

***Refusing detention, Criticizing rationales and practices in holding centres –
2018-2019 Observation report***

***(Refuser l'enfermement, Critique des logiques et pratiques dans les zones
d'attente – Rapport d'observations 2018-2019)***

Summary

Since the late 1980s, authorities have constructed a discourse which emphasizes threats posed by immigration, exaggerates risks and fosters anxiety around the nature or profound wishes of persons in migration. This discourse has justified adopting freedom-destroying and repressive migration policies. European and French migration policies have developed a vast legal arsenal facilitating the detention of persons in migration at every stage of their journey. All too often, detention is presented as the only possible option. It has become a crucial and ordinary tool for managing migrant persons in Europe today. Yet the sole reason for this deprivation of liberty is non-compliance (justified or not) with rules regarding border crossing and/or residence.

In 1992, the French Parliament created a legal framework for immigration detention at borders, thus giving birth to the legal regime of holding centers / transit zones (*zones d'attente*). Under French law, persons in migration who are stopped at the border are in one of three situations. Some are denied entry because they do not fulfil entry conditions. Others are merely interrupted in their transit through France. The last category is asylum seekers. The rules regarding refusals of entry, detention in holding centers and deportation provide the administration with a significant margin of action. The introduction of a legal framework did not put an end to rights violations, despite frequent recommendations of human rights protection bodies. In fact, these violations have been a chronic, structural problem stemming from laws in force and practices.

In 30 years, Anafé has observed that persons deprived of liberty at borders are regularly confronted with difficulties such as: lack of information on the situation, procedure and rights of detained individuals, lack of interpreter, lack of lawyer, lack of access to a phone, lack of access to a doctor or healthcare, insufficient food, degraded health and sanitary conditions, poor detention conditions in insalubrious facilities, lack of access to outside premises, lack of information on the right to asylum, refusals to register asylum applications, refoulement before asylum claims are examined, deprivation of liberty of accompanied and unaccompanied children, stigmatizing behavior and racist or sexist statements, pressure, intimidation and violence on the part of the police...

As the pretended invasion of the European territory is presented as an imminent threat, detention in border zones is erected as the last bastion. Yet history shows that it is inefficient and that it generates numerous human rights violations. Despite this, the justification of its existence legitimizes or excuses rights violations committed between its walls. But to avoid seeing them, holding centers are gradually removed from citizens' watch, through restrictions on civil society's access to these opaque and often arbitrary sites.

One main observation prevails: denouncing the very principle of detaining foreign persons at borders leads to challenge the negative and repressive effects of the means implemented by the European Union and its members to control their borders. Mobilizing against the administrative detention of foreign persons has become a necessity so as to safeguard the safety, physical and mental health and in some cases the very life of persons in migration.

The report *Refuser l'enfermement, Critique des logiques et pratiques dans les zones d'attente – Rapport d'observations 2018-2019* is essential for several reasons:

- It exposes, through concrete examples, the situation of persons who fall victim to detention in French holding centers (in international ports, airports and train stations). It also explains what holding centers truly are: **detention sites where individuals are set aside from civil society, and where fundamental rights violations occur on a daily basis.**

- It was produced through the analysis of data collected in the course of legal assistance sessions conducted by volunteers, during monitoring visits in holding centers and thanks to field testimonies. This report thus recalls the **fundamental role of transit zone monitors** (*visiteurs de zones d'attente*) **who observe, question, denounce and inform**. This role is regularly undermined by the French administration.
- As reflected by its structure, the report covers two aspects. First, it deals with **structural violations of detained persons' rights**, which are denounced by Anafé on a regular basis. Second, it provides an in-depth analysis of the **situation in around fifteen holding centers**.
- Finally, the report sheds light on the consequences of detention, so as to enable the reader to understand the absurdity of a quasi-carceral system in which **men, women and children suffer every day, in no less than 96 French ports, train stations and airports**.

A few figures

As of 25 October 2019, there were **96** holding centers according to the ministry of the interior:

- **40** managed by the border police (*police aux frontières – PAF*)
- **56** managed by customs
- **24** in ports
- **64** in airports
- **1** in a train station and **7** in other sites.

Situations	2018	1 st semester 2019
Number of refusal of entry decisions (excluding terrestrial borders)	16 081	6 849
Number of persons detained in holding centers	9 855	5 264
Number of asylum seekers detained in holding centers	1 445	1 069
Number of unaccompanied minors detained in holding centers	232	154
Number of persons deported from holding centers	12 072	5 169

Sources: figures provided by the ministry of the interior and the Direction of the Border Police.

Analytical part

The report begins with a foreword which covers the consequences of detention for persons held in holding centers and for persons who assist them. The analytical part which follows deals with eight fundamental topics.

Civil society's **right to access** – and thus to monitor – detention sites is crucial so as to shed light on the reality faced by foreign persons in these sites and their detention conditions. It enables civil society to act as a whistleblower, to defend fundamental rights and to testify on the consequences of detention and on situations leading to violations of the rights of persons in migration. Yet civil society frequently encounters difficulties in accessing detention sites where foreign persons are held, in particular holding centers. There was an increase in illegal obstacles to this right in 2018 and 2019.

The law of 16 June 2011 created the regime of **temporary holding centers**. In 2018, their number increased in overseas territories, against the letter of the law, established procedures and the rights of persons who were the first to suffer the consequences. Whether it be in Guadeloupe, La Réunion or Mayotte, persons who experienced these temporary holding centers were held in inhuman conditions: in hotels, without being able to leave their room to get some fresh air or stretch their legs in corridors; in insalubrious airport halls; in unfit gymnasiums; in parts of administrative detention centers (different legal regime); on a wharf; in the transit room of the first floor of a police station and in cages.

In terms of entry conditions, politicians developed a new concept without any real legal basis: **'migration risk'**. Whether it be during border checks, in the course of refusal of entry procedures or transit zone detention decisions, or even before courts, this notion has gained growing significance. This is despite the fact that it is based on discriminatory considerations, leaving a very wide margin of appreciation and thus favoring arbitrary decisions.

Ajda, a Kurdish of Syria, arrived from Istanbul at the airport of Marseille-Marignane on 21 August 2019. Not long before, she had suffered refoulement from the airport of Lyon-Saint-Exupéry without having been able to lodge an asylum claim. When Anafé was informed of her arrival, it mobilized to ensure that her application was registered. However, she was still notified a refusal of entry decision. During her detention in the transit zone, Ajda was deprived of food for an entire day and did not have sheets on her bed. During the first few days, she was not allowed outside. She was finally freed by the judge of liberty and detention (juge des libertés et de la détention) on 25 August.

The detention of children continues in holding centers despite the recommendations of human rights protection bodies and NGOs. The best interests of the child are constantly ignored in the context of detention in holding centers, as a result of detention conditions or children's rights violations. Anafé's observations have shown that deprivation of freedom in holding centers has a negative impact on children's physical and psychological health. Detention conditions often jeopardize their health as they suffer anxiety, insomnia, eating disorders...

Fanta, age 16, arrived at Orly airport on 23 September 2019. As an orphan, she fled Guinea Conakry after her uncle tried to force her to marry a 74-year-old man who attempted to rape her. Anafé informed the children's judge of her situation through a written note, yet the judge did not examine her case. Fanta was freed as an asylum seeker, after being detained for three days alongside adults.

Asylum is a system which ordinarily aims at protecting persons from persecution they suffer in their country of origin. Unfortunately, what occurs at French borders seems far from this rationale. Asylum claims in holding centers are in reality 'requests for admission on French territory for asylum purposes'. The procedure is expeditious and conditions in which it is organized do not allow for a proper examination of the situation of persons who request international protection.

Roissy transit zone, 16 May 2018. Mariama, a national of the Comoros, was interviewed by an asylum officer without any interpreter. According to her testimony, the protection officer stated that no interpreter was available and that he would repeat questions several times to ensure that she understood correctly. Her application was dismissed as manifestly unfounded.

Gender relationships are unequal, as part of relationships of power and domination which structure our society in the same way as class and race relationships. Anafé wishes to better take into account gender relationships in holding centers, in particular regarding access to health and justice. Its reflections revolve around relationships of domination at play at borders, and gender violence, which is frequent if not systemic.

Sarah arrived at Roissy airport on 5 October 2019. At her arrival at the police facility, she was body-searched by two male police officers, despite her feminine appearance. The Border Police relied on the sex indicated on her passport, instead of the gender she herself claimed.

The legislative framework fails to enable proper **judicial review** of respect for fundamental rights and of the legality of refusal of entry and detention decisions, since there is no available suspensive appeal. In addition, the law does not provide for the organization of free sessions of legal assistance provided by practicing lawyers. Yet rights violations and arbitrary decisions occur on a daily basis. Even when judicial review is possible, the different hearings, at the administrative tribunal, at the tribunal of great instance, or at the court of appeals, raise questions as to how foreign persons are treated. Important legal principles are violated. Foreign persons are criminalized and even suffer racism. These hearings are contrary to dignity in a system supposedly characterized by the rule of law. They raise questions as to the effective role of the judge as 'guardian of individual freedoms'.

Transit zone, **police custody, prison, administrative detention**... Hundreds of persons arriving at the border endure these forms of detention one after another. Due to a mere cancelled hotel reservation, lack of a health insurance or an asylum request, a repressive system closes on individuals and rights violations proliferate. Detention never seems to end.

Ali, a national of Mali, arrived at the border on 2 March 2019. Due to a cancelled hotel reservation, he was held in a transit zone. With the help of a friend who lives in France, he regularized his situation by booking a new hotel. On 10 March 2019, he was placed in police custody, before being detained in the Mesnil-Amelot administrative detention center.

'Tour de France' of holding centers

In this part, Anafé decided to deepen the analysis of the situation in around fifteen holding centers: **airports of Beauvais-Tillé, Bordeaux-Mérignac, Lyon-Saint-Exupéry, Marseille-Provence, Nantes-Atlantique, Nice-Côte d'Azur, Paris-Orly, Pointe-à-Pitre, Paris-Charles de Gaulle, Strasbourg-Entzheim, Toulouse-Blagnac, port of Marseille, transit zone of Le Canet in Marseille, ZAPI (accommodation site for the transit zone of Roissy airport).**

Holding centers analyzed here were chosen according to several factors, some external to Anafé (number of refusal of entry decisions, detained persons, asylum seekers and children, complicated situations, observed cases of violence...), others internal (persons followed by Anafé or one of its habilitated members in the course of legal assistance sessions, and number of monitoring visits).

Monitoring visits of holding centers and legal assistance sessions held by Anafé and its member organizations help identify grave dysfunctions: lack of access to rights for detained persons (right to request asylum, entitlement to a one-clear-day period before deportation...), inadequate conditions in asylum interviews (lack of interpreter, lack of confidentiality), old and ill-maintained detention rooms (dirty, uncomfortable, windowless room, vitiated air, noisy...), lack of clear separation between men, women and children. For the latter, no particular installations (reserved area, games, possibilities for recreation...), no legal representative (*ad hoc* administrator) as provided for in the French immigration code (CESEDA).



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Drawing by Maria, age 10, detained for 16 days in the transit zone of Roissy in 2018.

Recommendations

As is the custom, Anafé has decided not to issue recommendations at the end of its report.

However, if one and only one message should prevail, it would be the **necessity to put an end to the administrative detention of foreign persons.**