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Policies of Exclusion and Practices of Inclusion: How Municipal Governments Negotiate Asylum Policies in the Netherlands

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Abstract There is a major gap in Dutch refugee and immigration control policies between its ambitions and outcomes. It results in considerable numbers of rejected asylum seekers who, while they cannot be expelled from the country, are excluded from government support and from opportunities to work in the belief this should encourage voluntary departure. Destitution and homelessness can often be the result, an outcome which poses problems in cities, creates a challenge for local government and triggers calls for political change from non-governmental actors. This article analyses the ways Dutch municipalities have developed practices to cushion and counteract aspects of such exclusionary national asylum policies, how these municipal actors justify these actions and how they thereby question the legitimacy of national policies and their execution. The analysis reveals the tensions that exist in the governance of migration through national policies and local practices. While not discounting the possibility that these actions and argumentations provide fuel to national political sentiments favouring the further exclusion of 'irregular' migrants, in this study we argue that at times they may also strengthen democratic policy-making and drive policy change.

Extracto Existe una laguna importante entre las ambiciones y los resultados de las políticas de control de refugiados y de inmigración en los Países Bajos. Esto lleva a que un gran número de solicitantes de asilo rechazados no pueden ser expulsados del país pero a la vez son excluidos del apoyo gubernamental y de las oportunidades de trabajo con la idea de que así se estimulará su salida voluntaria. Lo que muchas veces ocurre es que se quedan sin hogar y acaban viviendo en la indigencia, lo que plantea problemas en las ciudades, supone un reto para los Gobiernos locales y lleva a que organizaciones no gubernamentales demanden un cambio político. En este artículo se analiza cómo los municipios neerlandeses han desarrollado métodos para amortiguar y contrarrestar los aspectos de tales políticas de asilo nacionales de exclusión, el modo en que estos organismos municipales justifican estas medidas y cómo de esta manera cuestionan la legitimidad de las políticas nacionales y su ejecución. En este análisis se muestran las tensiones que existen en la regulación de la migración mediante políticas nacionales y prácticas locales. Si bien no se descarta la posibilidad de que estas acciones y argumentos alimenten sentimientos políticos nacionalistas a favor de excluir aún más a los emigrantes 'irregulares', en este estudio defendemos que a veces también podrían reforzar la elaboración de políticas democráticas e impulsar cambios políticos.

Resume De toute évidence, il y a une lacune majeure dans les politiques aux Pays-Bas concernant le contrôle des réfugiées et des immigrés quant aux ambitions et aux résultats. Il finit par un nombre non-négligeable de demandeurs d'asile refusés qui, alors que l'on ne peut pas les expulser d'un territoire, ils n'ont ni aucun droit à l'aide de l'État, ni aucun accès aux

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possibilités d'emploi, en croyant que cela devrait inciter à un départ volontaire. Souvent la misère et le sans-abrisme peuvent en résulter, ce qui pose une question dans les villes, constitue un défi pour l'administration locale, et suscite des appels au changement politique de la part des acteurs non gouvernementaux. Ce présent article analyse les façons dont les administrations municipales néerlandaises ont élaboré des procédés dans une tentative d'amortir et de contrecarrer certains aspects des politiques d'asile nationales qui alimentent l'exclusion, comment ces acteurs municipaux justifient de telles actions et, par conséquent, comment ils remettent en question la légitimité des politiques nationales et leur mise en oeuvre. L'analyse laisse voir les tensions qui existent dans la gouvernance de l'immigration par moyen des politiques nationales et des pratiques locales. Alors que la possibilité que ces actions et ces arguments puissent renforcer les sentiments politiques nationales en faveur d'une augmentation de l'exclusion des migrations 'clandestines' n'est pas à écarter, on affirme ici que, de temps en temps, ils peuvent aussi renforcer l'élaboration démocratique des politiques et piloter le changement de politique.

摘要　荷兰的难民及移民控制政策中，政策企图与结果之间，存在着显着的落差，并导致为数众多的寻求庇护受拒者，在无法被驱逐出境的同时，被排除于政府支持、以及相信可鼓励自愿离境的工作机会之外。贫困与无家可归，经常是上述问题的后果，此一后果在城市中造成问题，为地方政府带来挑战，并引发非政府组织呼吁进行政治变革。本文分析荷兰市政层级的政府，建立缓冲与抵抗此般排除性国家难民政策面向的实践方式、这些市政层级的行动者如何合理化上述行动，以及他们如何从而质问国家政策及政策执行的正当性。研究分析，揭露了透过国家政策与透过地方实践的移民管理之间存在的紧张关係。儘管我们并非漠视这些行动与主张将刺激拥护进一步排除'非正规'移民的国族政治情绪之可能性，但我们亦于本研究中主张，它们有时也可能会强化民主政策制定，并驱动政策变革。

Keywords asylum policy Netherlands municipal governments resistance policies of exclusion

INTRODUCTION

In early May 2012 around 60 'failed asylum seekers'[1] from Iraq pitched their tents in front of one of the national reception centres in the town of Ter Apel, in the north east of the Netherlands.[2] The makeshift campsite was populated by asylum seekers whose departure could not be effectuated and who had been expelled from the reception centre to fend for themselves. It was not long before the Iraqi asylum seekers were joined by people in a similar position, notably from Iran, Somalia and Azerbaijan. The precarious situation of the residents drew supporters from Dutch organizations and volunteering civilians and continued to attract substantial media attention. After a fortnight of occupation, on 23 May, the camp was dissolved by the police. Instead of subsequently going underground and 'disappearing' into illegality, the failed asylum seekers created new camps around the country. Most visible and commented upon in the media were camps in The Hague (created 19 September) and Amsterdam (25 September). With winter only weeks away and overcrowding a growing issue, the camp in Amsterdam gradually turned into a public order concern. In November 2012, the Mayor of Amsterdam, Eberhard van der Laan (Social Democrat Party, PvdA), announced he had found a solution for the group of about 60 failed asylum seekers: some municipalities had agreed to accommodate a number of them and provide them basic facilities, such as housing.

The State Secretary of Security and Justice and Minister of Migration, Fred Teeven (Liberal Party, VVD), publicly distanced himself from this action stating that it was against the law to provide assistance to people who were 'illegally' residing in the Netherlands. The Mayor was also accused of giving false hope: failed asylum seekers should be

returning to their home countries.[3] In so doing the Minister invoked a trope consistently employed by the Dutch government over the past decade, namely that the Netherlands is pursuing a 'restrictive, yet just' immigration and asylum policy, and that this approach inevitably entails an 'active and consistent return policy'.[4] Local authorities obstructing the departure of 'those who cannot stay' are therefore accused of undermining this policy.

Events such as those described above are illustrative of tensions in the execution of European asylum policies. Not only in Amsterdam but in other European cities as well failed asylum seekers have squatted buildings, set up camps and protested against expulsion.[5] In addition, there are fierce protests and sometimes dramatic outcries by civil society groups and local communities mobilizing against deportations and the detention of asylum seekers (Conlon and Gill, 2013; Rosenberger and Winkler, 2014). Municipal authorities, street-level bureaucrats and public professionals are known to be active in trying to counter and cushion national policies, by bending the rules, setting up facilities to support failed asylum seekers, and by being actively involved in networks with NGOs and citizens that strive for more humane and inclusive approaches towards migrants. However, in the Netherlands municipal actors also actively obstruct implementation strategies and policy guidelines coming from the national government. They often justify their actions by openly questioning the narratives about 'restrictive and just' immigration control policies, continuously recited by national politicians and their executive organizations such as the Service for Return and Departure (DT&V).

It is not known how many failed asylum seekers remain in the Netherlands in spite of the government's best attempts to enforce their departure. That the current system is not water-tight is illustrated by figures provided by the authorities. Table 1 shows outflow from the 'return process' for the six years between 2008 and 2013 (the most recent figures). These figures include failed asylum seekers, although they enumerate all known unauthorized migrants who are categorized as 'returned'.

With little variation, about half of all these 'returnees' are known to have actually left (either forcibly or by independent departure). Approximately 50% of 'returns' in the period 2008–13 (first half year, see Table 1) left the national reception and detention centres 'independently without supervision'. Although 'administratively removed' (the formal bureaucratic term), sometimes following a period in detention or having been denied housing and other facilities from the state, many failed asylum seekers did not actually leave the Netherlands.[6]

In this article, we analyse how Dutch municipalities have developed ways of cushioning, bypassing, resisting and counteracting various aspects of exclusionary asylum policies. We also analyse the ways municipal actors justify these actions. At times these

Table 1. Number of returns from first half year 2008 to first half year 2012.

	2008	2009	2010	2011	2012	2013
Known departures	7200	10,360	11,830	10,850	10,130	8510
Of which, forced	6870	7270	8040	6640	5970	4870
Independent	2330	3090	3790	4210	4130	3640
Independent without supervision	11,000	11,750	11,220	10,750	10,710	7210
Total	20,200	22,100	23,050	21,600	20,840	15,720

Sources: Ministerie van Veiligheid en Justitie (2012) and Ministerie van Veiligheid en Justitie (2014).

actions border on forms of administrative disobedience, for example when a Mayor refuses to give permission to the municipal police to assist in the eviction of an immigrant. At other times they can better be understood as complementing national policies or as softening its effects. Some municipalities are developing their own programmes and arrangements to care for failed asylum seekers, which is officially a policy domain that falls under the responsibility of the national government. At the municipal level this often results in a patchwork of ad hoc measures, but sometimes more sustained and coordinated action is taken with regard to the presence of failed asylum seekers. Political actors are involved (the mayor, municipal council members and other politicians), as well as officials, administrators, bureaucrats and professionals (e.g. migration policy advisors, school directors and teachers). In most cases, branches of the municipal administration operate in a network of organizations and civil society actors that has developed in relation to the presence of irregular migrants, homeless people and other people in need.

In the next section, we introduce a theoretical perspective to analyse interactions between national and municipal policy actors around restrictive immigration policies in terms of contestations about the legitimacy of specific courses of action. We then provide the necessary context to understand the Dutch case, before zooming into the practices of resistance and the corresponding justifications. The empirical part of the article is then followed by a conclusion.

LEGITIMACY OF IMMIGRATION CONTROL POLICIES: A FRAMEWORK FOR ANALYSIS

Since the 1980s European states have sought to develop more comprehensive strategies and enforcing institutions to *effectively* control immigration, both with regard to who enters the country and with regard to people who are staying legally or illegally (or somewhere in between). It is well known that these strategies of 'securitization' often result in human tragedy and pose challenges for liberal democratic values and human rights (Doomernik, 2012). In addition, the created policy frameworks cannot (fully) live up to the promise of organizing effective control. Push factors, such as poverty, ethnic violence and wars simply turn out to be more powerful than any attempt to halt immigration flows, structurally limiting the ability of states to enforce their authority over who enters and resides in the country. In this article, however, we are interested in the domestic factors that hinder 'successful' immigration control and that can account for the discrepancies between political declarations about 'tough and effective approaches' and the reality on the ground in European states. In the literature, three main types of explanations exist; the first is sociological, the second based in policy research and a third, political explanation, focuses on contestation and mobilization against the execution of these policies.

The sociological explanation first and foremost looks at interactions between undocumented migrants and host society actors (employers, ethnic and other social networks, as well as all types of institutional or public actors (teachers, street-level bureaucrats, officials and police officers)). Undocumented migrants develop strategies to survive and family members, ethnic communities and employers de facto create all kinds of opportunities for immigrants to be embedded in society (Engbersen *et al.*, 2006). Against this background it becomes clear that, as Van Der Leun (2006, p. 311) observes, 'official policies have a limited influence on illegal immigrants' life chances'. Formal exclusion is cushioned via informal practices and informalities that are sometimes located within the law itself (Chauvin and Garcés-Mascarenãs, 2012). For the receiving society a

'moral administrative economy of illegality' develops, that is marked by all kinds of exploitation and abuse (trafficking, sexual abuse, slavery, exploitive (sub)renting of apartments, homelessness) (Chauvin and Garcés-Mascarenãs, 2012, p. 253). These situations of exploitation and marginalization are among the causes of social and political protest against tough immigration policies that we will discuss below.

The policy perspective conceives of the discrepancies between immigration control policies and the reality on the ground in terms of 'policy failure'. Cornelius and Tsuda (2004, pp. 7–15) have identified 'ambiguous policy objectives' as one of the main explanations for the existence of a 'policy gap' in immigration control. The fact that European states have been shifting their responsibilities in the field of immigration 'up' (for example to the EU), 'out' (for example to private parties such as airline carriers) and 'down' (for example to municipalities) has increased the probability of a mismatch between principals and agents in policy implementation (Lavah and Guiraudon, 2006).

Actors with administrative power also operate at different scales. Some of the executive branches, such as the Immigration and Naturalization Service (IND), primarily operate at a national level when verifying applications for legal residence. Others, such as the Central Agency for the Reception of Asylum Seekers (COA), have to collaborate and operate at a regional and local level, even though they function as executive agencies of the national government. In the words of Guiraudon and Lahav (2000), the necessity to co-opt lower level governments and 'shifting policy implementation down' increases the likelihood of 'gaps in policy implementation'. In addition, it may result in direct and indirect protests by lower levels of authority, because formal obligations, interests and ensuing policy priorities may significantly differ between administrative levels and branches of government (Van Der Leun, 2003). Immigration policies have also come to depend upon public and private institutions such as hospitals, schools and employers for their execution. This trend also results in tensions between, on the one hand, the goals and professional ethics of these organizations and the opinions and repertoires of their employees, and, on the other hand, the goals pursued by the government (Bovens, 1996; Van Der Leun, 2006; Pluymen, 2008).

What these two theoretical perspectives lack, in our view, is explicit attention for the *political* dimension of policy execution in this particular field. Nowadays immigration, asylum, reception and expulsion policies and formal institutions need to interact with a range of NGOs, social organizations, active citizens, political movements and legally based forms of resistance that all aim to obstruct or alter state actions. Many of these conflicts and protests develop at the intersection of national and local politics. Often alternative ideas about belonging and citizenship are being articulated at the local, city level, for example around the *sans-papiers* movement in France (Isin, 2005; Mcnevin, 2011; Nicholls, 2011). In the academic literature, there has recently been more attention on local social and political protests around asylum policies and deportations (Alink, 2006; Gibney, 2008; Tazreiter, 2010; Versteegt and Maussen, 2012). In this article, we want to contribute to this emerging literature by looking at the political dimension of interactions between national and municipal policy actors (governments and politicians as well as officials, bureaucrats and professionals). The main focus is on disagreements about the appropriateness of certain ways of acting. By focusing on conflicts about the *legitimacy* of particular courses of action we underline we are not primarily trying to pinpoint conflicts of interests, for example between the national government and municipal governments. We acknowledge that conflicts of material or political interest may also lead to a lack of support of local actors when requested to execute or support national policies (for an analysis of conflicts of interests between local and national level see Leerkes *et al.*, 2012, p. 450). However, in this article we focus on

the actions, arguments and justifications through which policies are circumvented or resisted because they are deemed *illegitimate*.

What does it mean to analyse municipal protests and practices of resistance as challenges to the *legitimacy* of government policies, and how should we understand this as related to democratic politics? In liberal democratic states we expect political authority and public policies to be legitimate, that is, we expect citizens to have good reasons to comply voluntarily with what public authorities demand them to do. Only when those who are subject to certain rules or policies *recognize* the validity of 'claims of legitimacy' can they be called legitimate, as opposed to them being merely accepted or 'enforced' (Uphoff, 1989). We distinguish three types of legitimacy claims: democratic, constitutional and output legitimacy (Bader, 2010).

Democratic legitimacy claims are based on the idea that policies are the outcome of processes in which (1) citizens and relevant stakeholders have had sufficient opportunities to influence policies ('input legitimacy'), (2) there have also been sufficient opportunities for deliberations and negotiations on policies and measures, and in the implementation and execution phases ('throughput legitimacy') and (3) these opportunities were sufficiently fair and open to all relevantly affected. *Constitutional legitimacy* claims are based on the idea that policies and policy implementation (including acts of officials or decisions on individual asylum or expulsion cases) are in line with, or emanate from, national and international legal standards. This form of legitimacy is linked to the liberal-rights aspect of democratic states. States have been binding themselves to international human rights regimes. The fact that state policies respect existing legal standards and principles in itself provides reasons for the credibility of those policies (cf. Moravcsik, 2000). Conversely, if one shows that policies violate the norms of international human rights regimes one *ipso facto* claims they lack constitutional legitimacy. Finally, *output legitimacy* refers to the 'problem-solving quality of the laws and rules', and whether policies are effective and efficient in addressing the social situations and problems for which they have been introduced (Schmidt, 2013). Output legitimacy claims tend to be accepted when government interventions seem to help solve problems in ways citizens experience as adequate.

When we analyse practices and programmes that are supported or initiated by the municipality as challenging national policies of asylum and migration control, we mean that municipalities engage in courses of action that exist in tension with, or in direct opposition to, what the national government (and its executive branches) deems appropriate. The distinction between different types of legitimacy may help to identify and analyse the reasons actors have to cushion or resist a particular policy or measure. Protesters challenge *democratic legitimacy* if they argue that the majority of the people do not support certain measures or that there were insufficient opportunities for relevant stakeholders to influence policy implementation and impose changes they deemed necessary. Practitioners and officials challenge *constitutional legitimacy* if they claim measures violate basic legal and human rights norms. They question *output legitimacy* if they say policies do not adequately address social problems. For our empirical analysis this means we are not interested primarily in the motivations, norms, opinions or ethics of professionals, which often cause them to resist policy execution or 'bend the rules' (Van Der Leun, 2006), but in explicit *argumentations and justifications*. Ours is a form of argumentative analysis interested in normative justifications and reasoning (Smits, 2009).

This way of conceptualizing resistance and protest against immigration and expulsion policies also relates to recent literature on ways of revitalizing democracy. There is a growing appreciation for the 'agonistic' elements in the democratic process, and

processes of contestation are considered essential and productive aspects of democratic politics (Mouffe, 2000). The French historian Rosanvallon has introduced the term 'counter democracy' to capture the way democratic politics include opportunities of the people to remain 'vigilant', to 'oversee the work of the government' and 'to refuse' government decisions (Rosanvallon, 2008, p. 15). An autonomous public sphere in which contestation, debate and protest flourish can serve to question policy and allows actors to exercise power over government in what Habermas has called 'the manner of a siege' (Habermas, 1997, p. 59). It is not only social movements and media that exercise these kinds of pressures; in a situation of network governance branches of government or different institutional levels may also confront one another. In some cases 'governmental players' may join movements and civil society organizations with a view to resist a particular policy, fight a common cause or seek to steer policy in a different direction (Verhoeven and Broër, 2015). More recently radical democrats have suggested that civic disobedience should sometimes be understood as the expression of collective self-determination and as a 'counterweight to the rigidifying tendencies of state institutions' (Celikates, 2014, p. 223). One of the crucial mechanisms via which obstructions and acts of resistance can strengthen democracy is through forums constituted by protesters in which they oblige officials and politicians to explain and justify actions. These accountability practices are 'democratic means to monitor and control government conduct, for preventing the development of concentrations of power, and to enhance the learning capacity and effectiveness of public administration' (Bovens, 2007, p. 462). In what follows we therefore look in particular at the ways *municipal* governments in the Netherlands oblige *national* authorities to give account for asylum and expulsion policies, and ask them to provide additional reasons for why the legitimacy claims surrounding these policies should be accepted by municipal actors.[7]

IMPLEMENTING POLICIES OF EXCLUSION IN THE NETHERLANDS: NATIONAL RHETORIC AND MUNICIPAL TROUBLES

The opportunities for the Dutch government to control immigration by monitoring its external borders are more and more limited. This is a result of the Europeanization of immigration policies, growing international mobility and increasingly porous borders (Lahav and Guiraudon, 2006; Doomernik and Jandl, 2008). As in other European states, the focus on immigration control policies has shifted towards 'internal border control', including efforts to regulate the access of migrants to the labour market and welfare facilities and limiting the access of 'illegal' immigrants to Dutch society and its scarce resources (Pluymen, 2008).

A Benefit Entitlement Act, also known as the 'Linking Act' (*Koppelingswet*) was introduced in 1998. It aimed to discourage illegal work and residence. Undocumented migrants were excluded from social services and work by linking residence status to a social-fiscal number required for work, legal housing and taxes. An exception was made for medical emergencies and schooling for children. The basic assumption underlying these measures was that these forms of exclusion would encourage 'illegals' to return to their home country. A related idea was that undocumented migrants were responsible for their own return, which was perceived as the desired concluding piece of a 'return policy' (Broeders and Engbersen, 2007). The consequences of the Linking Act became more acute when a New Aliens Act was introduced in 2001. This introduced a 28-day period for leaving the Netherlands following rejection of a residence permit application. It also stipulated that asylum seekers could not await the

outcome of a second application in a national reception facility. As a result of these changes municipalities were increasingly confronted with undocumented migrants in need of assistance and emergency reception, which was no longer provided by the national government.

In many cities that were confronted with the effects of these new national policies, municipal authorities worked together with NGOs, faith-based organizations and other welfare organizations to set up a 'shadow network' (Pluymen, 2008, p. 314). Municipalities also organized themselves in forums like the National Platform Organization of Municipalities for Shelter (and Return) (LOGO). They ended up providing alternative care arrangements, including temporary housing, schooling for children, food and medical support (the so-called 'bed-bath-bread arrangements'). This type of emergency shelter and support could be seen as undermining the ambition of the government to introduce an effective asylum control policy.

In subsequent years, however, it became clear that a conclusive return policy was extremely difficult to realize, and the immigration cycle was getting cluttered (WODC, 2011). Large numbers of asylum seekers were waiting for a decision on their asylum request, in many cases in a vulnerable situation and with no right to accommodation in one of the national reception centres. At the same time, the Immigration and Naturalization Services (IND) could not handle the number of applications. Confronted with protests and aware of the lack of perspective for many immigrants, the government decided, in 2007, to grant a pardon to former asylum seekers who had arrived in the Netherlands before the implementation of the New Aliens Act in April 2001. Importantly, this pardon was framed as an exceptional measure, needed to clear up the many 'leftovers' of a policy that was seen as too complex and too lenient. From now on, the government suggested, it would be feasible to implement a just, fast and effective asylum policy. Those who could not stay would be forced to leave.

In that context the pardon was connected to an Administrative Agreement that was concluded between the government and the Association of Netherlands Municipalities (VNG) in 2007. The national government agreed to improve the asylum procedure and departure arrangements and to take responsibility for migrants awaiting their removal. In return, the municipalities would close the emergency reception centres (ACVZ, 2012). At the time of the Administrative Agreement, 30% of the municipalities had an emergency reception centre, and many of the municipalities in which a national reception centre (operated by the COA) was located also had an emergency reception facility of their own, sometimes catering for more than 30 persons. For the national government, cracking down on this shadow network and fall-back option was vital in view of presenting the new approach as 'determined' and 'effective'. At the time the government was also under pressure to be 'tough' on immigration in response to electoral pressure and the rise of the populist *Freedom Party* (PVV) of Geert Wilders (founded in 2005).

At the time of writing, more than seven years since the Administrative Agreement, municipalities are still being confronted by homeless, undocumented migrants in need. However, the number of emergency reception centres in municipalities has decreased quite spectacularly. A study of 258 municipalities showed that in 2007 30% of the municipalities had experience with emergency reception, but by January 2011 that number had gone down to 9%.[8] Nonetheless, many of the larger cities such as Amsterdam, Utrecht and Rotterdam have indicated they have chosen to continue the facilities for undocumented migrants. More so than the smaller cities they continue to be confronted with undocumented migrants who are excluded from national reception facilities but still find themselves facing a 'problematic return process' (for whatever reason).[9]

In the remainder of this article, we analyse the ways Dutch municipalities have chosen to circumvent or resist the implementation of measures intended by the national government to install a strict asylum regime. As we have indicated above, the main pillars of that regime are the fencing of social services, the ending of opportunities for 'illegal' stay and enforcing effective departure of failed asylum seekers. This part of the article is based on an analysis of policy documents and 28 qualitative interviews with national and municipal officials, representatives of NGOs[10] and political representatives. The following cities were included in the study: The Hague, Amsterdam, Utrecht, Rotterdam, Nijmegen, Enschede, Leeuwarden and Alkmaar. Although we cannot claim these cities are representative for what is going on in all Dutch municipalities, or that what we learned from the documents and interviews necessarily captures the complexities of local practices, we believe they provide an accurate picture of practices and justifications that are important in the municipalities that we studied. Interviews lasted on average one and a half hours and were recorded and transcribed verbatim. In addition, we have collected and analysed policy texts to identify both formal and informal municipal practices and strategies. In our analysis of the material we have employed an interpretative form of argumentative analysis, looking at the different arguments that were being developed to justify specific courses of action and allowing us to identify the main tropes and reasons that structure these contentious processes (Smits, 2009).

MUNICIPALITIES AND FAILED ASYLUM SEEKERS: CUSHIONING, COMPLEMENTING AND RESISTING NATIONAL POLICIES

In early September 2014, the Association of Netherlands Municipalities (VNG) issued a press statement. This opened as follows: 'The VNG wants more opportunities for municipalities to provide shelter to rejected asylum seekers and thinks that also the central government should take its responsibility in this respect' (VNG, 2014). At that time, such support was already provided at 51 locations in Dutch municipalities (mostly in larger cities). In many instances, the organizations offering this support were directly or indirectly subsidized by their local authorities (*De Volkskrant*, 2 September 2014). The press statement, however, implied that municipalities advocated a formal policy to replace or regularize informal practices. Why did this happen?

To begin understanding the interactions and tensions between national policies and municipal practices it is informative to start with an analysis of the different expectations articulated by the two administrative levels (national and municipal) as to their respective responsibilities and activities, and the way they are related. From the viewpoint of the national government, municipalities are formally a 'chain-partner' when they provide municipally owned facilities for asylum seekers. Municipalities are a 'cooperation partner' when they merely provide space or land for the asylum centres, family centres, detention centres or expulsion centres that are owned and run by the state (DT&V, 2013). In addition, municipalities are expected to be 'cooperative' when it comes to other aspects of policy implementation for which they take no formal responsibility (for example in reporting 'undocumented migrants' (see Leerkes *et al.*, 2012), assisting in cases of expulsion, and refusing facilities for undocumented migrants).[11]

What do the municipalities think of this? The formal responsibilities of space provision (land and premises) to all individuals 'in the procedure', and assistance (accommodation and support) when a refugee status is granted, are occasionally a subject of discussion for the municipalities, especially with regard to sharing the 'burden' when municipalities are asked to house relatively large numbers of asylum seekers, for example, in 2014 in relation to the influx of refugees from Syria. Equally contested,

however, is the idea that municipalities should do all they can to 'fence off' public provisions for failed asylum seekers, and that they should actively assist in deportations. It is around these types of issues that the actions of the national government and its agencies may come into conflict with what municipalities consider to be their mandates. For example, the idea that municipal authorities should provide assistance in cases of 'expulsion' can be in conflict with the mayor's duty to retain public order. Municipal politicians and officials also claim they are entitled to intervene in situations involving undocumented migrants when, in their opinion, the local community is affected, when fundamental rights are being infringed upon, or public health and safety issues arise. This, for example, was the case when a group of failed asylum seekers had occupied a derelict building in Amsterdam and one of the occupants was seriously hurt falling down the stairs as a result of a loose handrail. The emergency personnel who arrived at the scene of the incident dared not enter the building for fear of asbestos (*Het Parool*, 27 August 2014). This incident came only a few days after a fight in another occupied location, a former garage, left one asylum seeker dead (*Het Parool*, 25 August 2014). A policy advisor on the need for emergency reception in his municipality said, 'As long as the Minister fails to deliver a conclusive return policy, the municipality is legitimized to offer emergency reception.' In an attempt to 'take responsibility' for these situations municipal authorities may end up employing activities (for example providing emergency reception) that may complement or counteract activities undertaken by national authorities.

In terms of the courses of action developed by municipalities, we found there were different patchworks of activities. At times municipal actors undertook actions that 'cushion' the all too hard or unjust consequences of specific measures or policy guidelines, at times they execute activities that 'complement' national policies or function as municipal equivalents (for example in the case of local return programmes), but at other times municipalities openly or secretly obstruct policy execution ('resistance'). In order to map out these various practices we present them here as four different ideal-typical forms of municipal action, without suggesting each form constitutes some kind of coherent municipal policy approach. In addition, the argumentations and justifications that are articulated around these forms of action are analysed in terms of democratic legitimacy, constitutional legitimacy and output legitimacy.

Emergency Shelter and Basic Facilities

Formally, the Administrative Agreement of 2007 stipulated that municipalities would no longer provide any form of accommodation or support for rejected asylum seekers. However, from our interviews it became crystal clear that several municipalities provide emergency reception and related facilities to undocumented migrants. Particularly in the larger cities, where most of the undocumented people tend to live, there exist emergency reception facilities (which is in line with the findings of Regioplan, 2009; WODC, 2011) (Table 2).

Municipal officials we interviewed did not think these facilities would be terminated in the near future. Some municipalities sought to keep the provision of accommodation 'under the radar', whereas others publicly defended their approach. In Utrecht, one of the four largest cities, the municipal council and the board of Mayor and Aldermen is quite outspoken about its general position regarding failed asylum seekers. A policy document on the reception and integration of asylum seekers and refugees mentions:

Table 2. Experience with emergency reception according to size of the municipality (Regioplan 2009).

Experience with emergency reception according to size of the municipality	Less than 10,000 (%)	10,000–20,000 (%)	20,000–50,000 (%)	50,000–100,000 (%)	More than 100,000 (%)	Total (n = 306)
No emergency reception	96.8	72.3	54.0	40.6	21.7	60.1
Emergency reception terminated	3.2	16.0	25.4	15.4	4.3	17.6
Emergency reception present	0.0	11.7	20.6	43.8	73.9	22.2
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source: Data from (Regioplan 2009, p. 8).

> The municipal council of Utrecht does not want to leave asylum seekers to fend for themselves. The council decided in the council agreement for 2010–2014 that the municipal government is actively fulfilling its duty to care for the homeless, (failed) asylum seekers and refugees. (…). The emergency reception will be continued, as in addition the activities for safety, return and legal support. (Municipality of Utrecht, 2010, p. 32)

This type of arrangement, in which a place to sleep and eat is provided, is illustrative of the ways local authorities may create their own 'internal inclusion systems' (Pluymen, 2008), thereby undermining a strict implementation of the 'linking principle' (ACVZ, 2012). Paradoxically, in order to regulate the inflow of undocumented migrants, municipalities end up defining the terms and conditions for people who want to benefit from the accommodations and other facilities. In most cases municipalities have delegated the operation of emergency shelter and the selection of undocumented migrants to NGOs, such as the International Network of Local Initiatives for Asylum Seekers (INLIA) or the Refugee Council.[12] When asked about the type of criteria used to decide on access to municipal facilities we learned that the following informal guidelines for admittance were being used in several localities: 'vulnerability' (is a person in a vulnerable position due to medical or psychological reasons), the 'type of household' (mothers with children having priority over young single males), 'stage of asylum procedure' (is the person awaiting a decision in an appeal) and finally 'attitude or perspective' (if someone has an active attitude to leave or a reasonable chance to obtain a residence permit).

Not all criteria have to be met in order for an individual to be accepted, and the order of importance may differ. The 'stage of procedure' is directly linked to the prospect the person has in the Netherlands, but several municipal officials also suggested that people who are not in a formal procedure can be admitted to emergency facilities if they show a cooperative attitude and are willing to cooperate in view of a return, or stand a reasonable chance of getting a residence permit. In both scenarios, both parties can agree that the facility offered will be temporary. Municipal officials use this argument to underline that they act *pragmatically* in order to resolve problematic situations. However, in our view, that municipalities are deciding on admittance of failed asylum seekers to emergency reception in terms of a moral economy of 'deservingness' illustrates that a new 'gate of entry' is being opened at the local level, which in reality may function as a safety net or a 'second chance' after the completion of the national procedures (see next section).

The provision of emergency reception and other facilities serves to *cushion* the negative effects of national policies for individual cases. Municipalities feel responsible in respect to their mandate to maintain public order and public health. With their pragmatic approach they question the output legitimacy of national expulsion policies, because they suggest they end up creating solutions for situations that result from incomplete execution of national policies (that promise that 'those who cannot stay will leave'). One element often mentioned in interviews was that the '28-day procedure', specifying that an immigrant should leave the country within 28 days after being denied a residence permit, was not working *in reality* because many immigrants were unable to obtain the required travel documents. One official observed, 'we encounter people on the street who cannot return', which justified attempts to cope with the situation rather than simply deny it, and reprise the 'tough talk' of the Minister. The official went on to argue, 'It is not in the interest of the community and the state to oblige these people to live in poverty and let them be susceptible to all sorts of diseases.'[13] But by developing their own moral economies of 'deservingness', suggesting that some failed asylum seekers are especially entitled to emergency reception, there is also a questioning of the ways asylum procedures produce unjust outcomes. The municipal practices we will discuss now go a step further in that regard, and demand not only that a right to 'emergency reception' is granted, but that some failed asylum seekers deserve to stay permanently, and legally.

Municipal Governmental Actors Supporting Individual Cases

A second activity of municipal governmental actors is to support individual cases other than providing them with emergency reception. The mayor of a municipality can, for example, start a correspondence or meet with the Minister and request a re-assessment of a case. The number of this type of request is quite limited. Usually the mayor will invoke 'humanitarian grounds' (e.g. personal and social circumstances) to justify granting a residence permit to an individual. Importantly this does not imply a re-opening of the asylum procedure, but granting someone a right to stay irrespective of the reasons for which he or she ended up in the Netherlands. That decision is at the discretion of the Secretary of State of Security and Justice and Minister of Migration. A relatively new, and contested, line of argument invokes a person's level of social and cultural integration as a ground to grant residence status and/or refrain from expelling someone. This type of argument has been used especially in cases that involved children, teenagers and young adults. In these discussions a lot of emphasis is put on the fact that individuals have been forming 'social ties' within the local community (ACVZ, 2012, p. 8), and that their level of 'cultural integration' makes them deserving of a right to stay. But at times the notion of a 'societal interest' is also invoked to suggest that (young) immigrants with good prospects are entitled to stay because they have something to offer to the receiving society. The mediatized cases of Sahar (a 14-year old girl from Afghanistan), Yossef (a Sudanese boy) and Mauro (a teenager from Angola) involved widespread protests, supported by municipal politicians, against the 'deportation' of Dutch speaking, 'well-integrated' children of failed asylum seekers (Versteegt and Maussen, 2012, pp. 54–68). In connection with these events the Advisory Committee on Migration Affairs (ACVZ) has suggested that municipalities may be given a role in bringing individual cases to the attention of the Minister. One of the proposals has been to install a kind of local advisory commission on 'hard cases', similar to the so-called *Härtefallkommisionen* that exist in Germany, which are entitled to propose a list of people to be given residence permits on exceptional grounds,

and thus function as an additional safety net in immigration and admission policies (ACVZ, 2011).

The Sahar and Mauro cases were illustrative of civil society-based protests that look for publicity, and that are sometimes supported by municipal authorities (e.g. the Mayor or municipal council members). At other times, mayors have themselves opted for a more direct confrontational approach. They can do this by using their authority as head of the police to postpone the eviction of a minor. Whether the mayor has this mandate is highly controversial and under debate, and it seems to border on acts of 'administrative disobedience'. A widely discussed case involved the Mayor of Giessenlanden, a municipality in the province of South Holland, who refused to give approval for assistance in the eviction of a 45-year-old man from Afghanistan, who was suspected of war crimes. Her argument was that the eviction of the man would create a problem for his family (given that his wife was very ill) and she feared that the eviction would result in protests by residents sympathizing with the family, which would threaten public order (Kos, 2012, p. 45).

Another example of a confrontational approach is when local officials and politicians speak out in public against national policies. In some cases this has resulted in collective action of mayors from different municipalities. For example, in 2014, 312 mayors signed an appeal to the Secretary of State of Security and Justice and Minister of Migration Teeven (Liberal Party, VVD), asking for the reassessment of cases of children who applied for the national amnesty arrangement for children but were refused on formal grounds.[14] Similar joint protests by municipalities have developed around the right of undocumented children to do an internship as part of their education, and about government plans to make 'illegal stay' a criminal offense.

As mentioned in the previous section, we found that some municipalities are actually engaged in what seems like a process of 're-assessment' of individual cases of failed asylum seekers. In view of deciding whether the municipality should step in for principled or humanitarian reasons some officials feel they need themselves to objectively reassess decisions that were made regarding an asylum request. A municipal official said on the need for reassessment: 'We trained an employee to review the cases. The feasibility of a case is central in *our decision to provide assistance*. We examine every aspect of the case and focus on finding a solution.'[15] Thus, municipal actors feel they are entitled to pursue their own course of action especially when they disagree with, or distrust, the decision-making process in the (formal) national asylum procedure. This is particularly salient in view of the fact that until 2001 a rejected asylum seeker could appeal to the courts to have his or her case re-examined. Under current law the court can only establish whether the IND has applied a correct procedure, not whether the contents of the application should have led to a different decision. The opportunity to appeal on 'substance' now seems to have resurfaced in municipal offices.

The type of actions that were described above can be understood as (milder or more radical) forms of *resistance* against decisions or against certain measures such as deportation. The ways they are justified varies. Sometimes officials interviewed argued that national policies were lacking in constitutional legitimacy, for example because they violate the basic rights of children and families. At other times emphasis was put on common sense and the 'output legitimacy' of policy was being challenged. Institutions such as the DT&V and the IND were accused of being 'obsessed with targets and numbers', and the efforts put in expelling 'well-integrated teenagers' were taken to exemplify immigration control policies gone astray.[16]

Municipal Networks: Collaboration, Diplomacy and Lobbying

In order to mediate in individual cases in a diplomatic manner, which is often the most effective strategy, municipal officials can draw on their contacts at IND and DT&V. Even though relations tend to be better with DT&V than with the IND, several studies (e.g. REGIOPLAN, 2009) demonstrate that both national institutions are reluctant to provide information on specific cases to the municipalities. Such information, however, is indispensable for local officials in order to assess the expectations of individuals they want to help.

In order to be more effective municipal officials actively form networks with colleagues in other municipalities. These networks function to support each other by gaining access to the relevant officials at IND and DT&V, with the operation of care arrangements for undocumented migrants, with lobbying in favour of individual cases, and to influence the policy-making process on a national level. The very existence of these platforms and networks is experienced as a response to the lack of democratic legitimacy of asylum policy, and the need for local stakeholders to be taken more seriously by the national government and its executive branches. Both municipal officials and representatives of NGOs that are active in defending the rights of failed asylum seekers often justify these actions by mixing moral and human rights-based arguments with a critique of the lack of output legitimacy of existing policy implementation. For instance, a representative of the *Foundation for the Undocumented* suggested that 'COA is intensively trying to put people on the street', and a municipal official explained that the presence of undocumented migrants was a direct result of the fact that the Immigration Service was 'under huge pressure from the cabinet to increase the return figures'.[17] However, we should emphasize that whereas our respondents working for NGOs and municipalities questioned the 'attitude' and 'organizational culture' of the main executive organizations (IND and DT&V) on several occasions, when we talked to employees of these organizations they emphatically *denied* they were evading international agreements and human rights standards. As one region manager of DT&V (and former employee of IND) said the asylum procedures were conducted in accordance with existing international standards; 'there is the Refugee Convention, and that is the basis for making a reasonable case to be granted asylum, and that is that. End of story'.

Local Return Programmes

A fourth form of activities are the so-called 'Local Return programmes', for example the programme 'Perspective'[18] for underage failed asylum applicants. This programme was started by the municipality of Utrecht and then adopted by several municipalities and eventually for a limited period by the national government. A municipal actor said of the results of this programme:

> We have a point of support for former under aged asylum applicants with the 'Perspective' program since 2003. We give this group support and guidance, even if they do not have a residence permit. This program has excellent results, even better than the programs of the national government.[19]

Municipalities tend to combine humanitarian considerations with a pragmatic approach, in which it is important for individuals to have some kind of perspective, either in the form of return or by having opportunities to obtain a residence permit. In both cases they are willing to assist if the undocumented migrant fits the criteria. The municipalities that offer local support programmes claim that they are effective, in part because they are

not strictly bound to the time frame of expulsion within 28 days after rejection of the asylum request which is set by the national government. These programmes are in line with national policy objectives and therefore complementary, but by combining a flexible time frame with clearly defined targets, and because of the level of commitment of the asylum seeker and the officials, they have tended to outperform other (national) programmes. Local return programmes thus complement national policies and are mostly justified by questioning the output legitimacy of existing programmes. However, the fact that at times a reassessment of the grounds for refusing a residence permit is asked for again demonstrates the degree to which municipal actors question the legitimacy of the execution of asylum procedures in the Netherlands and challenge the outcomes on moral and legal grounds. Even though municipalities claim their programmes to be more effective, there is no desire for their expansion. As several municipalities report, return programmes are understood to first and foremost be a responsibility of the national government.

CONCLUSION

Municipalities in the Netherlands have developed a broad range of activities to deal with the local consequences of immigration control policies. Substantial numbers of failed asylum seekers and their families end up stranded in the Netherlands, with a precarious legal status and excluded from access to most public services and facilities, and officially banned from participating in the formal economy and housing market. Particularly in the larger cities local authorities have, together with NGOs and citizens, set up and continue to operate emergency reception and accommodation. But, as we have demonstrated, municipalities have also developed practices that go beyond ad hoc emergency measures. We have analysed these practices as patchworks of activities that cushion, complement and counter national policies of exclusion. Municipal officials maintain strong networks with colleagues in other municipalities and with local partners and NGOs, they actively lobby national political and administrative authorities as well as the media, both for individual cases and in order to challenge broader policy programmes. At times they develop these activities under the radar and diplomatically, but often municipalities also speak out publicly and collectively. We have also looked at the ways municipal officials and politicians justify these practices and actions, and in what ways they thereby challenge the legitimacy of policy programmes developed by the national government and implemented by its various executive branches. We have defined legitimacy in terms of 'having good reasons to comply with', and we, therefore, see these practices and forms of resistance as potential openings for democratic debate on policy objectives as well as for policy learning. In order to map out the consequences of what municipalities are doing we distinguish in this conclusion between: (1) municipalities developing alternative and/or complementary practices and ways of doing, (2) municipalities playing an important signalling function with respect to policy implementation and its 'failures' and finally (3) municipalities playing a role in building up social and political pressure on the government and national political parties.

With regard to the first consequence we found various activities employed by municipal actors (usually in close collaboration with civil society-based initiatives and organizations) that can be seen as alternative or complementary to what the national government provides (or fails to provide). First, municipalities provide emergency reception in the form of housing, food and medical care, both incidentally for specific individuals and families, and more structurally as is the case for the groups of failed asylum seekers that are temporarily living in squatted buildings or camps. These measures are by

and large justified by pointing to the lack of output legitimacy of national policies (the mere fact that these people continue to live in Dutch cities is pointed to as evidence that policy implementation is 'unsuccessful'). But they are also defended in light of basic human rights and pragmatic considerations (in our interviews officials referred to concerns about public order as well as to their own ethical obligations to assist 'people in need'). Second, municipalities have set up local return programmes, claiming (not without reason) they were often better able to help individuals work on a successful return to their country of origin. Even though the experiences with such programmes, in for example Utrecht, were positive there is little political support to continue or expand these initiatives, primarily because 'return programmes' should remain embedded within the broader asylum procedure under the responsibility of the national government. Further legitimizing local return programmes is said to be at odds with the idea that 'formally' failed asylum seekers should not be living in Dutch cities in the first place. Finally, municipalities have in some cases taken up the role of either themselves making decisions on whether failed asylum seekers are entitled to support (for example by being given access to an emergency accommodation or by being admitted into a local return programme), or they have begun lobbying for individual cases because they deemed the existing procedures insufficiently fair and careful. We think that in general it is wise to develop an additional 'safety net' for failed asylum seekers, for example by allowing (local) authorities to demand that an individual is given a residence permit because of 'personal or humanitarian circumstances' (as is the case in the German *Härtefallkommisionen*), but we also want to signal that it is a major challenge for the legitimacy of the instances responsible for conducting the asylum procedure if the outcomes are actively being questioned by government officials at other institutional levels.

A second role that municipal activities in this domain fulfil is to signal when existing programmes and/or their execution are failing to solve the problems for which they were introduced or are creating (unforeseen) negative side effects. That is when policies lack output legitimacy. In many occasions, we have seen municipal actors, together with citizens and NGOs, speak out against the ineffectiveness or the moral wrongness of policies and measures taken by the national government and its executive organizations. This has been the case notably around the individual situations of 'well-integrated' teenagers, but also with regard to the impossibility of upholding strict policies fencing off local welfare arrangements. Municipalities have sought to use their common force to bring concerns to the attention of national politics, notably via the official platform organization (VNG). In November 2014, the VNG again demanded that the government work together with the municipalities in order to realize reception facilities for failed asylum seekers (VNG 2014).[20] Other platform organizations speaking for municipal governments (such as LOGO) have demanded the same, and thus municipalities end up almost literally asking for the same policy changes as advocacy (platform) organizations that are involved with legal and social support for undocumented migrants in the Netherlands, such as the Refugee Council, Amnesty International and the INLIA. While the official reaction of the government to this request is pending at the time of writing, the Central Appeals Tribunal now considers municipalities 'obliged' to offer bed–bread–bath arrangements for failed asylum seekers.[21]

The way municipalities and their platform organizations pick up on these concerns of NGOs and verdicts of (international) courts is also illustrative of the third consequence of the municipal activities that we have discussed in this article. That is that municipalities also play a role in mobilizing public and political opinion and thus raising pressure on the national government. However, at this point we want to stress that we do not want the reader to infer that Dutch municipalities are simply opposed to restrictive asylum and

immigration policies, or that local communities in the larger cities are more tolerant towards (irregular) migrants. We signalled that party-political differences were often intersecting with disagreements between the two institutional levels (national and municipal). For example, the left-leaning city of Utrecht has been quite outspoken in justifying its resistance to policies implemented by a right-leaning government, especially when that government was supported by the radical right populist PVV. Some of the highly mediatized local actions in support of the 'well-integrated' children of failed asylum seekers who risked being expelled, have co-existed rather well with widespread political support for restrictive national policies. Also the revival of local protests around the placement of (larger) reception centres that developed because of the arrival of refugees from Syria shows that there is no reason to think that in general municipal governments and local communities have a more 'welcoming' attitude when it comes to accommodating immigrants and asylum seekers. Tensions, therefore, continue to exist between political support for 'restrictive, yet just' immigration and asylum policies, and reluctance to witness and accept the costs of attempts to actually implement the corresponding measures.

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NOTES

1. In this article, the term 'failed asylum seeker' is used to refer to all people who have demanded asylum in the Netherlands (or the EU), and whose asylum request has been turned down, either permanently (after an appeal) or after the '28 days procedure' (in which case they can still appeal but no longer have a right to government-provided housing and assistance (see below)). 'Failed asylum seekers' can, in some cases, have a legal residence status for a limited period, for example for individual humanitarian reasons or when there is a danger of 'refoulement'. The prospects of obtaining the right to stay in the Netherlands will vary within this broad category of 'failed asylum seekers', as will, obviously, the degree of 'precariousness' of the lives of individuals, families and children involved. Finally, one should notice that 'failed asylum seekers' without a legal residence are an important part of a broader group of 'undocumented migrants'.
2. National Reception Centres, such as the one in Ter Apel, are so-called Central Agency for the Reception of Asylum Seekers (COA) locations. COA is responsible for the reception, supervision and departure (from the reception location) of asylum seekers coming to the Netherlands. These include asylum reception centres, family centres and detention centres.
3. *NOS Journaal*, 21 November 2012.

4. The 'what I am about' note on the home page of State Secretary Teeven read, for example: 'I aim to give asylum seekers clarity as soon as possible, allowing them to focus on their future. That also implies an active and consistent repatriation policy' (available at: http://www.government.nl/government/members-of-cabinet/fred-teeven) (accessed on 30 September 2014).
5. See, for example, the 'Lampedusa in Hamburg' group in Hamburg which has been very active since March 2013. See: http://lampedusa-hamburg.info/ (accessed on 14 December 2014). Or the protest around an occupied school in Berlin (Kreuzberg) in the Summer of 2014 (*Der Tagesspiegel*, 8 August 2014; *SpiegelOnline*, 2 July 2014).
6. The National Platform Organization of Municipalities for Shelter (and Return) (LOGO organization) signalled in March 2012 that a great number of failed asylum seekers *in actual fact* continued to sojourn in Dutch municipalities, often on the streets (LOGO, 2012).
7. 'Local forums' are but one among several 'accountability forums'. With regard to constitutional legitimacy, for example, international organizations and courts also oblige the Dutch government to provide further justifications for its policies and measures. The Dutch government has been criticized for regularly transgressing or looking for the limits of internationally agreed legal standards; notably rules set by the European Convention on Human Rights and EU Law. The government received a slap on the wrist from the European Court of Human Rights for ignoring article 3 (protection against inhuman treatment and torture) when returning a rejected asylum seeker to Somalia (*NRC-Handelsblad*, 11 January 2007). In its formulation of rules pertaining to family migration the government made explicit that it sought to stretch the European norms (Bonjour, 2010, p. 317). And in 2011, the European Commission expressed serious doubts about the legality (and feasibility) of Dutch plans to criminalize irregular residence. Amnesty International, among others, time and again points out the disproportionate use made by the Dutch authorities of aliens' detention (De Hart *et al.*, 2012).
8. It should be noted that some municipalities continue to provide emergency reception, but do not always mention this explicitly in their budgets (WODC, 2011, pp. 144–147).
9. This observation by the municipalities that continue providing reception, namely that the strict application of the linking principle and regulations included in the New Aliens Act is causing humanitarian problems and negative effects for society, is confirmed in a recent report by the Advisory Committee on Migration Affairs (ACVZ) entitled *Right to protection of human dignity* (2012). Municipalities argue that the current situation has not improved sufficiently so as to justify closing the emergency facilities. The ACVZ observed in its report that this cannot but cause friction between administration levels and might well be at odds with European and International human rights agreements (ACVZ, 2012, p. 116).
10. Interviews were conducted with representatives of the following NGOs: Church in Action, the Foundation Accommodation Homeless Aliens in Utrecht and the Foundation National Support for the Undocumented (LOS).
11. The position paper Repatriation and Departure (*Leidraad Terugkeer en Vertrek*) of the Repatriation and Departure Service (DT&V) states that the municipalities should have the intention to terminate all facilities to undocumented migrants as it is the responsibility of the migrant to leave the country on his or her own behalf (DT&V, 2013, p. 13).
12. For a more complete overview of NGOs that are involved in asylum policies and their consequences see Versteegt and Maussen (2012, pp. 98–101).
13. Interview municipal official in Utrecht, 2012.
14. One of the amnesty's conditions was that the asylum seeker had permanently been on the national authorities' radar. Those who were under the care of local authorities often were confronted with the claim that they had not officially been residing in the country.
15. Interview municipal official, June 2012 (our emphasis, SK, MM and JD).
16. Interview with representative of Church in Action February 2012.
17. Interview municipal official May 2012.
18. This program started in 2003 in Utrecht and was in 2011 adopted by 20 other municipalities.
19. Interview municipal official April 2012.

20. In itself this letter was connected to a decision of the European Committee of Social Rights of 10 November 2014 with regard to a complaint submitted by the Conference of European Churches concerning respect for 'the right of undocumented adult migrants to food, clothing and shelter'. Complaint number 90/2013.
21. See 'Uitspraak Centrale Raad van Beroep verplicht centrumgemeenten tot bieden BBB' [Verdict of Central appeals Tribunal obliges central municipalities to offer BBB]. Website LOGO (available at: http://www.logogemeenten.nl/nieuws/item/161/uitspraak-centrale-raad-van-beroep-verplicht-centrumgemeenten-tot-bieden-bbb) (accessed on 20 December 2014).

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