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ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

**ACCEPT**  
PLURALISM

**Contested policies of exclusion in  
The Netherlands:  
The lamentable asylum cases of Sahar and Mauro**

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University of Amsterdam

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Final Country Reports**



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EUROPEAN UNIVERSITY INSTITUTE, FLORENCE  
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

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**Work Package 4 – National Case Studies of  
Challenges to Tolerance in Political Life**

**D4.1 Final Country Reports on Concepts and  
Practices of Tolerance Addressing Cultural Diversity  
in Political Life**

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## **Tolerance, Pluralism and Social Cohesion: Responding to the Challenges of the 21st Century in Europe (ACCEPT PLURALISM)**

**ACCEPT PLURALISM** is a Research Project, funded by the European Commission under the Seventh Framework Program. The project investigates whether European societies have become more or less tolerant during the past 20 years. In particular, the project aims to clarify: (a) how is tolerance defined conceptually, (b) how it is codified in norms, institutional arrangements, public policies and social practices, (c) how tolerance can be measured (whose tolerance, who is tolerated, and what if degrees of tolerance vary with reference to different minority groups). The ACCEPT PLURALISM consortium conducts original empirical research on key issues in school life and in politics that thematise different understandings and practices of tolerance. Bringing together empirical and theoretical findings, ACCEPT PLURALISM generates a **State of the Art Report on Tolerance and Cultural Diversity in Europe**, a **Handbook on Ideas of Tolerance and Cultural Diversity in Europe**, a **Tolerance Indicators' Toolkit** where qualitative and quantitative indicators may be used to score each country's performance on tolerating cultural diversity, and several academic publications (books, journal articles) on **Tolerance, Pluralism and Cultural Diversity in Europe**. The ACCEPT PLURALISM consortium is formed by 18 partner institutions covering 15 EU countries. The project is hosted by the Robert Schuman Centre for Advanced Studies and co-ordinated by Prof. Anna Triandafyllidou.

The EUI, the RSCAS and the European Commission are not responsible for the opinion expressed by the author(s).

**The Amsterdam Institute for Social Science Research (AISSR)** unites all social science research of the UvA. Its programme group Challenges to Democratic Representation (Political Sciences) investigates the consequences of these developments for democratic governance. The empirical research focuses particularly on political parties, civil society (most notably, social movements and pressure and interest groups), mass media, citizens and their interests, opinions, feelings and preferences and political ideas.

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## **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, what argumentations do they articulate in relation to concepts such as tolerance and respect?

## **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
<b>Victim</b>	ACCEPTANCE (e.g. residence status)	INDIFFERENCE (e.g. dealt with abroad)
<b>Intruder</b>	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 and 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.<sup>1</sup>

A large percentage of Dutch voters believe that immigration should be curbed to a minimum and that asylum policy should be very strict.<sup>2</sup> 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 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.<sup>3</sup> Secondly, ideas on tolerance and immigration and asylum policies are linked to the concept of “pragmatic toleration”. Pragmatic toleration or “condoning” (*gedogen*) refers to the declaration in advance that under specific

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

<sup>2</sup> See opinion polls in SCP 2009: 257-258.

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

circumstances offenders against a particular legal norm do not need to fear punishment.<sup>4</sup> 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).<sup>5</sup>

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.<sup>6</sup> 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<sup>7</sup>**

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 residence permits on humanitarian grounds. This may 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,

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<sup>4</sup> 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).

<sup>5</sup> 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.

<sup>6</sup> 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).

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

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.<sup>8</sup> 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.<sup>9</sup> 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. 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.

## 1.4. 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 is:

How do different actors resist (aspects of) the execution of asylum policy, what argumentations do they articulate in relation to concepts such as tolerance and respect?

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<sup>8</sup> 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.

<sup>9</sup> See Doornik 2008: 135.

## **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 into 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.<sup>10</sup>

##### *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, *Centrale 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<sup>11</sup>) could be detained for a maximum of four weeks.

In 2001, the Netherlands reached the lowest figure of all European states in acceptance of asylum seekers.<sup>12</sup> 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

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<sup>10</sup> 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.

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

<sup>12</sup> For tables, we refer to the annex.



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.<sup>13</sup>

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”.<sup>14</sup> 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 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”.<sup>15</sup> 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.

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<sup>13</sup> Regiostat on behalf of LOGO-Gemeenten (2005).

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

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

### ***2007-2010: General Pardon and Administrative Agreement***

The newly formed Centre-Left Government<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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<sup>19</sup>, 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).<sup>20</sup>

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.<sup>21</sup> Two astute family locations were opened<sup>22</sup>, but the Minister appealed the court’s decision. In 2011 the Dutch Central Council of Appeal<sup>23</sup> 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.<sup>24</sup>

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

<sup>17</sup> Represented by the Association of Netherlands Municipalities, VNG.

<sup>18</sup> Spekman Initiative Law “Always Shelter for Children” 32566.

<sup>19</sup> Human Rights Watch (2003) Vluchtelingen Werk Nederland (2010). Letter to members of sedentary chamber commission of Justice of the Senate about change of Alien 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.

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

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

<sup>22</sup> In Katwijk and Gilze-Rijen

<sup>23</sup> Centrale Raad van Beroep, May 30 2011

<sup>24</sup> European Return Notice, 2008: 115 EG

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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

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

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<sup>25</sup> Letter by Hirsch Ballin, Minister of Justice, June 1 2010.

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

<sup>27</sup> 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.*

achieve their aims. They are beyond the scope of what we consider legitimate “protest” in a democratic context.<sup>28</sup>

### 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 GroenLinks (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)<sup>29</sup>. 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.
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

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<sup>28</sup> 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/>

<sup>29</sup> 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*.

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"> <li>• Offer (modest) accommodation</li> <li>• Grant residence status through asylum procedures, humanitarian or discretionary individual measure</li> <li>• Legalize status through regularization</li> <li>• Other forms of help (medical, psychological, housing, integration)</li> </ul> <p style="text-align: center;"><b>ACCEPTANCE</b></p>	What should be done? <ul style="list-style-type: none"> <li>• Allow NGOs to help</li> <li>• Leave person to own devices</li> <li>• Leave person to other country's responsibility (Dublin claimants)</li> </ul> <p style="text-align: center;"><b>INDIFFERENCE</b></p>
	No, he/she is not a victim. (He/she is an intruder)	What should be done? <ul style="list-style-type: none"> <li>• Help person leave through assistance</li> <li>• Provide help in country of origin</li> <li>• Provide with emergency shelter until expulsion</li> <li>• Offer aid to country of origin</li> </ul> <p style="text-align: center;"><b>TOLERANCE</b></p>	What should be done? <ul style="list-style-type: none"> <li>• Make person leave through pressure and penalization:                             <ol style="list-style-type: none"> <li>a) Reduction of facilities and no aid</li> <li>b) Retention</li> <li>c) Criminalization of illegality</li> <li>d) Isolation from local communities</li> <li>e) Forced expulsion</li> </ol> </li> </ul> <p style="text-align: center;"><b>INTOLERANCE</b></p>

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?" as a guiding tool for labelling. We then searched our data (media, policy documents, political debate, interviews, reports and websites) for reasoning towards a categorization as victim or intruder, and the different arguments that were used to establish such categorization. In our analysis of various sources, we found four different discourses through which the distinction between victims and intruders is being constructed. These four discourses are:

1. *Asylum authenticity discourse*. In this discourse the leading question is how to know whether or not the asylum demand has been genuine or authentic. Contestation concentrates on cases in which protesters argue that an asylum seeker has been wrongfully rejected because the procedure is flawed ("false rejections") or because the boundaries for granting asylum are drawn too narrowly. Authentic asylum applicants are "victims", fake ones are "intruders".
2. *Global injustice discourse*. In this discourse decisions on whether or not people legitimately seek to enter the Netherlands through the gates of the "asylum procedure" are framed in a wider perspective, namely whether they are genuinely economic refugees and should be recognized as victims of poverty. Those who make use of this discourse challenge the notion that those who are no "real refugees" are *ipse facto* "intruders". They represent them as "victims" as well and demand more solidarity and more open borders. In this discourse "intruders" are those who have good opportunities and life prospects in their country of origin.
3. *The duty of care discourse*. In this discourse the leading question is whether or not an undocumented migrant (which many rejected asylum seekers become after being expelled from accommodation) is suffering, i.e. is a "victim". The (local) government is said to have a duty to prevent homelessness and destitution, especially for vulnerable groups like children, ill people and the elderly. "Intruders" would be those who are not in need of assistance and who take advantage of the available facilities.
4. *Accomplished cultural inclusion discourse*. In this discourse the terms of the asylum debate are shifted towards a debate on whether or not rejected asylum seekers who are well integrated and have lived in the Netherlands for a long period of time, have obtained a right to stay. Expelling them to a country they hardly know (e.g. in the case of children) would make them "uprooted". This discourse draws on ideas about "cultural citizenship" to present the asylum seeker who has become connected to the (people in the) Netherlands as a victim of the length of Dutch procedures. "Intruders" are those who are insufficiently assimilated or who have connections to their country of origin.

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**

	1. Asylum authenticity discourse	2. Global injustice discourse	3. Duty of care discourse	4. Accomplished cultural inclusion discourse
<b>Victim</b>	Real refugee	Economic refugee	Vulnerable person, sufferer/ homeless	Integrated, rooted, connected
<b>Intruder</b>	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 excluded from legal work and because, officially, municipalities may not offer them accommodation as they do to the homeless who do have residence permits. 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 this report, we focus on the last issue. In a more extended version of this report, all five issues are elaborated.<sup>30</sup> Here we limit ourselves to the mediatisation of individual rejected asylum seekers, exemplified by an argumentation analysis of the cases of Sahar and Mauro.

### 3.3. The lamentable cases of Mauro and Sahar

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.<sup>31</sup> 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.

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<sup>30</sup> Versteegt and Maussen (2012). Contested policies of expulsion: Resistance and protest against asylum policy in the Netherlands.

<sup>31</sup> “Dieren voert actie voor asielzoekster” [Dieren in action for asylum seeker] in *Reformatie 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

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.

### **Box: Discretionary abilities**

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 to use his or her discretionary abilities, 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.

However, 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 (Wallage 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 five years of residence were considered long enough for integration (Alink 2006), but the Mauro and Sahar cases put the contested boundary for cultural and social inclusion at eight to ten years.

There is, additionally, a general agreement in coalitions 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 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.<sup>1</sup> 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.

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.

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

### **The Sahar case (2000-2010)**



*Sahar Hbrahim Gel/ picture: ANP*

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](http://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.<sup>32</sup> PVV-leader Wilders said it would be unwise to give mayors with “weak guts” such power.<sup>33</sup>

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 might be 400 more girls like Sahar in the Netherlands who would also qualify to get residence status.

In the following reader’s quotes, taken from the website of *De Spits* newspaper, the different argumentations in favour of and against Sahar’s residence status are presented. *De Spits* is a free newspaper, published by de Telegraaf. It is spread in train stations and is read both in print and online by a variety of readers, unlike *de Volkskrant* and *Trouw* which mainly have left-wing readers. As the Sahar case develops, all four discourses become engaged by readers, to frame Sahar as a victim or an intruder. The first *Spits* article of which the comments were analyzed, mentions a comment about Sahar by Socialist Party leader Roemer. Roemer criticizes PVV leader Geert Wilders for wanting to send Sahar, “a fully integrated girl, straight into the Afghan burqa”, simply because he “dislikes foreigners”. Roemer touches upon a sensitive nerve because Wilders is known for his criticism of Islam, headscarves and burqas.

A first reader’s comment to this article argues that the initial rejection of Sahar and her family should have resulted in them leaving, thereby referring to arguments of asylum authenticity. The family’s asylum appeal was rejected, and thus they should leave. The media uproar around Sahar is considered to be strategic by this reader:

“I don’t think it is about this child. She has been put into the spotlight by the Left, for political reasons. It’s her parents who stacked appeal upon appeal, and have continued to live here, instead of the poor individuals, with and without children, who have simply packed their stuff after the first negative court decision”.

Another comment refers to asylum authenticity, but argues in favour of Sahar. Also global inequality is presented by this reader as a reason to accept more refugees, mainly because the Dutch are wealthy:

“I am not an SP-voter, but Roemer is right. Every right-minded person would grant Sahar and other refugees a good future. And all those calculators should be ashamed. Going on a holiday twice a year, getting a bigger car than the neighbours. Buying cheap stuff from poor countries, so they can eat their fat belly even fatter, but no mercy for a refugee that calls for help. I am disgusted with these fat losers”.

A comment using the accomplished cultural inclusion discourse, ends up expressing intolerance for any migrant who is different from the average Dutch:

“I suggest an exchange: all well-adapted, Dutch speaking, well-educated, having a job and good future perspectives, non -criminal allochtones may stay, and all un-adapted, burqa-wearing, unworldly, criminal, lacking in prospect brothers and sisters pack their belongings and go back to their countries of origin. That seems a good deal to me. Besides: remarkable that Roemer finds a burqa a problem in Afghanistan, but not in the Netherlands”.

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<sup>32</sup> *Fries Dagblad*, "Sahar mag blijven als het aan de burgemeester is", February 24 2011.

<sup>33</sup> idem.

As Sahar's case was finally resolved and she was awarded a status, reader's comments in Spits continued to be mixed (Spits, April 8 2011) .

“Wonderful! What a retard by the way, everyone knew women in Afghanistan risk being killed, but Leers only found out now”.

“In the first place, she has been living here for 10 years, that means from the age of four. Besides that, what do you think a 14-year old Afghan girl will experience due to Islam, she will get killed or made a slave, or get raped. It was a scandal that the Minister appealed the court decision. You should look per case and have a heart, you don't want to get people killed”.

“This right wing cabinet does send a Kunduz mission that costs millions, but a highly intelligent Afghan refugee who wishes to be a doctor should get out???”

“Sure why not, does Leers also pay all the expenses that she and her damn family have cost the Dutch state? Geert it's enough with this cabinet, pull the plug out please. Fortune seekers still get everything for nothing and honest hard working people are being scrambled”.

“I am in favour. This is not about asylum seekers, who have spent their entire life in another country, but about children who were born here and have known nothing else besides our country”.

The accomplished cultural inclusion discourse was used in the last quote, as well as asylum authenticity discourse in the first. There are also references to Sahar's economic potential for Dutch society, but other people, as the quotes showed, still found her an intruder.

### **The Mauro case (2002- 2011)**



*Mauro Manuel/ picture: ANP*

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 is 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 refuses. 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 Mauro's stay. Also the majority of Parliament is in favour. Especially the CDA voters (74%) deviate from the CDA-Minister Leers and the members of Parliament. Two "deviant" CDA- MPs announced they would support Mauro, but later withdraw their support. A national congress of CDA-members accepts a resolution that it is undesirable to expel young asylum seekers without a diploma.

On November 1st, Mauro was finally not granted with a 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."<sup>34</sup>

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,

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<sup>34</sup> *De Volkskrant*, "De lijdende Leers": October 29 2011.

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.”<sup>35</sup>

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.”<sup>36</sup>

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 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.”<sup>37</sup>

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

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<sup>35</sup> “Completely integrated, Mauro must return to Angola” in *NRC-Handelsblad*, October 26 2011.

<sup>36</sup> “Mauro lied for asylum: the Angolan did have passport” in *De Telegraaf* December 3 2011.

<sup>37</sup> Interview 5: NGO representative (human rights).

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<sup>38</sup> 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).

**Table: Sahar and Mauro cases defended and contested in the four discourses (HP= Honeypot effect)**

SAHAR CASE				
	Asylum admission ( <i>danger</i> )	Global injustice ( <i>poverty</i> )	Duty of care ( <i>suffering</i> )	Inevitable inclusion ( <i>belonging</i> )
<b>Victim</b>	The country has changed. Afghanistan in 2004 is not Afghanistan in 2010 <sup>39</sup> . Should be recognized as refugee (letter UNHCR) <sup>40</sup> Family fears torture: liberal muslims <sup>41</sup> The law does not work well <sup>42</sup>	She is the personification of a world-wide problem: that of refugees <sup>43</sup>	Has lived on 13 asylum locations throughout the Netherlands <sup>44</sup> Children should not be expelled <sup>45</sup>	Does not speak the Afghan language <sup>46</sup> Has lived here too long. She will be seen as foreigner in her country of origin <sup>47</sup>
<b>Intruder</b>	Has been rejected many times. We have said “no” five times. They must accept no for an answer. <sup>48</sup> Giving in sends off a wrong signal <sup>49</sup> (HP)	NOT FOUND	Has lived illegally and does not apply to criteria of Pardon due to stay in foreign country. Such are the rules <sup>50</sup> .	(Refuted by court:) She can adapt to the Afghan customs <sup>51</sup>

<sup>38</sup> Member of Parliament Fritsma (PVV), in *De Telegraaf* January 21 2011.

<sup>39</sup> Sahar lawyer Paul Stieger, in “Sahar moet terug, zo zijn de regels. Afgewezen Afgaanse Friezin is doodsbang” [Sahar must go back, such are the rules. Rejected Afghan Friesian girl terrified] in *De Pers* December 2 2010.

<sup>40</sup> High Commissioner UNHCR: letter to Minister Leers. January 18 2011.

<sup>41</sup> “Sahar and family can stay for the time being” in *De Pers* January 20 2011.

<sup>42</sup> “Netherlands still struggling with failure of asylum policy” *Dagelijkse standaard.nl* December 16 2010.

<sup>43</sup> (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.

<sup>44</sup> “Netherlands still struggling with failure of asylum policy” in *Dagelijkse standaard.nl* December 16 2010.

<sup>45</sup> Letter by Mennonite Church, in: “Doopsgezinden komen op voor minderjarige asielzoekers” [Mennonites protect minor asylum seekers], source: *www.kerknieuws.nl* 14 January 2011.

<sup>46</sup> “Sahar St Annaparochie: landelijke media duiken op zaak Afgaans meisje” [Sahar St Annaparochie: national media dive into case Afghan girl, in *Franeker Dagblad* December 8 2010.

<sup>47</sup> Frisian CDA-members, in: *Omrop Fryslan*, “Oprop CDA-Fryslan oan Leers”, January 7 2011.

<sup>48</sup> Minister Leers, in: *Leeuwarder Courant*, December 8 2010.

<sup>49</sup> Member of Parliament Fritsma (PVV), in *De Telegraaf*, January 21 2011.

<sup>50</sup> IND representative in “Sahar moet terug, zo zijn de regels. Afgewezen Afgaanse Friezin is doodsbang” [Sahar must go back, such are the rules. Rejected Afghan Friesian girl terrified]. In *De Pers* December 2 2010.

<sup>51</sup> Minister Leers, quoted in courtcase Den Bosch, won by Sahar and family, January 20 2011, source: *DePers*.

MAURO CASE				
	Asylum admission ( <i>danger</i> )	Global injustice ( <i>poverty</i> )	Duty of care ( <i>suffering</i> )	Inevitable inclusion ( <i>belonging</i> )
Victim	Was only a child, cannot be held accountable for lies <sup>52</sup>	Will probably end up living on the street in Angola <sup>53</sup>	Mother in Angola rejected him <sup>54</sup> Traumatized relationship with his mother <sup>55</sup> Right to a family life <sup>56</sup> , Defence for Children, ECHR	Belongs here <sup>57</sup> Speaks no Portuguese
Intruder	Not a refugee <sup>58</sup> Fake identity <sup>59</sup> Told lies <sup>60</sup> Rules are rules <sup>61</sup> (refuted: Minister himself appealed positive court decision <sup>62</sup> No reward for “stalling”; we must prevent honeypot effects <sup>63</sup>	Angola is a booming economy, they need him there <sup>64</sup>	Mother is still involved <sup>65</sup> Foster parents knew he could not stay <sup>66</sup> He resided illegally when he could leave, doesn't need help	Passage of time: guilt lies with Mauro, his foster parents and his allies <sup>67</sup>

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

<sup>52</sup> “Fouten in dossier Mauro” [Mistakes in file Mauro]. *Brabants Nieuwsblad De Stem* (local newspaper) December 3 2011.

<sup>53</sup> “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.

<sup>54</sup> MP Spekman (PvdA) *Eindhovens Dagblad* (local newspaper). “Foute gegevens over Mauro zijn “irrelevant””. [False information about Mauro is “irrelevant”]. December 5 2011, Monday.

<sup>55</sup> MP Spekman (PvdA), in *Eindhovens Dagblad* December 5 2011.

<sup>56</sup> MP Dibi (GroenLinks) debate October 27 2011: “Can the Minister explain what is not lamentable about separating two brothers?” 16-15-80.

<sup>57</sup> Petition: Mauro must stay.

<sup>58</sup> Leers, in debate October 27 2011. He is not a refugee, he is not in danger, he is healthy. 16-15-74.

<sup>59</sup> De Telegraaf January 9 2012 “Doubts about Mauro” (Quotes Leers in news year lunch in Lanaken).

<sup>60</sup> MP Sietse Fritsma (PVV), in *Trouw*: “Mauro moet terug, geworteld of niet.” [Mauro must return, rooted or not] September 28 2011.

<sup>61</sup> Leers, in debate October 27 2011. The asylum request has been denied and then you must be fair and say: we have rules.

<sup>62</sup> MP Dibi, (GroenLinks) debate October 27 2011 “At one given moment, the judge said he could stay and what did the Minister do? He appealed because he disagreed with the decision.” 16-15-81.

<sup>63</sup> 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.”

<sup>64</sup> “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”

<sup>65</sup> MP Sietse Fritsma (PVV) [Mauro must return, rooted or not] in *Trouw* September 28 2011

<sup>66</sup> 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.

<sup>67</sup> MP Sietse Fritsma (PVV): “Mauro moet terug, geworteld of niet.” [Mauro must return, rooted or not] in *Trouw*. September 28 2011.



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 mediatization. The motion Spekman-Anker<sup>68</sup>, 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.<sup>69</sup> 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 Jossef, the MP Tofik Dibi of GroenLinks (Green Left) proposed a “Children’s Pardon”.<sup>70</sup> 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 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 mediatization 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

68 19 637 Vreemdelingenbeleid Nr. 1340 Motie van de leden Spekman en Anker, April 21 2010.

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

70 [www.kinderpardon.nu/](http://www.kinderpardon.nu/)



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 wants to wear 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 example resembling the German institution of a Härtefall-Kommission (Hard case commission), 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.

## 4. Discussion and conclusion

This final paragraph is dedicated to answering the main question: do different actors resist (aspects of) the execution of asylum policy, what argumentations do they articulate in relation to concepts such as tolerance and respect?

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 deducted 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
<b>Victim</b>	ACCEPTANCE (residence status)	INDIFFERENCE (dealt with abroad)
<b>Intruder</b>	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 various 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 correct, 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.

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.

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

*1+2: Admission to territory* *3+4: Illegal residence*

	<b>1. Asylum authenticity discourse</b>	<b>2. Global injustice discourse</b>	<b>3. Duty of care discourse</b>	<b>4. Accomplished cultural inclusion discourse</b>
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, expellable

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.

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*.

### **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 respondent argued that this illustrated how personal contact can change negative attitudes towards asylum seekers. Many voter 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 consequence 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.

### 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.<sup>71</sup>

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 protestors. 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 are 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

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<sup>71</sup> “Leers belooft streng maar rechtvaardig beleid”. [Leers promises strict yet just policy]. Nu.nl, June 20 2011.

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.

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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# **Annex**

## **I List of respondents<sup>72</sup>**

Interview 1: academic expert on migration politics

Interview 2: academic expert on asylum law

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 Groen Links 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: official of the IND (Immigration -and Naturalisation Service)

Interview 13: NGO representative (church)

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<sup>72</sup> 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 effect of applying for discretionary status/ lamentable case
- Effect of mediatisation versus silent route
- Effect of individual cases on policy

### III 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 Organ for the Accommodation of 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

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

VNG *Vereniging Nederlandse Gemeenten* Organization of Dutch Municipalities

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

VWN *Vereniging VluchtelingenWerk 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 residence 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”** (*schrijvende 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).

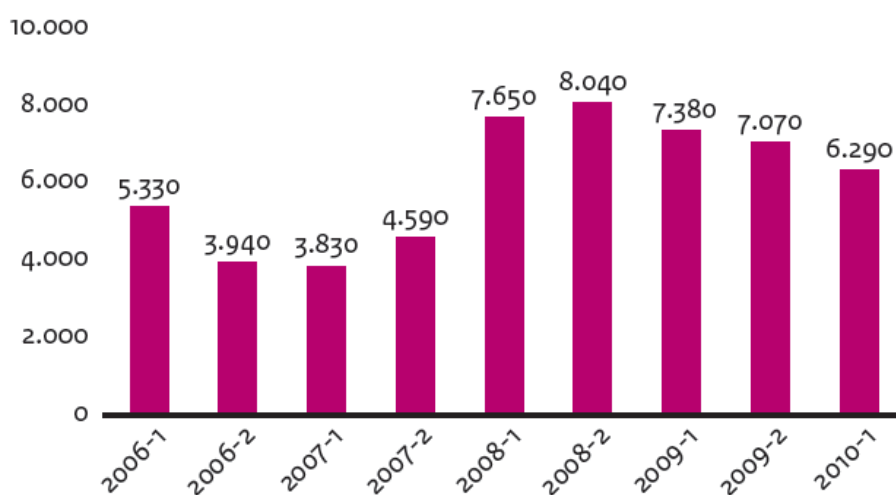
**AMAs.** Under-age asylum seekers who arrived without accompanying adult. These children receive special protection under the Children's Rights act and Human Rights acts. As a result, they cannot be repatriated and, if their asylum request is denied, they will be able to wait expulsion until they are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



## IV Tables and statistics

In the following tables, we provide the main statistics of Dutch asylum policy and for our two case studies. 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).

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



Source: IND and Rapportage Vreemdelingenketen 2010.

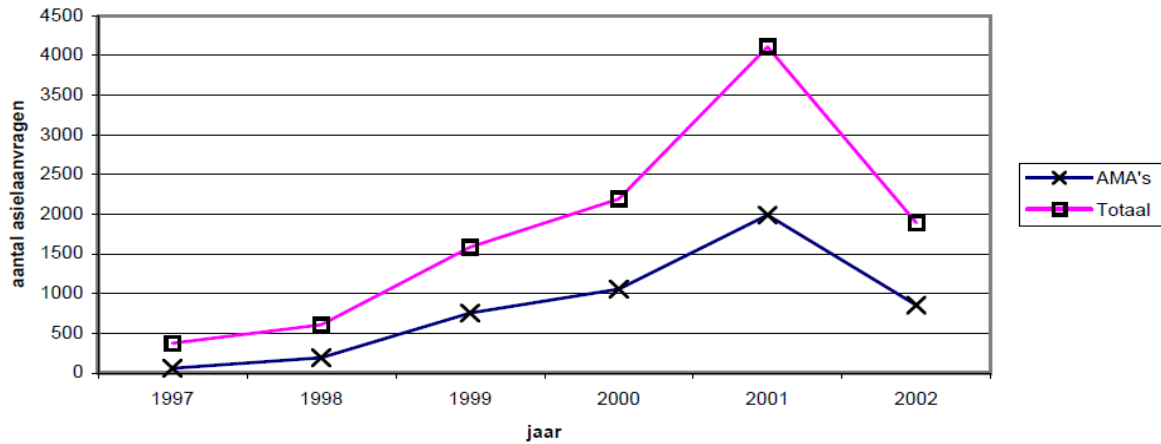
**Table 2. Decisions on asylum applications in the Netherlands, in the 4<sup>th</sup> Quarter of 2010**

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)

## Angolan AMA- asylum seekers 1997-2002.

Table 3. 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 4. Unaccompanied minors (AMAs) placed under foster care

### Representation

Table 8: Unaccompanied minors by age with representation from Nidos 2002 - 2008

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
<b>Total</b>	<b>4,625</b>	<b>100</b>	<b>3,343</b>	<b>100</b>	<b>2,563</b>	<b>100</b>	<b>2,158</b>	<b>100</b>	<b>12,689</b>

Source: Nidos (2009)

### Reception

Table 9: Unaccompanied minors <13 years of age placed in foster families 2002 - 2008

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

Source: Nidos (2009)

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



