



Contested policies of exclusion: Resistance and protest against asylum policy in the Netherlands

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Contested Policies of Exclusion in The Netherlands: the lamentable cases of Mauro and Sahar
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Nederlandse samenvatting

Een groot percentage van de Nederlandse kiezers vindt dat immigratie tot een minimum moet worden beperkt. Het Nederlandse migratie- en asielbeleid heeft nu de reputatie één van de strengste in Europa te zijn. Maar er klinkt ook protest. Er is kritiek op het oneerlijke verloop van asielprocedures en protest tegen het uitsluiten van (afgewezen) asielzoekers van sociale voorzieningen. Er worden zorgen geuit over de omstandigheden in vreemdelingendetentie en over de situatie van kinderen zonder verblijfsvergunning. In de media en politiek wordt met regelmaat heftig gedebatteerd over “goed geïntegreerde” afgewezen asielzoekers die op het punt staan uitgezet te worden.

Dit rapport brengt verslag uit van een onderzoek naar protesten tegen het Nederlandse asielbeleid. Het onderzoek maakte onderdeel uit van het cluster “policies of exclusion” in het ACCEPT-Pluralism project, een Europees vergelijkend onderzoek naar de manier waarop in 15 Europese landen het debat over acceptatie, tolerantie en intolerantie voor culturele minderheden wordt gevoerd. De financiering kwam van de Europese Commissie, in het kader van het 7th Framework onderzoeksprogramma.

In deze rapportage staan de verschillende actoren en organisaties die zich verzetten tegen het Nederlands asielbeleid centraal, evenals actierepertoires en de redenen en argumenten die door de protestbeweging worden gebruikt om het asielbeleid te bekritisieren. De twee casussen van Sahar en Mauro zijn een belangrijk focuspunt van deze studie geworden. Zij waren twee jonge uitgeprocedeerde asielzoekers die zouden worden uitgezet. Deze “schrijnende gevallen” werden onderwerp van politiek en publiek debat in 2010 en 2011.

Het onderzoek was erop gericht de volgende vraag te beantwoorden: hoe verzetten verschillende actoren zich tegen (aspecten van) de uitvoering van het asielbeleid?

Hieruit volgen vier subvragen, die voor dit onderzoek leidend zijn geweest:

1. Welke actoren, procedures en organisaties kunnen worden geïdentificeerd in de protesten tegen het asielbeleid?
2. Welke redenen en argumenten geven de verschillende actoren en organisaties om te protesteren tegen beleid gericht op uitgeprocedeerde asielzoekers?
3. Hoe verschillen zij in verantwoordelijkheden, actierepertoires en mogelijkheden om de uitkomst te beïnvloeden?
4. Wat is de rol van publieke mobilisatie rond “schrijnende gevallen” in publieke opinie en politiek debat?

Methodes

Om deze vragen te kunnen beantwoorden, is een kwalitatieve methode gebruikt. Drie typen bronnen werden geanalyseerd. De eerste bron bestond uit interviews met dertien experts, beleidsmedewerkers en vertegenwoordigers van de protestbeweging. Een tweede bron bevatte beleidsdocumenten en verslagen van politieke debatten, moties, websites en rapportages. Een derde bron bestond uit verschillende kranten die berichtten over het asielbeleid. De gemediatiseerde, schrijnende gevallen die we specifiek hebben onderzocht waren die van Sahar Hbrahim Gel (2010-2011) en Mauro Manuel (2011-2012). Juridische procedures, documenten en verslagen van rechtszaken, evenals gewelddadige protesten werden van het onderzoek uitgesloten.

Bij de analyse van het materiaal hebben we ons gebaseerd op twee theoretische benaderingen. Wacquant (2009) onderscheidt twee manieren waarop de overheid zich kan verhouden tot de sociale onderklasse: een manier gericht op verlichting en zorg, en een punitieve, repressieve manier. In de eerste variant verdient een asielzoeker steun, in de tweede variant is deze een bedreiging voor de sociale orde. Van Gorp (2005) toont in het asieldebat twee tegengestelde redeneringen aan: een discours waarin de asielzoeker als indringer wordt neergezet, en een discours waarin de asielzoeker een slachtoffer is. Wij hebben in de data gezocht naar de verschillende manieren waarop asielzoekers door de protestbeweging als slachtoffer worden geconstrueerd, en hoe indringer-constructies worden ontkracht. De conceptuele theoretische raamwerken van Wacquant en Van Gorp maakten het mogelijk om beleid te onderscheiden dat resulteert in acceptatie, tolerantie, en intolerantie voor afgewezen asielzoekers. Door de redenen te analyseren die de protestbeweging formuleert om asielzoekers als slachtoffer te presenteren, konden vier dominante discourses van protest worden geïdentificeerd.

Resultaten

De eerste vraag ging over welke actoren zich bezig houden met protesten. In de protestbeweging kunnen zes hoofdgroepen worden onderscheiden:

1. (Lokale) politieke organisaties, politici, beleidsmakers en ambtenaren
2. Niet-gouvernementele organisaties (NGO's) voor migranten en vluchtelingen
3. NGO's die zich met mensenrechten bezig houden
4. Kerken of religieuze en humanistische NGO's die zich op armoedebestrijding en liefdadigheid richten
5. Wetenschappers die gespecialiseerd zijn in mensenrechten, migratie en/of asiel
6. Media en journalisten

De tweede vraag, redenen van protest, bleek voor beantwoording afhankelijk van het thema. In de protestbeweging houdt men zich met vijf hoofdthema's bezig:

1. Onterechte afwijzing van het asielverzoek en oneerlijke asielprocedures
2. Dakloosheid en gebrek aan sociale zekerheid

3. Vreemdelingendetentie, omstandigheden in detentie en strafbaarstelling van illegaliteit
4. Uitzetting: protesten gerelateerd aan gevaarlijke omstandigheden in het land van origine en het risico op refoulement, evenals verbeteren van omstandigheden van uitzetting (vrijwillig versus gedongen)
5. Het ontworteld raken van kinderen en het (te beperkte) gebruik van discretionaire bevoegdheid voor individuele schrijnende gevallen

Rond deze vijf hoofdthema's van verzet geeft dit rapport inzicht in hoe het debat over uitgeprocedeerde asielzoekers plaatsvindt. Het draait in dit debat om twee centrale vragen. Ten eerste: moeten we de uitgeprocedeerde asielzoeker(s) beschouwen als slachtoffer of als indringer? Ten tweede: is de overheid verantwoordelijk om hulp te verlenen? De verschillende combinaties van antwoorden die op deze vragen mogelijk zijn worden vervolgens gebruikt om de beleidsstappen die nodig zijn, te rechtvaardigen. Bijvoorbeeld, of er sprake zou moeten zijn van een herziening van de afwijzing en het verstrekken van een verblijfsvergunning, of dat er noodopvang geboden zou moeten worden (zie tabel A).

Tabel A. Beoordeling van (afgewezen) asielzoekers en hun recht op overheidssteun

(b)	(a) Overheidssteun	Geen overheidssteun
Slachtoffer	ACCEPTATIE (bijv. verblijfsvergunning)	ONVERSCHILLIGHEID (bijv. verblijf in vluchtelingenkamp in buitenland)
Indringer	TOLERANTIE (bijv. voorkomen van dakloosheid/ hulp bij terugkeer)	INTOLERANTIE (bijv. detentie and gedwongen terugkeer)

De protestbeweging beargumenteert op verschillende manieren dat asielzoekers moeten worden beschouwd als slachtoffers en niet als indringers, en dat de Nederlandse overheid een (morele of juridische) verplichting heeft hen te steunen. Hierbij put de beweging uit verschillende bestaande narratieven, representaties en normatieve standpunten, en vormt deze tot vier dominante discourses van protest. Deze zijn:

1. **Asiel authenticiteits-discours.** In dit discours staat de vraag centraal of de asielaanvraag authentiek is. Het debat concentreert zich op zaken waarin de protestbeweging beargumenteert dat de asielzoeker ten onrechte is afgewezen, omdat in de procedure fouten zijn gemaakt of omdat de grenzen voor het toelaten van vluchtelingen te strak worden getrokken. Authentieke asielaanvragers die zijn afgewezen zijn slachtoffers, onechte (economische) asielzoekers zijn indringers. Het doel van het asielbeleid moet zijn: voorkomen dat de echte vluchteling gevaar loopt.
2. **Wereldwijd onrecht discours** In dit discours wordt de vraag of iemand terecht asiel aanvraagt in een breder perspectief geplaatst, namelijk of diegene niet zou moeten worden erkend als slachtoffer van armoede. Wanneer dit discours wordt ingezet, wordt het idee bekritiseerd dat degenen die geen echte vluchtelingen zijn, onmiddellijk indringers zouden zijn. Ze worden in dit

discours ook als slachtoffers beschreven en er wordt opgeroepen tot meer solidariteit. Het recht van Nederland om migranten te weigeren wordt betwijfeld. In dit discours zijn de indringers alleen diegenen die in hun land van herkomst goede toekomstperspectieven hebben. Het doel van het (asiel)beleid moet zijn: slachtoffers van armoede een perspectief bieden.

- 3. Het zorgplicht-discours.** In dit discours is de hoofdvraag of een ongedocumenteerde migrant of afgewezen asielzoeker onaanvaardbaar lijdt door uitsluiting van de woning- en arbeidsmarkt, en daarmee een slachtoffer is. De (lokale) overheid heeft in dit discours de plicht om dakloosheid en lijden te voorkomen, vooral bij kwetsbare groepen zoals kinderen, zieken en ouderen. Een bijzondere groep is die van migranten die niet (zeggen te) kunnen terugkeren naar hun land van herkomst, maar die geen aanspraak op overheidssteun kunnen maken. Indringers zijn degenen die geen behoefte hebben aan hulp, maar misbruik maken van de faciliteiten, bijvoorbeeld omdat zij wel terug kunnen. Het doel van het beleid moet zijn: voorkomen dat mensen onnodig lijden en van hulp verstoken blijven.
- 4. Geslaagde culturele inbedding discours.** In dit discours worden de termen van het asieldebat verschoven naar een debat over de vraag of een asielzoeker die lang in Nederland verblijft en goed geïntegreerd is, recht heeft verworven om te mogen blijven. Uitzetting naar een land dat ze nauwelijks kennen (met name in het geval van kinderen) zou hen doen ontwortelen. Het discours maakt gebruik van ideeën over cultureel burgerschap om de asielzoeker die verbonden is geraakt met Nederlandse cultuur en mensen, te beschrijven als een slachtoffer van lange procedures. Indringers zijn degenen die niet goed geïntegreerd zijn, nog banden hebben met het land van origine, of zelf verwijtbaar lang zijn gebleven. Het doel van het beleid moet zijn: voorkomen dat gewortelde kinderen en volwassenen uit hun omgeving worden losgerukt.

In dit perspectief zijn verschillende discursieve strategieën mogelijk. De protestbeweging maakt gebruik van deze vier verschillende discoursen om een categorisatie van de asielzoeker als slachtoffer mogelijk te maken. Als een discours er niet in slaagt dat voor een asielzoeker te bewerkstelligen, kan worden overgestapt naar een ander discours waarmee dat wel lukt. Wanneer een asielzoeker succesvol als slachtoffer kan worden beschreven, is immers de kans op acceptatie in de vorm van een verblijfsvergunning het grootst (zie tabel B).

Tabel B: Discursieve strategieën om “indringers” in “slachtoffers” te veranderen
(strategieën van de protestbewegingen weergegeven door pijlen)

	1. Asiel authenticities discours	2. Wereldwijd onrecht discours	3. Zorgplicht discours	4. Culturele inbedding discours
Slachtoffer	Echte (politieke) vluchteling	Arme, economische vluchteling	Kwetsbare persoon, dakloze, hulpeloze	Gewortelde, geïntegreerde Nederlander
Indringer	Onechte, economische vluchteling	Gelukszoeker	Uitbuiters, crimineel	Ongewenste vreemdeling, buitenlander

Om het model te verduidelijken, kunnen we ons een asielzoeker voorstellen die uit Angola vlucht en wiens asielverzoek vervolgens wordt afgewezen (deze afwijzing kan juist of onjuist zijn) en die vervolgens in Nederland blijft. De persoon kan vervolgens in contact komen met mensen die hem als slachtoffer

presenteren volgens het *wereldwijd onrecht discours*, en ervoor pleiten dat hulp moet worden geboden. Maar ook als de persoon niet als slachtoffer wordt gezien in het *wereldwijd onrecht discours*, kan hij nog steeds als slachtoffer worden gezien in het *zorgplicht discours*, bijvoorbeeld als hij dakloos wordt, of medische hulp nodig heeft, of nog een kind is. Humanitaire overwegingen komen er dan bij om hulp te verschaffen. Tenslotte kan na verloop van tijd, na herhaalde asiolverzoeken en lange procedures, de persoon geïntegreerd raken in de lokale omgeving, zodat binnen het *geslaagde culturele inbedding discours* kan worden betoogd dat de persoon een slachtoffer is. Dit is een laatste strohalm om de voormalige “indringer” te representeren als iemand die onlosmakelijk deel is gaan uitmaken van de samenleving.

Dergelijke re-framing is zichtbaar in onze twee case-studies van Sahar en Mauro. In het Mauro debat werd het *geslaagde culturele inbedding discours* ingezet door de protestbeweging om Mauro neer te zetten als een slachtoffer, die in de Nederlandse samenleving thuis hoort. Maar de tegenstanders gebruikten het *asiel authenticiteits discours* om hem te categoriseren als een indringer, omdat hij had gelogen tijdens zijn asielaanvraag. Het *wereldwijd onrecht discours* fungeerde als een tweede mogelijkheid; Mauro zou bij terugkeer in armoede vervallen. Maar ook het *wereldwijd onrecht discours* werd door tegenstanders ingezet om Mauro als een indringer te beschrijven, omdat Angola werd beschreven als een nieuwe opkomende economie, waarin Mauro wel zou kunnen slagen. Ondertussen gebruikten NGOs het *zorgplicht discours*, om een verblijfsvergunning te krijgen op basis van het Kinderrechtenverdrag. Binnen de discourses vonden ook pogingen plaats om de slachtoffer-claims te weerspreken, door twijfels op te roepen over Mauro's verbroken relatie met zijn moeder en door zijn toekomstige bijdrage aan de Nederlandse samenleving te bagatelliseren, omdat hij geen bijzonder goede student was. Ondanks de sterke argumenten rond het Kinderrechtenverdrag (gezinnen mogen niet uit elkaar worden gerukt) en een onderzoek van het NIDOS, weigerde Minister Leers de discretionaire bevoegdheid te gebruiken. De mogelijkheid om Mauro als indringer te blijven categoriseren vanwege leugens was hier mede debet aan. Het feit dat zijn brief aan Leers niet door hemzelf, maar door Defence for Children was geschreven maakte de zaak erger.

De Sahar-casus daarentegen vertoonde meer stabiele slachtoffer- categorisaties die moeilijk te weerleggen waren. Zelfs in het *asiel authenticiteits discours* kon Sahar worden beschreven als iemand die bang was terug te keren, voornamelijk omdat ze zo verwesterd was. Hier fungeerde het *geslaagde culturele inbedding discours* als een manier om haar met terugwerkende kracht een slachtoffer te maken in het *asiel authenticiteits discours*. Het feit dat Sahar met haar familie op straat had gezworven en zelfs naar het buitenland was geweest, was onder de regels van het Generaal Pardon voldoende om de familie niet ontvankelijk te verklaren, maar in het *zorgplicht discours* waren juist deze verhalen een krachtige bevestiging van het lijden en de kwetsbaarheid van dit gezin. De situatie in Afghanistan bleek het categoriseren van Sahar als slachtoffer te vergemakkelijken, en maakte het voor Wilders moeilijk om te pleiten voor uitzetting, gezien zijn visie op de islam als gevaar.

Aanbevelingen voor beleidsmakers en onderzoekers:

- Bewustwording dat het asieldebat put uit verschillende discourses en verschillende manieren om te bepalen of iemand een slachtoffer is. Deze categorisaties zijn breder dan simpele asiel- en vluchteling-definities.
- Gevoeligheid voor deze frames zal de communicatie tussen beleidsmakers, politici en de protestbeweging verbeteren. Dit veronderstelt begrip voor de verschillende perspectieven in het debat.

- In het politieke debat over asiel bestaan hardnekkige beleidsmythes over de mogelijkheden om (migratie met als doel) illegaal verblijf te voorkomen door uitsluiting, afstraffing en een streng asielbeleid. Deze mythes worden door de protestbeweging doorgeprikt. Meer realisme en pragmatisme is noodzakelijk in het beleid voor ongedocumenteerden en uitgeprocedeerde asielzoekers die onwillig of niet in staat zijn om terug te keren naar hun land van herkomst.

Executive summary

A large percentage of Dutch voters believe that immigration should be curbed to a minimum and Dutch immigration and asylum policy now have a reputation as among the strictest in Europe. But there is also protest: against the unfair treatment of asylum seekers during their asylum application, against (rejected) asylum seekers being excluded from basic social rights, against the bad circumstances of alien detention, and many people worry about the situation of children without legal status. There is also highly mediatized public protest on behalf of individuals who are at risk to be expelled and who are said to be “well integrated”.

This is a case study on contestation and protest against Dutch asylum policy. We are interested in the reasons and arguments used by the protesters, the way they draw on concepts such as tolerance, toleration and basic respect, and the consequences of these protests for Dutch asylum and expulsion policy. We decided the cases of Sahar and Mauro should be two focus points of the study. These were two young end-of-line asylum seekers who were to be expelled and who became the centre of public and political debates in 2010 and 2011.

The research aims to answer the following main question: How do different actors resist (aspects of) the execution of asylum policy?

Results

Six main groups of protesters could be identified:

1. Political organisations, politicians, policy makers and bureaucrats.
2. Non-Governmental Organizations (NGOs) for migrants.
3. NGOs involved with human rights or asylum law.
4. Religious and humanistic NGOs involved with charity.
5. Academics specialized in human rights, migration and/or asylum.
6. Media and journalists.

Five main aspects of policies for (rejected) asylum seekers are contested:

1. False rejection and unfair asylum admission procedures
2. Homelessness and refusal of housing/ social security

3. Detention, circumstances of detention and criminalization
4. Expulsion (protests related to dangerous circumstances in country of origin and inhumane treatment during expulsion)
5. The uprooting of children, and (too) limited use of discretionary abilities for individual cases

The report shows how the debate about rejected asylum seekers constantly circles around two central questions: First: should the asylum seeker be qualified as a “victim” or an “intruder”? Second, is the government responsible for providing assistance? The different combinations of answers that are given to these questions are used to legitimize the steps that need to be taken for individuals and groups, for example, whether a residence status should be given, or emergency shelter provided (see table A).

Table A. Assessment of (rejected) asylum seekers and their right to government assistance

(b)	(a) Assistance	No assistance
Victim	ACCEPTANCE (e.g. residence status)	INDIFFERENCE (e.g. dealt with abroad)
Intruder	TOLERANCE (e.g. prevention of homelessness/ assistance for return)	INTOLERANCE (e.g. detention and forced return)

Protest movements tend to argue in various ways that asylum seekers should be regarded as “victims”, not as an “intruders”, and that there is an obligation for the Dutch state to provide assistance. The varying ways in which these arguments are being developed in relation to broader narratives, representations and normative positions can be mapped out by distinguishing four discourses. These are:

- 1. Asylum authenticity discourse.** In this discourse the leading question is how to know whether or not the asylum demand has been authentic (but falsely rejected).
- 2. Global injustice discourse.** In this discourse, economic refugees are recognized as victims of poverty. Those who make use of this discourse demand more solidarity and more open borders.
- 3. The duty of care discourse.** In this discourse the (local) government is said to have a duty to prevent homelessness and destitution among rejected asylum seekers, especially for vulnerable groups like children, ill people and the elderly.
- 4. Accomplished cultural inclusion discourse.** This discourse draws on ideas about “cultural citizenship” to present the rejected asylum seeker who has become connected to the (people in the) Netherlands as a victim of the length of Dutch procedures.

Seen in this light different discursive strategies are available. The protest movement is drawing on these four different discourses to establish categorization of an asylum seeker as “victim”. If one discourse fails to categorize an asylum seeker as victim, another discourse can be used in which this is possible. Such re-framing is visible in our two case studies on Mauro and Sahar. The 13-year old Afghan girl Sahar, who feared expulsion with her family, was successfully re-categorized as a victim, because she was

considered too Westernised to be expelled to Afghanistan. Because the frame “sending her into the burqa” was initialised by the Socialist Party, the objections of Wilders’ anti-Islam PVV party were refuted and she was considered an authentic refugee in hindsight. Contrarily, Mauro, an 18-year old Angolan boy who wished to be with his Dutch foster family, was insufficiently re-framed as a victim, because he was also framed as an imposter who still had connections in Angola and because fears of a honeypot effect could not be countered (see table B).

Recommendations for policy makers and researchers:

- Awareness that the asylum debate draws on different discourses and several ways to determine whether a person is a “victim” or not, and that these categorizations exceed one-dimensional asylum and refugee definitions.
- Becoming frame-sensitive will improve communication between policy makers, politicians and protest movement. This requires an understanding of different perspectives in the debate.
- More realism and pragmatism is necessary in policies for undocumented migrants who are reluctant or unable to return.

Table B: Discursive strategies of turning “intruders” into “victims”

	1. Asylum authenticity discourse	2. Global injustice discourse	3. Duty of care discourse	4. Accomplished cultural inclusion discourse
Victim	Real refugee	Economic refugee	Vulnerable person, sufferer/ homeless	Integrated rooted, connected
Intruder	Fake/imposter /Economic refugee	Exploiter /Fortune seeker	Entrepreneur, (detained) criminal	Stranger, outsider,

Method

In order to answer these questions, a qualitative research method was used. Three main sources were analyzed. The first source consisted of interviews with thirteen experts, policy executioners and representatives of the protest movement. A second source included policy documents such as political debates, motions and reports. A third source consisted of various newspapers which described aspects of the asylum policy. The mediatized, lamentable cases which we examined in particular were that of Sahar Hbrahim Gul and Mauro Manuel in 2010 and 2011. Legal procedures (trials and court cases) and violent protests and extremist activism were excluded from the research.

Keywords

Asylum policy, expulsion, protest movements, local governance, human rights, tolerance, exclusion.

1. Introduction

1.1. Policies of exclusion, asylum and tolerance in the Netherlands

The Netherlands is among the European countries where the decrease of tolerance for immigrant communities and the so-called “backlash against multiculturalism” has been most dramatic. A major component of declining support for cultural diversity is the demand to *restrict immigration*. Most EU countries are trying to make their immigration policies more severe and immigration and asylum are increasingly dealt with at the EU level.^[1]

A large percentage of Dutch voters believe that immigration should be curbed to a minimum and that asylum policy should be very strict.^[2] But there is also protest. There is critique of the unjust and unfair treatment of asylum seekers at any stage of their asylum application and against the treatment of rejected asylum seekers and undocumented migrants. Some protest is primarily focussed around the dramatic case of individuals who are at risk to be expelled or who’s asylum request is rejected. This type of protest usually receives a lot of media attention and it involves emotional outcry in which friends and family of the person in question appear on national television. Two of such “lamentable cases” (*schrijnende gevallen*) resulted in major public debates in 2010 and 2011: the Afghan girl Sahar and a boy from Angola, Mauro. Whereas Sahar got a residence permit along with 400 other Afghan girls, because she had become too “westernized”, Mauro’s claim to remain with his Dutch foster family was rejected, but he was allowed to request a student visa.

This report presents the outcomes of a research that was aimed at finding the arguments and ideas behind socio-political mobilization against Dutch asylum policy, and whether and how these forms of mobilization affect the execution of policies of exclusion and citizenship in the Netherlands.

1.2. Contesting asylum policy in the Netherlands: national discourses on (in)tolerance and its limits

Historically the Dutch have often imagined themselves as a nation that offered a safe haven for religious and political refugees. There was a clear linkage between narratives about Dutch tolerance for religious differences *inside* the Netherlands and an openness towards *foreigners* who were persecuted for their faith and beliefs or who were fleeing violence. The Dutch branch of Amnesty International speaks of the

¹ Notably of course since the European Pact on Immigration and Asylum (2008). See the yearly reports of the European Migration Network (EMN).

² See opinion polls in SCP 2009: 257-258.

role of the Netherlands as a “guiding nation” (*gidsland*) in this respect. However, as one can read on Amnesty’s website, over the past two decades this image has changed. The fact that the Netherlands has been accused of violating human rights in the treatment of refugees has damaged the self-image as one of the most tolerant nations in Europe.^[3] Secondly, ideas on tolerance and immigration and asylum policies are linked to the concept of “pragmatic toleration”. Pragmatic toleration or “condoning” (*gedo-gen*) refers to the declaration in advance that under specific circumstances offenders against a particular legal norm do not need to fear punishment.^[4] In the context of the governance of immigration the critique of condoning has focused on leniency with regard to legal requirements for immigration and asylum, and with the way undocumented migrants were allowed to stay and work in the Netherlands. An opinion poll held in 2005 showed that the most vigorously condemned form of condoning was when “illegal stay in the Netherlands” was allowed (Mascini and Houtman 2011: 15).^[5]

Changes in Dutch asylum policy over the past ten years are thus directly related to debates on tolerance. Now that the effects and outcomes of stricter asylum policy are becoming visible, old and new voices of protest develop.^[6] Eviction of rejected asylum seekers remains difficult and a growing number of rejected asylum seekers become undocumented residents. Local authorities find ways to divert or obstruct national policy-guidelines and civic associations support asylum seekers who are confronted with situations that violate basic rights, notably of children.

1.3. Political challenges and tolerance: relevance for the framework of ACCEPT-pluralism^[7]

The fourth work package of ACCEPT-pluralism investigates the importance of tolerance in relation to political participation and representation of minorities. In the case of asylum seekers, the difference and boundaries between minorities and the receiving society primarily concern residence status and not cultural, religious or ethnic practices. Yet, a racial, religious and ethnic dimension is obviously present around this issue, since asylum seekers generally originate from Asia and Africa, and because the asylum procedure has become one of the few options for migrants outside the EU to enter the Netherlands. One of the main aims of the asylum procedure is to distinguish between those migrants who may enter (and who should be accepted) and those who may not. The Dutch case is illustrative of two seemingly contradictory emotions with regard to foreigners: there is an increased “intolerance” by the Dutch state and society for illegal residence, but there is also increased concern about individual stalled asylum cases, and a plea for acceptance and granting a residence permit on humanitarian grounds. This may

³ See “Is Nederlands gidsland in de mensenrechten?” Amnesty International, Downloaded February 20 2012. Available at: <http://www.amnesty.nl/mensenrechten/encyclopedie/nederland-mensenrechtenbeleid>.

⁴ The concept “condoning” is not unique to the Dutch situation, it also exists as a legal concept or guideline in Germany (“behördliche Duldung”), England (“cautioning and forbearance”) and France (“sans suite” and “main courante”). However, as Mascini and Houtman observe, the Netherlands is unique in that “condoning” has acquired a formal standing in policy guidelines (2011: 7).

⁵ Significantly, a press release of the Ministry of Immigration and Asylum on a proposal to make illegal stay in the Netherlands a crime was entitled “The government ends the condoning of illegality”. July 8 2011.

⁶ In 2003 Human Rights Watch condemned the Netherlands for violating the basic human rights of asylum seekers and immigrants. Recently, Amnesty International has raised concern about aspects of Dutch asylum policy (2010, 2011).

⁷ We decided not to include a section on the political participation of migrants, as this is unrelated to our topic.

well be illustrative of the way tolerance can involve a “perceptual shift” when the reasons for not tolerating a person are overridden by his or her humanity (Dobbernack and Modood 2011: 13). The formal non-toleration of those who have no legal rights to live in the country, becomes toleration or even acceptance, when the humanity of individuals becomes the ground for judgement.

The recent contestations around the eviction of rejected asylum seekers have also taken up new dimensions related to cultural differences. The so-called argument of “rootedness”, meaning that it is wrong to evict a person who is well integrated in Dutch society, has affinity with ideas about cultural citizenship, i.e. the idea that cultural assimilation is a requirement for full inclusion in a liberal state (Duyvendak 2011). In addition, debates on asylum policy bring to light a hidden tension in the discourses of liberalism. According to many protesters, human rights experts and NGOs, Dutch authorities and Dutch asylum practice are violating basic norms of decency and international human rights standards. It appears that in this context the politics of “liberal intolerance” are backfiring, because now the state itself stands accused as responsible for ways of doing that are “intolerable” in a liberal-democratic society.

There are important political dimensions to this case study. Asylum policy is among the most intensely debated issues in Dutch politics. Organized political mobilization by (rejected) asylum seekers and undocumented migrants themselves is rare, for the obvious reason that they have little opportunities.^[8] Still, there is indirect political representation of asylum seekers and undocumented migrants via NGOs, individual citizens, individual MPs and political parties.

Many studies report on the practical and legal obstacles in implementing strict policies of border control, expulsion and exclusion from facilities. Less well studied are the ways social and political mobilization, active resistance and protest shape policy execution and trigger policy change in this domain (e.g. Alink 2006, Gibney 2008, Tazreiter 2010). We can think of acts of civil and administrative “disobedience” by citizens, individual civil servants and local administrations.^[9] In view of identifying the ways in which contestation around the eviction of rejected asylum seekers is of direct relevance for debates on tolerance in the political domain we have decided to focus on two aspects. On the one hand, we will analyse the different actors, organizations and action repertoires that constitute public protest and contestation against the (execution of) Dutch asylum policy. On the other hand, we are interested in the discursive framing of individual “lamentable cases” and the consequences of Dutch asylum and expulsion policy, especially in relation to the type of arguments and justifications that are being developed to contest existing policy practices. The way this issue is debated will clarify “tolerance” and “respect” claims, as well as the claim of a decline of tolerance in the Netherlands.

We will analyse the way the “lamentable cases” of Sahar and Mauro were framed in the media and how they were used to problematize Dutch asylum policy (cf. also Van Gorp 2005). The sometimes contradictory nature of the argumentations is interesting in itself because it may reveal diverging policy goals, contrasting moral intuitions and conflicts among moral, prudential and realistic considerations (Bader and Engelen 2003). Another theoretical viewpoint that is relevant for our research is that developed by Loic Wacquant (2009). He describes two possible ways in which states may deal with the poor and marginalized (throughout history often migrants). These are: poor relief or social welfare and penalization.

⁸ However, while we are writing this report, a protest of rejected Iraqi and Somali asylum seekers in Ter Apel, Groningen, who refuse to disappear into illegality and request continued shelter, is taking place.

⁹ See Doornik 2008: 135.

These strategies are continuously balanced in state policy, for which Wacquant refers to Bourdieu's "two hands of the state". The left hand is dealing with marginalization from a poor relief point of view, using education, medical treatment and better opportunities as solutions. The right hand uses disciplinary measures, prisons and fines to control and confine the poor. The strategy of penalization assumes that the poor are a threat to society, whereas social welfare strategy assumes the poor are themselves in need of protection. We take his two opposing ways to handle marginalization as a starting point for our analysis of the Dutch asylum debates.

1.3. Research question

We wish to examine the general procedures and policies for rejected asylum seekers, and investigate what happens when protest against this policy is being mobilized, becomes mediatized and politicized. Our main research question thus reads:

How do different actors resist (aspects of) the execution of asylum policy?

We can further divide this in four subquestions:

1. Which actors, procedures and organisations can be identified as opposing these policies?
2. What reasons and arguments do different actors and organisations provide to object to policies directed at rejected (individual) asylum seekers?
3. How do they differ in responsibilities, action repertoires and means to change the outcomes?
4. What has been the role of public mobilization around "lamentable cases" in public opinion and political debate?

2. Method

2.1. Discourse analysis and case studies

Our research question leads us to search for information about actors, procedures (policy) and about moral reasoning. Since we wished to approach the issue of contesting the policy for rejected asylum seekers from a combination of social and political studies, the choice for discourse analysis became obvious. Through discourse analysis, it is possible to analyse and connect the way people think, speak, and act regarding asylum policy, thus deconstructing the (political) debate, as well as the policy.

As we embarked upon the study, the headlines of Dutch newspapers frequently mentioned the name Sahar, and as we proceeded, that of Mauro (starting September 2011). These were two young end-of-line asylum seekers who were to be expelled, and whose lamentable situation became the centre of a public and political debate. Through discourse analysis of the debate surrounding their cases, as well as the different steps which led to the outcome of their procedure, we hope to give insight not just reasons to contest Dutch asylum policy, but more importantly, the effects of such contestation on policy.

2.2. Range of information recourses

For this study, we used deskwork as well as qualitative interviews. The statistics on admission, rejection and effective expulsion of asylum seekers between the year 2000 and 2011 were gathered. We then analysed the relevant political debates. In the written media, we analysed main national newspapers (de Telegraaf, de Volkskrant, NRC-Handelsblad and Trouw) and opinion magazines (notably Elsevier). The search topics were: (rejected) asylum seekers, lamentable case, expulsion, detention, emergency shelter, Sahar, and Mauro. In order to describe contestation, we searched websites of NGOs, their online published reports, citizens' online petitions and social media protests, and local newspapers.

2.3. Interviews

For our group of respondents we selected people who could inform us about the practicalities and dilemmas in the policies for end-of-line asylum seekers, as well as possibilities to protest or obstruct the policies. We thus approached experts on asylum, policy makers and local politicians, representatives of NGOs and people who had supported Mauro or Sahar. While we conducted the interviews, we found that several respondents had more than one function. One of the politicians is also an expert on migration and holds a job at a university. Many respondents had been previously working as a volunteer for Vluchtelingenwerk (Refugee Council). Our sample included experts on migration, an official of the Dutch Immigration Service (IND), as well as politicians. Most respondents reported to have participated in signing petitions for individual cases or having joined protests.

The variety of respondents led us to create different topic lists for every respondent. A combined list of all possible topics can be found in the annex.

3. Analysis of the political challenge

3.1. Dutch asylum policy: reception, exclusion and expulsion

The following section analyses policies for (rejected) asylum seekers from 2000 to 2011. In this chronological depiction, three main themes emerge: (1) restrictions on immigration, (2) reduced facilities for irregular migrants, and (3) increased attempts to expulse unwanted migrants.^[10]

1990-2000

Prior to the 1990s the number of asylum seekers and undocumented immigrants was relatively small, (Doomernik 2008: 129). A rising number of asylum requests from former Yugoslavia resulted in processing delays between 1991 and 1995. In 1996 two new national institutions were created to coordinate asylum reception centrally: the Central Agency for the Reception of Asylum Seekers (COA, *Centraal Opvang Asielzoekers*) and the Immigration and Naturalization Service (IND, *Immigratie- en Naturalisatie Dienst*). The number of illegal residents in the Netherlands in those years was estimated between 50,000- 100,000 persons (CBS, 1999). In 1998 the so-called Linkage Act (*Koppelingswet*) came into effect. Its aim was to discourage illegal work and residence. Illegal migrants were excluded from social services and work, by linking residence status to a social-fiscal number required for work, housing and taxes. An exception was made for medical emergencies and schooling for children.

2000-2006: New Aliens Act

In 2000 a new law was created to shorten the procedure and reduce the costs of repatriation. The New Aliens Act (*Vreemdelingenwet 2000*) had important consequences for rejected asylum seekers. Governmental support and shelter were ended for all refused asylum seekers. An exception was possible only if the asylum seeker could prove that he or she could not return. If an asylum seeker failed to report to the Alien Service during the procedure, or went missing, the migrant would become “*persona non grata*”. This became punishable with six months in prison. Preventive detention was introduced, meaning that immigrants who could be sent back to the country of origin (i.e. when a “*laissez passer*” was given^[11]) could be detained for a maximum of four weeks.

¹⁰ The policies directed at (rejected) asylum seekers thus relate to several policy fields: immigration, justice, public health, safety, social welfare, education, medical care, and foreign policy.

¹¹ *Laissez-passer* (literally: “let go”) is a document that allows passage into another country, for example when a passport is missing.

In 2001, the Netherlands reached the lowest figure of all European states in acceptance of asylum seekers.^[12] The influx of asylum seekers decreased from 44,000 in the year 2000 to 9,900 in 2004 (Donkerlo 2007). In 2002, 2,200 asylum seekers were granted a “pardon” and the numbers of refused asylum seekers residing illegally in the Netherlands were estimated between 10,000 and 40,000 (CBS 2002).

However, on the local level the effects of this policy of exclusion were cushioned. As Pluymen (2008: 326) argues: “The local level felt the need to compensate for (...) [the] “void” which was created by excluding destitute migrants who were unable to return to their country of origin from housing and public services. Municipalities thus financially supported or even created foundations which would in turn offer shelter or support” (our translation IV/MM). In 2002, 40 municipalities wrote a letter to Secretary of State Van Kalsbeek (PvdA) that they would no longer execute the policy which stipulated that rejected asylum seekers must be evicted by the police from the COA facilities and left without accommodation. The letter was an example of increased collisions between government and municipalities. The National Board of Municipalities for Shelter (LOGO, *Landelijk Overleg Gemeentebesturen Opvang en Terugkeerbeleid*) also sent a report in 2005 to alert the Minister regarding the situation of approximately 4,000 unaccompanied minors.^[13]

According to the new government, that came into power in 2003, the answer to these issues was to be found in more perseverance in attempts to expulse rejected asylum seekers. Minister Verdonk (“Iron Rita” from the liberal party VVD) announced a new policy aiming to remove 26,000 rejected asylum seekers. The so-called project “Return” should increase the return migration of undocumented migrants.

In June 2006, the results of Verdonks attempts to clear 26,000 old files were made public. A large percentage of the formerly rejected asylum seekers (44%) had been entitled to asylum while their file was re-evaluated. Only 714 persons received a permit due to “lamentability” (*schrijnendheid*). 3000 people had left the country independently, 1000 were forcefully expelled and 6400 disappeared into illegality, where they could no longer apply for government assistance and risked detention. Meanwhile, more measures to fight illegal residence became effective. In 2005, it became compulsory for all persons over age thirteen to carry identification at all times. Together with the Linkage Act of 1998, this new obligation became a powerful tool of the (Aliens) police to detect undocumented migrants, and also to detain them, either to keep them off the street or to ensure their expulsion.

While the policy became stricter, two incidents related to the asylum issue sparked public debate, and these debates created opportunities for opponents to criticize and question the policy. The first case involved rejected asylum seekers who were sent back to Congo in 2005, along with documents in which personal information about their asylum request was made available to the Congolese secret service (which was in charge of border control). This caused political and media uproar, in which Verdonk was accused of “endangering the lives of rejected asylum seekers”.^[14] The second case was more dramatic, because in October 2005 a fire at the Return Centre of Schiphol airport in Amsterdam killed eleven undocumented migrants awaiting expulsion and injured many more. When information became known about the lack of safety in the building and the unwillingness of guards to open the cell doors, thus leaving the inmates trapped, this

¹² For tables, we refer to the annex.

¹³ Regiostat on behalf of LOGO-Gemeenten (2005).

¹⁴ A special commission that investigated the matter concluded that mistakes had been made (Rapport Havermans, December 2005). NOS: *Verdonk erkent slordigheden Congo*. [Verdonk admits administrative errors Congo], December 9 2005.

led to political and public protest. After an investigation by the *Onderzoeksraad voor de Veiligheid*, both the Minister of Justice (Donner, CDA) and the Minister of Housing (Dekker, VVD) resigned from office.

Following the growing public concern about the situation and treatment of asylum seekers, local aldermen and mayors of the Green Left party (GroenLinks) published a manifesto in September 2006 entitled “Don’t make refugees homeless”.^[15] The 40 signatories expressed the intention to continue offering shelter and support for undocumented migrants and rejected asylum seekers. In 2006, on the 4th of November, 5000 people joined in a manifestation for refugees and in favour of a national pardon. In November that year, the liberal VVD, the party of Minister Verdonk, lost a great number of votes during the parliamentary elections and the social-democrat PvdA would enter the new government.

2007-2010: General Pardon and Administrative Agreement

The newly formed Centre-Left Government^[16] announced a “one-off pardon” for aliens who had arrived in the Netherlands before the new Aliens Act (before 1st Of April 2001) and who had not received citizenship status. Illegal residents could also apply (Donkerlo 2007). Eventually, 28,000 people received a residence permit. However, there was also a “quid pro quo” attached to the pardon. A so-called “Administrative Agreement” (*Bestuursakkoord*) was signed between the Secretary of State, Mrs. Albayrak (PvdA), and the municipalities.^[17] The Government agreed to grant the Pardon on the condition that municipalities no longer offer shelter or social services to rejected asylum seekers and undocumented migrants (Donkerlo 2007). The government in turn would ensure an “adequate” return policy. In order to improve the return policy, a new organisation was established: the Return and Departure Service, (DT&V, *Dienst Terugkeer en Vertrek*) that combined expertise from COA, IND, alien police and the IOM (Doomernik 2008: 3). Rejected aliens would reside in a removal centre until expulsion. The established budget for removal centres in 2008 was over 53 million euro. In the years after the Pardon, attempts to curb influx of migrants into the Netherlands continued.

The current asylum policy debate focuses on admission and what to do with illegal residents, some of whom are rejected asylum seekers. The latter debate involves measures such as legalization, shelter, detention and expulsion. There is debate about whether or not to create special measures for children.^[18] Protests continue to be voiced and sometimes they result in policy adaptations. For example, after objections by Human Rights Watch, the Refugee Council and the UNHCR^[19], a change of the asylum procedure became effective on the 1st of July 2010. The infamous 48 hour procedure (5-6 days) was changed into 8 days, including a period of rest previous to the start of the procedure (two weeks).^[20]

¹⁵ “Maak van Vluchtelingen geen daklozen” Manifest GroenLinks burgemeesters en wethouders, September 6 2006.

¹⁶ A coalition of two Christian Parties and the Social Democrats: CDA-PvdA-ChristenUnie.

¹⁷ Represented by the Association of Netherlands Municipalities, VNG.

¹⁸ Spekman Initiative Law “Always Shelter for Children” 32566.

¹⁹ Human Rights Watch (2003) *VluchtelingenWerk Nederland* (2010). Letter to members of sedentary chamber commission of Justice of the Senate about change of Aliens Act. VW2000 *Schriftelijk onderzoek d.d. 9 februari 2010 inzake Wijziging Vreemdelingenwet 31 994*. Amsterdam, februari 4 2010; UNHCR (2003). *Implementation of the Aliens Act 2000: UNHCR’s Observations and Recommendations*. July 2003.

²⁰ Letter of Minister of immigration and asylum, to the chair of the Senate, October 17 2011.

Meanwhile, detention has become one of the more commonly used measures to keep undocumented migrants off the streets (Amnesty International 2010). In total, six alien detention centres hold approximately 10,000 irregular migrants per year (Van Kalmthout 2007). On average, less than 40% of the detained migrants is effectively expelled annually (Doomernik 2008; see also DT&V 2010).

Special attention is currently drawn to the situation of children. In 2009, the European Committee of Social Rights ruled that the Netherlands should offer housing to all (illegally residing) children including their parents. This was the result of a complaint lodged on 14 January 2008 by Defence for Children International against the Netherlands. The Minister however did not consider himself bound by this decision, but in 2010 a Court in The Hague came to the same recommendation.^[21] Two astute family locations were opened^[22], but the Minister appealed the court's decision. In 2011 the Dutch Central Council of Appeal^[23] rejected the Minister's appeal by referring to the European Convention on the Exercise of Children's Rights as well as the European Return Notice.^[24]

In April 2010, two members of Parliament Spekman (PvdA) and Anker (CU) filed a motion which became known as the "motion of rootedness" (*wortelingsmotie*). The motion refers to the UN Convention on the Rights of the Child (1989) that obliges states to guarantee children's right to education, housing, and medical care. It demands that a residence permit will be granted to rejected asylum seekers' children who have lived in the Netherlands over eight years, if the government is partly to blame for their prolonged stay and if for at least two years of their residence in the Netherlands the migrants had been staying legally (with some kind of -temporary- residence permit). The motion was accepted by Parliament, but Minister at the time, Mr. Hirsch Ballin (CDA) refused to execute it. According to him, the motion was very similar to an amendment to the Aliens law which had been rejected earlier by the parliament. One reason to reject the amendment was that parents would be tempted to live in illegality in order to get a residence permit through their child.^[25]

The new government's agreement of 2010 of the minority cabinet of VVD and CDA (that was condoned by the populist PVV), made plans to abolish all "categorical protection" in asylum admission policy.^[26] A strict stance on asylum policy became a litmus test to see whether the government was willing to do the maximum to reduce immigration. A new law passed the Senate that made illegal residence a criminal offense, which implies that illegal residence itself - not just the possibility of eviction- may lead to fines and, if these cannot be paid, to detention. The latest development in asylum policy debate is the possibility to create a Pardon for Children, with ideas similar to the previously, not effectuated, *wortelingsmotie*. The Council of State published an advice against the motion, because for individual cases, the Minister's discretionary ability should suffice.^[27]

²¹ Gerechtshof Den Haag, 200.063.511/01, January 11 2011. *Verboden een uitgeprocedeerd gezin op straat te zetten*.

²² In Katwijk and Gilze-Rijen

²³ Centrale Raad van Beroep, May 30 2011

²⁴ European Return Notice, 2008: 115 EG

²⁵ Letter by Hirsch Ballin, Minister of Justice, June 1 2010.

²⁶ Annual Policy Report EMN / European Migration Network 2010: 20, Migratie en asiel in Nederland.

²⁷ Advice Council of State, 33068, 22nd December 2011. *Voorstel van wet van de leden Samsom en Voordewind tot wijziging van de Vreemdelingenwet 2000 houdende versterking van de positie van in Nederland gewortelde minderjarige vreemdelingen*.

In the last week of April 2012 the government of the Right, condoned by the PVV, came to an end. Especially in the Christian Democrat party (CDA), the party of the Minister of Asylum and Migration (Leers), there is dissatisfaction among some leading members about the way the party has become responsible for an increasingly strict and sometimes inhumane asylum policy. Obviously we have not been able to include the new developments in this report, but it appears that politically, opportunities for successful protest have improved.

3.2. Contesting Dutch asylum policy: actors, discursive strategies and main issues

In the following paragraphs we describe the different groups and organizations involved in contesting asylum policy and their main discursive strategies. We wish to state beforehand that an important source of policy contestation was deliberately omitted from our research. Much of the protesting against asylum policy occurs in the designated places of legal contestation (i.e. the courts), for example through appeals on a rejection of an individual asylum request. It involves legal experts and lawyers. Our theoretical focus is socio-political, however, and we describe non-legal contestation of policy by citizens and professionals. A second type of protest that we have deliberately excluded are acts of violence and other illegal means, such as death threats used by (extremist, left wing) activists to achieve their aims. They are beyond the scope of what we consider legitimate “protest” in a democratic context.^[28]

3.2.1. Groups and organizations

For the sake of clarity, the people and organizations involved with protesting against the asylum policy can be divided into six groups:

1. **Political organisations and actors, and bureaucrats** including notably individual MP’s of Groen-Links (Green Left), SP (Socialist Party) and PvdA (Labour Party). At the local level representatives of the Christian Democrats (CDA) and VVD (Conservatives) also at times support initiatives.
2. **Non-Governmental Organizations (NGOs) acting on behalf of (rejected) asylum seekers, refugees and/or undocumented migrants**, nationally or locally, such as Vluchtelingenwerk, VON (Refugee Organisations Netherlands), LOS (National Support for the Undocumented), and ASKV (Amsterdam Solidarity Committee Refugees)^[29]. These organizations may consist largely of volunteers (in the case of ASKV) or largely of professionals (such as Vluchtelingenwerk).
3. **NGOs involved with human rights or asylum law**, such as Amnesty International, Human Rights Watch, Defence for Children, and the Association of Asylum Lawyers.

²⁸ These actions include threats to airlines who expulse irregular migrants, illegal demonstrations and bombing of corporations who are involved with building alien detention centres, and writing death threats to people who work in the “asylum industry”. In 1991, the house of Minister of Justice Aad Kosto was destroyed by a bomb by the group RaRa, in protest against his asylum policy. Also the assassination of Pim Fortuyn in 2002 was, according to the assassin (Volkert van der G.), an attempt to protect asylum seekers from harmful policies. See an overview (in Dutch) of illegal protests made by the General Intelligence and Security Service (AIVD: 2009): <https://www.aivd.nl/onderwerpen-0/extremisme/links-extremisme/verzet-asielbeleid/overzicht-acties/>

²⁹ See the extended version of this report for a list of organizations: Versteegt and Maussen (2012). *Contested policies of expulsion: Resistance and protest against asylum policy in the Netherlands*.

4. **Churches and religious or humanistic NGOs involved with charity** and care for the needy, such as Kerk in Actie, INLIA, and the Humanistic Alliance. Their aim is helping vulnerable people, homeless people, and those in special needs.
5. **Academics** specialized in human rights, migration and/or asylum law who contribute to debate and protest through research, reports and public statements.
6. **Media and journalists** may address asylum policy in comments from the chief editor, and choose certain perspectives from which to describe the issues.

3.2.2. Discursive strategies

Some activities of protesters consist of helping (rejected) asylum seekers cope with their situation, by assisting them for a renewed application, or help them get emergency shelter. But organizations can also lobby for a change of policy through media, political lobbying, and by providing information to the public. When they voice their opinion, in either way, the protesters are trying to change the perception of asylum seekers through debate.

In this section we present the main discursive positions and discourses that we have identified in our analysis of public protests around Dutch asylum policy over the past ten years. Following the theories of Van Gorp (2005) and Wacquant (2009), we have constructed a discursive space allowing us to analyse debates on asylum policy. Seen in this light two questions are central to the asylum debate, and their answers are continuously contested:

1. Is this person a victim?
2. Is the government responsible for providing assistance?

The two questions can be used to map out the discursive space of the asylum debate along two axes (see table). We found that the answers to the two relevant questions correlate with different possible policy recommendations. The policy of social welfare is associated with the status of victim, whereas the policy of penalization can be associated with the status of intruder. These are presented in rows in the table below. Note that penalization efforts are strongest in the fourth quadrant, where the person is assessed as an intruder, *and* the Dutch government is not responsible for social assistance. The first quadrant, by contrast, shows the highest level of governmental assistance: the person is a victim, and the government should assist. The government is thus *less likely to help* intruders than victims, and *more likely to punish* intruders if the government is felt to be less responsible.

The ACCEPT-framework turned out to be particularly helpful in further clarifying these four positions: when in the context of asylum debates the person is seen as a victim and there is agreement that the government is responsible in providing assistance, for example by granting a residence permit, there is acceptance. The position that holds that the asylum seeker is not a victim, but still has a legitimate claim for assistance, for example help with repatriation or emergency shelter, is qualified as tolerance. The punitive and forced expulsion policies we associate with intolerance, whereas the withdrawal of the government care from victims in the third quadrant is qualified not as tolerance or intolerance, but as indifference (see table 3.2.1.).

Table 3.2.1. Discursive space of Dutch asylum debate

SHOULD THE DUTCH GOVERNMENT TAKE RESPONSIBILITY IN ASSISTANCE?			
		YES, RESPONSIBILITY	NO RESPONSIBILITY
IS THIS PERSON A VICTIM?	Yes, he/she is a victim	What should be done? <ul style="list-style-type: none"> - Offer (modest) accommodation - Grant residence status through asylum procedures, humanitarian or discretionary individual measure - Legalize status through regularization - Other forms of help (medical, psychological, housing, integration) ACCEPTANCE	What should be done? <ul style="list-style-type: none"> - Allow NGOs to help - Leave person to own devices - Leave person to other country's responsibility (Dublin claimants) INDIFFERENCE
	No, he/she is not a victim. (He/she is an intruder)	What should be done? <ul style="list-style-type: none"> - Help person leave through assistance - Provide help in country of origin - Provide with emergency shelter until expulsion - Offer aid to country of origin TOLERANCE	What should be done? <ul style="list-style-type: none"> - Make person leave through pressure and penalization: <ul style="list-style-type: none"> (a) reduction of facilities and no aid (b) detention (c) criminalization of illegality (d) isolation from local communities - Forced expulsion INTOLERANCE

This theoretical perspective and the construction of a discursive space that maps out different positions in the asylum debate was extremely helpful in guiding the analysis of the argumentations and discussions. A second step was to identify, in an empirical and inductive way, the main discourses through which Dutch asylum policy is being contested. To find these discourses, we used Van Gorp's distinction of "Victim or intruder?" and searched our data for reasoning towards a categorization of victim, and which different reasons were used by the protest movement to establish such categorization. We define discourse as: specific ensembles of ideas, concepts and argumentations and are particularly interested in the argumentations, policy recommendations and figures of speech that are associated with particular discourses. In our analysis of various sources, we found four different discourses through which the distinction between victims and intruders is being constructed. We can introduce these four discourses based on the following questions:

- a. What is the central question of the discourse?
- b. How does the discourse distinguish between victims and intruders?
- c. In what type of situations is the discourse being used?
- d. Which actors are using or articulating this discourse?

We need to underline that during the empirical research it has become increasingly clear that the "asylum debate" is actually comprising two main debates, which intersect and overlap, but which *in view of*

the asylum trajectory can also be seen as consecutive: first, there is a debate on admission to the territory and to Dutch society, and, second, there is a debate about how to handle the situation of rejected asylum seekers who *de facto* are residing in the Netherlands, usually illegally.^[30] Sometimes it may not be obvious whether the situation of a particular individual or family should be addressed as about admission or as about how to handle *de facto* residence (e.g. if a family is officially still awaiting the outcome of a procedure, but has already been living in the Netherlands for 8 years). Yet, it makes sense conceptually and empirically (see below) to treat these as two distinct, and largely consecutive, debates (Carens 2003; Bader 2005). Finally, we need to stress that the discourses below have been found in analysing *protest and contestation* of Dutch asylum policy, they do not cover the whole spectrum of possible positions on asylum policy, and notably the arguments of those who are in favour of extremely strict policies of asylum, exclusion and expulsion are not fully analysed.

The first two discourses can most clearly be identified in the debates on *admission*: we call them the asylum authenticity discourse and the global injustice discourse.

1. Asylum authenticity discourse

The first discourse focuses on the question whether an asylum seeker justly applies for the refugee status under the Geneva Convention and applicable laws. This we call the *asylum authenticity discourse*. It means only those persons should be granted asylum and be eligible for a residence status, who are real refugees.

Whether an asylum request should be granted can essentially become known by answering the question: “Is this person’s life in danger according to the Geneva Convention and human rights regimes?” If yes, the person is a victim. In that case, refugee status and residence status should be given. If not, the Dutch state owes him/her nothing; he or she should leave the country, he or she is an intruder. The main dilemma in asylum policy practice according to this discourse is the difficulty to distinguish between victims/refugees and intruders/pretenders, in a context of liars and pretenders on the one hand, and governments that want to apply the Geneva Convention in its most narrow sense, on the other.

In the context of protest, the asylum authenticity discourse is often articulated when an asylum seeker is said to be rejected unlawfully, and when there is still an appeal going on. The discourse is also engaged when the rejected asylum seeker is about to be expelled, and there is fear of *refoulement* (torture or detention upon return to the country of origin). The asylum authenticity discourse was articulated in political debates concerning the Congo issue in 2005 (see above). It is also visible in the debates about “categorical protection” (i.e. granting asylum to all people from a particular country or region).

The actors that articulate this discourse are mostly the legally involved NGOs, lawyers, as well as scientists with a legal background, and the public servants who are working in the administrative services dealing with asylum requests.

³⁰ Note that the second debate overlaps with the more general debate on undocumented migrants. In the Netherlands rejected asylum seekers form a considerable amount of the total number of undocumented migrants.

2. Global injustice discourse

The second discourse is rather critical of the distinction made in the asylum authenticity discourse between “real” and “fake” refugees. Instead, it frames the issues in terms of global inequalities and calls for larger solidarity with people who have extremely poor life prospects and flee to the Netherlands hoping for a better future. The fact that many “economic refugees” will try to enter through the gates of the asylum procedures is inevitable in a world of extreme inequalities, and immigration and asylum policies should be realistic about this. We call this the *global injustice discourse*. The question whether a residence status must be granted is known through the answer to the following question: “Is this person fleeing poverty?”. If yes, the person is a victim. Residential status must follow and we must help this person. If not, Dutch society cannot be held responsible and owes him/her nothing, this person must leave and is an intruder.

The possibility to distinguish clearly between economic and war refugees is questioned, since war, poverty and global economic inequality are considered to be interrelated. Victims in the global injustice discourse are those who have good grounds to flee poverty. Intruders are migrants who are merely “fortune seekers” (for example because they have reasonably good prospects for prosperity in their home country) and who are not victims but perpetrators of inequalities and exploitation (f.e. involved in human smuggling). In the abstract, the moral intuition of this discourse would be a plea for “open borders” and for a fundamental restructuring of global inequalities. In reality, these radical conclusions are tempered by the realist and prudential arguments which can also be articulated within this discourse. Prudentially, for example, one can argue that it is not in the self-interest of poor societies to see their younger and more talented members leave. Realistically, one can say that in the present world order the Netherlands simply cannot open its borders to all economic refugees, or point to the risk that the worse off in the Netherlands will also pay a price when too many immigrants can enter. But prudential and realist objections can also be used to argue that more people should be admitted. The human and economic costs of preventing immigration are considered too high, and those who suggest it is possible to keep all fortune seekers out are lacking in realism.

There is no formal, legal frame to assign residence status to migrants who have been exploited or flee from poverty, but the global injustice discourse is visible in many statements of the protest movement, including those of our respondents. It is one of the main reasons why they contest the policy: they feel the Dutch government has no absolute right to restrict immigration. The global injustice discourse is often engaged in calls for a regularization. It is used by social scientists as well as representatives of religious NGOs.

Where the first two discourses mainly deal with admittance to Dutch territory, the two other discourses figure in the debate about rejected asylum seekers and undocumented migrants who *continue to live* in the Netherlands.

3. Duty of care discourse

The situation of homelessness and destitution of many rejected asylum seekers has given rise to a *duty of care discourse*, especially at the municipal level.

Its central question in this discourse is: “Is this person suffering?” If yes, emergency shelter or social aid can be given, there can be support to help the person repatriate, but also granting a residence permit

may be a legitimate way to end a situation of physical and psychological suffering. If not, we owe him/her nothing, this person must leave or should have left already. In this discourse the “intruders” can be those who are to blame themselves for their situation, who have abused the system (e.g. trying to be admitted as a parent or spouse) or who have committed (war) crimes. Even if they suffer, these “intruders” do not merit compassion, at least not from the state.

The dilemma for asylum policy practice according to this discourse is: how to discern between those who are in need and who will continue to suffer if they do not get assistance, and those who “abuse the system”, who can leave but who decide not to because they hope for assistance they can get for themselves or their children.

The *duty of care discourse* demands special protection for vulnerable individuals or groups, such as pregnant women, children, elderly and people with medical conditions. Also people who are not accepted back by their country of origin are considered vulnerable, because they must exist in a limbo, without being able to support themselves. The vulnerable groups are represented as being at risk of living on the street, and becoming homeless. “Homelessness” is central to the construction of “unacceptable suffering”, as this is considered a situation which governments of decent liberal states should prevent at all cost. The duty of care discourse can be used in attempts to create special needs groups who may apply for assistance and accommodation. The solution is not necessarily found in residence status, but in creating acceptable living conditions, and a clear perspective for the future, for example by allowing children to be educated. Since the duty of care discourse almost exclusively deals with undocumented migrants who should return to their country of origin, a “honeypot effect” of the assistance measures is feared by its opponents.

4. Accomplished cultural inclusion discourse

The fourth discourse that is used to represent and assess the situation of rejected asylum seekers is the *accomplished cultural inclusion discourse*. At the heart of this discourse figures the idea that it is unfair and wrong to let people (notably children) live in the Netherlands for many years, and then suddenly expel them to a foreign country from which they have become alienated. These persons have, over time, become integrated and rooted in Dutch society and they should not be expelled because then they would become uprooted.

The central question in this discourse is: “Does this person belong here?” If yes, this person deserves a residence status and an opportunity to have a future in the Netherlands. If no, this person must leave. The dilemma in asylum policy practice is how and when to determine whether rejected asylum seekers are genuinely at risk to become uprooted when they must leave. Both the time spent in the Netherlands and all kinds of “marks” of integration (from speaking Dutch to cultural practices) are being used to identify the “good guys” or “victims”. Indications of who is to blame for their prolonged stay in the Netherlands and at what age the immigrant arrived in the Netherlands are also included. Intruders are people who have deliberately stalled their asylum procedure - or that of their children- in order to achieve a citizenship status based on “rootedness”. But, because of the emphasis on cultural assimilation in this discourse, “intruders” may also be those who are insufficiently integrated.

The *accomplished cultural inclusion discourse* is used very often in mediatized individual cases, where requests for humanitarian status have failed. The defenders of the Mauro and Sahar cases used *accomplished cultural inclusion* as a frame of reference and in the discussions on the “rootedness motion”

(*wortelingsmotie*) and the Children's Pardon, *accomplished cultural inclusion* became central to the political debate.

The table below presents the four discourses and how they establish distinctions between victims and intruders.

Table 3.2.2. Four discourses used to frame asylum seekers as victims or intruders

	ADMISSION TO TERRITORY		ILLEGAL RESIDENCE	
	1. Asylum authenticity discourse	2. Global injustice discourse	3. Duty of care discourse	4. Accomplished cultural inclusion discourse
Victim:	Real refugee	Economic refugee	Vulnerable person, sufferer/ homeless	Integrated rooted, connected
Intruder:	Fake/ imposter/ Economic refugee	Exploiter/ Fortune seeker	Entrepreneur, (detained) criminal	Stranger, outsider, expulsable

3.2.3. Main issues

The discursive strategies and discourses presented above may not all be used at the same time. In the process of asylum application, rejection, and expulsion, there are many issues which give rise to protest, and actors will use different arguments and representations, drawing on the available discourses.

The main issues that emerged from our analysis of the protests, more or less follow a chronological line from the moment the asylum application is handed in, until (attempts at) expulsion of the rejected asylum seeker. It all starts with the admission procedure, which is contested as biased, not aimed at admitting refugees, but directed towards a maximum amount of rejections. As the procedure has ended, the rejected asylum seeker is officially obliged to leave, but may not do so for different reasons. Illegal life brings difficulties because the irregular migrants are excluded from the welfare system and excluded from legal work and because, officially, municipalities may not offer them accommodation as they do to the homeless who do have a residence permit. A large amount of protest concerns this treatment of end-of-line asylum seekers and undocumented migrants. Other problems are related to the risk of detention and the way detention is executed. Expulsion itself, when it does happen, is also contested because of its brutal execution and intimidating treatment of children. Sometimes, the last resort before expulsion, is the approach of media, in order to bring the individual case to the public and political arena.

The protests can thus be divided into the following five issues:

1. False rejection and unfair procedures
2. Homelessness and refusal of housing/ social security
3. Detention, circumstances of detention and criminalization
4. Expulsion (both related to 1 (refoulement) and 2 (physical force, sedation, handcuffs))
5. The uprooting of children, and (too) limited use of discretionary abilities for individual cases

In the following paragraphs, these five main issues will be explored and the use of the four discourses in the discursive strategies is analyzed. For the analysis, we used interviews with various contesters, political debates, and media.

3.3. Protest against the asylum procedure

“I assume that my colleagues have done their best for the past eleven years. But with this measure their work is simply thrown overboard. Suddenly Albayrak comes with this General Pardon, and I think, well that is very nice, but I have spent years trying to figure it all out and have told people they should leave, and suddenly they can stay?

Interviewer: It felt like a loss?

Respondent: Yes, like a personal loss. I have great difficulty with the interfering of mayors and churches. Let the IND decide who can stay, and who cannot.”^[31]

“One has to do the admission procedure accurately, it should not be a legal battle over “who wins”, with fake arguments. Just objectively look at the file. If you do that, the rejected person will accept the result much easier. If you are able to be more accurate and also give people the benefit of the doubt, you will end up with a much smaller group which really cannot be sent back. Now this group is mixed: people who are unjustly rejected, people who are rejected but should have been given a humanitarian status for “no fault”, and a group that is able to return but unwilling to do so”. ^[32]

3.3.1. Introduction

The Dutch asylum procedure has undergone several changes in the past 12 years. The most significant change was the revision of the shortened procedure of 48 (working) hours, which was introduced in the *Vreemdelingenwet* 2000, into an eight (working) day procedure in 2008. Due to the fact that there are many people who seek to enter the Netherlands via the asylum procedure -even if not all of them qualify as refugees - the task of the IND is to “check whether or not a person may enter”.^[33] Since the true origins and true reasons of asylum application by an individual are unknown to the IND, the granting of a refugee status depends solely on the person’s ability to present a credible refugee story with the necessary documents. The story must be told within the first days of arrival, with relevant “details” such as torture, the killing of loved ones etcetera. These details may not be added later, because this would impair the applicants’ credibility.^[34] The IND is responsible for the interviews. The asylum seeker is assisted by a lawyer and may be informed about the procedure by volunteers of the NGO Vluchtelingenwerk. The asylum seekers are accommodated during their (first) procedure either in an AC with

³¹ Interview 12, official of the IND (Immigration -and Naturalisation Service).

³² Interview 10: two local policy advisors in LOGO-cities

³³ Interview 12: official of the IND (Immigration -and Naturalisation Service)

³⁴ The new asylum procedure of 2008 however seems more tolerant in this respect, see Spijkerboer 2010.

open access, or they are institutionalized at AC Schiphol airport in Amsterdam, which effectively serves as a detention centre. After the decision they may be transferred to a COA location for further investigation, or in case of denied access, they are referred to the Expulsion Centre in Ter Apel. When a rejected asylum seeker is going into appeal, he or she will continue to be assisted by a lawyer but usually the person is not entitled to await the appeal in the Netherlands. This must be separately requested. Even if the request to await appeal in the Netherlands is granted, he or she is not entitled to accommodation. In this case, local NGOs may offer further assistance for accommodation, or they may get help from other people.

Protesters who criticize an unfair asylum procedure usually frame their claims in the terms of the *asylum authenticity discourse*. They present rejected asylum seekers as “victims” who are wrongly denied a status and are miscategorised by the authorities as “intruders”, because of flawed procedures. The speaking of asylum seekers as (potential) “liars” is largely absent from the accounts of the protest movement - both in the interviews as well as in the documented material we collected. Protesters will realistically acknowledge that many applicants do not qualify as refugees under the Geneva Convention, but tend to insist that poverty can also be a legitimate reason to migrate and be accepted. In the interviews the respondents from the protest movement, as well as the social scientists, turned to the *global inequality discourse* to re-frame the economic refugees as victims, and called for more solidarity.

3.3.2. Main actors and arguments involved in protest

Naturally, a lot of protest and resistance against procedures takes place in the legal arena. In terms of socio-political mobilisation the most prominent voices of protest around this issue are individual or organized asylum lawyers and NGOs that monitor the procedures. These include international NGOs such as Human Rights Watch, that critically monitors human rights violations during the procedure, and legal NGOs such as the Dutch Association of Asylum Lawyers. (Social) scientists have critically reflected on the flaws of the asylum procedure, e.g. problems in communication (Doornbos 2006), assessing the trustworthiness of a story told by people who may suffer from trauma-related memory loss or shame (Bloemen et al. 2006 and Tankink 2009), and linguistic aspects (Thije 2008). The underlying legal and demographic assumptions of the policy have also been scrutinized (Schotel 2011; Van Wijk 2007 and Grütters 2003).

On the websites of organizations such as INLIA, as well as in interviews, we found several statements criticizing the asylum procedure. We summarize these quotes here, by distinguishing the most common objections and by referring to original sources in which these claims were made. The claims were that:

1. The procedure is unfair, in part because of the fact that it seeks to reject as many applicants as possible, for example by refusing categorical access of refugees from war zones such as Afghanistan, Somalia and Iraq.^[35]
2. There is too little legal possibility to correct or control the decisions made by the IND.^[36]

³⁵ Interview 3: NGO representative (migrants: emergency shelter); Interview 7: academic expert on asylum ethics

³⁶ Interview 6: local politician

3. The treatment of asylum seekers who are still in the procedure is inhumane, because they lack basic needs such as enough pocket money, good housing and facilities for children.^[37]
4. The procedure is unacceptably long and the insecurity of the outcome brings much suffering.^[38]

In the analysis the argumentations used in interviews, media and political debate were labelled as supportive of “victim” or “intruder” categorization. In order to explain why asylum seekers are wrongfully rejected and should be regarded as victims, the protest movement made use of the *asylum authenticity discourse* as well as the *global injustice discourse*. The main structural flaws in the asylum procedure are said to result in a bias towards (false) rejections. The first type of false rejections results from the way the assessment of the correctness of someone’s story of refuge and identity claim is organised. In the view of the protesters the difficulty is that asylum seekers have to convince IND representatives that they are telling the truth:

“Well, take for example an AMA who says he is from Congo. There has been a civil war going on for years. When he was little, he and his parents ran away from the war, his parents crossed the borders for longer and shorter periods of time. Such a boy never went to school in Congo. He speaks all sorts of neighbouring languages and a bit of Congolese. When the IND tries to verify his nationality, they say: he is lying about his identity, because he knows very little about Congo and barely speaks the language. On that base, his application is rejected”.^[39]

The second type of false rejections results from the way procedures are designed to reduce the amount of accepted asylum requests. For example, the possibilities for obtaining a humanitarian status have been reduced, which comes at the expense of those who cannot return:

“There used to be a list of countries, of embassies, of which it was known they never cooperated in accepting back their citizens. That list used to be the basis for the cooperation-criterion. But this list is not being used anymore. It still exists, it is also updated. I have found that out. So they do know which people cannot go back; who cannot obtain a laissez-passer. But nothing is done with it, supposedly everyone who wants to, can go back”.^[40]

Also because of other factors the way asylum procedures operate is said to have changed in a way that results in more false rejections. Some say the Geneva Convention is poorly executed because of the way human rights have become institutionalized and politicized: “In itself, the Geneva convention for the protection of refugees is constructed very well, but states, are looking for loopholes. Offering protection is now interpreted as, and limited to, not being allowed to expulse”.^[41] Additionally, the possibilities for appeal are being frustrated: “The highest court, the department of justice of the Council of State, has become a

³⁷ Interview 13: NGO representative (church)

³⁸ Interview 8: NGO representative (church - The Sahar case)

³⁹ Interview 7: academic expert on asylum ethics

⁴⁰ Interview 6: local politician, signatory of Groen Links Manifest

⁴¹ Interview 7: academic expert on asylum ethics

defender of the government policy”.^[42] Even the European Court of Human Rights is said to be under pressure by individual states and unable to correct all false rejections for pragmatic and strategic reasons: “Human rights are no longer what they used to be. (...) They changed from a banner which countries followed, to an instrument of pressure, and finally to an institution. I am referring to the European Court (...). This juridification changes the dynamics, and the discourse. It is no longer a discourse of ideological mobilization but one of legal decision making and precedential effects (...) The Court is busy, and it costs money and time. To pay for this it needs the individual States, and that affects the decisions.”.^[43]

The IND official we interviewed, however, denied that policy and anti-immigration sentiments had many consequences for individual decisions:

“You do hear, that they say, ‘oh, a lot of them are allowed in’. But I also notice that the IND continues stoically regardless which Minister is in office. We just execute the UN Refugee Treaty. What you do notice, is that the policy is aiming at preventing a honeypot effect. (Q: Is your practical work influenced by preventing this honeypot effect?) Yes, one does think about it. For example, ‘oh dear, now we are getting a lot of people from Eritrea’, or ‘hey, suddenly a lot of Colombians are entering for a transit to Israel’. Then we arrange a transit-stop. But on the other hand, we are simply tied to European guidelines”.

The IND official framed the procedures for assessing asylum applications exclusively within an asylum authenticity discourse. Despite institutional and political pressure and despite the presence of an unknown number of imposters among applicants, the IND aims to take accurate decisions. But, due to the pressure on the IND to “meet targets” and because some lawyers present themselves as fierce antagonists of the organisation, accuracy as well as objectivity is sometimes jeopardized: “The lawyers can be really big-mouthed. They will send me an inadequate request five, six times. Then, the tenth time, even if it is correct, I tend to think: you can forget about it”. Also, the presence of many “liars” can make it difficult for interviewers at the IND to still be open-minded towards those who do speak the truth: “When you have just had nine interviews in which someone is messing about, can you still be objective the tenth time? We talk about that with colleagues.”^[44]

A large part of asylum debate seems to be about distinguishing between true refugees and imposters. But we found the protest movement’s reasoning not only problematizing the way distinctions were being made, but also suggesting different and additional “victim” categorization. Emphasis can be put on the the economic aspects of migration and exclusivist migration policies are considered unethical:

“In the first place, it means thousands of people are dying at sea, on their way to Europe. Second, you will get the construction of illegality-regimes, mechanisms meant to marginalize people to such extent that they will leave (...) But when politics want one thing and economy wants something else, they often can stay in the informal circuit”.^[45]

⁴² Interview 9: academic expert on human rights

⁴³ Interview 9: academic expert on human rights

⁴⁴ Interview 12: representative of the IND (Immigration -and Naturalisation Service)

⁴⁵ Interview 9: academic expert on human rights

The relationship of Europe with Africa, for example, is described as (still) based on exploitation of psysical and human resources: “I miss that in politics, the connection between: fine, if you remove all recourc- es there and remove economic trade barriers for importing (...) We have pleaded in favor of admitting more lower educated from Africa. Or how ethical is it when you get all the higher educated from there?” Some of the respondents doubt there actually is any legal or ethical justification to deny access at all to migrants who flee poverty.^[46]

When the rejection is considered unjust, the common action strategy is to contest this outcome. Besides lawyers, NGOs are also involved with appeals and re-starting individual procedures. One of our respondents who worked for an NGO that offers shelter and assistance for rejected asylum seekers and undocumented migrants, said: “The first thing we ask of them is their file. Because then we can get started for them. Some of them know it already. They come in with their documentation under the arm.”^[47]

Besides individual assistance for appeal and re-starting a procedure, there is a lobby to change the procedure. The admission procedure has been changed in 2008 largely as a result of international protests from Human Rights Watch, UNHCR and Amnesty International.

3.4. Denial of assistance and homelessness

“You don’t put children onto the streets... Look at the Children’s Rights Treaty which we signed. It is very commonplace that you should not do that. But the Minister, after the Court made this clear, went into appeal, he disagrees with it... well that says it all.”^[48]

“Politicians believe that, if we make people’s lives awful enough, if we just lock them up or starve them or make their lives miserable, they will return. And that is not the case. Because a life on the street here is still to be preferred over the life from which they ran away. And we cannot just stage a civil war, only to get these people out of here. What I would like is for politicians to understand that as a country, you never win anything by marginalizing groups. The only thing you create is a subculture of exploitation which is more and more infected by criminality. You miss tax income and you only increase legal costs.”^[49]

3.4.1. Introduction

It is the desire of the government to discourage rejected asylum seekers from continued illegal life in the Netherlands. Therefore, all support from the government ends after the IND has rejected the asylum request and municipalities are officially not allowed to offer accommodation and shelter for homeless re-

⁴⁶ Interview 3: NGO representative (migrants: emergency shelter); Interview 1: academic expert on migration politics
Interview 2: academic expert on asylum law.

⁴⁷ Interview 3: NGO representative (migrants: emergency shelter).

⁴⁸ Interview 13: NGO representative (church).

⁴⁹ Interview 4: NGO representative (migrants/refugees).

jected asylum seekers. The policy, apart from firmly excluding unwanted migrants from the Dutch welfare state, should also deter new migrants from choosing the Netherlands as their country of destination, preventing “a honeypot effect” (*aanzuigende werking*). The reasons rejected asylum seekers have for staying in the Netherlands are many. They include fear of going back, shame towards the families, and the estimation that an illegal life in the Netherlands is to be preferred over a dangerous and insecure life in their country of origin. But it can also be that there is a genuine desire to return, but an inability to effectively do so.^[50]

3.4.2. Main actors and arguments involved in protest

The number of previously used “municipality emergency shelters” (*gemeentelijke noodopvang*) has been reduced (Regioplan 2009). But not all municipalities have ceased their aid and they are an important actor in contesting this aspect of Dutch asylum policy.^[51] In some cases, the municipalities have chosen to provide funding for NGOs, and then the NGOs will provide shelter. Some of the organizations are local foundations specifically created for this purpose, such as SNOW in Wageningen.^[52] This is a kind of administrative disobedience that municipal authorities use as subterfuge to resist implementation of national policy guidelines.

There are also many NGOs that offer aid for undocumented migrants, including organizations based on humanistic (Humanitas) or religious principles (INLIA, Kerk in Actie) or be (self)organizations specifically focussing on refugees or undocumented migrants (VON/ LOS). There are those that operate locally (ASKV) and there are nationally operating organizations (Vluchtelingenwerk). Some focus on specific groups, such as Somali’s, women, or children. Some organizations only provide information (LOS) or engage in lobby-activities, others offer shelters and pocket money.

In our analysis of the protest movement (websites, political debate and interviews), we found several arguments to contest the denial of assistance. Similar reasoning was found in a variety of sources, here we summarize these with reference to at least one source.

- a. Some of the homeless people are true refugees who will not return because they fear prosecution and civil war in their country of origin. Instead of living on the streets, they deserve a residence status.^[53]
- b. A large percentage of rejected asylum seekers is unable to return because they don’t have the required documents (they are “stateless”) or because their country does not accept them (no “laissez-passer” is issued, embassies do not cooperate). They are stuck in the Netherlands, but have failed to obtain a “Without Blame- status” from Dutch authorities. To address this issue some argue that the former “criterion of cooperation” should be reinstalled.^[54]

⁵⁰ Pluymen, M. (2008)

⁵¹ Regioplan (2009)

⁵² Interview 6: local politician, signatory of Groen Links Manifest

⁵³ Interview 6: local politician, signatory of Groen Links Manifest

⁵⁴ Adviescommissie voor Vreemdelingenzaken: Recht op menswaardig bestaan. Advies over de opvang en bijstand voor niet rechtmatig verblijvende vreemdelingen en rechtmatig verblijvende vreemdelingen zonder recht op voorzieningen. Den Haag, March 2012 (12).

But even if the asylum rejection was not contested in itself, a discourse of *duty of care* was engaged to point out that policies should not inflict suffering onto people, regardless if they deserve or have a residence status:

- c. When asylum seekers are still awaiting an appeal, it is unfair to deny them assistance and accommodation.^[55]
- d. Denial of assistance even for those who are rightfully rejected, increases suffering: whatever official government policy may require, states and municipalities still have moral obligations to prevent homelessness, especially of vulnerable people such as children and elderly.^[56]

Other argumentations were not referring to any ethical goal, but rather pointed out that the policy was counter-productive:

- e. Denial of assistance creates additional and new problems; it increases exploitation and fuels the illegal market, (survival) criminal behaviour, drug abuse etcetera. For prudential reasons of “public order” municipals should provide social assistance.^[57]
- f. Denial of assistance and homelessness does not help in making people leave; it only makes them destitute and less able to return.^[58]

Among our respondents the arguments used were mostly articulated within a duty of care discourse. The same discourse was visible in articles in the left wing media. An article in the *Volkskrant* for example critically discussed the refusal of the municipality of Venlo to offer accommodation to “families of asylum seekers”^[59] An example of the way this discourse is engaged by members of parties of the Left, can be found in a Parliamentary debate with Minister Verdonk in 2003. It was about many expected evictions out of COA facilities of rejected asylum seekers:

“We have a mutual agreement that it is a matter of decency that we will not let people live on the streets and that we provide people shelter.”

(MP de Wit, Socialist Party, 11th December 2003, TK Interpellatie De Wit, 36-2570)

“Does the Minister accept the current situation that people who cannot return, who don’t have any perspective, are roaming the streets of the Netherlands and that only municipalities, churches and refugee organizations are adding a spark of humanity to the lives of these people?”

(MP de Wit, (MP Marijke Vos, Green Left, 11th December 2003, TK Interpellatie De Wit, 36-2574)

⁵⁵ Klaas de Vries, PvdA, in: TK Interpellatie De Wit -36-2579 (2003)

⁵⁶ Interview 5: NGO representative (human rights)

⁵⁷ Interview 10: two local policy advisors in LOGO-cities

⁵⁸ Interview 10: two local policy advisors in LOGO-cities

⁵⁹ *Volkskrant*. *Venlo weigert opvang van asielgezinnen; uitgeprocedeerd*. Venlo refuses shelter for asylum families. End of line. 3rd September 2011.

Minister Verdonk replied by explaining why she was not willing to provide shelter for people whose asylum demand has been rejected:

“Those who are not eligible for stay, should return. If they don’t do so on their own accord, it follows they will be expelled. I repeat my point of view: those who want to return, are able to return [...] Only for a group of people where it has been established objectively they cannot return despite their desire to return, the so-called “no fault” criterion is used [...] A conclusive solution as requested by the SP-fraction, that is, accommodation until the effective return of people, cannot and will not be effectuated. With such a measure, every incentive to return will be taken away.”

In this fragment the Minister argues, first, that the migrants who did not qualify for a “no fault” status and still refuse to leave are “intruders” and, second, that an underlying policy goal of withholding of accommodation is to stimulate irregular migrants to leave the country and to prevent a “honeypot effect”.

3.4.2. Action strategies and changes through protest

One way of addressing the situation of rejected asylum seekers who are sojourning on the territory of a specific municipality (legally or illegally) is to try and re-launch the asylum procedure. According to our NGO respondents, it usually works to appeal to the outcome of the procedure: “If one puts time and effort into it, it is almost always possible to reverse the rejection and get a residence permit through appeal and continued procedures”.^[60] Seen in this light, the funding of NGOs by the municipalities may indirectly result in more residence permits, because a main task of NGOs is to help asylum seekers get a permit.^[61] If this happens, the problem is solved from the perspective of the municipalities and the NGOs. In case of a rejected asylum seeker who is, also according to the NGO, rightfully rejected but unable to return, they may try to apply for a “no fault” (*Buiten schuld*) procedure, or try to appeal for a residence permit based on medical or humanitarian reasons. Another option is to request an exception by the Minister with a plea to use his “discretionary abilities”. This may be done in cooperation with local politicians. Several respondents who work in local political settings mentioned successes in achieving a residence status by contacting the administration unofficially, for example by a phone call to the Ministry.

Another form of resistance by local authorities is more direct. Officially, municipalities are tied to the “Administrative Agreement” of 2007. However, there are local politicians and administrations that openly admit that they continue offering “emergency shelter” for undocumented migrants, in cities such as Utrecht, Wageningen and Tilburg.

In these cities those who are responsible argue that the agreement also demands of the government to provide a “suitable approach” towards those who must leave the country. As long as the government fails to expel the rejected asylum seekers or to offer humanitarian permits for those in destitute situations, it remains the obligation of municipalities to offer shelter and prevent homelessness. Municipalities have the responsibility to care for those residing on the territory (a “duty of care” (*zorgplicht*)), which

⁶⁰ Interview 10: two local policy advisors in LOGO-cities

⁶¹ Interview 3: NGO representative (migrants: emergency shelter)

includes care for rejected asylum seekers. The European Social Charter (1996) also demands that governments ensure humanitarian conditions for all people who reside in the country.

“Administrative disobedience” by municipal administrations and street level bureaucrats, which is more or less openly legitimized by local authorities (Mayor or aldermen) has become an important way of resisting the implementation of Dutch asylum policy. Three main strategies are used. First, non-compliance with planned evictions in asylum centres, by withholding police force. A local policy maker:

“The alien police is the responsibility of national government, but regular police and public order is the responsibility of the mayor. A mayor can prevent evictions at an asylum centre, the State may try to enforce it, but it proves to be legally impossible. We haven’t evicted for eight years, and the State cannot make us do it”.

Second, even if asylum seekers have been evicted from an asylum centre, municipalities have proven to be creative in finding indirect ways to keep providing other shelters for the undocumented. In one municipality the strategy is to cooperate with the lawyer of the rejected asylum seeker. The lawyer will formally demand shelter to the municipality, because the client is “vulnerable”. The municipality will then send an official written letter declining this request by referring to obligations based on Dutch policy, but without denying that the client is indeed vulnerable. The lawyer then has enough ammunition to take the case to a court, and the court will demand the municipality to offer shelter, based on European guidelines and obligations regarding “vulnerable” people. Third, municipalities may try to address the situation of homelessness by helping rejected asylum seekers and undocumented migrants return to their country of origin by offering assistance through programs, such as “Perspectief”.

It is clear that these forms of protest and lobby for better procedures have been successful. The so-called “Spekman motion” has demanded shelter for all asylum seekers with serious medical conditions (2010). The number of applications for a humanitarian citizenship status based on medical conditions amounts to approximately 350 persons per year (IND: 2009). Another success is the creation of “family locations” for (detained) rejected asylum seekers and undocumented migrants. This happened after a lobby that lasted several years and a campaign called “No child in the street” (*Geen kind op straat*). The Central Council of Appeal (*CRvB, Centrale Raad van Beroep*) ruled that children must be accommodated at all times.^[62]

3.5. Alien Detention and criminalisation

“[Detention] should be an exceptional measure, a last resort, in order to capture someone who refuses to go, for a short period of time so this person can be evicted. But it has become standard procedure [...] The rights of aliens in detention are very limited, they have no right to attend a funeral of a family member, or witness the birth of their child. Even convicts in penitentiary institutions have that right. But precisely because they are no real prisoners, these rights do not apply to them. They

⁶² Centrale Raad van Beroep, 30 mei 2011

have no right to visitors, no daily activities. And they can be locked up for long! Eighteen months! For someone who has done nothing wrong. We may think we are humane, but all we did is place inhumanity out of sight.”^[63]

“I found out that detention centres have a very strict policy against protests. There were inmates who sat down on the floor. The fire hose was used on them, they got beaten up. Or they are put into the isolation cell for unknown periods of time.”^[64]

3.5.1. Introduction

Until 1982, detention of aliens in the Netherlands was relatively rare: approximately 500 persons per year were held, for an average period of one month (Van Kalmthout 2007: 90). In the past 25 years, numbers of detained migrants awaiting their expulsion have been steadily growing. In 2004, capacity for alien detention has increased to 3,100 cells, holding an average of 16,000 aliens per year (Doomernik 2005: 2). The average time spent behind bars has increased from 56 to 75 days. This means that approximately 25% of the influx into Dutch prisons consist of people who are detained because they lack a residence permit (Van Kalmthout 2007: 90).

Politically, the Minister of Immigration and Asylum is responsible for alien detention. The majority of aliens are detained at detention centres and the responsibility for internal policy of the Alien Detention Centres lies with the Legal Institutions Service (DJI, *Dienst Justitiële Inrichtingen*) which is subject to the Ministry of Justice. The IND decides whether or not a person may be released or should (still) be held captive, as they must obtain the documents needed for establishing identity, and travelling documents such as a *laissez passer*.

Formally and according to the Dutch Constitution, resolutions of the Council of Europe and the European Guidelines for asylum policy, the detention of aliens is an administrative measure to be used *only* if all other measures have failed (*ultimum remedium*).^[65] Yet, alternative measures to keep track of an alien such as electronic surveillance, bail and intensified checks are rarely used. Moreover, since 2001 the Council of State no longer investigates whether alien detention is justified (Van Kalmthout 2007: 92) and in 2004, the monthly legal check on sustainability of the detention was abolished (Van Kalmthout 2007: 93). The Dutch law describes two conditions for detention of aliens: it can be done when expulsion is likely to be arranged on short notice, and when the person poses a threat to public order (Van Kalmthout 2007: 93). Border detention is used for those who wish to enter the Netherlands but have not been granted permission, whereas migrants who are illegally residing or who are still awaiting the results of a second appeal for asylum can be detained in regular penitentiary institutions or in specific alien detention centres (Van Kalmthout 2007: 89).

⁶³ Interview 7: academic expert on asylum ethics.

⁶⁴ Interview 9: academic expert on human rights.

⁶⁵ Council of Europe: Twenty Guidelines of the Committee of Ministers on Forced Return, September 2005, art.6; Proposal for a directive of the European Parliament and the Council on Common standards and procedures in Member-States for returning illegally staying third-country nationals (COM2005/0391/final), Brussels 1.9.2005:14

Dutch law states that alien detention should only “minimally restrict” the freedoms of inhabitants. Additionally, UN documents, the Council of Europe and the Committee for Prevention of Torture (CPT) have repeatedly stated that “aliens residing illegally should not be treated as criminals”.^[66] However, now that the detention regime in all prisons in the Netherlands has been reduced to the bare minimum, alien detention offers even less opportunity for leisure and contact with the outside world than the common regime for detained criminals (Van Kalmthout 2007: 98). In many cases, detained migrants are locked into their cells for 20 hours a day and must share their cell with up to six inmates. The detention can last up to 18 months. Depending on their location, there may be restrictions, such as on receiving newspapers.

Several reports of Amnesty International^[67] have criticized Dutch alien detention on a number of aspects. A report of 2008 reads:

“Amnesty International was alarmed to encounter allegations of ill-treatment, particularly given the lack of prompt and full independent investigations into such allegations (...) The organization is concerned about the number of irregular migrants and asylum-seekers in detention, the duration of their detention, and the fact that other vulnerable groups, such as unaccompanied minors and torture victims continue to be detained. As such, immigration detention has effectively become a tool of deterrence and punishment, which conflicts with international human rights standards”
(Amnesty International 2008: 5).

The report mentions how protests of inmates against their restricted possibilities of contact with the outside world are being met with disciplinary measures such as isolation.

According to the Amnesty report the asylum procedure should not be used as a measure to “scare off” others and prevent illegals from entering.^[68] Among the asylum seekers are genuine refugees who may be further traumatized if they are detained. Furthermore, vulnerable people such as elderly, ill people, minors and pregnant women should be exempted from detention.

According to Amnesty International, numbers and statistics on the effectiveness of this aspect of policy remain obscure, which further delegitimizes the use of this drastic measure: “A lack of publicly available statistical data on various aspects of immigration detention prevents adequate parliamentary and judicial scrutiny of whether Dutch policies on irregular migration are effective and proportionate to the goal they aim to achieve and are therefore justified” (Amnesty International 2008: 6). According to Van Kalmthout (2004), about 40% of detainees have been effectively removed, the others are eventually released back into the street.

⁶⁶ David Weisbrodt, special rapporteur for the UN in: The rights of non-citizens, Doc. E/CN.4. Sub.2/2003/23 of 26th May 2003.

⁶⁷ Amnesty International 2008, Amnesty International 2010 and Amnesty International 2011.

⁶⁸ Amnesty International 2011.

3.5.2. Main actors and arguments involved in protest

Because detention should be (but does not seem to be) an “ultimum remedium” and given the human suffering that goes with this type of detention of undocumented migrants, all three types of NGOs are protesting against alien detention. There are few lawyers involved, as alien detention is considered an administrative measure, not a legal one. Therefore, many detained aliens are not represented legally, unlike convicted criminals (Van Kalmthout 2007: 98). Protest by local communities is rare. While in detention, migrants do not interact with the legally residing citizens. Any abuse, human rights violations or mistreatment happens within the walls of the institution, and it is hard to communicate this to the outside world. Some newspapers have paid attention to this subject, for example when a group of (Dutch) squatters were put into alien detention because they refused to identify themselves after a clash with the police.^[69]

In the sources which we analysed we found several objections against the way detention is being used in Dutch asylum policy practice. We deduce the arguments about detention to a shortlist of five main objections, which we paraphrase as follows:

1. Detention is used for the wrong reasons. It is not used to hold people in order to effectively expulse them, but as a means to keep them off the streets and as a way of creating a additional “push factor”, both for them and for potential new asylum seekers.^[70]
2. Detention is not effective if it supposedly should contribute to the effective expulsion from the Netherlands of rejected asylum seekers; only 40% of detained persons are expulsed.^[71]
3. There conditions in detention centres are inhumane : there is lack of privacy, lack of authorized leave for personal circumstances (such as birth of a child), and detainees have less rights than criminal prisoners (e.g. no right to read newspapers or to daily activities).^[72]
4. The length of detention is unknown, and the maximum length is too long (18 months).^[73]
5. There is too little use of alternative measures, such as electronic control.^[74]

3.5.3. Action strategies and changes through protest

The earlier mentioned report of Amnesty International of 2008 on alien detention led to a series of talks between Amnesty and Secretary of State of Asylum at the time, Mrs. Albayrak (PvdA). According to Amnesty

⁶⁹ Volkskrant. *Zwijgende krakers overgeleverd aan Vreemdelingendienst*. Silent squatters handed over to the IND. 7th July 2011.

⁷⁰ Paraphrased from Interview 7: academic expert on asylum ethics and Interview 9: academic expert on human rights.

⁷¹ Paraphrased from Interview 9: academic expert on human rights.

⁷² Paraphrased from interview 7: academic expert on asylum ethics (see quote at the beginning of the paragraph).

⁷³ Paraphrased from Interview 8: NGO representative (church - The Sahar case).

⁷⁴ See subsequent reports by Amnesty International.

the suggestion that detention was used as *ultimum remedium* (last resort, if all other measures had failed) did not correspond to current policy and practices.^[75] Other institutions also expressed their worries, such as the National Ombudsman, a public institution that should protect citizens from governmental error^[76], and the Committee for Prevention of Torture (CPT). Together with 40 other NGOs, Amnesty International offered a petition to the Parliamentary Commission for Immigration and Asylum, represented by its chairman Hero Brinkman (PVV) in January 2011. The petition urged for less alien detention and more use of alternatives. Minister Leers was quoted on this issue: “It is to prevent that an alien is withdrawing from supervision (...) It is a last resort. But according to international standards. We must make sure the alien actually leaves. We should not pamper people, but encourage them [to return, IV/MM] and treat them respectfully”.^[77]

In a motion, accepted in 2010, the MPs Gesthuizen, Spekman, Schouw, Voordewind and Dibi requested the Minister to investigate alternative possibilities for alien detention and inform them before summer 2011.^[78] In 2011, an amendment to the Aliens Act (on recommendation of MP Gesthuizen) prescribed that for every detained alien, the Minister should indicate a final date on which return must be effectuated, lest the alien be released from detention.^[79]

However, whereas the above mentioned changes seem to show that protest has resulted in a softening of the detention regime, there is also a trend in the opposite direction. Actually, the chances that rejected asylum seekers will face detention may increase because of a new law that will make illegal residence itself a criminal offence. This law has passed the Senate in December 2011. Illegal stay in the Netherlands will in the future be sanctioned with a fine of maximally 3800 euros, and in case of non-payment, a substitute detention of maximally six months (Amnesty International, 13th December 2011). A coalition of NGOs churches, unions, and experts on migration, has tried to prevent the passing of this law through a lobby and petition called “*Nee tegen strafbaarstelling*” (No against criminalization). The petition rejected criminalization of illegal stay, especially by referring to negative effects on the victims of forced prostitution and exploitation.^[80] In this way these NGOs tried to change the terms of discourse in which undocumented migrants were portrayed as “criminals” and “intruders”, and proposed to perceive them first and foremost as “victims”. Minister Leers commented that in general, only illegal residents who are creating havoc will be confronted with this measure.^[81]

Allied NGOs have also lobbied against the detention of children, in a campaign named “*Geen kind in de cel*” (“No child behind bars”). Notably due to the Amnesty International report and repeated lobbying by

⁷⁵ Amnesty International, letter to secretary of State Mrs. Albayrak, 3rd. February 2009; Letter to Amnesty International by Mrs Albayrak 25rd September 2008.

⁷⁶ Ombudsman, Advice regarding the hunger-and sit strike in detention centre Schiphol 2010/353, 14-12-2010.

⁷⁷ Trouw “Protest tegen detentie laatste middel” January 27 2011.

⁷⁸ Motie van het lid Gesthuizen c.s., December 1st 2010, 32500 VI.

⁷⁹ Amendment van het lid Gesthuizen, 25th October 2011, 32 420.

⁸⁰ Petition: *Nee tegen strafbaarstelling*, March 2011-December 2011. www.geenstrafbaarstelling.nl/nl/petition/ondergetekenden. Within nine months the coalition was supported by seven church organizations, seven legal organizations, 44 NGOs for refugees, 60 professors at universities, all LOGO municipalities, and the two largest trade unions, and collected over 3000 individual signatures, but ultimately the action proved to be unsuccessful.

⁸¹ <http://www.vng.nl/smartsite.dws?ch=DEF&id=110785>.

Defence for Children and other human rights NGOs, Minister Leers announced minors would no longer be put in detention centres unless they had obstructed their removal.^[82]

This is an example of a lobby which has resulted in a change of policy. Alien detention is now only applied to male undocumented migrants, and if they have a wife and children these will be held separately in a “family location”. This should also prevent homelessness of children (see issue 2).

3.6. Forced expulsion

“02.40 hours: “Good Morning! Time to go to Baghdad” [...] The words “respect” and “humane” are used a lot during the trip. Everything is available. Next to the airplane stairs there are sports-mats to prevent injuries if rebellious aliens are thrown to the ground. There is a doctor, a spiritual caretaker. There are IND representatives to judge a new asylum request, there is a member of a governmental commission to check the expulsion. There are toys: colour pens, airplanes of cardboard. Everything is available, and yet three little boys are facing the wall, like in a police movie. They are being frisked. They are not criminal, they are only being expelled. It is not a movie: this is the final consequence of the alien policy.”^[83]

Eduard Nazarski, director of [Amnesty International](#): “They have requested asylum here. The Dutch government says, you are not in danger, so you must return. But when you return and you immediately end up in jail, something is very wrong of course.” (NOVA TV documentary, May 2010)

3.6.1. Introduction

Expulsion of undocumented migrants and rejected asylum seekers has become an important part of Dutch asylum policy in the past 15 years. In 2001 there was an increase of Schiphol-deportations going from 12.000 to 14.500. 932 persons became persona non grata. Despite the intensification of efforts to repatriate migrants, in 2003, 2,400 planned departures from Schiphol were cancelled because the expulsion could not proceed, mostly because the migrant had “left with unknown destination” (66%) (Van Buuren 2004: 44). In the year 2002, 1,404 persons were expelled via charter flights, and there were 13,185 expulsions through regular flights (Van Buuren 2004: 96).

Between 2001 and 2002, forced expulsion, which includes the use of handcuffs and tying the person to the airplane chair increased with 60% to a total number of 434 incidents. Human rights organizations complained, because these measures create a dangerous situation during a possible airplane accident (Van Buuren 2004: 45). Also, there were rumours of the use of sedation. As a result, rejected asylum seekers on forced return flights often refuse to eat or drink out of fear of being sedated. In 2004, safety instructions for the expulsion of aliens changed on a European level, due to the death of an alien who was pressed forward in the chair and suffocated (CvT 2007: 19). For example, pressing a pillow onto the face is no longer allowed since 2004.

⁸² Minister Leers: Kamerbrief beperking detentie alleenstaande minderjarige vreemdelingen, 10-03-2011.

⁸³ De Volkskrant, 08-04-2011 “02.40 uur: Goedemorgen! Time to go to Bagdad”.

In the Netherlands the conditions under which expulsions proceeded were rarely debated until 2006. In that year the Dutch TV-program *Netwerk* (a collaboration of (Protestant-Christian) public media (NCRV and EO, Evangelische Omroep) broadcasted a documentary about the expulsion of aliens by the Royal Military Police (the *Marechaussee*). The “methods” employed included sitting on top of a handcuffed alien, choking, silencing by means of a cloth or leather gloves, secret medication, and the squeezing of testicles (*Network*, 19th October 2006). The documentary led to questions in Parliament. A commission (*Commissie van Toezicht Uitzettingen Koninklijke Marechaussee*) was asked to investigate whether or not Military Police used excessive violence during evictions and if so, how this could be avoided. According to the investigation several prohibited methods had been used, also after the improved policy requirements of 2004 (CvT 2007: 18). The use of a restraining instrument (bodycuff) was implemented in 2005 and this has led to less violence and less infliction of pain to the alien. The fact that many aliens are unwilling to be repatriated increases the possibility of violent expulsions. The commission advised that during the process, the alien should be well informed about the expulsion beforehand, made at ease, and reassured. At the airport, a long waiting period must be avoided and food and drinks should be available.

It is unclear whether or not the recommendations of the commission have been implemented. Stories of expulsions are rarely mentioned in national media. In 2010, the TV program *NOVA* showed a documentary about the forced expulsion of Iraqi asylum seekers^[84], in which Iraqi police used excessive force upon their return, some returned migrants were arrested and others went missing. and we found no research on expulsions in the Netherlands. But there are expulsion stories collected on websites of NGOs and notably on those of left-wing activists.^[85] These stories usually present repatriated migrants as victims and they typically include dramatic events such as a sudden break-in by police force in the middle of the night, migrants leaving without being able to pack suitcases or get money, and children taken out of their rooms in pyjamas.^[86]



In order to explain the difficulties of the expulsion policy, and perhaps refute the statements about inhumane treatment, the DT&V published a booklet in 2010 called “Why don’t you just send them back?”, which contained examples of true events.

The stories represent the rejected asylum seekers as criminals, imposters and mental patients who are successfully repatriated.^[87] Those who can be regarded as victims of the system, such as a young couple of mixed origin with a baby, are given a residence permit. To protect individuals, names of persons were changed, as well as country’s names, which makes the stories sound rather unrealistic (“Ben Raapas was sent back to Concreto”/ “Ian Smith says he is from Zamunda, but his real name is John Johnson from Udongo”). In the booklet, the asylum authenticity discourse is used to re-affirm the categorization into victims and intruders.

Image: The booklet “Why don’t you just send them back?”, published by DT&V, 2010.

⁸⁴ <http://www.novatv.nl/page/detail/uitzendingen/7836/'Uitgezette+asielzoekers+slachtoffer+van+buitensporig+geweld'>

⁸⁵ http://www.vrijheidvanbeweging.nl/dood_door_beleid/lijt_slachtoffers.html

⁸⁶ <http://ac.home.xs4all.nl/klm/voorbeelden/voormart.html>

⁸⁷ DT&V, 2010

The number of expulsions in the year 2009 amounted to 4,000 (Jaarverslag DT&V, 2009). The numbers of the DT&V (Service of Return and Repatriation) for the year 2010 were:

	total	percentage
Total number of aliens at DT&V	7.490	100%
New procedure or received status	2.190	29%
Effectively removed	2.915	39%
Left with unknown destination	2.385	32%

3.6.2. Main actors and arguments involved in protest

In May 2010, Amnesty International has issued a statement on the forced return of Iraqi citizens^[88], which led to a letter by the ECHR to the Minister Leers to restrict flights to Baghdad. This restriction was refuted three weeks later.^[89] We found protests on the website of Autonoom Centrum, describing torture and killing of forced returnees in their country of origin.^[90] Yet, such protests against forced expulsion or prevention of flights were not considered part of the tasks of the majority of NGOs we researched. Our impression is that in general the idea that undocumented migrants can legitimately be repatriated (also against their will) is rarely contested, and contestation focusses on the (lack of) safety of some countries (notably Iraq and Afghanistan), and the accuracy of the grounds for asylum rejection in these cases.

3.6.3. Action strategies and changes through protest

A number of NGOs are involved in providing information about voluntary and forced return.^[91] There may be active support for voluntary return, such as through the Perspectief project. This project created by local policy advisors was launched in several cities to assist young AMAs to find a solution for their future. An assessment of this project showed that it was more successful and cheaper than national policy in both achieving effective return and in acquiring residence permits. A local senior policy advisor commented: "It cost less than 12,000 euros per person, and was resulting in over 40% return, compared to the regular detention and expulsion policies, which normally exceeds 40,000 euros per person, and are resulting in less than 20% return" (WODC 2011). However, the Minister (Leers) was not convinced by a positive scientific evaluation of the project and stopped funding it.

Besides voluntary expulsion, the execution of forced expulsion policies does not get much attention in media and by NGOs. Even on NGO websites which take explicit stand about expulsion, such as

⁸⁸ <http://www.amnesty.nl/nieuwsportaal/nieuws/stop-gedwongen-terugkeer-naar-irak>

⁸⁹ <http://www.ein.org.uk/european-court-demands-halt-forcible-return-iraqi-asylum-seekers>

⁹⁰ <http://www.noborder.org/archive/www.autonoomcentrum.nl/klm/voorbeelden/benga.html>

⁹¹ See for example, <http://www.vluchtelingenwerk.nl/asiel/terugkeer.php>

“Women against expulsion”, little is said about forced repatriation and instead the general alien policy is criticized (i.e. criminalization and denial of status). The inhumane treatment during expulsion, the financial costs, and the risk of refoulement (being sent back and facing torture) are the main objections we found. Only a more radical left wing organisation suggested several possibilities to prevent individual expulsions (these were mentioned in the report *Across the Border (Over de Grens)* by the previous *Autonomo Centrum* (described by Van Buuren 2004: 200-202).^[92] These assume a personal relation with the alien prior to the eviction, and the assistance of the airplane staff. However, the increase of special charter flights for repatriation, where no other passengers are taken and two thirds of the plane is filled with military police, make such citizen protests impossible.

In general, when expulsion is mentioned in the media, it is rarely about an actual expulsion flight, but more often about the threat of expulsion in individual cases. The persons are said to be “about to be expelled”, but the moment when this expulsion will take place is unclear and may take several years. We will describe the discursive positions on these mediatized cases, including Sahar and Mauro, in the following section.

3.7. Mediatized protests against expulsion of individuals: the lamentable cases of Mauro and Sahar

“I regularly get requests to use my discretionary abilities for people who are “well-integrated”, whereas my abilities are limited to those cases which are very lamentable due to a combination of factors, and integration is not one of them. However I do feel the need to bridge the gap between the responsibility felt by local representatives, and my responsibility to use discretionary powers scarcely.” Minister Leers requests advice from the Advisory Committee for Alien Affairs.^[93]

“Well, I feel awkward about it. I know ten people who are more lamentable than Mauro. And then I think, why aren’t they in the news? And should one be in the news to get a fair treatment?”^[94]

“Three days: there are much worse stories. In the second place, people hear about it and they think it is an exception, but it is part of the regular policy. That also means that, if you save this person because he or she is in the media, that you do injustice to others in the same situation. They get hope, unjustified. [...] Yes and Mauro failed on all aspects of course. Just like Taida Pasic, you see that these processes are started by people who have no idea about context.”

I: Which context?

⁹² The activist group *Autonomo Centrum* started in the 1980s as a local squatters group from Amsterdam. It was regarded by AIVD as one of the left-wing extremist protesters against the asylum policy. It is also known for its elaborate databases of incidents and policies, notably suicide in detention centres and unsolved deaths of rejected asylum seekers. The collecting of information became such a priority for this activists group, that they decided to quit in 2004 due to “having become a bureaucratic organization”.

⁹³ ACVZ, 12-03-2012: *Recht op menswaardig bestaan. Advies over opvang en bijstand voor niet rechtmatig verblijvende vreemdelingen en rechtmatig verblijvende vreemdelingen zonder recht op voorzieningen.*

⁹⁴ Interview 3: NGO representative (migrants: emergency shelter).

“That this is a structural problem. It’s never the organisations and emergency shelters who take such an individual case to the media. They see people on a daily basis with suitcases and children, having slept on the streets for three days.”^[95]

“What does help, eventually, so I have learned, is the theory of proximity. You need people close to you. The law, and human rights will not serve you, but people around you may provide safety by standing around you, and protect you, stand up for you. Who will say: no, I will not allow this, this is my neighbour, this is my friend, this is my classmate.”^[96]

3.7.1. Introduction

In the past years, several individual asylum cases have become the centre of a media debate. Usually, the cases had arrived at the end of the line of a long asylum procedure.^[97] The option of continued illegal life in the Netherlands, as well as the risk of detention, are in general absent from the debate. The reasons to make an exception for this particular individual are defended, besides by the asylum seekers themselves, by individual citizens, schools, churches, media, individual politicians, sometimes celebrities, and sometimes NGOs.

Two things are remarkable about these cases: first, the way individualized and mediatized asylum cases elicit so much more public compassion than anonymous ones. Second, the emergence of a new, and influential discourse to re-categorize the rejected asylum seeker as a victim. The *accomplished cultural inclusion discourse* provides a new set of concepts, images and ideas to argue that a person should stay after all: he or she *belongs* in the Netherlands. The notions of “belonging” and “integration” are thus important, and they are related to the duration of stay and responsibility of the receiving society and state.

The first time the upcoming expulsion of an illegal migrant resulted in public debate was in 1997 (Alink, 2006). The illegal Turkish tailor Gümüş, no rejected asylum seeker but a friendly, undocumented migrant, managed to capture the hearts of his local community in Amsterdam. Gümüş was the exception to a restorative measure meant to legalize so-called “white” (tax-paying) illegals who could prove they had paid taxes for at least three years. He only had worked legally for two years. In individual cases, exceptions could be made, especially if the person had developed a good connection with Dutch society. After a political debate, in which MPs refused to vote about individual cases and some refused to change policy over one individual, Gümüş and his family was expelled and sent back to Turkey despite massive protests and a citizen movement on their behalf. His example of “well-integrated, hard working, tax paying illegal”, was effectively made impossible through the Linkage Act which was introduced in 1998 (Pluymen, 2008).

Another example involved the case of Sophie Yangala from Congo. In 2001, she feared expulsion, and a local group of protesters from the school of her daughter created a Committee called “Stop expulsion

⁹⁵ Interview 4: NGO representative (migrants/refugees).

⁹⁶ Interview 7: academic expert on asylum ethics.

⁹⁷ “Dieren voert actie voor asielzoekster” [Dieren in action for asylum seeker] in *Reformatorisch Dagblad* April 25 2001
 “Waanzin om dit gezin uit te zetten” [Madness to expulse this family] in *Trouw* January 5 2001.
 “Hevien mag in Rotterdam blijven”: GroenLinks Rotterdam, December 8 2009, 22:52u - Ivo Rodermans.

Yangala”. The initial protest was framed in the discourse of *asylum authenticity*, referring to the torture she and her husband endured in Congo, and the death of her husband^[98]. One month later, in May 2001, the Yangala family (Sophie and her two daughters) went to The Hague to offer a letter to the Queen. This created some media attention in which the discourse of *accomplished cultural inclusion* was used to describe the attachment of Yangala’s children to the Netherlands and the degree of cultural integration Yangala and her daughters had.^[99] In the end, the Yangala family was given a humanitarian residence status.

Other cases reached the headlines in the years after. Taida Pašić, from Kosova, who was arrested and put in alien detention during her exams in 2006, and the Syrian girl Hevien, in 2009, who inspired the Spekman-Anker rootedness motion. Taida was expelled by Minister Verdonk, whereas Hevien could stay through a discretionary measure by Albayrak.^[100] In 2011, Yossef, a boy from Alkmaar was pushed into public attention by a local newspaper, *Alkmaarse Courant*. Yossef feared expulsion and as a preparation to his expulsion, he and his mother were to be transferred to a family location in Katwijk. The location in Katwijk was said to be unfit for children and lacking proper educational facilities (even though many children are located there since the accomodation was opened, due to the campaign *Geen Kind op Straat/ No child on the street*). Moreover, the boy feared losing his school friends and said that he was tired of being moved around. In the media campaign, Yossef was presented as very “Dutch” and eating “pink cake” (a common treat in the Netherlands). There was a debate about whether media may choose sides in such issues. PvdA local politician Tineke Koomen lobbied for Yossef in the *Alkmaarse Courant* in the following words:

“Yossef is a boy with a Soudanese nationality who has become a Dutch child, an Alkmaar boy who has his friends in this city, who is member of the soccer club and is going to school here. Let him live with his mother in Alkmaar as long as there is no clarity about possible expulsion to his country of origin. This child should not be more damaged by this procedure which has been dragging on for years; children have rights too”.^[101]

The result of the campaign was that Yossef was not transferred to the Katwijk location, but he still is eligible for repatriation, together with his mother.

For our research, we focus on two highly debated cases. The so-called Sahar case in 2010 was about an Afghan girl aged 14 whose family had unsuccessfully applied for asylum since 2000 and was requested to return to Afghanistan. The case of Mauro became known to the wider public in late 2010. It involved an 18- year old boy from Angola who had arrived alone in the Netherlands at the age of eight (in 2002) and requested asylum. After the repeated rejection of his asylum request, he had lived in an AMA-centre and later in a Dutch foster family because unaccompanied minors cannot be expelled. Upon reaching the age of eighteen Mauro was to be sent back to Angola. Both youngsters had dominated the Dutch media for several months as their upcoming expulsion became publicly contested.

⁹⁸ “Dieren voert actie voor asielzoekster” [Dieren in action for asylum seeker] *Reformatorisch Dagblad* April 25 2001.

⁹⁹ “Waanzin om dit gezin uit te zetten” [Madness to expulse this family] *Trouw* May 5 2001.

¹⁰⁰ Hevien mag in Rotterdam blijven: Groen Links Rotterdam, Dinsdag 8 december 2009, 22:52u - Ivo Rodermans.

¹⁰¹ “Laat Yossef in Alkmaar opgroeien” [Let Yossef grow up in Alkmaar] *Alkmaarse Courant* October 23 2011.

Discretionary powers

In all the cases where large public support is mobilized for an individual rejected asylum case via media, there is a request to the Minister. He or she is asked to make an exception to the general policy and use his or her discretionary powers, by granting a residence status and thus preventing the expulsion. Usually previous requests have been made in private and these have been declined, so the public uproar is expected to change the Minister's mind.

In the past twenty years, the use of discretionary abilities seems to be declining, and reasons for doing so are more restricted. From 1945 to 1994, discretionary individual regularizations were very common, especially when an undocumented migrant or rejected asylum seeker was unable to return (Walaardt 2012). Until 2001, every asylum procedure which lasted longer than three years automatically resulted in a residence status. When the Return policy started and the cooperation criterion was abolished, such regularizations became rare, and expulsions, as well as refusal of accommodation increased.

Discretionary abilities were regarded as a means to solve only the most lamentable cases (*schrijnende gevallen*). But these abilities of the Minister are increasingly restricted by a fierce political debate on when cases are lamentable. In 2007, Minister Ernst Hirsch Ballin (CDA) described some conditions which can apply: for example in case of serious medical problems, or the threat of a broken family (when the children of a family are allowed to stay and parents are not). The Council of State had ruled that his predecessor Rita Verdonk had insufficiently described her criteria for rejecting such a request. Criteria of cultural integration are only unofficially part of the assessment, and are changing. In 1997, three years of residence were considered long enough for integration (Alink 2006), but in 2010 the Mauro and Sahar cases showed that the contested boundary for cultural and social inclusion had been shifted to eight or ten years.

There is, additionally, a general agreement to refrain from using discretionary abilities, either in private or after public protest. When Minister Hilbrandt Nawijn (LPF, List Pim Fortuyn) received nearly 19,000 requests (the so-called 14-1 letters) in 2003, the majority was rejected. Subsequent Ministers used less and less of their discretionary abilities: Rita Verdonk used it 1000 times in four years, Ernst Hirsch Ballin 590 times in three years, and Gerd Leers only 120 times in one and a half year.^[102] However, the General Pardon regularized many cases in 2007 and thus it may be difficult to compare such numbers, because the number of undocumented migrants and rejected asylum seekers residing in the Netherlands is unknown and may have declined.

The position of Minister Leers as a CDA-party member tied to a coalition condoned by PVV, was crucial for the debate in the Sahar and Mauro cases. The Christian Democrat Party is quite divided on the issue of asylum policy, but the PVV was very clear that it wanted discretionary powers to be used minimally.

In our own newspaper and magazines sample we found over 3000 "hits" for Mauro and over 2000 hits for Sahar. Between 26th October and 3rd November there were over 200 newspaper articles written about

¹⁰² "NRC Next Checkt: Het asielbeleid is niet strenger geworden". [NRC Next checks: Asylum policy did not get stricter] *NRC Next* 21st May 2012

Mauro (Nederlandse nieuwsmonitor, 2011). In our analysis we specifically looked at reasons which were provided to view the young asylum seekers as victims or intruders. We now present both cases, provide for each case some quotes to illustrate the debate, and offer tables in which the discursive strategies for framing are outlined and compared.



Sahar Hbrahim Gel/ picture: ANP

The Sahar case (2000-2010)

In 2010, a 14 year-old Afghan girl Sahar Hbrahim Gel and her family had unsuccessfully applied for asylum three times since the year 2000 and were about to be expelled to Afghanistan. They had lived in the Netherlands illegally, because they did not feel they would be safe in Afghanistan. Meanwhile, Sahar and her two brothers went to school and became very successful students. In an attempt to get asylum, the family also went to Sweden for three months. Because of this short residence abroad, they could not apply for the Generaal Pardon-arrangements and they were requested to return to Afghanistan.

As the decision that the family should leave became known in the town of Sint Annaparochie, protests soon were organized and local and national media were informed. The Doopsgezinde Church wrote a letter to Minister Leers, urging him to accept underage asylum seekers who have resided in the Netherlands for many years. Classmates of Sahar created a website with online petition (www.saharmoetblijven.nl) and a Hyves-site (Dutch equivalent of Facebook). Sahar and her lawyer appeared in television shows, as did the mayor of the municipality and the school principal.

A court in Den Bosch ruled on the 21st of January, 2011, that Sahar and her family could stay, mainly because she had become too westernized. This was confirmed by a letter from the UNHCR, which stated Sahar should be acknowledged as refugee. Moreover, Minister Leers' rejections of the initial requests for asylum had not been substantially motivated. The court decision was televised and printed in several newspapers. This caused the PVV to urge Leers to appeal, because it should not be rewarded that the family had decided to stay so long and re-appeal several times. However, the mayor of Leeuwarden, the provincial capital, said that Minister Leers should accept the outcome.

On the 26th of January, Minister Leers announced that he would appeal the court's decision at the Council of State, because the long stay of the family in the Netherlands had been due to their own decision to

keep appealing. He wished also to further investigate whether or not “westernized” girls in Afghanistan face specific threats. He also stated on national television that in some cases, mayors should be able to decide whether a person may stay. This caused to the mayor of Het Bildt (Sahar’s municipality) to publicly announce he would immediately grant Sahar and her family permission to stay if he would be given the opportunity.^[103] PVV-leader Wilders said it would be unwise to give mayors with “weak guts” such power.^[104]

On April 10th 2011, the Council of State ruled that Sahar and her family would get permission to stay in the Netherlands. The Mayor of St. Annaparochie offered her flowers. The Ministry of Immigration accepted the outcome, and added that its own investigation into “westernized girls in Afghanistan” had reached similar conclusion. The Ministry estimated that there may be 400 more girls like Sahar in the Netherlands who would also qualify to get residence status.

Context of the Sahar case: Afghanistan, protection in the Netherlands and General Pardon

Sahar Hbrahim Gel and her family fled Afghanistan in 2000 because they were moderate muslims. Ever since 1979, Afghan citizens have fled the country due to war, famine and dictatorial fundamentalist oppression. In 2001 there were already 2 million Afghan refugees residing in Pakistan and 1,5 million in Iran (UNHCR) and an estimated 100,000 in Russia. In Europe, 36,000 Afghans mainly took refuge to Germany, the UK and The Netherlands between 1979 and 2001. After the Taliban regime fell in 2001, many Afghans returned, but as the new transition government failed to provide internal security, large numbers of Afghans continued to apply for asylum in the years 2002-2011. They are among the largest group of asylum seekers in The Netherlands, together with Somalians and Iraqis. The Netherlands offer no categorial protection for Afghanistan, which means that all asylum seekers from Afghanistan must prove they are personally in danger according to the definition of the Geneva Convention, or may apply for subsidiary or humanitarian protection (see annex; subsidiary protection since 2006). In 2010, approximately 57% of all asylum requests were rejected (IND 2010).

During the General Pardon in 2007 a number of 2,007 previously rejected Afghans were regularized, (7% of the total), and 643 Afghans were deemed not eligible for Pardon (10% of the total), for example because they were considered F1 (associated with the dictatorial regime) or they had spent some time abroad, just like Sahar’s family. Currently, almost 40.000 Afghans are legally residing in the Netherlands.

After 2007, forced repatriations of rejected asylum seekers to Afghanistan increased, and there are many attempts by Repatriation Service and the IOM to increase voluntary repatriation as well, especially to Afghanistan.^[105] Meanwhile there is news about *refoulement*: violence upon return. Newspaper de Volkskrant reported how a rejected Afghan asylum seeker from The Netherlands was killed in Kabul by the Taliban^[106]. He had lived in Maastricht until 2005, where Mayor Gerd Leers (the Minister

¹⁰³ Fries Dagblad, “Sahar mag blijven als het aan de burgemeester is”, 24th February 2011

¹⁰⁴ idem

¹⁰⁵ Project: Duurzame terugkeer op maat

¹⁰⁶ “Taliban murdered expelled Afghan”. [Taliban vermoordden uitgewezen Afghaan] *Volkskrant* February 24 2011

to be) attempted to get a discretionary status in vain from Minister Rita Verdonk. Upon hearing the news of his death, Minister Leers described it as “tragic” but also claims the asylum procedure was “carefully performed”. Moreover, the spokesman added, over four years had passed between the expulsion and the murder.

The latest plans of Minister Leers to build a return-house in Afghanistan for unaccompanied minors, was criticized by Unicef as “opposing the Rights of the Child, and not in the interest of children”^[107]. Due to ongoing conflict, Nato airstrikes and cultural practices, Afghanistan is currently described as the world’s most dangerous country for women (Thomson Reuters Foundation Survey 2011).

Framing of Sahar in media and politics

The news about Sahar started in her school and later spread to local media such as *Franeker Dagblad*, *Leeuwarder Courant* and *Omrop Fryslân*. *De Pers* (December 2, 2010) published a long article about Sahar. The introductory paragraph exemplifies Sahar’s belonging in the Netherlands. She is described as a typical Dutch schoolgirl, who is loved by her classmates and who is intelligent and hard working, resulting in excellent school results. Her connection to the local community is stressed by a remark about her grade for Frisian language, which contrasts with her lack of proficiency in Afghan. There is no reference to the living conditions in Afghanistan:

“Sahar is sitting at a table in the City Gymnasium (Secondary School, IV/MM) in Leeuwarden. Behind her is a flag on which is written “Sahar must stay” made by her classmates. She wears a leather coat and keeps her long hair out of her face with a small braid. At her feet rests her schoolbag. She never had a bad grade during her first year and a half at the gymnasium. Or just once, but after a re-trial she got an A+. For Frisian language, she holds an A. I can understand it but cannot speak it. I have better command of it than of Afghan language anyway”.

The command of Sahar in Frisian language undoubtedly sparked support among her local community in Friesland. *Omrop Fryslân*, a local TV station that broadcasts in the Frisian language, commented on the Sahar case by quoting the supportive words of the Mayor of Leeuwarden:

“Minister Gerd Leers should give Sahar a residence permit. That says mayor Fred Crone of Groningen. According to him, Leers cannot do anything else after the court decision. Besides that, Crone points to a letter of the refugee organisation UNHCR. The letter says Sahar is too westernized to be sent back. Before Leers takes his decision, Crone says, he should read that letter well”. (Crone: Sahar moat bliuwe, *Omrop Fryslân* January 20 2011)

In Mayor Crone’s argumentation, the dangers of Afghanistan are pushed to the foreground, but specifically in relation to girls who are culturally embedded in Western countries. Here the *asylum authenticity discourse* becomes (re-)engaged by means of an *accomplished cultural inclusion discourse*.

¹⁰⁷ s“Netherlands violate Children’s Rights with return house in Afganistan”. *Trouw* 31-05-2012

When PVV leader Geert Wilders came to Friesland^[108], he was asked what he thought of Sahar. According to Omrop Fryslân, “PVV-lieder Wilders is der net foar dat Sahar yn ús lân bliuwt” (“PVV leader Wilders is not in favor of Sahar staying in our country”). This led to another televised news report about Sahar by Omrop Fryslân on 15th of January. Although Wilders did not further specify his reasoning, he was criticized by many who felt his comment was heartless.

The negative framing of Sahar as an intruder by Geert Wilders was attacked by Socialist Party leader Roemer (January 22 2011, Leeuwarder Courant). He was quoted to have said: “I think that it is a big disgrace that PVV is so fanatically trying to send fully Dutch girls, such as Sahar, into the burqa”.

Roemer touches upon a sensitive nerve because Wilders is known for his criticism of Islam, headscarves and burqas. Roemer’s statement actively reinforced a victim categorization of Sahar in both the *accomplished cultural inclusion discourse* as well as in *asylum authenticity discourse*, by connecting Sahar’s (liberal) Dutch-ness to the threat of an (oppressive) burqa.

Besides reasons to allow Sahar a residence permit based on her cultural adaptation and the dangers in Afghanistan, others pointed out her economic value to the Netherlands. Opposition mainly addressed a possible honeypot effect if asylum laws are applied too loosely, and the fault of cultural adaptation resting with Sahar’s parents, who kept on stalling their asylum procedure and refused to simply pack their bags and go back. Others pointed out the dangers of Afghanistan, and questioned the safety of the country, not just for Sahar but for all other rejected asylum seekers from Afghanistan. The fairness of an exception just for girls, or just for Afghanistan, was debated. The main positions in the debate on Sahar could be summarized as:

- 1.a Sahar may stay: she is well-integrated and connected to Dutch society
- 1.b Sahar may stay: she is an asset to Dutch economy
- 1.c Sahar may stay: she will be in danger in Afghanistan (because she is a smart, Dutch girl)
- 1.d Sahar may stay, and so should others in her situation (well-integrated yet not so smart or beautiful, and/or asset to economy, and/or in danger of Islamic oppression)
- 2.a Sahar should leave: it is unfair to make an exception, others have left too
- 2.b Sahar should leave: the rejection was valid, her parents are to blame for prolonged stay, and illegal residence should not be rewarded.

After the presentation of the Mauro case, we will re-address these positions as we categorize them within our analytical framework of the four discourses of protest.

¹⁰⁸ Days earlier the Frisian PVV-Twitter account had been hacked and the condition to get it back was a support of Wilders for Sahar. Omrop Fryslân, Hjoed: Ruil stipe Sahar- PVV-account, January 13 2011



Mauro Manuel/ picture: ANP

The Mauro case (2002- 2011)

In 2002, an eight-year old boy from Angola, named Mauro Manuel, entered the Netherlands after his mother had put him on a plane. Due to his minor age, and his arrival without accompanying adult, he received the temporary status as AMA (“solitary minor asylum-seeker”).

The Aliens Act of 2000 had established that children arriving in the Netherlands without accompany, would be housed and receive an education, until the age of eighteen. Mauro applied for asylum but this was not granted, due to the fact that there was no indication that his life was in danger in Angola. He was illegal, but could wait for his expulsion and stay in the Netherlands until he would reach maturity. He would only be admitted to the Netherlands in case he would stay longer than three years and if he had no more living relatives in his country of origin.

The asylum requests of Mauro were initially rejected (2003), later granted (2004), and then rejected again (2006). Mauro was placed in a foster family. The family attempted twice to adopt him, but because of his illegal status this was impossible (2007 and 2008). Contact with his biological mother in Angola was scarce and became problematic because of Mauro’s declining skills in his native language.

As a final request for asylum was denied in 2007, Mauro is officially obligated to leave. In 2009, Mauro’s foster parents and the NGO Defence for Children attempted to request special status for Mauro as a “lamentable case”, due to his family life in the Netherlands and long stay. Minister Hirsch Ballin refuses. An MP of the Christian Democrats, Ger Koopman, requests secretary of State Albayrak to use her discretionary ability. She also refused. The foster organisation Nidos argues it is best for Mauro to stay with his new Dutch family.

In 2010, a court in Amsterdam rules that, since Mauro had become a member of a Dutch family, he should not be expelled due to Article 8 of the Convention of the Rights of the Child and Human Rights (right to family life). Mauro would be allowed to stay. However, Minister Leers decided to appeal to this court decision. The Council of State decided that Leers’ decision was justified, because he still has a mother in Angola. Mauro would not be granted a permission to stay.

The Mauro case was highly mediatized both in national and international press. According to Minister Leers, there was a risk of generating a precedent, and possibly hundreds of “Mauros” would attempt to apply for special arrangements as well. Adoption organizations however found only four other young men in a similar situation. Several academic experts on migration law wrote a public letter explaining that Minister Leers had solid legal grounds to admit Mauro based on the Child Rights, or use his discretionary abilities. Meanwhile Geert Wilders (PVV) made it clear that Mauro needed to be expelled and threatened to end his support to the Government.

A national poll suggested that a majority of the Dutch population was in favour of letting Mauro stay. Also the majority of Parliament is was favour. Especially the CDA voters (74%) deviated from the CDA-Minister Leers and the members of Parliament. Two “deviant” CDA- MPs announced they would support Mauro, but later withdrew their support. A national congress of CDA-members accepted a resolution that it is undesirable to expel young asylum seekers without a diploma.

On November 1st, Mauro was finally not granted a residence permit, because all CDA members voted against the motion. However, he was allowed to request a scholarship for his vocational training, which he could request from within the Netherlands. Official regulations state that foreign students must send scholarship requests from within their country of origin. The only possibility for Mauro now is an appeal for European courts, in order to get a residence permit due to the (earlier mentioned) Article 8 of the Rights of the Child. CDA-Member of Parliament Sterk wrote on her Twitter-account that “without media-attention, more would have been possible for Mauro.”^[109]

Context of the Mauro case: Angola, AMAs and foster care

Mauro Manuel was one of the approximately 15,000 Angolans that arrived in the Netherlands between 1998 and 2003 (Van Wijk 2007) on a total of 20,000 Angolans arriving in Europe in that period. Half of the asylum-applications were from unaccompanied minors, who were sent to Europe by their social network in order to escape the civil war and increase life opportunities. The rejected asylum seekers who were under age (AMAs) were not expelled, but placed in a closed AMA-centre in the city of Vught, which had started in 2002. However, this campus soon became subject of criticism for being too strict, and having a military regime (VPRO 10 April 2003, Experiment campus Vught). Of the 434 residents only six returned to their country of origin. A protest among the young residents resulted in the closing of the facility in 2004, and many AMAs were then relocated to return centres or were put in foster families (Omroep Brabant: Ama-campus Vught gaat dicht, 5 November 2004). Between 2002 and 2008, 1,358 unaccompanied minors were placed temporarily in foster families (Nidos, 2009; see annex for table).

In Angola, the civil war ended in 2002, thus asylum requests for that country were no longer granted and less asylum seekers arrived. 4,500 Angolans had to leave The Netherlands, and the majority left voluntarily, alongside a number of Angolans with a residence permit. 75% of this group was between 18 and 23 years of age, and they constitute the largest group of voluntarily returning migrants (Van Wijk 2007: 362). In order to enable expulsion rejected young Angolans before the age of 18, an orphanage was opened in 2003 in Angola on behalf of the Dutch government, so even those without

¹⁰⁹ De Volkskrant, “De lijdende Leers”: October 29 2011.

parents in Angola could be repatriated. However, upon return many young Angolans were found to have relatives who could care for them, and the Dutch orphanage in Angola remained empty. (De Volkskrant, November 1 2011 “Zaak Mauro: Nederlands was in Angola een hype”).

Framing of Mauro in media and politics

Similar processes of framing and re-framing as victim or intruder were found in the Mauro case. In this first quote, Mauro is represented by *NRC Handelsblad* as a young boy who is deprived of a family and a home, first by his mother, later by Dutch courts and Minister Leers. He is described as a child that has become integrated in the Netherlands through family and education:

“Angolan Mauro Manuel (18) has been living with his foster parents for eight years [...] At nine years old he was put on a plane to the Netherlands by his mother. Mauro never had a residence permit. The judge prevented attempts by his foster parents to adopt him. Friends, family and classmates have requested attention for his case. Mauro wrote a letter to Leers requesting permission to stay. Leers refused. Mauro speaks Dutch (with Limburg accent), went to primary school in Venray and to the VMBO (secondary school). He currently attends a vocational education.”^[110]

Where the former quote referred to Mauro’s integration and connection to Dutch society, thus invoking the accomplished cultural integration discourse, the right wing newspaper *De Telegraaf* instead presents Mauro as an intruder:

“The young Angolan Mauro Manuel turns out to have lied about his last name and about his date of birth. His real name is Mauro Estevao and he has a passport, which could have gotten him shortly after his arrival to our country, back to his mother in Angola.”^[111]

The framing here pushes strongly away from “accomplished cultural inclusion” and “victim”, because Mauro is described only in terms of Angolan ethnic identity (no reference to his Dutch upbringing or Limburg accent) with an Angolan mother. His “lies” represent him as an impostor in the *accomplished cultural inclusion discourse*, and he is himself to blame for his long residence.

Comparison of the two cases

Our respondents mostly felt that Sahar and Mauro both had to be legalized. Albeit in the case of Mauro not for reasons of asylum but for humanitarian reasons. Sahar and Mauro are both described

¹¹⁰ “Completely integrated, Mauro must return to Angola” in *NRC-Handelsblad*, October 26 2011.

¹¹¹ “Mauro lied for asylum: the Angolan did have passport” in *De Telegraaf* December 3 2011.

as victims of the strict Dutch asylum policy, but Mauro is also considered to have become a scapegoat in political battles between CDA and PVV. The respondents believed that given the political situation and the media exposure, Minister Leers had become extremely reluctant to use his discretionary powers in this particular case. An academic expert on migration politics (interview 2) said: “He (Minister Leers) manoeuvred himself into an impossible position, by letting things explode like this in the media. Discretionary abilities are better used through the back door. But this case had already been done through the back door and failed. Leers felt the hot breath of Wilders and was scared that the Cabinet would fall because of this. In which event the CDA would have been reduced to zero”.

The reluctance of the Minister to use discretionary powers when necessary is presented as a political and moral failure, and, by one of our respondents, even as a legal one: “It seems as though Leers thinks that applying his discretionary abilities is against the rules. That is a very problematic development. Because the discretionary ability is there to avoid humanitarian and human-rights related mistakes on the individual level, and it is part of justice. It is not contradictory to it.”^[112]

In the table below, we present the categorizations of Sahar and Mauro taken from various sources (interviews, media and political debate). In order to save space, the statements in the boxes are short, paraphrased quotations from our data (media, interviews and political debate) with reference to at least one original source. For example, in the debate about whether or not Mauro was to blame for certain lies in his asylum application, an original quote read: “Those who have been caring for Mauro, have provided wrong information on behalf and about the boy.”[...] From this newspaper quote, we extracted the argumentation which is present in the choice of words, notably “those who have been caring”, and “boy”, implying Mauro was not to blame because he was under age. This line of argumentation was also found in other sources. In the table, this and similar quotes are paraphrased in short as: “Was only a child, cannot be held accountable for lies”.

A recurring line of reasoning found in the opponents of Sahar and Mauro was the risk of a honeypot effect: if Sahar, or Mauro, would be granted status, this would attract many more new requests for reconsideration or even more new immigrants. For example, in the Mauro case, a Member of Parliament for the right-wing, populist PVV^[113] stated that “if this behaviour is rewarded with a residence permit, it will be copied due to its proven success. Such a signal will impair the entire alien policy and especially the return policy”. Quotes that made references to such risks are also paraphrased into short statements and are labelled as HP (honeypot effect).

¹¹² Interview 5: NGO representative (human rights)

¹¹³ Member of Parliament Fritsma (PVV), in *De Telegraaf* January 21 2011

Table 3.7.1. Sahar defended and contested in the four discourses (HP= Honeypot effect)

SAHAR CASE				
	Asylum admission (danger)	Global injustice (poverty)	Duty of care (suffering)	Inevitable inclusion (belonging)
Victim	<p>The country has changed. Afghanistan in 2004 is not Afghanistan in 2010^{1*}.</p> <p>Should be recognized as refugee (letter UNHCR)^{2*}</p> <p>Family fears torture: liberal muslims^{3*}</p> <p>The law does not work well⁴</p>	<p>She is the personification of a world-wide problem: that of refugees^{5*}</p>	<p>Has lived on 13 asylum locations throughout the Netherlands^{6*}</p> <p>Children should not be expelled^{7*}</p>	<p>Does not speak the Afghan language^{8*}</p> <p>Has lived here too long. She will be seen as foreigner in her country of origin^{9*}</p>
Intruder	<p>Has been rejected many times. We have said “no” five times. They must accept no for an answer.^{10*}</p> <p>Giving in sends off a wrong signal^{11*} (HP)</p>	<p>NOT FOUND</p>	<p>Has lived illegally and does not apply to criteria of Pardon due to stay in foreign country. These are the rules^{12*}.</p>	<p>(Refuted by court:) She can adapt to the Afghan customs^{13*}</p>

Table 3.7.2. Mauro defended and contested in the four discourses (HP= Honeypot effect)

MAURO CASE				
	Asylum admission (danger)	Global injustice (poverty)	Duty of care (suffering)	Inevitable inclusion (belonging)
Victim	<p>Was only a child, cannot be held accountable for lies^{14*}</p>	<p>Will probably end up living on the street in Angola^{15*}</p>	<p>Mother in Angola rejected him^{16*}</p> <p>Traumatized relationship with his mother^{17*}</p> <p>Right to a family life^{18*}, Defence for Children, ECHR</p>	<p>Belongs here^{19*}</p> <p>Speaks no Portuguese^{20*}</p> <p>Has become real Limburger/ Dutch^{21*}</p> <p>Passage of time: guilt lies with government (appeal by Minister)^{22*}</p>
Intruder	<p>Not a refugee^{23*}</p> <p>Fake identity^{24*}</p> <p>Told lies^{25*}</p> <p>Rules are rules^{26*}</p> <p>No reward for “stalling”; we must prevent honeypot effects^{28*}</p>	<p>Angola is a booming economy, they need him there^{29*}</p>	<p>Mother is still involved^{30*}</p> <p>Foster parents knew he could not stay^{31*}</p> <p>He resided illegally when he could leave, doesn’t need help</p>	<p>Passage of time: guilt lies with Mauro, his foster parents and his allies^{32*}</p>

As the tables show, categorization of Sahar as a victim in the *accomplished cultural inclusion discourse* was more prominent, and categorization as intruder overall was used less than in the Mauro case. Moreover, *inevitable inclusion* for Sahar (her being “westernised”) proved to be useful to categorize her as a victim in the *asylum authenticity discourse*. Precisely because she was so westernised, she would be in danger if she would return to her country of origin. The “lies” of Mauro were used repeatedly against him and created much doubt about his categorization as victim in the *accomplished cultural inclusion discourse*. He may speak in a Limburg accent, but what about his mother in Angola? The tables suggest that framing in the debate – particularly the success of victim categorization in all four discourses – have important consequences for the outcome of a mediatized case.

On the level of policy, there may also be changes resulting from mediatisation. The motion Spekman-Anker^[114], for example, which was accepted but not executed (see paragraph 3.1) was inspired by the Hevien case. The motion proposes to grant residence status to a child if: “...the *child is rooted in Dutch society* and, partially due to Dutch government, has spent more than eight years in the Netherlands, and has stayed legally in the Netherlands for at least two years” [our emphasis, IV and MM]. The Council of State, the highest court in asylum cases, deemed the initiative “inefficient, unfair and unnecessary”, and it presented a negative advice the day after the initiative law was presented.^[115] According to the Council of State, the Children’s Pardon law: “does nothing to prevent long procedures, it creates inequality by rewarding those who stayed illegally over those who left on their own account, and it does not qualify ‘rootedness’ in other terms than a period of time”.

Despite criticism, other attempts to legalize children are made. In 2012, right after the lost cases for Mauro and Yossef, the MP Tofik Dibi of GroenLinks (Green Left) proposed a “Children’s Pardon”^[116]. In the campaign for this proposal, the children are described with “typical Dutch” adjectives relating to Dutch local food and celebrations, and the conclusion is: these children should not be expelled, they belong here:

“We want a children’s pardon. More Limburgian than *vlaai* (cake), more Northern Hollandish than cheese, more Zeeuwish than the Zeeuwish girl. More Frisian than the Elfstedentocht. 14 years old, 10 years in the Netherlands. 9 years old, 8 years in the Netherlands. 13 years old, 13 years in the Netherlands. If we don’t do anything, their future lies in Iraq, Afghanistan, Eritrea, Angola. Countries of which they don’t know the language, where they know nobody, where they are aliens. We will not let this happen. These children belong here. We want a children’s pardon. We want to get them out of insecurity and welcome them into their country. That is why we call from our hearts.”

The petition got nearly 150,000 signatures in the first three months, and the initiative is being debated in local politics as well.

How do these mediatized cases relate to tolerance or acceptance of rejected asylum seekers? Does the public outcry over Mauro and Sahar express the backlash against anti-immigrant sentiments, or does the

¹¹⁴ 19 637 Vreemdelingenbeleid Nr. 1340 Motie van de leden Spekman en Anker, 21 st April 2010

¹¹⁵ Raad van State: Samenvatting advies over versterking positie van in Nederland gewortelde minderjarige vreemdelingen December 22 2011

¹¹⁶ www.kinderpardon.nu/

focus on cultural adaptation in these cases only reveal a large amount of intolerance for diversity? Does the sympathy for children reveal hypocrisy or is it an expression of tolerance resulting from a perceptual shift? And are these mediatized cases effective in changing debate about asylum, or asylum policy?

To start with the first question, it is difficult to know whether mediatisation has helped, because there are no numbers available about the percentage of rejected individual cases that are dealt with in discretion, compared to those that are done publicly. There is a difference too: when cases are brought to the media, they may have already been declined as discretionary case in private. According to the analytical framework developed by Alink (2006) a political crisis can only result in policy change if the politicians in charge are willing to change the policy. If they are inclined to be conservative, a crisis will simply pass by without any effect. But sometimes mediatisation can work to bring a specific issue to public attention. One of our respondents from a church-related NGO explains how the mediatisation of one little boy, Hui, accelerated the campaign for “No child behind bars”: “We had already been on that subject for some time, on a daily basis there were 60 children in detention, I went there every day to check how many, but then Hui came and suddenly the action started to roll.” Another NGO-representative for human rights recalled the same dynamic in this case in which mediatization around the individual situation was helpful. Besides support and activism in favour of Sahar and Mauro, our respondents expressed feelings of ambiguity with the strategy of mass media attention for individual cases, as well as their effect. Several reasons were mentioned why the cases of Mauro and Sahar did no good for the general problems of the rejected asylum seekers, or only partly so, and that the chosen strategy may not even have worked for the individuals concerned.

An academic expert on human rights said:

“I understand the strategy to put forward an individual case. It mobilizes public opinion. But it deters attention from the structural dimension. On the other hand, it can be seen as a symptom of a change of attitude. It may help to improve the general negative framing of migrants. First people talk about AMAs, now they say Mauro. Everyone knows who that is, it appeals to people. But I am unsure about the next step in this strategy.”

Another respondent, working for a religious NGO, expressed her misgivings about the way Mauro was represented as a beautiful black boy within a white, Dutch foster family, playing football with predominantly autochthonous kids and appearing on television alongside his white younger brother. These culturalist (if not racist) representations of a “black boy fully assimilated in a white, Dutch family” were being used to argue in favour of letting Mauro stay. Duyvendak (2012) commented that such culturalism provides a false criterion based on tribalism. He argues in favour of a more objective criterion such as length of stay - without basing any judgements on whether or not Mauro likes to eat Limburgian vlaai or whether Sahar wears a headscarf.

But some effects might be emerging from the emotional aftermath of the Mauro-case. While residence statuses that are granted whimsically spark fears of honeypot effects, it seems that mediatized cases that are not resolved by means of a residence status, create a sense of dissatisfaction, which give rise to calls for changes in the overall asylum policy.

Besides creating special measures for children through the idea of rootedness, there is a lobby in favour of shifting discretionary abilities from the Minister to mayors and other local decision-makers, for exam-

ple by taking the German practice of a Härtefall-Kommission (Hard case commission) as an inspiration, which is a local advisory committee for lamentable cases. The lobby has resulted in a recommendation from the Advice Commission for Alien Affairs (2012). Where the residence status of Sahar made way for a few hundred similar girls to reside in the Netherlands legally, the unsolved Mauro case may thus continue to resonate in the on-going debates on rejected asylum seekers for some time.

*** Table Sahar and Mauro footnotes:**

- ¹ Sahar lawyer Paul Stieger, in “Sahar moet terug, zo zijn de regels. Afgewezen Afghaanse Friezin is doodsbang” [Sahar must go back, such are the rules. Rejected Afghan Friesian girl terrified] in *De Pers* December 2 2010.
- ² High Commissioner UNHCR: letter to Minister Leers. January 18 2011.
- ³ “Sahar and family can stay for the time being” in *De Pers* January 20 2011.
- ⁴ “Netherlands still struggling with failure of asylum policy” *Dagelijkse standaard.nl* December 16 2010.
- ⁵ (Former) Socialist Party leader Jan Marijnissen, in TV show Pauw and Witteman, source: *Joop.nl*. “Marijnissen: Sahar moet gewoon asiel krijgen”. [Marijnissen: Sahar simply should get asylum], December 16 2010.
- ⁶ “Netherlands still struggling with failure of asylum policy” in *Dagelijkse standaard.nl* December 16 2010.
- ⁷ Letter by Mennonite Church, in: “Doopsgezinden komen op voor minderjarige asielzoekers” [Mennonites protect minor asylum seekers], source: *www.kerknieuws.nl* 14 January 2011.
- ⁸ “Sahar St Annaparochie: landelijke media duiken op zaak Afghaans meisje” [Sahar St Annaparochie: national media dive into case Afghan girl, in *Franeker Dagblad* December 8 2010.
- ⁹ Frisian CDA-members, in: Omrop Fryslan, “Oprop CDA-Fryslan oan Leers”, January 7 2011.
- ¹⁰ Minister Leers, in: *Leeuwarder Courant*, December 8 2010.
- ¹¹ Member of Parliament Fritsma (PVV), in *De Telegraaf*, January 21 2011.
- ¹² IND representative in “Sahar moet terug, zo zijn de regels. Afgewezen Afghaanse Friezin is doodsbang” [Sahar must go back, such are the rules. Rejected Afghan Friesian girl terrified]. In *De Pers* December 2 2010.
- ¹³ Minister Leers, quoted in courtcase Den Bosch, won by Sahar and family, January 20 2011, source: *DePers*.
- ¹⁴ “Fouten in dossier Mauro” [Mistakes in file Mauro]. *Brabants Nieuwsblad De Stem* (local newspaper) December 3 2011.
- ¹⁵ “Al 2 jaar geen contact met zijn moeder. Teruggekeerde Agolese vrouw: Mauro heeft hier weinig te zoeken”. [No contact with his mother for two years. Returned Angolan woman: Mauro has no business here] in *De Volkskrant* November 16 2011.
- ¹⁶ MP Spekman (PvdA) *Eindhovens Dagblad* (local newspaper). *Foute gegevens over Mauro zijn “irrelevant”*. False information about Mauro is “irrelevant”. December 5th 2011, Monday.
- ¹⁷ MP Spekman (PvdA), in *Eindhovens Dagblad* December 5 2011.
- ¹⁸ MP Dibi (GroenLinks) debate October 27 2011: “Can the Minister explain what is not lamentable about separating two brothers?” 16-15-80.
- ¹⁹ Petition: Mauro must stay.
- ²⁰ MP Spekman (PvdA) in debate October 27 2011: “..to send a boy, who is so at home here, to a country where he does not speak the language nor understand its culture 16-15-73
- ²¹ In: *NRC Handelsblad*. “Oostrum, dorp van Mauro, geeft de schuld aan “politici”” [Oostrum, village of Mauro, puts blame on “politicians”] in *NRC-Handelsblad* October 29 2011.
- ²² MP Dibi (GroenLinks) in debate 27th of October 2011: “It took four years before the government came to a decision. The judge allowed him to stay and what happened? The Minister appeals because he disagrees with this decision”. 16-15-81.
- ²³ Leers, in debate October 27 2011. “He is not a refugee, he is not in danger, he is healthy”. 16-15-74
- ²⁴ *De Telegraaf* January 9 2012 “Doubts about Mauro” (Quotes Leers in news year lunch in Lanaken)

- ²⁵ MP Sietse Fritsma (PVV), in *Trouw*: “Mauro moet terug, geworteld of niet.” [Mauro must return, rooted or not] September 28 2011
- ²⁶ Leers, in debate October 27 2011. The asylum request has been denied and then you must be fair and say: we have rules.
- ²⁸ Minister Leers, in debate October 27 2011: ”If we do this today, I predict tomorrow there will be another Mauro, and the day after tomorrow another one.”
- ²⁹ “Bekijk de zaak-Mauro eens van de positieve kant”[Look at the Mauro case from the positive side] in *De Telegraaf* November 1 2011. “For this healthy young man employers will be lining up in Angola”
- ³⁰ MP Sietse Fritsma (PVV) [Mauro must return, rooted or not] in *Trouw* September 28 2011
- ³¹ Leers, in debate October 27 2011. Very early, he and his foster parents knew he would not get a status and would be going back. 16-15-74
- ³² MP Sietse Fritsma (PVV): “Mauro moet terug, geworteld of niet.” [Mauro must return, rooted or not] in *Trouw*. September 28 2011

4. Discussion and conclusion

4.1. Introduction

This final paragraph is dedicated to answering the main question: How do different actors resist (aspects of) the execution of asylum policy?

Throughout this final discussion, we will answer the question and address the four subquestions:

1. Which actors, procedures and organisations can be identified as opposing these policies?
2. What reasons and arguments do different actors and organisations provide to object to policies directed at rejected (individual) asylum seekers?
3. How do they differ in responsibilities, action repertoires and means to change the outcomes?
4. What has been the role of public mobilization around “lamentable cases” in public opinion and political debate?

We begin by clarifying our results with the help of the general ACCEPT-framework and explain what our project is contributing to the academic debate.

Four discourses could be deduced from the protest movement’s argumentations. These four discourses help framing rejected asylum seekers as victims or intruders and, combined with the debate on government responsibilities, create various possible outcomes which can be categorized as acceptance, tolerance, indifference or intolerance (see table 4.1).

Table 4.1: Assessment of (rejected) asylum seekers and their right to government assistance

(b)	(a) Assistance	No assistance
Victim	ACCEPTANCE (residence status)	INDIFFERENCE (dealt with abroad)
Intruder	TOLERANCE (prevention of homelessness / assistance for return)	INTOLERANCE (detention and forced return)

Toleration and tolerance are commonly associated with “refraining” from acting and interfering on the basis of feelings of rejection of the other (Dobbernack and Modood 2011). However, in our model tolerance as in the case of “condoning” rejected asylum seekers is related to government action and not inaction, which would seem counterintuitive. Assistance is meant to balance out the negative effects of the vari-

ous laws that are based on intolerance and that prevent rejected asylum seekers and undocumented migrants from acquiring assets and obtaining accommodation. The negative effects are made undone, while still not recognizing or accepting the rejected asylum seeker as a legitimate resident. Hence we qualified this strategy as tolerance, whereas intolerance is associated with the penal state, using strategies such as detention, fines and expulsion. The 2x2 table logically called for a new category, which is labelled as indifference: it includes asylum requests which are judged as legitimate, but not the responsibility of the Dutch State. These include Dublin claimants for example, and other refugees who are for various reasons prevented from entering. This category may in fact be the largest, since millions of people are taking refuge worldwide and over 99% never arrives at the European borders (Grütters 2011).

The answer to the question whether one should accept, tolerate or not tolerate rejected asylum seekers depends on the policy framing that goes with the wider discourse that one uses. We have named these four discourses: (1) asylum authenticity discourse, (2) global injustice discourse, (3) duty of care discourse, and (4) accomplished cultural inclusion discourse.

All four discourses offer a possibility for a “victim” categorization. These considerations and doubts surrounding the representation of asylum seekers as “victims” or “intruders”, in the context of determining whether they can legitimately reside in the Netherlands, resonate with the other debates throughout the ACCEPT project.

4.2. Moving through the discourses

The discourses are different ways to strategically determine the right of a (rejected) asylum seeker to stay or leave, as well as entitlement to (some) government assistance, e.g. while waiting for a decision. Victims are more likely to be granted access than intruders. The protesters of the strict asylum policy will thus try to push the categorization of an individual upwards out of the “intruder” category and into the “victim” category. This can be done in two ways: the first is, by arguing within the discourse that the person should be viewed not as an intruder, but as a victim. The second way is, by moving “sideways” to the next discourse, in which an intruder of one discourse can become categorized as victim in another.

Table 4.2 shows a model we have created based on our analysis. In this model, the re-categorization as victim is represented by arrows. The first way (arguing within the discourse, and pushing categorization “up”) is shown here by means of straight arrows, and the second way (shifting to another discourse where a former intruder can be re-categorized as victim due to other criteria) is shown by means of bended arrows. For the sake of clarity, we only present the arrows that represent the discursive strategies of the protesters. But arrows in opposite directions can be drawn for those in favour of a strict asylum and/or migration policy. A third way of enabling government assistance -not visible in this table- is by arguing in favour of assistance even for those who are intruders.

To clarify the model, we can imagine a person fleeing from Angola first to be rejected as asylum seeker (and this rejection may be accurate or not), then overstaying in the Netherlands and finding people who will represent him as a victim based on the *global injustice discourse* and suggest that assistance should be provided. But even if the person is regarded not as a victim in the global injustice discourse, he or she can still become a victim in the *duty of care discourse*, for example if he or she is a child, or if one becomes homeless, or is in need of medical care. Humanitarian motivations may then enter as reasons

to provide help. Due to longer stay, the person may finally become integrated and then the discourse of *accomplished cultural inclusion* may be engaged to assess the person as a victim. In this final, last resort discourse, the former “intruder” has become a victim of time and government inertia, and has become an inseparable part of his or her local community.

Table 4.2: Discursive strategies of turning “intruders” into “victims”

		1+2: ADMISSION TO TERRITORY		3+4: ILLEGAL RESIDENCE	
		1. Asylum authenticity discourse	2. Global injustice discourse	3. Duty of care discourse	4. Accomplished cultural inclusion discourse
Victim	Real refugee	Economic refugee	Vulnerable person, sufferer/ homeless	Integrated rooted, connected	
Intruder	Fake/imposter / Economic refugee	Exploiter/ Fortune seeker expellable	Entrepreneur, (detained) criminal	Stranger, outsider,	

In the Mauro debate, the *accomplished cultural inclusion discourse* was used by protesters to establish Mauro as a victim who belonged in the Netherlands, and NGOs used the *duty of care discourse* to establish residence permit through the invocation of Children’s Rights. But the opponents used the *asylum authenticity discourse* to frame him as an impostor and intruder, because he had lied during his asylum application. Even the *global injustice discourse* was used by the opponents to represent Mauro as an exploiter, because Angola was presented as a new booming economy in which Mauro would flourish on return. Within the discourses, there were attempts to criticize the victim claims, by expressing doubts about his broken relation with his biological mother and by doubting his future contributions to Dutch society, because he was not a particularly bright student.

The Sahar case instead showed more stable “victim” categorizations which were hard to refute. Because Sahar’s family had been roaming the streets and even went abroad they were not eligible for a pardon under the rules of the National Pardon of 2007, but within the *duty of care discourse* these stories became a powerful expression of her family’s suffering and vulnerability. Even in the *asylum authenticity discourse*, Sahar could be framed as someone who feared return to Afghanistan, mainly because she had become so westernized. Here the discourses went full circle and the *accomplished cultural inclusion discourse* served to make her a victim in hindsight in the *asylum authenticity discourse*.

4.3. From tolerance to intolerance or acceptance

Both Sahar and Mauro had been “tolerated” in Dutch society for a prolonged period of time (almost 10 years in the case of Sahar, more than 8 years in the case of Mauro), when their future became subject to a wide public debate: should the Dutch state shift to intolerance, meaning it would seek to expulse them from the Netherlands, or should it shift towards acceptance and grant them a residence status? This fact alone shows how toleration is seen as an unsatisfactory and unstable way of engaging with the presence of rejected asylum seekers. When rejected asylum seekers are officially tolerated (because they are awaiting the outcomes of an appeal, or because they are under age) or when they

are merely “condoned” (as in the case of many undocumented migrants living in the Netherlands) the situation demands a more permanent settlement. There is thus a generally felt need to move away from “toleration”.

One possibility is to shift towards intolerance, by seeing to the effective removal of unwanted immigrants from the Netherlands. In the case of Sahar and Mauro this meant that they were represented as “intruders”, for example by disqualifying the legitimacy of their asylum requests and by questioning the motives of their families for migrating to the Netherlands. This strategy was fully justifiable given existing Dutch asylum law and policy. Allowing Sahar and Mauro to stay might set a precedent and produce a “honeypot effect”, and it would be unfair towards others. Yet, the massive mobilization around these two cases demonstrates that this view was not so widely shared as one might expect. We will not repeat our analysis of the various arguments here, but instead single out two issues that are of particular relevance in the context of the shifting importance of concepts such as tolerance, respect and recognition.

First, we have seen how in these case there occurred a shift of perspective and a transformation of attitude when Dutch society was confronted with two young people. The reasons for non-toleration can be changed when attention is shifted to the humanity and moral standing of the subject (Heyd in Dobberack and Modood 2011: 13). It is ironical, to say the least, that the outcry to “let Sahar and Mauro stay” found substantial support on the pages of *de Telegraaf*. One of our respondents argued that this illustrated how personal contact can change negative attitudes towards asylum seekers. Many voters who read the *Telegraaf* “are in favour of Sahar but against admitting immigrants”, so he observed. On the positive side, he believed the Mauro case has led to a change in public opinion; people felt it was wrong to evict someone who is well nested in a local community.

Second, the importance of the *accomplished cultural inclusion* discourse to justify the use of discretionary powers raises important questions. In the first place, the emphasis on successful cultural assimilation implies that it is both easier and more just to grant asylum to people who “belong in the Netherlands”. Indeed, it would be very unjust to expel fully assimilated young adults. Cultural assimilation, “rootedness” and a demonstrated willingness to “embrace Western values” are thus being legitimized as grounds to decide who can stay and who should leave. In addition, cultural rootedness is made important at the detriment of attention for social rootedness and for the respect of emotional and affective ties. In a human rights perspective it makes much more sense to argue that it is wrong to destroy families and inflict suffering on individuals, than to say that migrants should stay because of cultural attitudes. Simultaneously, however, these cases have shown what kind of support undocumented migrant and asylum seekers can find in local communities and how local identifications and connections can induce people to stand up and protest against unjust consequences of asylum policy. As one of our respondents said, this kind of social mobilization based on strongly felt ideas about “moral wrongness” is fundamental to democracy and demonstrates that citizens will not tolerate a situation of lawlessness and the violation of basic human rights.

Table 4.3. Common strategies of contestation

	Change policy / practice / public debate	Help an individual
OPEN / THROUGH MEDIA	<ul style="list-style-type: none"> - Lobby, media-attention - Reframing of language - Collaborations - Reports and position papers - Petitions, letters - Demonstrations - Motions - Request restorative measure (General Pardon) 	<ul style="list-style-type: none"> - Legal procedures until Council of State or European Court - Reframing as victim - Online petition - Media-attention - Motions - Church asylum
SILENTLY	<ul style="list-style-type: none"> - Create foundations which support undocumented migrants with local government money - Not executing national policy (for example not sending police) 	<ul style="list-style-type: none"> - Request “discretionary measure” of Minister - Local community guarantees - by police or municipality “Looking the other way”

4.4. Moral reasoning in the discourses

We find different types of moral reasons in all discourses. Moral and ethical reasoning in general were used in all the discourses, prudential, realistic and legal reasoning in some. Because a legal foundation for the global injustice discourse is weak, we mainly found moral and ethical reasoning in this discourse. The *accomplished cultural inclusion discourse* as well as the *global injustice discourse* are based on a general notion that the undocumented migrant is entitled to support due to mistakes which the Dutch government has made (even if in the distant past, for example as a colonial power). There is a moral obligation to help, because the Dutch “owe” this to the migrant. These are political or ideological positions, not embedded in any legal frame, and they are thus highly contested views.

By contrast, the *asylum authenticity discourse* and the *duty of care discourse* essentially argue that the asylum seeker is in need of help because of extrinsic conditions, which are outside the control of the Dutch government and/or the migrant. These reasons are rarely stated in moral, but almost exclusively in legal terms, and are backed by references to the Geneva Convention and the European Convention on Human Rights, and other international covenants. National laws are said to collide with international legal obligations. However, with migration increasingly viewed as a threat to the nation in many European countries, this legal framework is shifting too. Where we see the Geneva Convention’s and Human Right’s influence decrease, there are several attempts to provide the *accomplished cultural inclusion discourse* with legal foundations through the “rootedness motion” and the currently debated Children’s Pardon.

Prudential reasoning (focusing on effectiveness) was found in the *duty of care discourse*, especially when the duty of care was extended to “intruders” (following the question whether governments should assist or punish those who must leave). Realistic reasoning was used in addition to criticize the governmental “penalization” strategies because they were ineffective and costly, notably detention and forced expulsion. Similarly, realistic reasoning was used to criticize the reluctance of governments to assist homeless undocumented migrants, as this would lead to criminal behaviour. However, this strategy to

point out the “public order” problems of homeless undocumented migrants has somewhat backfired, because the framing of them as a threat to public order by municipalities has served as a justification to increase alien detention and criminalization.

4.5. Observations addressed at policy makers and protesters

This research has first and foremost focussed on the debate about the implementation of Dutch asylum policy, especially with regard to migrants who’s asylum application has been refused. Therefore in our recommendations we focus on the discursive level.

Our first recommendation is related to the four discourses that we found – asylum authenticity, global injustice, duty of care and accomplished cultural inclusion – and that all, albeit in different ways, are being used to separate “victims” from “intruders”. The fact that the “asylum authenticity discourse” figures alongside three other discourses demonstrates, first, that the debate on asylum policy and practice stretches well beyond the mere question of “admission or not given international human rights standards” and includes issues such as global inequalities, the situation of undocumented migrants and unwillingness and inability of return migration. Second, it shows how distinctions between “victims and intruders” are being drawn in a variety of ways, without the “authenticity of asylum discourse” functioning as the ultimate ground to decide on what course of action is morally, legally or prudentially right. We therefore recommend that all who are involved in these debates become more aware of the variety of possible policy framings and corresponding legitimate courses of action, and acknowledge that in reality issues of global poverty, violence and persecution, illegal migration, human suffering and homelessness are related. In this context the suggestion that problems will be essentially solved as long as a “strict yet just asylum policy is implemented” (Minister Leers) is highly misleading.^[117]

Our second observation addresses actors in the debate – both protesters and those involved in policy making and policy implementation – and suggests they become more “frame reflective”, i.e. that they are aware of the fact that the ways they represent and conceive of situations and define them as “problems” can differ from the ways others perceive these situations (Rein and Schön 1993). As we have seen, asylum policy discussions tend to involve many intra-frame conflicts, leading to additional frustration and deception both among executioners of asylum policies and protesters. For example, employees of the IND may see the granting of a General Pardon as undermining the very essence of their task, namely to distinguish authentic (“victims”) from unauthentic applicants (“intruders”) in asylum procedures. Their framing of the issue and the course of action they defend is fully legitimate within the “authentic asylum discourse”. However, in terms of the “duty of care discourse” things may look very different, and a General Pardon may be seen as an appropriate strategy to alleviate the suffering of undocumented migrants in the Netherlands. Also protesters who draw on a discourse of global inequality to argue that *au fond* all migrants are victims of structural factors beyond their control, may be asked to become more reflective of their framing and to see whether they are willing to accept prudential and realist (and possibly moral) counter arguments to a general defence of “open borders”. Frame reflective discourse may constitute one way to move beyond stubborn confrontations in asylum debate and in finding new shared framing to address problems.

¹¹⁷ “Leers belooft streng maar rechtvaardig beleid”. [Leers promises strict yet just policy]. Nu.nl, June 20 2011.

Our third suggestion builds on the other two, and asks for more “realism” in Dutch asylum policy discussions and practice. As we have shown, in the context of populist political mobilisation around migration and integration, asylum policy has over the past decade become more and more “over-determined”; the development and execution of asylum policy has come to symbolize the willingness of the government to end “condoning” (*gedogen*), to demonstrate its ability to govern society in a globalising world (*maakbaarheid*) and to exemplify a tough stance against “multiculturalism and cosmopolitanism”. These underlying goals are tightly linked to the prestige of the (national) government, individual politicians and institutions such as the DT&V and IND. Especially in the recent cabinet of the Right, the Minister has constantly repeated that asylum policy should be “strict and just”, also to appease the populist PVV that was condoning the coalition government. In many ways the very promise that a very effective, just and strict asylum policy can be implemented is a *myth*: “a narrative created and believed by a group of people which diverts attention from a puzzling part of their reality” (Yanow 1996: 191). There is simply too much evidence that asylum and illegal migration remains by and large an “intractable policy controversy”. Yet, simply acknowledging that some aspects of policies will continue to fail is not an option for politicians, or so it seems. A strategy is to use dramatic metaphors to suggest that strict policies are absolutely necessary, most notably the “honeypot effect”, but also by suggesting that “lying in asylum procedures” verges on committing a criminal act, and that boys like Mauro are therefore “intruders”. Protesters have, quite rightfully so we think, sought to construct a new vocabulary to challenge the “realism” of these narratives about policy implementation, by pointing to the way rejected asylum seekers are simply being made homeless (*klinkeren*) or by speaking of “administrative removals”. More openness among politicians and policy makers about the realist and prudential concerns that are articulated in protests against the execution of Dutch asylum policy may well be necessary to avoid that policy myths result in real harm inflicted upon individual migrants.

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AD.nl. *Sahar heeft verblijfsvergunning*. Sahar has residence permit. 3rd May 2011. www.dankert.nl/bart/dossiers/sahar.html

Elsevier. *Buitenland. Arrestaties na zuuraanval op Afghaanse schoolmeisjes*. Foreign news. Arrests after acid attacks on Afghan school girls. 25th November 2008.

Elsevier. *Afghaans meisje Sahar verdient gerechtigheid*. Afghan girl Sahar deserves justice, weblog Afshin Elian, Friday 17th December 2010

Franeker Dagblad. *Sahar Sint Annaparochie: Landelijke media duiken op zaak Afghaans meisje*. Sahar Sint Annaparochie: national media dive into case Afghan girl. 8th December 2010. www.dankert.nl/bart/dossiers/sahar.html

Friesch Dagblad. *Klasgenoten in actie tegen de uitzetting van Sahar*. Class mates in action against expulsion Sahar. 25th November 2010.

Friesch Dagblad. *Sahar mag blijven als het aan de burgemeester ligt*. Sahar may stay if it were up to the mayor. 24th February 2011. www.dankert.nl/bart/dossiers/sahar.html

Hart van Nederland. *Sahar mag blijven*. Sahar may stay. 21st January 2011. www.dankert.nl/bart/dossiers/sahar.html

Joop.nl. *Marijnissen: "Sahar moet gewoon asiel krijgen"*. Marijnissen: "Sahar should simply get asylum". 16th December 2010. www.dankert.nl/bart/dossiers/sahar.html

Kerknieuws.nl *Doopsgezinden komen op voor minderjarige asielzoekers*. Mennonites stand up for minor asylum seekers. 14th January 2011. www.dankert.nl/bart/dossiers/sahar.html

Leeuwarder Courant. *Leers: Sahar terug naar Afghanistan*. Leers: Sahar back to Afghanistan. 7th December 2011. www.dankert.nl/bart/dossiers/sahar.html

Leeuwarder Courant. *De nachtmerrie van Sahar*. The nightmare of Sahar. 16th December 2011 www.dankert.nl/bart/dossiers/sahar.html

Leeuwarder Courant. *VN: erken Sahar (14) als vluchteling*. UN: recognize Sahar (14) as refugee. 18th January 2011. www.dankert.nl/bart/dossiers/sahar.html

Leeuwarder Courant. *Bossche rechtbank voorkomt voorlopig uitzetting Afghaanse Sahar uit St. Annaparochie*. Court in Den Bosch prevents expulsion of Afghan Sahar from St Annaparochie for the time being. 20th January 2011. www.dankert.nl/bart/dossiers/sahar.html

Leeuwarder Courant. *Roemer: "Sahar kan PVV niets schelen"*. Roemer: PVV does not care about Sahar. 22nd January 2011. www.dankert.nl/bart/dossiers/sahar.html

Leeuwarder Courant. *Gehoordgezien. Sahar*. Heard-and-seen. Sahar. Tuesday 28th February 2012

Leeuwarder Courant. *Familie Sahar: blijdschap en ongeloof*. Family Sahar: happiness and disbelief. 8th April 2011. www.dankert.nl/bart/dossiers/sahar.html

Leeuwarder Courant. *Advocaat Sahar dreigt met nieuwe rechtszaak*. Lawyer Sahar threatens with new court case. 23rd April 2011. www.dankert.nl/bart/dossiers/sahar.html

MSN Nieuws. *Afghaanse scholiere Sahar mag toch blijven*. Afghan school girl Sahar may stay after all. 8th April 2011. www.dankert.nl/bart/dossiers/sahar.html

NOS *Hoger beroep Sahar uitgesteld*. Appeal Sahar postponed. 29th March 2011. www.dankert.nl/bart/dossiers/sahar.html

NOS *Afghaans meisje Sahar mag blijven*, Afghan girl Sahar may stay. Friday 8th April 2011 <http://nos.nl/artikel/231580-afghaans-meisje-sahar-mag-blijven.html>

NRC Handelsblad. *Een Goois jochie wil echt niet terug naar Sierra Leone; verwesterde kinderen van asielzoekers schrijven aan Minister Leers of ze, net als de Afghaanse Sahar, ook in Nederland mogen blijven*. A boy from Het Gooi really does not want to return to Sierra Leone; westernized children write Minister Leers if they, like Afghan Sahar, may stay in the Netherlands too. 1st July 2011.

NRC Handelsblad. *Ze heeft nu rust, een fiets en een kanarie; hoe gaat het met Sahar*.

She now has a quiet life, a bicycle and a canary: How is Sahar doing? 3rd January 2012

- NRC.nl *Hulporganisaties huiverig bij media-aandacht asielzoekers*. Aid-providing organizations reluctant about media-attention asylum seekers. 12th March 2011 www.dankert.nl/bart/dossiers/sahar.html
- NRC.nl *De monoculturele illusie, volgens Hirsch Ballin* The monocultural illusion, according to Hirsch Ballin. 17th September 2011. www.dankert.nl/bart/dossiers/sahar.html
- Nu.nl. *Leers kijkt nog eens naar zaak-Sahar*. Leers reconsiders case Sahar. 8th December 2010. www.dankert.nl/bart/dossiers/sahar.html
- Nu.nl. *PVV standpunt over Sahar is grove schande*. "PVV positioning on Sahar big disgrace" Friday 7th October 2011
- Omrop Fryslân. *Kaemerfragen oer útsetting famke*. Questions in Parliament about expulsion girl. 26th November 2010. www.dankert.nl/bart/dossiers/sahar.html
- Omrop Fryslân. *Noch gjin beslút oer Sahar*. No decision yet about Sahar. 3rd January 2011. www.dankert.nl/bart/dossiers/sahar.html
- Omrop Fryslân. *Oprop CDA-Fryslân oan Leers*. Call CDA-Friesland for Leers. 7th January 2011. www.dankert.nl/bart/dossiers/sahar.html
- Omrop Fryslân. *"Weriepenje saak-Sahar"*. "Recall case Sahar". 18th January 2011. www.dankert.nl/bart/dossiers/sahar.html
- Omrop Fryslân. *Crone: "Sahar moat bliuwe"*. Crone: Sahar should stay. 20th January 2011. www.dankert.nl/bart/dossiers/sahar.html
- Omrop Fryslân. *Mooglik dúdlikens oer Sahar*. Possibly clarity about Sahar. 8th April 2011. www.dankert.nl/bart/dossiers/sahar.html
- De Pers. *Sahar moet terug, zo zijn de regels. Afgewezen Afghaanse Friezin is doodsbang*. Sahar must go back, such are the rules. Rejected Afgan Friesian girl terrified. Thursday 2nd December 2010
- De Pers. *Sahar en familie mogen voorlopig blijven*. Sahar and family may stay for the time being. 20th January 2011. www.dankert.nl/bart/dossiers/sahar.html
- De Pers. *Hero Brinkman zoekt de innerlijke Nederlander*. Hero Brinkman searches for the interal Dutchman. 11th April 2011. www.dankert.nl/bart/dossiers/sahar.html
- RTL Nieuws. *Leers in hoger beroep in zaak Sahar*. Leers appeals in case Sahar. 26th January 2011. www.dankert.nl/bart/dossiers/sahar.html
- Telegraaf. *PVV eist vertrek Sahar*. PVV demands Sahar leaves. 21st January 2011. www.dankert.nl/bart/dossiers/sahar.html
- Trouw. *Leers voelt niets voor aanpassingen vreemdelingenwet*. Leers against adaptation alien act. 19th January 2011. www.dankert.nl/bart/dossiers/sahar.html
- Trouw. *Sahar te verwesterd om terug te sturen naar Afghanistan*. Sahar too westernized to be sent back to Afghanistan. 8th April 2011.
- Trouw. *Sahar weet al dat ze in Nederland mag blijven*. Sahar already knows she can stay in the Netherlands. 28th February 2012

De Volkskrant. *Afghaanse zusjes krijgen verblijfsvergunning. Eerste toewijzing van asielaanvragen voor verwesterde meisjes na 14-jarige Sahar.* Afghan sisters get a residence permit., First accepted asylum requests of westernized girls after 14-year-old Sahar. 16th June 2011.

Volkskrant.nl *Leers vraagt om uitstel in zaak-Sahar.* Leers requests extra time in case-Sahar. 29 March 2011, 11.33.

(Mauro case)

AD/ Haagse Courant. *De tranen van Mauro.* The tears of Mauro. 3rd November 2011.

AD/ Algemeen Dagblad. *Douglas is nodig en Mauro? Die niet.* Douglas is necessary and Mauro? He is not. 3rd November 2011.

AD/ Algemeen Dagblad. *Advocaat Sahar: Zaken liggen anders bij Mauro.* Lawyer Sahar: things are different with Mauro.

ANP (Algemeen Nederlands Persbureau/ General Dutch Press Agency). *Leers: Mauro moet terug naar Angola.* Leers: Mauro must go back to Angola. October 26, 2011

ANP. *Mauro en familie buitengewoon teleurgesteld.* Mauro and family very disappointed. October 26 2011

ANP. *Terugkeer Angola was Mauro's grootste angst.* Return to Angola was Mauro's biggest fear. October 26, 2011. 11.47 AM.

ANP. *Vaak landelijk debat individuele vreemdeling.* Often national debate individual alien. October 26, 2011. 12.21 PM.

ANP *Verontwaardiging op internet na besluit Mauro.* Online disapproval after decision Mauro. 26 October 2011. 12.24 PM

ANP. *Koppejan tegen gedwongen uitzetting Mauro.* Koppejan against forced expulsion of Mauro. October 26 2011

ANP. *CDA niet blij met antwoord Leers over studie (2).* CDA not happy with answer Leers about study. October 28, 2011

ANP. *UAF wil Mauro steunen bij eventuele studie.* UAF wants to support Mauro for study possibility. October 28, 2011

ANP. *Tientallen voeren actie voor Mauro.* Dozens in action for Mauro. October 29, 2011.

ANP. *Bleker: geen spijt van uitnodiging aan Mauro.* Bleker: no regret of invitation to Mauro. October 29, 2011.

ANP. *Lot Mauro in handen van CDA-fractie.* Fate Mauro in hands of CDA-fraction. October 31, 2011

ANP. *Initiatiefnemer Mauro-actie zeer tevreden.* Starter of Mauro-action satisfied. November 1st 2011

ANP. *Foute gegevens aangeleverd namens Mauro.* False information provided on behalf of Mauro. December 2, 2011

ANP. *Leers geeft verklaring af over Mauro.* Leers gives statement about Mauro (2). March 31, 2012.

BN De Stem (local newspaper). *Fouten in dossier Mauro.* Mistakes in file Mauro. 3rd December 2011

Eindhovens Dagblad (local newspaper). *Foute gegevens over Mauro zijn "irrelevant".* False information about Mauro is "irrelevant". December 5th 2011, Monday

Elsevier. *Onderbuik. In provinciale ophef over 18-jarige asielzoeker zijn emoties belangrijker dan de rechtsstaat.* Below the belt. In provincial uproar about 18-year old asylum seeker, emotions matter more than the rule of law. 5th November 2011.

Elsevier. *Barmhartig Nederland. Waarom leidt het uitzetten van verwesterde kinderen als Mauro tot zoveel protest? Het veronderstelde wrede beleid van de staat is helemaal niet zo inhumaan. Kind Netherlands.* Why does the expulsion of westernized children like Mauro lead to so much protest? The presumed cruel policy of the state is not so inhumane. 5th November 2011.

Geenstijl.nl Webforum. Column "Bassiehof" (Bas Paternotte) *Mauro moet effe dimme. Voorts is Bassiehof van mening dat Mauro moet blijven.* Mauro should shut up. Further Bassiehof thinks that Mauro should stay. 30th October 2011. http://www.geenstijl.nl/mt/archieven/2011/10/mauro_moet_effe_dimmen.html

Godsmarketing.nl Weblog. *Zaak Mauro verdeelt Den Haag...en de kerk.* Case Mauro divides The Hague...and the church. 1st November 2011. <http://www.godsmarketing.nl/2011/11/01/mauro-manuel-verdeelt-den-haag-en-de-kerk-sgp-christenunie-cda-christelijke-politiek/>

Krapuul.nl Weblog. *Tijdlijn Mauro.* Timeline Mauro. <http://www.krapuul.nl/blog/55904/tijdlijn-mauro/>

Libelle. *Interview met de pleegmoeder van Mauro.* Interview with Mauro's foster mother. 4th November 2011

Metro. *Mauro: wel hulp maar geen asiel.* Mauro: assistance, but no asylum. Wednesday, 2nd November 2011

Metro. Column. *Duo Penotti is tevreden.* Duo penotti is happy. November 3, 2011

Nederlands Dagblad. *Twijfels aan C en G in zaak Mauro.* Doubts about "C" and "G" in case Mauro (C-Christian in CDA, G-Reformed in SGP). 3rd November 2011.

NRC Handelsblad. *Niet alleen Mauro, ook Leers verliest.* Not just Mauro loses, but Leers too. 27th October 2011.

NRC Handelsblad. *Mauro mag wel/niet blijven.* Mauro may/may not stay. 28th September 2011 Wednesday.

NRC Handelsblad. *Mauro moet weg, maar niet meteen. Volledig ingeburgerd moet Mauro terug naar Angola.* Mauro must leave, but not immediately. Completely integrated Mauro must go back to Angola. 26th October 2011.

NRC Handelsblad. *Zaak-Mauro gaat CDA veel pijn doen.* Case-Mauro will hurt CDA. 27th October 2011.

NRC Handelsblad. *Plotseling was er crisioverleg bij het CDA.* Suddenly there was a crisis debate inside CDA. Friday 28th October 2011.

NRC Handelsblad. *Tot hun 18e mogen ze blijven, dan moeten ze weg: dat zijn de regels.* Until their 18th they may stay, and then they should leave: such are the rules. 28th October 2011.

NRC Handelsblad. *Waarom houden wij van Mauro?* Why do we love Mauro? 28th October 2011.

NRC Handelsblad. *Oostrum, dorp van Mauro, legt schuld bij "politici".* Oostrum, village of Mauro, puts blame with "politicians". 29 October 2011.

NRC Handelsblad. *Kamer maakt morsig einde aan kwestie Mauro.* Parliament's messy end to Mauro issue. 2nd November 2011.

NRC Handelsblad. *Ook voor een studievizum gelden regels, hoe zit het daarmee?* For a visa for study there are rules too, what about them? 2nd November 2011.

NRC Handelsblad. *Strikte regie voor een jongen in nood; Publiciteit rondom Mauro wordt al vier jaar geregeld door Defence For Children.* Tight coordination for a boy in distress. Publicity around Mauro has been arranged by Defence for Children for four years, 4th November 2011.

NRC Next. *Mauro lijkt een bijzonder geval te zijn. Maar dat is hij zeker niet.* Mauro seems to be a special case. But he definitely is not. 27th October 2011.

NRC-Next: *Het lot van Mauro, Sahar en de anderen. Commentaar.* Editorial comment: The fate of Mauro, Sahar and the others. Wednesday 28th February 2012

De Pers.nl. *“Volk wil vergunning voor alle Mauro’s”.* “People want permit for all Mauros”. 28th October 2011. http://zaplog.nl/zaplog/article/volk_wil_vergunning_voor_alle_mauros

De Pers *En uiteindelijk mag Mauro gewoon in Nederland blijven.* In the end Mauro can simply stay in the Netherlands. 20th December 2011.

RTLNieuws.nl. *Claudia de Breij zingt protestlied voor Mauro.* Claudia De Breij sings protest song for Mauro. 31st October 2011.

SP.nl (Socialist Party). *IND-stukken laten zien: Leers moet zaak Mauro opnieuw laten onderzoeken. Reveal IND-documents: Leers should let the Mauro case be reinvestigated.* By Sharon Gesthuizen. 29th October 2011.

Stentor/ Sallands Dagblad. *Na Mauro staat de volgende “illegaal” alweer klaar.* After Mauro, the next “illegal” will stand up. By Frank van Lierde, Cordaid. 3rd November 2011.

Telegraaf. *Albayrak maakt draai van 180 graden; PvdA-Kamerlid nu wel voor verblijfsvergunning.* Albayrak turns 180 degrees. PvdA- Member of Parliament now in favor of a residence permit. 2nd November 2011.

Telegraaf. *Mauro gaat studievizum aanvragen.* Mauro will request visa for study. 19 November 2011

Trouw. *Mauro moet terug, of hij geworteld is of niet.* Mauro must return, rooted or not. (Letter by PVV MP Fritsma). 28 September 2011, Wednesday

Trouw, *Een litanie van afwijzingen, en erkende bezwaren.* A litaney of rejections and recognized objections, October 29th, 2011.

Trouw. *Streng juf met een sidderend schoolklasje.* Strict teacher with shaking school class (representation of analysis of Mauro media representation by Clair Polak). 7th November 2011.

Trouw. *Steun CDA doorslaggevend voor steun wetsvoorstel Mauro’s en Sahars.* Support CDA decisive for motion Mauro’s and Sahars. Monday February 27th 2012

Volkskrant. *Angolese Mauro is Sahar niet.* Angolan Mauro is not Sahar. 24th September 2011.

Volkskrant. *Mauro is geen Sahar.* Mauro is no Sahar. 27th October 2011.

Volkskrant. *Leers kan Mauro wel degelijk verblijfsvergunning verlenen.* Leers is able to give Mauro a residence permit. (Letter by legal experts). 29th October 2011.

Volkskrant. *Sint Bleker.* St Nicholas Bleker. 1st November 2011.

Volkskrant. *Zo verliepen de Mauro-stemmingen.* These are the results of the Mauro-votes. 01-11-2011

Volkskrant. *Mauro wist niet van zijn brief*. Mauro knew nothing about his letter. November 2 2011.

Volkskrant. *Mauro ruimt voor CDA de rotzooi op*. Mauro cleans up the mess for CDA. (by Joel Voordewind). 3rd November 2011.

Volkskrant. *Een groot gebaar*. A big gesture. 3rd November 2011.

Volkskrant. *Al 2 jaar "geen contact" met zijn moeder. Teruggekeerde Angolese vrouw: Mauro heeft hier weinig te zoeken*. No contact with his mother for two years. Returned Angolan woman: Mauro has no business here. 16th November 2011.

Volkskrant. *Leers oogst kritiek met zijn uitspraken over Mauro*. Leers is criticized for his comments about Mauro. 2nd April 2012

IJmuider Courant *Minister Leers in het nauw na suggestie dat Mauro een leugenaar is*. Minister Leers in trouble after suggestion that Mauro is a liar.

Television:

<http://www.novatv.nl/page/detail/uitzendingen/7836/'Uitgezette+asielzoekers+slachtoffer+van+buitensporig+geweld'>

KRO Rekenkamer. *Wat kost een Mauro*. What's the price of a Mauro. 8 March (20.25 uur, Ned.3).

Annex

I List of respondents^[118]

Interview 1: academic expert on asylum law

Interview 2: academic expert on migration politics

Interview 3: NGO representative (migrants: emergency shelter)

Interview 4: NGO representative (migrants/refugees)

Interview 5: NGO representative (human rights)

Interview 6: local politician, signatory of GroenLinks Manifest
(Maak van Vluchtelingen geen daklozen - *Don't make refugees homeless* -2006)

Interview 7: academic expert on asylum ethics

Interview 8: NGO representative (church - The Sahar case)

Interview 9: academic expert on human rights

Interview 10: two local policy advisors in LOGO-cities

Interview 11: local politician (The Mauro case)

Interview 12: employee of the IND (Immigration -and Naturalisation Service)

Interview 13: NGO representative (church)

¹¹⁸ For ethical reasons associated with our research group, we anonymized all our respondents, although many were willing to participate in the research with their names and institutions mentioned.

II Topic list

Used for the interviews

Function/ organisation

background and basic numbers

- Nature of work
- Relation to field of asylum
- Size and objective of organization
- Direct contact rejected asylum seekers?
- Possibilities to act according to principles
- Cooperation/ coalition partners
- Mostly obstructed by
- Influence compared to ten years ago
- Examples of success/ failure

Asylum policy

- Most influential persons, organizations
- What happens when an application is rejected? Who acts?
- How does an expulsion take place?
- Opportunities to influence individual decision/policy
- Power balance between national and local politicians

Personal opinion

- What do you think of the current asylum policy? Why?
- Participation in protest, sign petition? Why?
- Motivation to do this work

- What do you think of expulsion from accommodation onto the street?
- When are asylum seekers no longer entitled to support?

Lamentable cases: Sahar and Mauro

- How do you feel about the way in which Sahar was granted status?
- How do you feel about the way in which Mauro was not granted status?
- The effectivity to apply for discretionary status/ lamentable case
- Effect of mediatisation versus silent route
- Effect of individual cases on policy

III Organisations and actions^[119]

Name/ website	Type	Issue
Amnesty International Netherlands www.amnesty.nl	Human Rights	Detention Children's rights for shelter
Autonoom Centrum ¹ <i>Autonomous Centre</i> http://ac.home.xs4all.nl/	Human Rights	Asylum procedure Shelter Detention Expulsion
Alkmaarse Courant/ Noordhollands Dagblad http://www.noordhollandsdagblad.nl/stadstreek/alkmaar/	Media	Individual case (Yossef)
ASKV Amsterdams Solidariteits Komitee Vluchtelingen <i>Amsterdam Solidarity Committee Refugees</i> www.askv.nl	Migrants	Asylum procedure Shelter
Contouren http://www.frederike.nl/cgi-bin/scripts/db.cgi?&ID=367&ww=1&view_records=1	Media	Asylum procedure Shelter
Defence For Children Netherlands http://www.defenceforchildren.nl/	Human Rights	Asylum procedure Shelter Detention Individual Case (Mauro)
Fort Nederland in beeld (Vrijheid van beweging) ² <i>Fortress Netherlands in the picture (Freedom of Movement)</i> http://vrijheidvanbeweging.nl/fortnederland/	Moral	Detention
Fabel van de Illegaal, Leiden <i>Fable of the Illegal</i> http://defabel.home.xs4all.nl/	Moral	Asylum procedure Shelter Detention
Geen Kind in de Cel (petition, 2010-2011, 140,000 signatures) <i>No child in the cell</i> http://www.geenkindindecel.nl/	Coalition	Detention
Geen Kind op Straat (petition, 2010, unknown number) <i>No child on the street</i> http://www.geenkindopstraat.nl/pages/gkos/home	Coalition	Shelter

¹¹⁹ This list is not a complete inventory of actions, organisations and websites, but represents the ones which we included in our analysis. There are numerous (citizens') committees and organizations active to support (individual) rejected asylum seekers, both on local and national level. Representing refugees alone, we found over 400 migrant self-organizations represented by VON.

Name/ website	Type	Issue
Human Rights Watch (no website for Dutch representation) http://www.hrw.org/ http://www.hrw.org/news/2010/09/10/human-rights-watch-opent-kantoor-nederland	Human Rights	Asylum procedure Detention
Humanistisch Verbond <i>Humanist Alliance</i> www.humanistischverbond.nl	Moral	Asylum procedure Shelter Detention
INLIA and Charter of Groningen-churches Internationaal Netwerk van Lokale Initiatieven ten behoeve van Asielzoekers <i>International network of Local Initiatives for Asylum Seekers</i> http://www.inlia.nl/	Church (Protestant and Catholic)	Shelter
Justitia et Pax http://www.justitiaetpax.nl/	Church (Catholic)	Shelter Detention
Joke Kaviaar ³ http://www.jokekaviaar.nl/	Human Rights	Asylum procedure Shelter Detention Expulsion
Kerk in Actie <i>Church in Action</i> http://www.kerkinactie.nl/	Church (Protestant)	Shelter Detention
Kinderpardon (petition) (over 100,000 signatures and counting) <i>Children's Pardon</i> http://www.kinderpardon.nu/	Politicians (GroenLinks), municipalities, and celebrities	Children's Rights: residence permit for children residing in the Netherlands longer than 8 years
Stichting LOS Landelijk Ongedocumenteerden Steunpunt <i>National Support for the Undocumented</i> http://www.stichtinglos.nl/	Migrants	Shelter
LOGO-Gemeenten Landelijke Overleg Gemeentelijke Opvang (en Terugkeer) <i>National Organization of Municipalities for Shelter (and Return)</i> http://www.logogemeenten.nl/ (last update 2009)	Municipalities	Shelter
MAPP (until 2011) Meldpunt Asielzoekers met Psychische Problemen <i>Report Unit for Asylum Seekers with Psychological Problems</i>	Migrants	Asylum Procedure
Meldpunt Vreemdelingendetentie <i>Report unit Alien Detention</i> (initiative of LOS) http://www.meldpuntvreemdelingendetentie.nl/	Migrants	Detention
Meldpunt Dakloze asielzoekers <i>Report unit homeless asylum seekers</i> (initiative of INLIA) http://www.inlia.nl/meldpuntdaklozeasielzoekers.html	Church	Shelter
Mauro moet blijven! (petition: 68.900 signatures on 16th May 2012) <i>Mauro must stay!</i> http://petities.nl/petitie/mauro-moet-blijven--2	Citizen's initiative	Individual Case (Mauro)

Name/ website	Type	Issue
Nacht van de Vervanging 17th March 2011 <i>Night of Replacement</i> http://www.sndvu.nl/acties.html http://www.opzij.nl/Werk-Maatschappij/Werk-Maatschappij-Artikel/Donderdag-17-maart-Nacht-van-de-vervanging.htm http://www.kerkinactie.nl/Kerk-en-gemeenten/Actueel/Agenda/Nacht-van-de-Vervanging--ag5546 http://amsterdam.groenlinks.nl/taxonomy/term/89	Coalition	Shelter
Nederlands Juristen Comité Mensenrechten <i>Dutch Legal Professionals Committee For Human Rights</i> http://www.njcm.nl/site/	Human Rights	Shelter Detention
Nationale Ombudsman http://www.nationaleombudsman.nl/	Human Rights	Detention
Onbegrensd Arnhem ⁴ <i>Unlimited</i> http://onbegrensd.squat.net/	Moral	Asylum procedure Expulsion
Pardon.Nu (Information about General Pardon) http://cmr.jur.ru.nl/cmr/pardon/	Coalition	Asylum procedure
Pharos (Health care for migrants and refugees) http://www.pharos.nl/programma/gezondheid_asielzoekers	Migrants	Asylum procedure
PRIME Participating Refugees in Multicultural Europe http://prime95.nl/index2.htm	Migrants (self- organization)	Asylum procedure Shelter Detention
(Geen) Strafbaarstelling (petition, 3,000 signatures) <i>No criminalization</i> http://www.geenstrafbaarstelling.nl/	Coalition	Detention Criminalization
Red Sahar! (petition, 12,425 signatures) <i>Save Sahar !</i> http://petities.nl/petitie/red-sahar	Citizen initiative	Individual Case (Sahar)
Stop DC16 ⁵ <i>Stop Detention Centre Zestienhoven</i> http://www.dc-16.nl/	Moral	Detention
STIL Utrecht Solidariteitsorganisatie Voor vluchtelingen en Migranten zonder verblijfsvergunning <i>Solidarity organisation for refugees and migrants without residential permit</i> http://www.stil-utrecht.nl/	Migrants	Shelter
SNDVU Stichting Noodopvang Dakloze Vreemdelingen Utrecht <i>Foundation for Emergency Shelter of Homeless Aliens</i> http://www.sndvu.nl/	Migrants	Shelter
Vluchteling in de knel, Eindhoven <i>Refugees in trouble</i> http://www.vluchtelingenindeknel.nl/	Migrants	Asylum procedure Shelter
VluchtelingenWerk Nederland <i>Refugee Council Netherlands</i> http://www.vluchtelingenwerk.nl/	Migrants	Asylum procedure Shelter Detention

Name/ website	Type	Issue
Vrouwen Tegen Uitzetting <i>Women against expulsion</i> http://www.vrouwentegenuitzetting.nl/	Migrants (partially self- organisation)	Asylum procedure Shelter Detention
VON Vluchtelingen Organisaties Nederland <i>Refugees Organisations Netherlands</i> http://www.vluchtelingenorganisaties.nl/	Migrants (self- organisations)	Shelter Criminalization Detention
Vrijheid van Beweging <i>Freedom of movement</i> http://www.vrijheidvanbeweging.nl/beattheborders/	Migrants	Asylum Procedure Detention Expulsion
Werkgroep Vluchteling Vrij <i>Workgroup Refugee Free</i> http://home.wanadoo.nl/werkvluchtvrij/	Moral	Asylum procedure Shelter Detention Expulsion
Zaanse Schande <i>Zaanstad Disgrace</i> http://www.dezaanseschande.nl/home.html	Moral	Detention
ZAPP Zorg voor Asielzoekers met Psychische Problemen <i>Care for asylum seekers with psychological problems</i> http://www.askv.nl/zapp/index.htm	Migrants	Asylum procedure Shelter

*** Table footnotes:**

- ¹ Activism includes actions bordering on illegality: occupation of Martinair headquartes for flights to Zaire, 1995 (AIVD)
- ² Activism includes actions bordering on illegality: unauthorized actions (paintbombs) directed at BAM, construction company of detention centres.
- ³ Activism includes actions bordering on illegality: "Dutch anarchist writer and activist, is being charged with incitement. This website was taken down by the public prosecution but has been put back online. Some articles on this website are considered inflammatory", statement on website.
- ⁴ Activism includes actions bordering on illegality: AMA-campus Deelen, removing fences, August 2003 (AIVD)
- ⁵ Activism bordering on illegality: unauthorized noise demonstrations at detention centres

IV Abbreviations and definitions

AC *Aanmeldcentrum* - Report (Arrival) Centre

ACVZ *Adviescommissie voor vreemdelingenzaken* - Advisory Committee for Alien Affairs

Ama *Alleenstaande minderjarige asielzoeker* - Unaccompanied Minor Asylum Seeker

A-status *Admittance as Refugee (under Alien Law 1965)*

COA *Centraal orgaan Opvang Asielzoekers* – Central Reception Organisation for Asylum Seekers

DT&V *Dienst Terugkeer en Vertrek*- Service for Return and Departure

IND *Immigratie- en Naturalisatiedienst* - Immigration and Naturalization Service

IOM *International Organisation for Migration*

KMAR *Koninklijke Marechaussee* - Royal Military Police

LOGO-Gemeenten. *Landelijk Overleg Gemeentelijke Opvang (en Terugkeer)*- National Organization of Municipalities for Shelter (and Return)

MOB *Met onbekende bestemming* - (departure) with unknown destination

MOA *Medische opvang asielzoekers* - Medical Relief for Refugees

NJCM *Nederlands Juristen Comité voor de Mensenrechten* - Dutch Juror's Committee for Human Rights

OC *Onderzoeks- en opvangcentrum* - Investigation and accommodation centre

Raad van State - Council of State, highest (policy) court to judge asylum cases

UNHCR *United Nations High Commissioner for Refugees*

VAJN *Vereniging Asieljuristen Nederland* - United Asylum Lawyers Netherlands

Vb 2000 *Vreemdelingenbesluit 2000*

Vc 2000 *Vreemdelingencirculaire 2000*

VD *Vreemdelingendienst*

VNG *Vereniging Nederlandse Gemeenten* Association of Netherlands Municipalities

VON *Stichting Vluchtelingen Organisaties Nederland* - Foundation for Refugee Organizations Netherlands

VWN *Vereniging Vluchtelingen Werk Nederland (Vluchtelingenwerk)* - United Refugee Work (NGO)

Definitions

Asylum seekers: people who are awaiting a decision on their asylum request (any time in the procedure). They may have entered with or without a passport, through human trafficking or through other means. Until their decision, reside in an asylum centre and are not allowed to work. The procedure may take years (including appeals), although in recent years procedures have been shortened to a minimum of five days.

Refugees: people whose asylum request has been granted and who have been recognised officially as refugee under the Geneva Convention. They are granted citizenship status and will receive assistance in housing, education and work.

Rejected asylum seeker: people whose asylum request has been rejected (either correctly or incorrectly). They may appeal and could be granted a refugee status later. Until then, it may be allowed to await the results of an appeal. After the appeal is rejected, or if they do not appeal, they are regarded as ‘illegal migrant’ and are thus required to leave the Netherlands on their own accord. All support from the Netherlands officially ends.

Undocumented migrants/ illegals: migrants who reside in the Netherlands and do not have residential rights. In the group of illegals, there may be rejected asylum seekers as well as other irregular migrants, such as illegal workers who entered on tourist visa and overstayed, or who arrived through human trafficking. While illegally residing, they risk detention, fines, and will be officially excluded from housing facilities as well as work. Only illegal housing facilities and illegal work is then optional. Officially, municipalities may not open their homeless facilities for illegal residents (including rejected asylum seekers). All illegal migrants are subject to Dutch return policies and other regulations intended to make them leave. They cannot pay taxes or build up social benefits.

Pardonners: undocumented migrants and rejected asylum seekers who became legitimized due to a national pardon in 2007. The regulation applied to those who had arrived under the old (pre-2000) asylum law.

“Humanitarian” or “lamentable cases” (*schrijnende gevallen*): undocumented migrants and rejected asylum seekers whose case is introduced individually to the Minister. Because of personal, dramatic circumstances (mostly medical or family-related, sometimes related to the situation in their country of origin) the Minister may grant citizenship through his or her discretionary abilities. The question whether someone’s case is lamentable or not can become subject of political or media debate (see paragraph 3).

AMAs. Under-age asylum seekers who arrived without accompanying adult. These children receive special protection under the Children’s Rights act and Human Rights acts. As a result, they cannot be repatriated and, if their asylum request is denied, they will be able to wait expulsion until they are adult under Dutch law (18 years).

V Ministers and Secretaries of State responsible for asylum 2000-2011

Year	Cabinet	Minister	Secr. of State	Policies /issues
2000	Kok -III PvdA VVD D66	Cohen - PvdA		New Alien Law
2001				
2002	Balkenende I CDA VVD LPF	Nawijn -LPF		
2003	Balkenende II Minority Cabinet CDA VVD D66	Rita Verdonk- VVD		(Nawijn) 14/1 letters (Verdonk)Return Policy
2004				Opening of Removal Centre Ter Apel (2008: Freedom Limiting Location)
2005				Congo affair (Verdonk)
2006	Balkenende III Minority Cabinet CDA VVD	Ernst Hirsch Ballin - CDA	Nebahat Albayrak PvdA	
2007	Balkenende IV CDA PvdA CU			General Pardon
2008				Improved asylum procedure (abolishment of 48-hour procedure)
2009				Spekman Ex Ante Execution Test (medical situation & accommodation)
2010	Rutte VVD CDA condoned by PVV	Leers - CDA		Rootedness motion Spekman-Anker (failed to execute) / Sahar
2011				Sahar/ Mauro debates Council of State: no more children on the street/ Start Family Locations

Balkenende-I: 22 July- 6th October 2002

Balkenende-II: 27 May 2003 - 30 June 2006

Balkenende-III: 7 July 2006- 22 November 2006

Balkenende-IV: 22 February 2007 - 20 February 2010

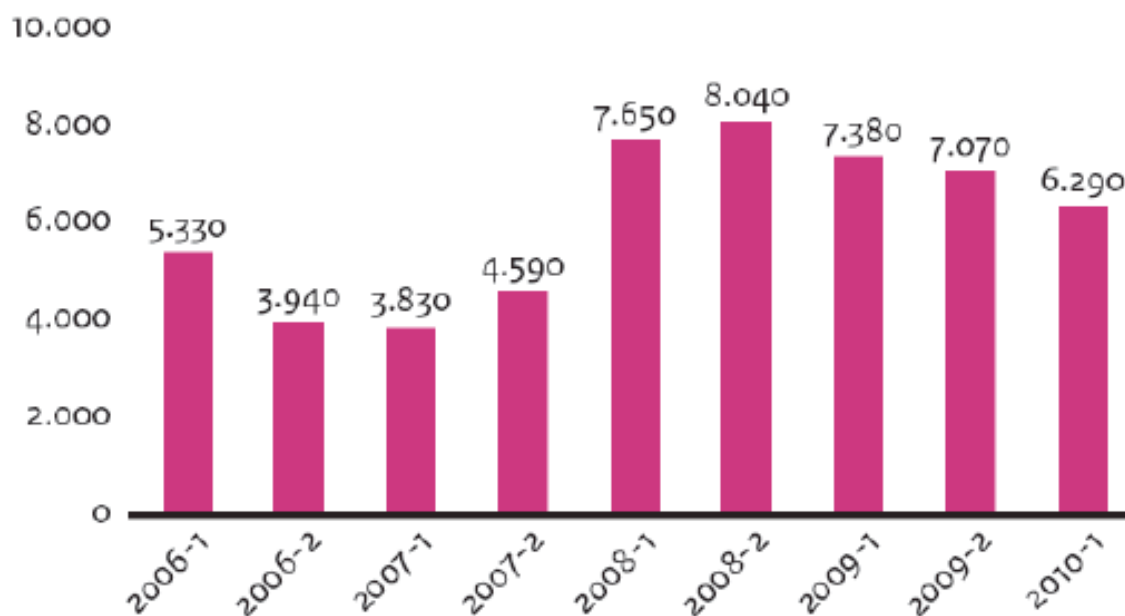
VI Tables and statistics

In the following tables, we provide the main statistics for the five issues which are central to the protest movement.

Issue 1: Asylum admission

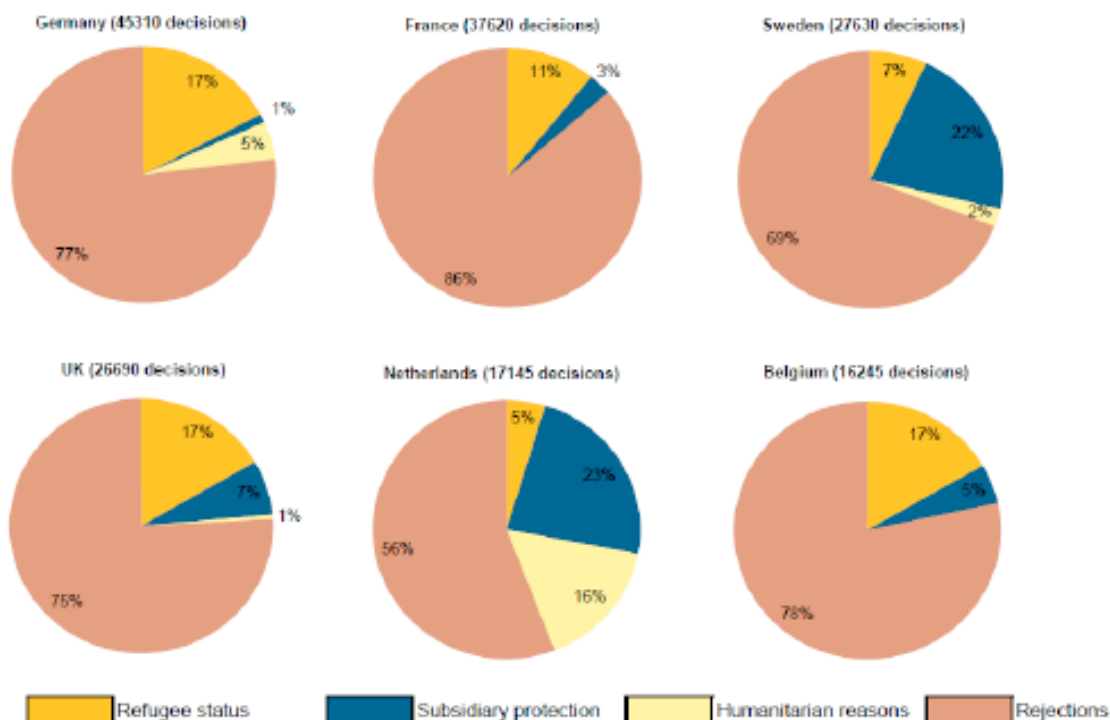
The first tables clarify the numbers of asylum applications (table 1) and the numbers of admissions and rejections for 2010 in European perspective (table 2 a,b and c).

Table 1. Numbers of asylum applications in the Netherlands 2006-2010.



Source: IND and Rapportage Vreemdelingenketen 2010.

Table 2a. Asylum decisions of Somali asylum seekers: comparison of The Netherlands with other European countries.



1) Member States selected here are those reporting the highest number of first instance decisions issued in 2010.
 Note: UK – the United Kingdom
 Source: Eurostat (online data code: [miqr_asydcfst](#))

Table 2b. Decisions on asylum applications in the Netherlands, in the 4th Quarter of 2010

NETHERLANDS							
Refugee status		Subsidiary protection		Humanitarian reasons		Rejections	
Iran	40	Somalia	450	Somalia	520	Afghanistan	280
Iraq	35	Afghanistan	130	Afghanistan	40	Iraq	260
Somalia	20	Iraq	125	Iraq	30	Somalia	190
Other	130	Other	320	Other	180	Other	1 430

(source: Eurostat 2010)

Table 2c. First instance asylum decisions in Europe (EU-27) in the 4th quarter of 2010.

BELGIUM						
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections		
Afghanistan	150	Iraq	105	Not applicable	XK	780
Guinea	130	Afghanistan	95		Armenia	770
Iraq	90	Somalia	10		Russia	265
Other	450	Other	15		Other	2 120

FRANCE						
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections		
Sri Lanka	130	Mali	80	Not applicable	XK	970
Russia	115	Guinea	35		Russia	760
Eritrea	90	Somalia	20		Bangladesh	730
Other	725	Other	70		Other	6 025

SWEDEN							
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections			
Iraq	140	Somalia	750	Afghanistan	40	Serbia	2 700
Somalia	110	Eritrea	260	Stateless	25	Somalia	450
Iran	50	Afghanistan	205	Somalia	20	MK	440
Other	220	Other	145	Other	95	Other	3 535

OTHER							
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections			
Russia	240	Afghanistan	465	Afghanistan	60	Russia	1 130
Iran	195	Iraq	175	Turkey	40	Nigeria	690
Afghanistan	150	Somalia	170	Nigeria	30	Afghanistan	555
Other	625	Other	575	Other	380	Other	6 505

GERMANY							
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections			
Iraq	685	Somalia	35	Afghanistan	230	Serbia	3 065
Iran	300	Eritrea	20	Russia	35	MK	1 965
Afghanistan	155	Afghanistan	20	Nigeria	15	Afghanistan	705
Other	520	Other	30	Other	120	Other	5 645

NETHERLANDS							
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections			
Iran	40	Somalia	450	Somalia	520	Afghanistan	280
Iraq	35	Afghanistan	130	Afghanistan	40	Iraq	260
Somalia	20	Iraq	125	Iraq	30	Somalia	190
Other	130	Other	320	Other	180	Other	1 430

UNITED KINGDOM							
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections			
Iran	240	Afghanistan	85	Somalia	20	Iran	495
Eritrea	160	Zimbabwe	45	Iran	10	Pakistan	485
Sudan	140	Iran	40	Iraq	5	Sri Lanka	450
Other	710	Other	205	Other	15	Other	3 165

EU-27							
Refugee status	Subsidiary protection		Humanitarian reasons	Rejections			
Iraq	1 095	Somalia	1 450	Somalia	570	Serbia	6 650
Iran	885	Afghanistan	1 000	Afghanistan	375	MK	2 910
Afghanistan	590	Iraq	485	Iraq	85	XK	2 825
Other	4 190	Other	1 755	Other	885	Other	34 170

I) Member States selected here are those with the highest number of first instance decisions issued during Q4 2010.

Notes: XK – Kosovo / UNSCR 1244; MK – the former Yugoslav Republic of Macedonia

Source: Eurostat (online data code: [migr_asydcfstg](#))

Eurostat definitions (Eurostat (2011) Data in Focus: Population and Social Conditions. Author: Antony Albertinelli):

‘Person granted refugee status at first instance’ means a person covered by a first instance decision granting refugee status, taken by administrative or judicial bodies during the reference period. Refugee status means status as defined in Art.2(d) of Directive 2004/83/EC within the meaning of Art.1 of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967. According to the Art.2(c) of that Directive refugee means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it.

‘Person granted subsidiary protection status at first instance’ means a person covered by a first instance decision granting subsidiary protection status, taken by administrative or judicial bodies during the reference period. Subsidiary protection status means status as defined in Art.2(f) of Directive 2004/83/EC. According to the Art.2(e) of that Directive a person eligible for subsidiary protection means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

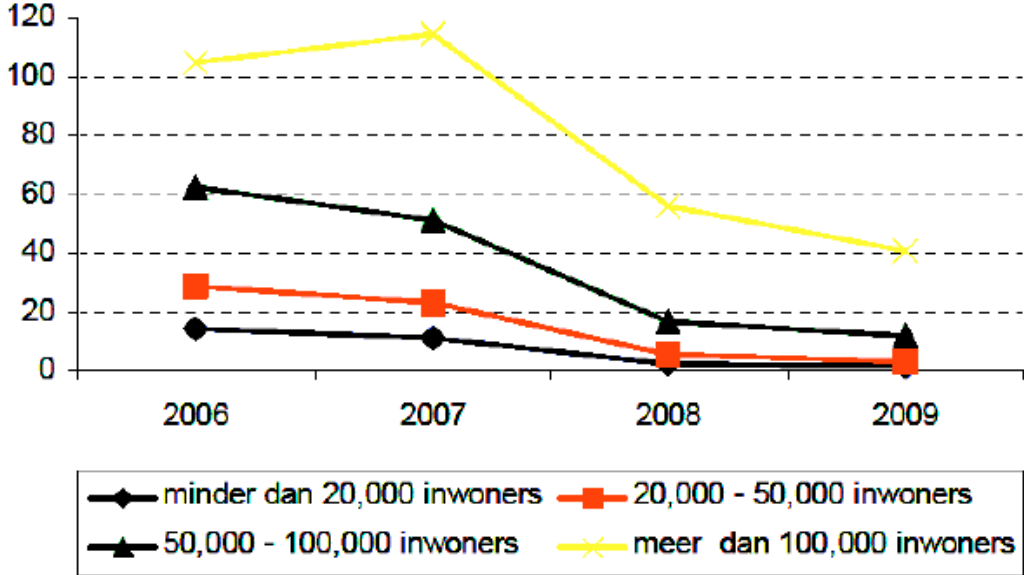
‘Person granted authorisation to stay for humanitarian reasons at first instance’ means a person covered by another first instance decision granting authorisation to stay for humanitarian reasons under national

law concerning international protection, taken by administrative or judicial bodies during the reference period. It includes persons who are not eligible for international protection as currently defined law but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments. Examples of such categories include persons who are not removable on ill health grounds and unaccompanied minors.

Issue 2. Homelessness and refusal of housing/ social security

Decline of emergency shelter for rejected asylum seekers (removed from COA centers) and undocumented migrants.

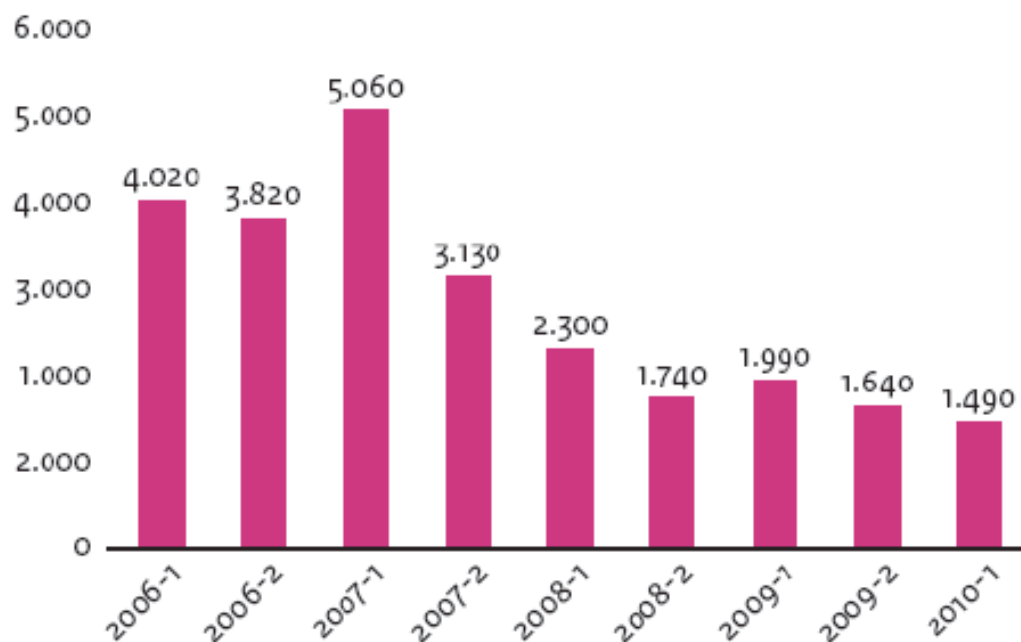
Table 3. Average number of persons that resided in municipality’s emergency shelters Absolute numbers per municipality size (2006-2009).



Note: "Minder dan/ meer dan...inwoners" means "Less than/ more than...inhabitants".
 Source: Regioplan, Omvang gemeentelijke noodopvang aan uitgeprocedeerde asielzoekers (2009)

Table 4. Illegal residence 2006-2010

Illegals found by the KMar (Royal Military Police) during regular internal checks on identity.

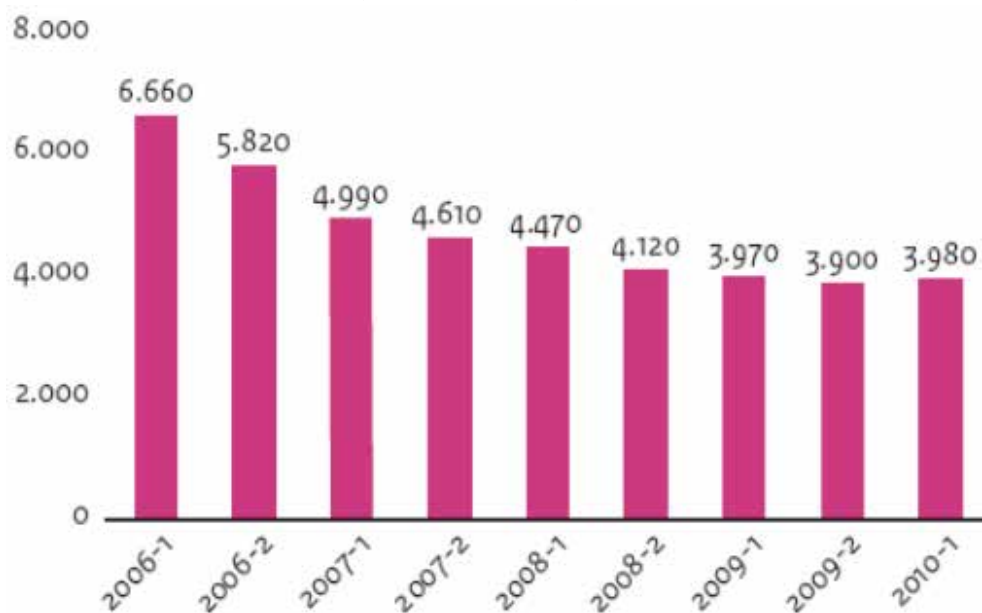


Source: KMar and Rapportage Vreemdelingenketen 2010 (Ministry of Justice, 2010)

Issue 3. Detention

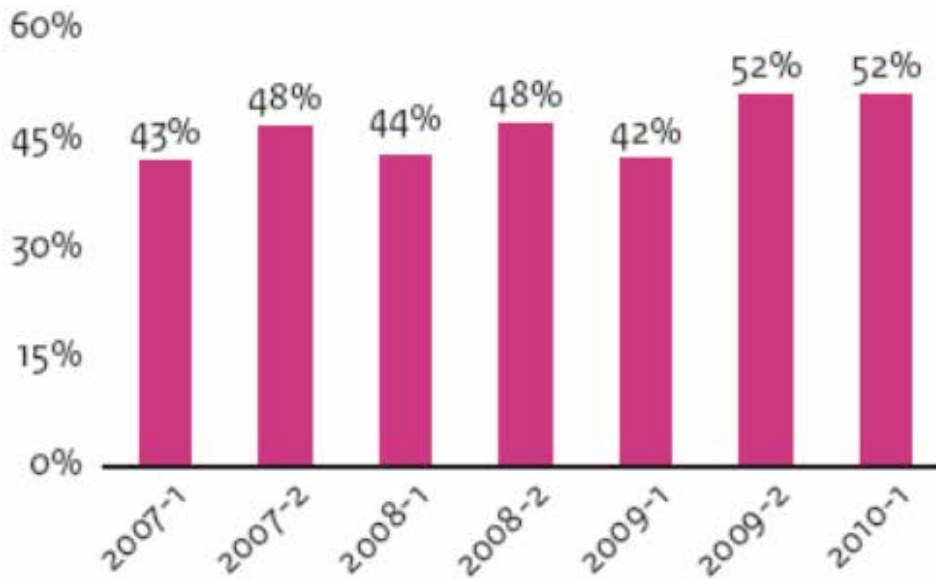
Table 5. Alien detention: numbers of detained irregular aliens 2006-2010.

Source: Dienst Justitiële Inrichtingen and Vreemdelingencirculaire 2010



Issue 4. Expulsion

Table 6. Percentages of affirmed departure of total departure from expulsion centres 2007-2010

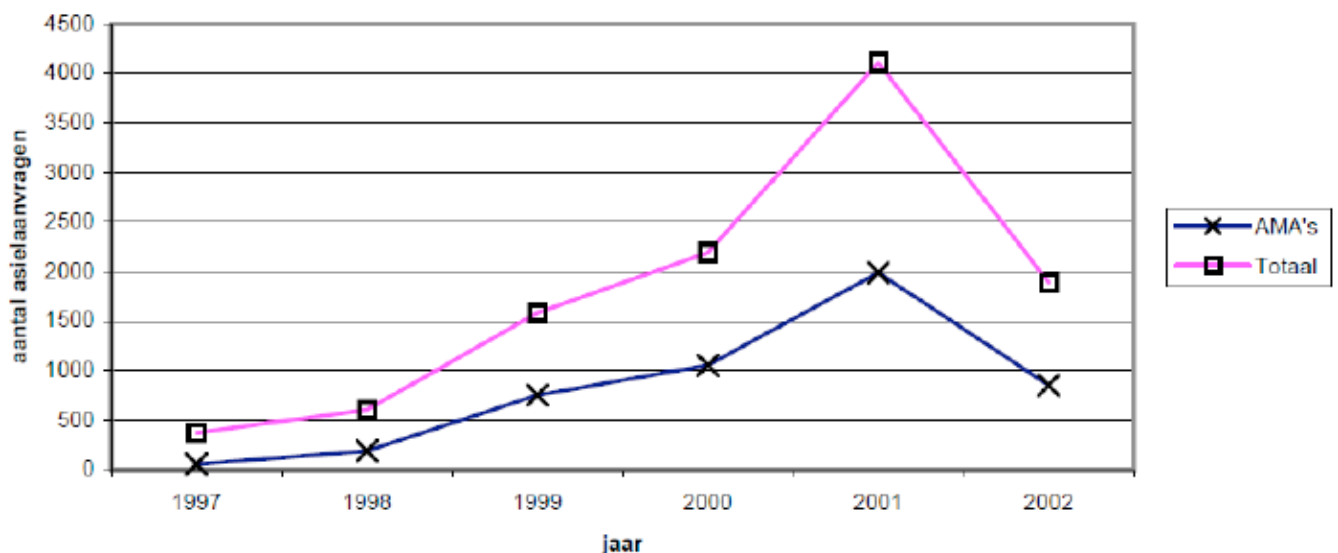


Source: Dienst Terugkeer en Vertrek (DT&V) and Vreemdelingencirculaire 2010

Issue 5. Individual lamentable cases

The Mauro case: Angolan AMA- asylum seekers 1997-2002.

Table 7. Number of AMAs in total of Angolan asylum seekers



Source: IND, in: Wijk, Joris van (2007). Luanda-Holanda. Irreguliere (asiel)migratie van Angola naar Nederland (p. 306)

Table 8 and 9. Unaccompanied minors (AMAs) placed under foster care

Age	2004	%	2005	%	2006	%	2007	%	Total
<12	1,295	28	1,103	33	666	26	561	26	3,625
12-16	1,249	27	936	28	769	30	669	31	3,623
16-18	2,081	45	1,304	39	1,128	44	928	43	5,441
Total	4,625	100	3,343	100	2,563	100	2,158	100	12,689

	Total
2002	348
2003	249
2004	205
2005	163
2006	146
2007	105
2008	142
Total	1,358

Source: Nidos and INDIAC, NL EMN NCP: Unaccompanied Minors in the Netherlands. February 2010.

