's instruction n°INTV2108042J of March 31, 2021 on preparation centers to return schemes, sent to the police prefect and departmental prefects, specifies the regime of the DPARs. The instruction sets out the objectives, the target public and the actors involved in the DPARs.</p> <p>The national plan for the reception of asylum seekers and the integration of refugees also mentions the DPAR and the creation of 1,300 additional places in the schemes by 2021.</p>
<p><i>Is it used in practice? Please provide any available data for the period 2015-2020</i></p>	<p>As of December 2020, 17 DPARs were operational, including four in the Paris region and 13 in the provinces, with a total capacity of 1,051 places.</p>

³⁶ "Instruction No. INTK1517235J of the Minister of the Interior and the Minister of Housing, Regional Equality and Rurality dated 22 July 2015 on the implementation of the plan "*Répondre au défi des migrations: respecter les droits, faire respecter le droit*" [Responding to the challenges of migration: respecting rights, ensuring compliance with the law], <https://bodata.steinertriples.fr/INTK1517235J.pdf> (in French), instruction repealed.

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	The Government has authorised funding for 1,300 places in the 2021–2022 relaunch plan’s framework.
<i>National authorities responsible to administer the alternative</i>	Prefectures, the General Directorate for Foreigners in France (<i>Direction générale des étrangers en France - DGEF</i>), in conjunction with the OFII.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	NGOs, facilities that have signed an agreement with the State (e.g. Adoma).
<i>Obligations attached to the granting of the alternative</i>	Applicants must comply with the conditions for voluntary return.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	If a foreign national accommodated in a DPAR refuses to leave France voluntarily, the prefectural authorities may proceed with the <i>ex officio</i> execution of the removal measure by using coercive procedures.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions</i>	Monitoring takes place either through regular visits by the police to check on the TCN’s presence in the facility or by the TCN checking in at a police station.
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention?</i>	<p>The authorities consider that the effectiveness of this alternative to administrative detention is evident from the quarterly statistical feedback from the facilities and, in particular, the voluntary return rate.³⁷</p> <p>Indeed, the voluntary return rate in DPAR was 92% for 2019. This rate was only 78% in 2020, a decrease that can mainly be explained by the health crisis and difficulties for executing removal orders.</p> <p>This observation is also shared by organisations managing certain DPARs: they mention positive results in terms of the rate of return of people referred under the ARV scheme. They also emphasise that the DPARs</p>

³⁷ Contribution from the Office for Detention and Return (*Bureau de la Rétention et de l'Eloignement*) within the Sub-Directorate to Combat Irregular Immigration (*Sous-direction de la lutte contre l'immigration irrégulière - SDLII*) in the DGEF of the Ministry of the Interior, February 2021.

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	ensure the smooth operation of facilities dedicated to accommodating asylum seekers by freeing up the places occupied by people whose applications have been rejected and who wish to return. In their view, the effectiveness of the systems is calculated in particular by taking into account the length of stay and the actual return rate (mainly voluntary return or, in extreme cases, forced return). ³⁸
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Q6. Please identify any **practical challenges associated with the implementation of each alternative** to detention available in France, based on existing studies or evaluations or information received from competent authorities

<ul style="list-style-type: none"> • House arrest <p>While house arrest is a less coercive measure than detention, it does not offer the same rights to third-country nationals as those placed in the CRA in terms of legal support. Indeed, the law does not currently provide for people placed under house arrest with a view to their removal to receive assistance in terms of informing them about and exercising their rights.</p>
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Challenge ³⁹	Alternative 1 (house arrest)	Alternative 2 (DPAR)
Availability of facilities related to accommodation (i.e. beds)	<p>Foreign nationals are placed under house arrest at the place of residence they have declared. If a foreign national does not have a place of residence, they may be accommodated in a hotel or in a DPAR.</p> <p>Some foreign nationals whose asylum claims have been rejected and who are placed under house arrest as part of their removal,</p>	<p>NGOs which manage DPARs have pointed out that it would be appropriate to have premises close to transport and/or airports.⁴¹</p>

³⁸ Contribution from the Housing Department of the operator Adoma (CDC Habitat Group), February 2021.

³⁹ Several operators managing DPARs contributed to identifying the challenges related to the implementation of the two alternatives to detention: the Housing Department of the operator Adoma (CDC Habitat Group) and the Refugee Reception Unit of the NGO Habitat & Humanisme EHD [Entreprendre pour humaniser la dépendance].

⁴¹ Contribution from the Housing Department of the operator Adoma (CDC Habitat Group), February 2021.

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	<p>whether they return voluntarily or not, remain in the accommodation provided by the National Reception System (<i>Dispositif national d'accueil</i> - DNA) which represents an obstacle to the smooth operation of asylum facilities.⁴⁰ To address this challenge, the government has decided to create 1,300 additional DPAR places in 2021.</p>	
<p>Availability of staffing and supervision</p>	<p>According to the authorities, foreign nationals placed under house arrest are not subject to any supervision apart from the obligation to check in. However, the police may be asked from time to time to check whether the person concerned is complying with the obligations regarding the house arrest (presence at the accommodation at set times, etc.)</p>	<p>Some DPAR managers noted the need to set up a team of social workers, a management team with profiles that are sometimes difficult to anticipate depending on the actual rotation of detainees and departures, and the impact on the logistical/security needs depending on the requirements of local politicians or the difficulties of group management if detainees are isolated or cohabiting.⁴²</p> <p>Some organisations managing DPARs emphasize the need of human resources (police, gendarmerie) to deal with the regular reporting appointments⁴³.</p> <p>According to the authorities, the monitoring of timekeeping records for persons in DPARs is lighter in comparison with house</p>

⁴⁰ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

⁴² Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

⁴³ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

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		arrest. Indeed, the reporting progress can be done within the facility and there is generally only one reporting obligation per week.
Administrative costs		On average, the cost is €25/place per day in the provinces and €27/place per day in the Paris region.
Mechanisms to control movements of the person	<p>A person under house arrest may not move outside a clearly identified area. If necessary, they may request an exemption document from the administrative authority.</p> <p>NGOs in charge of persons under house arrest point out that the house arrest measure requires regular reporting to the competent police department, which is a cumbersome procedure from an administrative point of view.⁴⁴</p>	<p>A person under house arrest may not move outside a clearly identified area. If necessary, they may request an exemption document from the administrative authority.</p> <p>Some NGOs managing DPARs point out that:</p> <ul style="list-style-type: none"> - Mechanisms to control movement are limited to certain persons placed under judicial control or under house arrest within the DPAR.⁴⁵ - People placed under house arrest are subject to regular reporting on site or with the local police or <i>gendarmerie</i> office.⁴⁶
Legislative obstacles	<p>Foreign nationals must have been issued with a removal order (dated less than one year ago).</p> <p>The conditions for house arrest are governed by the CESEDA which provides for</p>	<p>According to the authorities, there are no legislative obstacles, as those who are accommodated join the scheme of their own free will.</p> <p>DPAR managers would like the implementation of national specifications to</p>

⁴⁴ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

⁴⁵ Contribution from the Refugee Reception Unit of the NGO Habitat & Humanisme EHD [Entreprendre pour humaniser la dépendance], February 2021.

⁴⁶ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

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	a maximum duration of arrest.	ensure consistency and a framework for services. ⁴⁷
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)	Foreign nationals receive no financial support. They may receive assistance from the local voluntary sector. If a foreign national has no fixed address, accommodation may be provided by the state (hotel or DPAR).	Foreign nationals who are accommodated receive a daily allowance to cover their needs, of about €4/day per person.
Other challenges		<p>DPAR managers stress two points:</p> <ul style="list-style-type: none"> - Due to the health crisis context: there were no flights, and waiting times were much longer than advertised, leading to frustration (6 to 12 months).⁴⁸ - Children's education is often impossible due to short stays or changes in their situation during the school year, which often leads to a break in the children's schooling.⁴⁹

The administrative detention system in Mayotte

⁴⁷ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

⁴⁸ Contribution of the Refugee Reception Unit of the NGO Habitat & Humanisme EHD [Entreprendre pour humaniser la dépendance], February 2021.

⁴⁹ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

A derogatory detention regime applies in Mayotte, largely due to the particularly high migratory pressure on the island. This pressure has worsened since 2018 due to the political crisis in the Comoros, the country that is the source of the large migratory flows to Mayotte. Most of the foreign nationals deported have Comorian nationality. In 2013, the legal framework applicable to Mayotte was incorporated into the CESEDA.

The provisions relating to removal measures are also specific to Mayotte and are set out in Article L.514-1 of the CESEDA. In this respect, the law of 7 March 2016⁵⁰ introduced the possibility of a suspensive interim injunction against expulsion measures.

The law of 7 March 2016 introduced several legislative provisions and reformed the framework applicable in Mayotte in terms of detention; such as the possibility of automatic intervention by the JLD after 48 hours of detention rather than five days. However, this provision was repealed by Mahoran members of parliament, who invoked the “exceptional migratory pressure” on the island.⁵¹

NGOs criticise the detention system in this department, pointing out in particular the residence conditions in the CRA but also the conditions for exercising rights. The 2019 report by NGOs working in the CRAs⁵² highlights “*particularly worrying practices*” in terms of respect for and exercise of the rights of detained and removed persons in Mayotte. In addition, in June 2016, the General Controller for Detention Facilities (*Contrôleur général des lieux de privation de liberté* - CGLPL) published a report on a visit by six controllers to the Pamandzi CRA in Mayotte⁵³ in which they highlighted the speed with which deportations were implemented and the ineffectiveness of the exercise of the rights of persons held in the CRA.

Significant increase in returns since 2018 and strengthening the fight against illegal immigration

The 2019 inter-NGO report on the CRAs highlighted an increase in asylum applications in detention since the end of 2018: the political context in Comoros has indeed worsened. In addition, detention on the island has also seen a very sharp increase over the same period (2018–2019), rising from 16,000 to almost 27,000 according to the Border Police (*Police aux frontières* - PAF) figures.⁵⁴

The French authorities are focusing on returns by increasing gendarmerie and border police (PAF) personnel and creating the **Investigatory Group into Combatting Clandestine Immigration (Groupe d'Enquête sur la Lutte contre l'Immigration Clandestine - GELIC)** on 20 June 2018 to fight irregular immigration more effectively.⁵⁵

⁵⁰ Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France.

<https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000029287359/>

⁵¹<https://www.lacimade.org/defendre-ses-droits-au-centre-de-retention-de-mayotte-actualites-et-conseils-pratiques/> (in French).

⁵² https://www.lacimade.org/wp-content/uploads/2020/09/La_Cimade_Rapport_Retention_2019-1.pdf (in French).

⁵³<https://www.cglpl.fr/wp-content/uploads/2018/05/Rapport-de-visite-du-centre-de-r%C3%A9tention-administrative-de-Pamandzi-Mayotte.pdf> (in French).

⁵⁴ p.13, https://www.lacimade.org/wp-content/uploads/2020/09/La_Cimade_Rapport_Retention_2019-1.pdf (in French).

⁵⁵<https://www.mayotte.gouv.fr/index.php/content/download/10298/78140/file/CP%20-Installation%20GELIC.pdf> (in French).

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Q7. Please identify any **practical advantage associated with the implementation of each alternative** to detention available in France in comparison with detention, based on existing studies or evaluations or information received from competent authorities

House arrest is a measure which restricts liberty, as opposed to detention, which deprives a person of liberty. Foreign nationals under house arrest are restricted to a specific area, must report to the authorities at set intervals, must declare any change of address and, in some cases, must be at home at set times.

DPARs have several advantages over detention. These are “open environment” facilities which allow families to be accommodated as well as rejected asylum seekers who are committed to the process of **voluntary return**. A parliamentary report published in June 2019⁵⁶ gave a “satisfactory” assessment of the scheme, with a removal rate “above 80%” in these DPARs, which had nearly 899 places in 2018 according to the report, compared to 1,051 in 2020. The DPARs make it possible to accommodate people who do not necessarily have access to mainstream emergency accommodation and thus ensure the national reception system operates more smoothly.

Advantage	Alternative 1(House arrest)	Alternative 2(DPAR)
Availability of facilities related to accommodation (i.e. beds)	<p>Accommodation either consists of the foreign national’s own accommodation or a hotel paid for by the administrative authorities.</p> <p>For some NGOs in contact with foreign nationals under house arrest, this option is an advantage because this procedure can be implemented even though the person do not have a personal accommodation.⁵⁷</p>	<p>DPAR managers mention adequate funding⁵⁸ and specify that DPARs make it possible to offer material reception conditions for the time needed to prepare for the return.⁵⁹</p> <p>The DPARs are fully equipped with furniture and household appliances for all aspects of daily life.</p>
Availability of staffing and supervision	<p>There is no supervision other than reporting obligations and home attendance hours.</p>	<p>Social workers employed by the organisations managing the DPARs are regularly present on-site. The OFII</p>

⁵⁶ https://www.assemblee-nationale.fr/dyn/15/rapports/cion_fin/l15b1990-a28_rapport-fond.pdf

⁵⁷ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

⁵⁸ Contribution of the Refugee Reception Unit of the NGO Habitat & Humanisme EHD [Entreprendre pour humaniser la dépendance], February 2021.

⁵⁹ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

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	<p>According to the NGOs in contact with these individuals, this is a procedure that does not include providing support to people, so no staff are needed in this respect, but it is still necessary to have staff to monitor the house arrest measures (time limits, check-ins, etc.).⁶⁰</p>	<p>return officer [agent retour] also visits the facility to assist foreign nationals accommodated within it in their efforts to return home.</p> <p>The EHD NGO noted in this respect a support ratio of one [social worker] for approximately 15 to 20 [beneficiaries of the scheme].</p> <p>The DPARs provide support with return procedures in conjunction with the authorities (OFII, prefecture, police, etc.).</p>
Administrative costs	<p>Cost of overnight hotel accommodation.</p>	<p>This administrative cost amounts to an average of €25/place per day in the provinces and €27/place per day in the Paris region.</p> <p>This cost helps to have visibility on the consumption of credits and on expenditures, and also makes it possible to control the funding of DPARs and thus avoid large disparities between the centers.</p>
Mechanisms to control movements of the person		<p>The DPARs are open environment facilities allowing freedom of movement except for foreign nationals who are under house arrest in DPARs and subject to regular reporting.</p> <p>However, this geographical perimeter generally limits the freedom of movement to the departmental level.</p> <p>The DPAR managers note that people are accommodated</p>

⁶⁰ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

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		and supported by an operator and are therefore easily located, especially if they are under house arrest at the DPAR. ⁶¹
Legislative obstacles	None.	None, the people accommodated in this way join the scheme of their own free will. For NGOs working in DPARs, these facilities represent an advantage in terms of legislative security since they accommodate people who are willing to return.
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)	Foreign nationals placed under house arrest are not eligible for financial assistance.	Foreign nationals in this situation receive a daily allowance to cover their needs, of about €4/day per person. NGOs may organise food donations and cash payments, they work in partnerships to ensure access to healthcare, and the teams are able to continue the social support (access to care, schooling, etc). ⁶²

⁶¹ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

⁶² Contribution of the Refugee Reception Unit of the NGO Habitat & Humanisme EHD [Entreprendre pour humaniser la dépendance], February 2021.

Section 3: Assessment procedures and criteria used for the placement of third-country nationals in detention or alternatives to detention

This section examines the assessment procedures and criteria/benchmarks that are used in order to decide whether placing the third country national in detention or to instead use an alternative. The section will also explore how authorities decide which alternative to detention is most suitable to an individual case.

The section starts from the assumption that the grounds for detention exists and does not specifically analyse how the existence of such grounds are assessed.

The section begins with an overview of the steps taken to decide to use an alternative instead of placing the individual in detention. Questions then explore the timing of this assessment, whether an individual assessment is conducted, which authorities are involved in the assessment procedure and which criteria are used to determine whether to use detention or an alternative.

The session will assess how vulnerability factors are assessed when taking a decision for detention and when making an assessment to opt for detention or an alternative.

Q8. Please provide an **overview of when and how the decision** about placing a person in an alternative instead of in detention is made. Please respond considering the following elements

- i. Is the assessment between detention or alternatives to detention made at the same time as when the grounds for detention are considered or at a different time?
- ii. In what circumstances are the grounds for detention rejected in favour of an alternative to detention?
- iii. Does the procedure vary depending on the categories of third country nationals or their country of origin (e.g. because of the specific situation in the country)?
- iv. Which authorities are involved in the procedure, please specify the respective role (i.e. consultative, decision maker)?

International protection procedure: not applicable

As mentioned above, asylum seekers cannot be detained during the asylum procedure on this ground alone.

Return procedure

i. The decision to detain or issue an alternative measure is taken by the administrative authority at the same time as the grounds for detention and the assessment of the risk of absconding are examined.

Thus, Article L.551-1 of the CESEDA provides that foreign nationals may be detained if they do not provide effective assurances to prevent the risk of absconding, if the detention is proportionate and if it is not possible to take a decision on house arrest.

ii. The administrative authority must give reasons for its decision to detain.

Since the law of 7 March 2016⁶³, detention must be enforced as a last resort, with priority given to house arrest. Thus, prefects must state the following in their decisions to detain:

⁶³ Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France.
<https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000029287359/>

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- that the person is not under house arrest, and the grounds on which house arrest has been rejected in favour of detention;
- the reasons for the non-use of house arrest on the basis of article L.561-2 of the CESEDA and that these reasons justify the need for detention (failure to provide effective assurances, presence of a risk of evading the removal order, etc.);
- taking into account the person's state of vulnerability;
- taking into account the best interests of any children accompanying a foreign national in detention.

The decision on house arrest is determined by an assessment by the administrative authority of the effectiveness of the assurances provided. This assessment must analyse the non-negligible risk of absconding as established in Article L-511-1 d and Article L.551-1 of the CESEDA.

Assessing the effective assurances in order to justify a decision to place a person under house arrest or in detention is based on three points:

- 1) identification of the person: *can the person concerned present an identity and/or travel document?*
- 2) the location of the person: *what domicile/address has been declared to the administration?*
- 3) The degree of confidence that the person will comply with their obligations: *this involves looking at a range of indicators to assess the degree of confidence in the person's cooperation.*

- iii. Does the procedure change according to the category of third-country nationals or according to the country of origin (e.g. due to the specific situation in the country)?

No. The procedure and provisions are identical regardless of the nationality and country of origin of the person concerned.

- iv. The authorities:

The JLD must be called upon within 48 hours of notification of the detention for the purpose of extending the detention beyond this period. The JLD shall issue a decision within 48 hours of the matter being referred to them, by order at the seat of the judicial court within the jurisdiction of which the place of detention of the foreign national is located.

Q9. Is the possibility to provide alternatives to detention **systematically considered** in France when assessing whether to place a person in detention?

International protection procedures: not applicable

As mentioned above, asylum seekers cannot be detained during the asylum procedure for this reason alone.

Return procedures:

YES, according to the legislative provisions introduced by the law of 7 March 2016.

Since the law of 7 March 2016, house arrest has been prioritised over detention. The administrative authority assesses the effectiveness of the assurances provided in order to make its decision. The detention order must specify the reasons for which house arrest is rejected.

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Q10. When there are grounds for authorising detention, which **considerations or criteria** are used to decide whether to place the third-country national concerned in detention or instead provide an alternative?

Criteria	International protection procedures	Return procedures
Suitability of the alternative to the needs of the individual case	As mentioned above, asylum seekers cannot be detained during the asylum procedure for this reason alone. N/A	Yes. Decisions on detention and alternatives to detention must be reached on a case-by-case basis . This consideration of the individual's state of vulnerability, or their particular situation (accompanied minors, family, etc.) must be expressed in the reasons for the administrative authority's decisions.
Cost-effectiveness		No.
Nationality or Country of origin/return (e.g. considerations on the specific situation in the country of origin)		No.
Level of the risk of absconding		Yes. A "significant risk of absconding" is one criterion used to justify a decision to detain. Article L551-1 of CESEDA lists twelve cases in which the risk of the foreign national absconding, and therefore evading the removal order, is established. The absence of effective assurances to prevent the risk of absconding is the main criterion for detention.
Vulnerability		Yes. The consideration of any state of vulnerability or

Detention and alternatives to detention in international protection and return procedures

Criteria	International protection procedures	Return procedures
		disability in the reasons for the decision to detain is mentioned in Article L551-1 of CESEDA.
Less-invasive legal measures impacting on human rights	<i>Not applicable</i>	No.

Q.10.1. If **vulnerability** is one of the criteria used to assess whether placing the person under an alternative instead of detention, please **describe how the vulnerability assessment is made** (e.g., the responsible authority and the procedures followed).

- Elements of vulnerability considered (unaccompanied minors, families with children, pregnant women and persons with special needs, victims of violence etc)
- Are vulnerability assessments conducted on a case-by-case basis, or is the assessment based on pre-defined categories/groups?
- Authorities / organisation conduct the assessment?
- Procedures followed

International protection procedures: not applicable

As mentioned above, asylum seekers cannot be detained during the asylum procedure for this reason alone.

Return procedures:

As mentioned above, **the decision to place an individual detention or to use an alternative measure** is made on the basis of an individual and personalised analysis. All foreign nationals are subject to an examination of their vulnerability by the administrative authority (L.551-1 I of CESEDA).

Article R.553-13 of CESEDA specifies the procedures for assessing the vulnerability of foreign nationals placed in detention: "***independently of the examination of their vulnerability by the administrative authority when*** they are placed in detention, they may, at their request, have their vulnerability assessed by OFII officers [...] and by a doctor at the administrative detention centre."

Not all detainees can benefit from these provisions **during their detention**. Only detainees falling under the Dublin procedure, asylum seekers whose applications have been rejected, and those whose asylum application is in progress but who are the subject of a ban from French territory (*interdiction du territoire français - ITF*), a removal order or an administrative ban from France (*interdiction administrative du territoire - IAT*), may be subject to a vulnerability assessment by the OFII at their request.

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Following this assessment, the OFII mediator or the doctor may formulate an opinion on the need to adapt the foreign national's detention conditions, or on their continued detention if it is incompatible with their vulnerable state.

In this respect, the CRA manager may determine special conditions for detention, taking into account the person's vulnerabilities, and may, in the event of incompatibility with detention, inform the competent administrative authority.

Detention or alternative measures do not apply to unaccompanied minors (see Q4).

In the case of families with children, the authorities prioritise house arrest or preparatory return schemes (see Q4).

Thus, as the government has explained in various answers to parliamentary questions,⁶⁴ "French law prohibits the detention of unaccompanied minors. However, it does allow for the detention of families and therefore of some minors. The detention of minors is, nonetheless, strictly regulated by paragraph III bis of Article D. 313-1 of the Code on the Entry and Residence of Foreign Nationals and the Right of Asylum. This ensures that national law complies with the requirements of the ECHR by laying down three cumulative conditions: detention is only possible in specific cases, particularly if the foreign national has already obstructed the execution of a removal order or has absconded; the duration of detention must be as short as possible in relation to the time strictly necessary for departure; placement is only possible in an administrative detention centre with isolated and adapted rooms, specifically designed to receive families. In situations involving accompanied minors, the duration of detention is reduced to a maximum. It was 34 hours on average in 2018. Moreover, these placements remain exceptional as minors represent barely 1% of all persons placed in detention in 2018, i.e. a total of 199 minors. Thus, compliance with national law ensures that the detention of minors remains an exceptional measure, that its duration is always short and that it is carried out in material conditions that are in the best interests of the child. In detention, special attention is paid to families by the managers and medical units. In line with its commitment, the Government is spending €6.1 million on a programme to improve the living conditions of detainees and to provide more family-friendly occupational activities and facilities. Families are also provided with medical care through standard consultations or continuity of care and, if necessary, through the services of hospital units located within the jurisdiction of the detention centres. In addition, psychologists have been gradually deployed from September 2019. This measure follows on from discussions with the Directorate-General for Healthcare (direction générale de l'offre de soins) and the Department for Health (direction de la santé) on the revision of the circular of 7 December 1999 on the health measures implemented in administrative detention centres.

Q11. Which **legal remedies** are available to the third-country national against a decision to opt for detention /instead of an alternative to detention?

International protection procedures: not applicable

As mentioned above, asylum seekers cannot be detained during the asylum procedure for this reason alone.

⁶⁴ QST-AN-15-21253QE (<https://questions.assemblee-nationale.fr/q15/15-21253QE.htm>) / 17498QE (<https://questions.assemblee-nationale.fr/q15/15-17498QE.htm>) and 6830 QE (<https://questions.assemblee-nationale.fr/q15/15-6830QE.htm>) (in French)

Return procedures:

The foreign national in question can lodge a legal appeal against the detention order with the JLD. The time limit for an appeal is 48 hours. The JLD rules within 48 hours and informs the administrative court of the meaning of their decision without delay (Article L.512-1 of the CESEDA). This appeal is not suspensive.

The third-country national has the right to appeal against the house arrest measure (and the removal order if applicable) before the administrative court (*tribunal administratif* - TA) within 48 hours (Article R.512-1 III of CESEDA).

Q12. What **support (legal, social, psychological)** is available for migrants during the period when a decision is made about placing the individual in detention or to use an alternative to detention?

International protection procedures: not applicable

As mentioned above, asylum seekers cannot be detained during the asylum procedure for this reason alone.

Return procedures:**In detention centres:**

- Detainees have the right to access a medical service (doctor, nurse, psychologist) and the right to communicate with any person of their choice (interpreter, consulate, NGO). Persons placed in the CRA are provided with legal assistance in order to assert their rights. In addition, in each detention facility, a space is provided so that detained foreign nationals can talk to a lawyer (L.553-4 of the CESEDA).
- Detained foreign nationals who wish to apply for asylum after being held in detention can also receive legal and linguistic assistance for this purpose (L.551-3 of the CESEDA)
- The contract for legal assistance in the CRAs was renewed by the Ministry of the Interior for a maximum of four years from 1 January 2021. La Cimade, ASSFAM-Groupe SOS Solidarité, Forum Réfugiés-Cosi and France Terre d'Asile are the NGOs working in CRAs to provide legal assistance to detainees.

For foreign nationals under house arrest, there is no state intervention to facilitate access to social, legal or psychological assistance. However, foreign nationals in detention are perfectly entitled to approach local actors (NGOs, medical and psychological centre, social workers, etc.) to obtain help. Third-country nationals have the right to be informed, in a language they understand, of the obligations arising from house arrest and the rights available to them. (Article L.561-2-1 of the CESEDA).

In the DPARs, foreign nationals receive individualised administrative assistance in preparing for voluntary return. Foreign nationals receive social support from social workers as well as support in preparing for voluntary return from the OFII return officer.

Section 4: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures

This section aims at comparing the different impact of detention and alternatives to detention on the effectiveness of international protection and return procedures.

The impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States' international protection and return procedures is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.

Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these aspects of effectiveness, it is recognised that the type of individuals placed in detention and in alternatives to detention (and their corresponding circumstances) are likely to differ significantly and therefore the comparisons made need to be treated cautiously.

Ensuring compliance with migration procedures

Q15. Please provide any statistics that may be available in France about the number of **irregular migrants** including failed asylum seekers placed in detention and in alternatives to detention during the return procedure, **who absconded**.

Number of third-country nationals held in detention and in alternatives to detention during the return procedure who absconded. Absolute figures by year. Reference years: 2017–2018–2019 (give figures for each year)

Source: DGEF, Ministry of the Interior

2017	Number of irregular migrants in return procedures (including before removal)	Number of migrants who absconded before the removal order was enforced
Detention (absolute figures) ⁶⁵		
Data for metropolitan / overseas	26,003 / 17,388	71 / 3

⁶⁵ Source: Les étrangers en France, Rapport au parlement 2019 [Foreign nationals in France, Report to Parliament 2019], https://www.immigration.interieur.gouv.fr/content/download/126541/1011698/file/2048131_rapport_DGEF_2019_WEB.pdf (in French).

Detention and alternatives to detention in international protection and return procedures

Total	43,391	74
Alternatives to detention 1 (house arrest) ⁶⁶	8,781	Not available
Alternatives to detention 2 (DPAR)	Not available	Not available
2018	Number of irregular migrants in return procedures (including before removal)	Number of migrants who absconded before the removal order was enforced
Detention (absolute figures)		
Data for metropolitan / overseas	25,367 / 14,040	62 / 3
Total	39,407	65
Alternatives to detention 1 (house arrest)	18,302	Not available
Alternatives to detention 2 (DPAR)	Not available	Not available
2019	Number of irregular migrants in return procedures (including before removal)	Number of migrants who absconded before the removal order was enforced
Detention (absolute figures)		
Data for metropolitan / overseas	24,358/26,128	54/4
Total	50,486	58
Alternatives to detention 1 (house arrest)	14,287	Not available
Alternatives to detention 2 (DPAR)	3,103	Number of absconding (160) and forced departures (32) from DPARs in the provinces.

⁶⁶ Idem.

Detention and alternatives to detention in international protection and return procedures

Q16. Please provide any statistics that might be available in your country on

- (i) the proportion of voluntary returns and
- (ii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention.

Average length of the procedure to reach a return decision, and number of voluntary returns for TCNs placed in detention and in alternative measures. Reference years: 2017–2018–2019

2017	Average time between arresting a migrant in an irregular situation and them being issued with a return decision	Average time between a return decision being issued and its enforcement	Number of assisted voluntary returns of TCNs (TCNs who chose to return voluntarily, not subject to an OQTF) (absolute numbers) ⁶⁷	Number of effective forced returns of TCNs (absolute figures) unassisted removals = forced returns and unassisted spontaneous returns + assisted returns (under OQTF) excluding TCN readmissions and excluding forced removals and assisted removals of EU nationals / excluding assisted voluntary departures (without an OQTF) ⁶⁸
	No statistical data is available on the average time between	The average time between issuing a		

⁶⁷ Les étrangers en France, Rapport au parlement 2019 [Foreign nationals in France, Report to Parliament 2019], https://www.immigration.interieur.gouv.fr/content/download/126541/1011698/file/2048131_rapport_DGEF_2019_WEB.pdf (in French).

⁶⁸ Les étrangers en France, Rapport au parlement 2019 [Foreign nationals in France, Report to Parliament 2019], https://www.immigration.interieur.gouv.fr/content/download/126541/1011698/file/2048131_rapport_DGEF_2019_WEB.pdf (in French).

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	arresting a migrant in an irregular situation and a return decision being issued. In most cases, a deportation order is issued following a police custody or administrative detention procedure to verify the right to stay. This detention is for a maximum of 24 hours (Article L.611-1-1 of the CESEDA).	removal order and the actual implementation of the return cannot be estimated as it depends on several elements (issuance of consular laissez-passers, availability of flights, etc.).		
Total number of persons detained in the CRAs: 43,391				
Absolute figures (TOR)	Not available	Not available	3,734	9,836
Alternatives to detention 1 (house arrest)	Not available	Not available	Not available	Not available
Alternatives to detention 2 (DPAR)	Not available	Not available	Not available	Not available
2018	Average time between arresting a migrant in an irregular situation and them being issued with a return decision	Average time between a return decision being issued and its enforcement	Number of voluntary returns (people who chose to return voluntarily) (absolute numbers)	Number of actual forced returns (absolute numbers)
	No statistical data is available on the average time between arresting a migrant in an irregular situation and a return decision being issued. In most cases, a deportation order is issued following a police custody procedure or an administrative detention to verify the right to stay. This detention is for a maximum of 24 hours	The average time between issuing a removal order and the actual implementation of the return cannot be estimated.		

Detention and alternatives to detention in international protection and return procedures

	(Article L.611-1-1 of the CESEDA).			
Total number of persons detained in the CRAs: 39,407				
Absolute figures (TCN)	Not available	Not available	4,758	11,292
Alternatives to detention 1 (house arrest)	Not available	Not available	Not available	Not available
Alternatives to detention 2 (DPAR)	Not available	Not available	Not available	Not available
2019	Average time between arresting a migrant in an irregular situation and them being issued with a return decision	Average time between a return decision being issued and its enforcement	Number of voluntary returns (people who chose to return voluntarily) (absolute numbers)	Number of actual forced returns (absolute numbers)
	No statistical data is available on the average time between arresting a migrant in an irregular situation and a return decision being issued. In most cases, a deportation order is issued following a police custody procedure or an administrative detention to verify the right to stay. This detention is for a maximum of 24 hours (Article L.611-1-1 of the CESEDA).	The average time between issuing a removal order and the actual implementation of the return cannot be estimated.		
Total number of persons detained in the CRAs: 50,486				
Absolute figures (TCN)	Not available	Not available	2,512	13,562
Alternatives to detention 1 (house arrest)	Not available	Not available	Not available	Not available

Detention and alternatives to detention in international protection and return procedures

Alternatives to detention 2 (DPAR)	Not available	Not available	2,526 ⁶⁹	32 ⁷⁰
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Q17. Have any **evaluations or studies on the rate of absconding and degree of cooperation** of third-country nationals in detention and in alternatives to detention been undertaken in France?

[International protection procedures: Not applicable](#)

[Return procedures: NO](#)

Q18. Is there any evidence, or empirical observation on **whether detention or alternatives to detention have a greater impact on migration procedures**, (e.g. whether they make return procedure more effective), **depending on certain characteristics of migrants** and specifically country of origin, nationality, family situation, gender, age.

[International protection: not applicable](#)

[Return](#)

✓ House arrest:

According to the Ministry of the Interior, “the drop in the number of house arrests as an alternative to detention between 2018 and 2019 is a sign of greater efficiency in removal and effective selection work by prefectures”.⁷¹

✓ DPAR

NGOs involved in the DPARs have made several observations in this area. First of all, these schemes were created in 2015 and have been developed mainly since 2018, with capacity planned to double by 2021, as the rate of return observed is very satisfactory overall. The DPARs managed by Adoma (nine across the country) report fairly short stays, allowing for rotation and rapid departures, bearing in mind that for the vast majority of the places, the people referred there have volunteered to leave. House arrest is often used for the duration of the stay (45 days, renewable once). The support offered also enables the necessary steps for departure to be completed more quickly (link with OFII and the various administrations/consulates, assistance with paperwork, organisation of transport for departure, etc.). However, some association consider that some people are referred to the DPARs, once their asylum application has been rejected with no accommodation, would not be willing to leave on a voluntary basis.⁷²

⁶⁹ Including accompanying minors (excluding accompanying minors; 1,534 and 19)

⁷⁰ Idem.

⁷¹ Les étrangers en France, Rapport au parlement 2019 [foreign nationals in France, Report to Parliament 2019],

https://www.immigration.interieur.gouv.fr/content/download/126541/1011698/file/2048131_rapport_DGEF_2019_WEB.pdf (in French).

⁷² Contribution from the Housing Department of Adoma (Groupe CDC Habitat), managing body of DPAR, February 2021.

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In DPARs, the voluntary return rate for 2019 was 92%, while it was 78% for 2020. This decrease is mainly due to the health crisis and is not necessarily representative. Indeed, some of the people hosted in DPAR stayed longer in the structures due to the health context (border closures, renewal of consular laissez-passer, etc.). However, this decrease, which is linked to a particular context, does not call into question the fact that the voluntary return rate is high, which proves the effectiveness of this system.

Upholding fundamental rights

Q19. What **human rights safeguards** are available in detention and in alternatives to detention?

Protection	Detention	Alternatives to detention	Comparison between detention and alternative measures
<p>Is access to legal aid provided? if so, how? specify</p>	<p>Persons placed in the CRA are provided with legal assistance in order to exercise their rights. A new contract took effect on 1 January 2021 for a maximum of four years. The NGOs responsible for providing this legal assistance are the ASSFAM, CIMADE, Forum Réfugiés COSI, and FTDA.</p>	<p>In the DPARs, access to legal aid is not organised by the state. Foreign nationals in the DPARs are provided with social support and return support.</p> <p>They may approach local NGOs for legal assistance.</p> <p>The teams are in charge of the overall support of the persons (social, health and administrative support) and can direct the persons to NGOs or competent bodies to claim certain rights if necessary.⁷³</p> <p>Foreign nationals under house arrest may receive legal assistance from local NGOs.</p>	<p>Legal assistance is organised in detention.</p> <p>Foreign nationals under house arrest and in DPARs should contact their local NGOs.</p>

⁷³ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

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<p>Is the right to be heard ensured in detention and in alternative measures?</p>	<p>YES, Article L.551-2 of the CESEDA states that when placed in detention, foreign nationals "shall be informed in a language they understand and as soon as possible of the fact that they have the right to request the assistance of an interpreter, a lawyer and a doctor." As such, they can exercise their right to be heard through external representatives.</p> <p>In addition, a third-country national placed in detention can appeal to the JLD if they want to appeal against the detention measure. Finally, article R.553-14 of the CESEDA states that the State shall conclude an agreement with one or more legal entities whose mission is to inform foreign nationals placed in detention and to help them exercise their rights.</p>	<p>In the DPARs:</p> <ul style="list-style-type: none"> - Foreign nationals in the DPARs are provided with clear information to the effect that the accommodation and support they receive is intended to enable them to return to their country of origin. - Social workers are available on a daily basis and weekly home visits take place.⁷⁴ - The support offered includes information on access to rights and referral to the relevant authorities, as necessary.⁷⁵ <p>Foreign nationals under house arrest are interviewed prior to the notification of the house arrest measure. Foreign nationals are provided with all useful information on the conditions for voluntary return proposed by the OFII.</p>	<p>Foreign nationals are informed of their rights when they are placed in detention, in the DPAR, or under house arrest. In detention and in the DPARs, they have access to NGOs or social workers who can answer queries.</p>
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⁷⁴ Contribution of the association Habitat & Humanisme, Pôle Accueil des Réfugiés, February 2021.

⁷⁵ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

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<p>Is access to health (access to facilities, monitoring of health and well-being of the person) provided?</p>	<p>YES: upon arrival in the CRA, detained foreign nationals can consult a doctor (L.551-2 of the CESEDA) and may, upon request, undergo an assessment of their state of vulnerability. In addition, foreign nationals placed in detention receive help settling in, and receive information, moral and psychological support and assistance in preparing the material conditions for their departure: these actions are covered by an agreement signed by the State with the OFII (Article R.553-13 of the CESEDA).</p>	<p>In the DPARs:</p> <ul style="list-style-type: none"> - Foreign nationals receive social support. Social workers refer foreign nationals to healthcare facilities, as necessary. - Social workers are available on a daily basis and refer detained persons to care facilities and build partnerships.⁷⁶ - Access to healthcare/health networks is part of the support provided by the teams through local partnerships with the health network (doctors, hospital, PASS (mobile health centres), etc.).⁷⁷ <p>The associations working in the DPARs report very limited or even non-existent financial resources and note vulnerabilities in terms of health - particularly mental health (addictions, etc.).</p> <p>Foreign nationals under house arrest do not have access to state-provided healthcare but may contact healthcare organisations.</p>	<p>Foreign nationals in CRAs have access to healthcare. In DPAR, they are referred by the facility's managing actor toward appropriate structures.</p> <p>Foreign nationals under house arrest should approach healthcare organisations.</p>
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⁷⁶ Contribution of the association Habitat & Humanisme, Pôle Accueil des Réfugiés, February 2021.

⁷⁷ Contribution from the Housing Department of Adoma (CDC Habitat Group), managing body of DPAR, February 2021.

Q20. Have **evaluations or studies** been conducted in France on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention, of mental and physical health)?

Yes.

Most studies have been carried out by NGOs working in the CRAs or by independent bodies responsible for ensuring human rights are respected: these studies and reports point to a **number of shortcomings in the protection of the rights of foreign nationals** detained in CRAs.

- ✓ **The 2019 activity report of the CGLPL** assessed the situation regarding the exercise of rights and the material conditions of reception in administrative detention centres.⁷⁸

Representatives of the CGLPL visited four CRAs in 2019. The controllers observed that the *“general climate in administrative detention centres has become tense”*. In addition, they note the difficulty NGOs had in carrying out legal aid work in the CRAs.

The CGLPL assessed the **exercise of rights** in the CRAs as follows: *“the information provided to detainees on their rights and remedies is still highly unsatisfactory.”* This exercise of rights is carried out in an *“expeditious”* manner, according to the report.

With regard to the **material conditions of reception** in the CRA, the CGLPL emphasised the *“precarious nature”* of these conditions, and with regard to the **procedures for leaving the CRA**, the CGLPL emphasised procedures that were *“carried out in an expeditious manner, with summary information and a complete lack of support.”*

- ✓ In February 2019, the **CGLPL published an opinion on “the healthcare of foreign nationals in administrative detention centres.”**⁷⁹ In this opinion, the CGLPL points out the *“shortcomings”* of the health policy in the CRAs, in terms of access to care and the treatment of psychological disorders of detainees, and recommends several improvements, including the reinforcement of medical units in the CRAs, the organisation of free access to these medical units, the presence of a psychiatrist for better treatment of psychological disorders, and the need for the CRA doctor’s opinion to be binding on the administrative authority if a person’s state of health is incompatible with their continued detention.

⁷⁸ Rapport d’activité 2019, Contrôleur général des lieux de privation de liberté [Annual report, CGLPL], https://www.cglpl.fr/wp-content/uploads/2020/06/CGLPL_rapport-annuel-2019_web.pdf (in French).

⁷⁹Opinion of 17 December 2018 on the healthcare of foreigners in administrative detention centres, Contrôleur général des lieux de privation de liberté, published in the Official Journal on 21 February 2019, https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000038150443 (in French).

In response to this opinion, the Ministry of the Interior and the Ministry of Solidarity and Health agreed to re-launch work to update the health system in administrative detention centres.

- ✓ The **Human Rights Ombudsman (*Défenseur des droits - DDD*)** also mentioned shortcomings in terms of the right to health in the CRA in a report published in May 2019. It highlights “*a particularly poor level of care for detainees.*”⁸⁰
- ✓ A **2019 report by NGOs working in the CRAs** also mentioned the fundamental rights of TCNs placed in detention:⁸¹
 - the report denounced **the increase in the number of detained minors**. In Mayotte in particular, they denounced violations of these minors’ rights, stating that “children had been illegally attached to adults”. The European Court of Human Rights (ECHR) condemned France in this regard in the Moustahi judgement of 25 June 2020.⁸²
 - It highlights the **lack of protection for victims of human trafficking and inadequate support**.
 - It also points to “**rapid expulsions and insufficient access to the judge” in overseas administrative detention centres.**
- ✓ With regard to **house arrest**, the French authorities consider that this measure, less coercive for the persons concerned, is less effective to ensure the effective removal of individuals. Moreover, data to measure the AAR effectiveness on return procedures are not available. Furthermore, some NGOs consider this measure to be discretionary insofar as the administration may resort to it without prior intervention by a judge. However, this discretionary principle is specific to all measures complementary to removal when implemented by the administrative authority. Some NGOs also consider that it leads to restrictions on freedoms, given the numerous restrictive and constraining administrative measures and practices (extension of the measure to categories of foreign nationals previously left at liberty, legalisation of the questioning of people in their homes and in hostels, penalisation of non-compliance with a house arrest order, abusive summonses and hearings, excessive frequency of checking in and out, etc.).⁸³

⁸⁰ Défenseur des droits, Rapport “Personnes malades étrangères : des droits fragilisés, des protections à renforcer” [Foreign nationals who are ill: diminished rights, stronger protection], 13 May 2019, https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rap-etranqmalad-num-07.05.19_0.pdf (in French).

⁸¹ Rapport 2019 sur les centres et locaux de rétention administrative [2019 Report on administrative detention centres], ASSFAM- groupe SOS Solidarités, Forum réfugiés-Cosi, France terre d’asile, La Cimade, Solidarité Mayotte, <https://www.lacimade.org/publication/rapport-national-2019-sur-les-centres-et-locaux-de-retention/> (in French).

⁸² [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-12876%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-12876%22]}) (in French).

⁸³ <https://blogs.mediapart.fr/la-cimade/blog/060116/assignation-residence-la-retention-hors-les-murs> (in French).

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Q21. Please provide any statistics available in your country on the **number of complaints regarding violations of human rights**⁸⁴ and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention.

International protection procedures: not applicable

Return procedures

A number of detention decisions have been overturned by judges.

The judicial courts (JLDs and appeal courts) ordered the release of 4,656 detained foreigners in 2018 (out of a total of 39,407 detained foreign nationals).

In 2018, the administrative courts (administrative tribunals and administrative courts of appeal) overturned 1,742 return decisions (OQTF, decision determining the country of return, refusal of a period of voluntary departure, prohibition of return) out of a total of 132,978 removal measures pronounced in 2018. Within this category as a whole, three major reasons for this can be highlighted: refusal of the deadline for voluntary departure (210 cancellations), manifest errors of assessment when taking into consideration the foreigner's personal situation at the time the OQTF was issued (699 cancellations), and procedural flaws (incompetence of the person signing the OQTF, lack of mention of notification of the measure, etc.), which led to the cancellation of 244 removal procedures.

In 2019, the judicial courts (JLDs and appeal courts) ordered the release of 4,184 foreigners placed in detention as part of procedural cancellations (out of a total of 50,486 foreigners placed in detention in 2019).⁸⁵

Q22. Have any evaluations or studies in France considered the **cost-effectiveness of using detention or alternatives to detention as part of the asylum procedure** (e.g. length of time to determine an international protection status and executing decisions, costs of procedures, etc)?

N/A in France, as asylum seekers cannot be detained for this reason alone.

Q23. **Have any evaluations or studies** in France considered **cost-effectiveness of using detention and alternatives to detention as part of the return procedures**. (e.g., the length of time that transpires from issuing a return decision to the execution of the removal, the share of voluntary returns out of the total number of returns, the total number of removals completed, costs of procedures,)?

While it is not possible to estimate the length of time between a return order being issued and its enforcement through both detention and alternative measures, detention may allow for a faster enforcement of the removal order when the detained person is

⁸⁴ Please consider appeals to a judge but also to a specific administrative commission or ombudsman.

⁸⁵ Les étrangers en France, Rapport au parlement 2019 [Foreign nationals in France, Report to Parliament 2019], https://www.immigration.interieur.gouv.fr/content/download/126541/1011698/file/2048131_rapport_DGEF_2019_WEB.pdf (in French).

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documented. Indeed, because the individual is deprived of their liberty, removal is easier, as the person concerned cannot abscond.

The unit cost of a forced removal is €13,795, including arrest, transport to the CRA, surveillance and court time, and removal. No information is available on the cost of removal under simple house arrest. However, in the case of assisted return with accommodation in a DPAR, the unit amount is €9,696.

Conclusions

This study highlights several elements relating to the implementation in France of alternatives to detention (house arrest and preparation centers to return schemes). In the framework of the National plan for the reception of asylum seekers and the integration of refugees for 2021-2023, published on 17 December 2020, these alternatives have been prioritized with the creation of 1,300 places in preparation centers to return schemes in 2021. In addition, these centers have been increasingly mobilized by the authorities as an alternative to detention since the start of their experimentation in 2015. In 2019, 3,103 third-country nationals were received in DPAR before their voluntary return or exit from the scheme. Fewer people (2,024) were received in 2020 due to a longer duration of detention in the facility because of the COVID-19 pandemic which had a significant impact on removals.

Similarly, the legislative changes enshrined by the law of 7 March 2016 on the rights of foreign nationals in France, giving the priority to house arrest over detention, have facilitated the use of this alternative. In 2017, the total number of third-country nationals placed under house arrest, which stood at 8,781, rose to 18,302 in 2018, falling to 14,287 in 2019 and 12,913 in 2020, which the authorities see as a sign of greater efficiency in removal procedures and effective selection work by prefectures.

Nevertheless, detention remains the most commonly used measure pending the execution of removal measures for third-country nationals.

Regarding the challenges identified by the actors in the context of house arrest, access to legal support for the third-country nationals concerned, which is not provided for by the law, is one of the challenges identified. In addition, the associations that contributed to the study emphasized that house arrest could represent an obstacle for a smooth national reception system (DNA).

For preparation centers to return scheme, the managing organizations point out the need for more resources in terms of personnel and equipment, as well as national specifications to ensure consistency and a better framework for services in these programs.

The alternatives to detention presented in the study have advantages in terms of efficiency in return procedures, since the preparation centers to return schemes, for which the number of places is constantly increasing, promote the effectiveness of removal measures and make the national reception system smoother. Indeed, in 2019, the foreign nationals' voluntary return rate in DPAR was 92%.

Concerning house arrest, the authorities emphasize that this alternative is less effective in enforcing removal measures and that it's difficult to evaluate its effectiveness. Some associations as well as the evaluations carried out by the General Controller for Detention Facilities (CGLPL) and the Human Rights Ombudsman (DDD) also emphasize that this measure is restrictive in terms of freedoms and does not respect certain fundamental rights. This study shows that although the use of detention remains the most common practice pending the enforcement of removal measures for illegal foreign nationals, the legislative and policy framework governing alternatives to detention has been strengthened and thoroughly reformed since 2015, allowing for the implementation of DPARs, an alternative to detention that is increasingly used by the authorities and whose advantages are recognized by operators and civil society actors.

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APPENDIX

Appendix 1: Statistical annex

Table 1. Statistics on number of third-country nationals in detention and provided alternatives to detention per category

	2015	2016	2017	2018	2019	2020	Source / further information
Statistics on number of third-country nationals in detention per category							
Total number of third-country nationals in detention	40,095	39,620	43,391	39,407	50,486	24,717	Metropolitan France and Overseas department. Source: Foreign nationals in France, Report to Parliament 2019 / SDLII (DGEF), Ministry of the Interior
Number of applicants for international protection in ordinary procedures in detention (including Dublin)	not applicable						Asylum applicants cannot be placed in detention for the sole purpose of asylum application
Number of persons detained to prevent illegal entry at borders							Information not available
Number of person detained during return procedures (including pre-removal)							Information not available
Number of vulnerable persons part of the aforementioned							Information not available

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categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							
Vulnerable persons specified - minors	4,490	4,466	2,910	1,306	3,377	2,153	Accompanying minors, metropolitan France and overseas
Vulnerable persons specified – unaccompanied minors	not available						UAMs cannot be put in detention
Number of other third-country nationals placed in immigration detention							Information not available
Statistics on number of third-country nationals provided alternatives to detention							
Total number of third-country nationals in alternatives to detention	4,020	Not available	8,781	18,302	14,287	12,913	These data only concern TCNs subject to an house arrest decision (Article L.561-2 of CESEDA)
	Not available	Not available	Not available	Not available	3,103	2,024	These data only concern TCNs received in DPAR prior to the effectivity of their voluntary return or exit of the scheme.
Number of applicants for international protection in ordinary procedures in Alternatives to	not applicable						Asylum seekers cannot be detained or subject to an alternative to detention during

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detention (including Dublin)							the asylum procedure on this ground alone.
Number of persons given alternatives to detention to prevent illegal entry at borders							Information not available
Number of person in alternatives to detention during return procedures (including pre-removal)							Information not available
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							Information not available
Vulnerable persons specified - minors							Information not available
Vulnerable persons specified – unaccompanied minors	not applicable						Unaccompanied minors cannot be subject to an alternative measure to detention.

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Table 2: Average length of time in detention

Average length of time in detention	2015	2016	2017	2018	2019	2020	Source / further information
Average length of time in detention of all categories of third-country nationals in detention [IN DAYS]	11.6	12.2	12.4	15.4	17.5	19.9	Metropolitan France Source: Foreign nationals in France, Report to Parliament 2019
Average length of time in detention of applicants for international protection in ordinary procedures	Information not available						
Average length of time in detention of persons detained to prevent illegal entry	Information not available						
Average length of time in detention of persons during return procedures	Information not available						
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category	Information not available						

Appendix 2: Contributors

INSTITUTIONAL BODIES

Ministry of the Interior, General Directorate for Foreign Nationals in France (DGEF)

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- Maud VANDOOOLAEGHE, Deputy General Director of the Section for the reception of refugees

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