

# LEAVING THE NETHERLANDS

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Twenty years of voluntary return policy in the Netherlands (1989-2009)

November 2010

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Produced with a contribution of the European Return Fund  
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This research report is published within the framework of the project '(Re)assessing assisted voluntary return: the Netherlands in a European perspective'. The project was financed by the European Return Fund and the Dutch Ministry of Justice.

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ISBN 978-92-9068-580-7

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# 1 – INTRODUCTION

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## 1.1 VOLUNTARY RETURN MEASURES AND THE DUTCH RETURN POLICY

Dutch migration law states that any alien without the right to remain in the Netherlands, such as rejected asylum seekers and irregular migrants, should leave the country of their own accord.<sup>1</sup> This is the core of the concept of voluntary departure as incorporated in Dutch migration policy. This report provides a historical overview of the evolution during the last two decades of the measures instituted to ensure that aliens without a legal status meet their obligation to leave the Netherlands voluntarily.<sup>2</sup> This overview is the result of an analysis of parliamentary documents, policy evaluations, media reports and documentation of organizations involved in implementing this voluntary return policy.

Through this report we hope to contribute to a better historical awareness of voluntary return measures as integral part of the return policy in the Netherlands. The history of Dutch voluntary return measures includes some distinct moments of a change in policy, which coincide with different government coalitions. The main aim of this report is to provide an addition to the tools currently available to policy-makers and other stakeholders, concerned with the issue of voluntary return. We intend to provide opportunities to learn from past successes and failures in order to inform future (voluntary) return policies in the Netherlands and form a basis for incorporation of Dutch best practices into European asylum and migration approaches.

Given the broad range of issues that have an impact on return policy, as well as the intimate connection between return policy and other policy areas, such as the prevention of irregular migration, admission, reception and integration, we will limit our focus to three aspects. The first concerns the context in which policy instruments have been deployed. This context is formed by, for example, the basic principles and rationales behind the return policy, some of which have remained unchanged throughout the twenty-year period discussed here, while others have evolved. This context is also partly formed by developments in other areas of migration policy..<sup>3</sup> As said above, the voluntary return measures can to a large extent be considered as an integral part of a general return policy. This report will primarily focus on the voluntary return policy and measures. It is beyond the scope of this report to look into the other instruments deployed by the government such as those related to the enforcement of return.

The perspective on the basic starting points of voluntary return policy naturally leads us to consider the way this policy has been put into practice. Olde Monnikhof and De Vreede note

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<sup>1</sup> Article 61(1) Aliens Act (*Vreemdelingenwet*) 2000.

<sup>2</sup> As shall become clear in this report, there have been discussions about the use of the word ‘voluntary’. In contemporary policy documents, it is more common that the word ‘independent’ (*zelfstandig*) is used. In this report, the word ‘voluntary’ will remain in use as this is the original ‘incarnation’ of the concept in Dutch return policy.

<sup>3</sup> It would be impossible to address all developments which have impacted, either directly or indirectly, the issue of voluntary return. Nevertheless, we aim to discuss the major developments which fall outside the immediate scope of voluntary return policy, but which have been very relevant to how this policy was shaped and implemented.

that positive and negative instruments have been employed to achieve the goals of return policy.<sup>4</sup>

Our second point of entry for the discussion reflects on the positive instruments that have been used to make the option of voluntary return more attractive. Here, our attention will be primarily on the provision of assisted voluntary return (AVR) programmes and special post-return reintegration projects. This is complemented by a discussion of the role that development cooperation funds and policies have played in fostering conditions for return.

The third and final issue of interest in this report is the use of negative instruments, which are aimed at making continued (illegal) stay in the Netherlands less attractive. Here we will focus on various instruments, such as the exclusion of undocumented migrants from social services and amenities, the eviction of rejected asylum seekers from government-sponsored reception facilities, and the use of (the threat of) detention and/or forced removal.

For each of these three elements, we will discuss the official positions of the various governments responsible for return at the time, but also some of the debates, controversies, and reactions these generated. In many cases, these debates were the catalysts for later changes in the basic principles or implementation of voluntary return policy.

## 1.2 SCOPE OF THIS REPORT

Before delving into the history of Dutch voluntary return policy, some qualifications should be made. First of all, while the term ‘return policy’ is commonly used, this policy strand is primarily occupied with departure from the Netherlands. The destination of the (rejected) asylum seeker or (irregular) migrant is of less immediate concern. While in most cases return to one’s country of origin will be the most likely outcome of a departure process, departure to a third country is generally not excluded as an option.<sup>5</sup>

Likewise, some provision needs to be made in relation to the ‘voluntary’ component of voluntary return policy. We are aware of much debate about the voluntariness of departure when those involved are faced with a legal obligation to leave their host country.<sup>6</sup> As we shall see, the Dutch government initially used the term ‘voluntary return’ (*vrijwillige terugkeer*) for this type of legally-obligated departure, but later also started using alternatives, such as ‘independent’ return or departure (*zelfstandige terugkeer*, *zelfstandig vertrek*). As it remains the most-used international term, we will adhere to ‘voluntary return’ to discuss the policy aimed at encouraging departure of (rejected) asylum seekers and irregular<sup>7</sup> migrants of their own accord.

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4 M. Olde Monnikhof and J. De Vreede (2004), *Terugkeerbeleid voor afgewezen asielzoekers: Evaluatie van het terugkeerbeleid '99 en het terugkeerbeleid onder de Vreemdelingenwet 2000*, The Hague, Research and Documentation Centre of the Dutch Ministry of Justice (WODC): pp. 58-59.

<sup>5</sup> However, this is usually a more difficult way of meeting an obligation to depart, as the alien will have to ensure access to this third country.

<sup>6</sup> The best known criticism of this use of ‘voluntary return’ or ‘voluntary departure’ comes from the European Council for Refugees and Exiles (ECRE), which suggests that the term ‘mandatory return’ is used in these cases. See ECRE (2003), *Position on return*. PO1/10/2003/Ext/MP: p. 4

<sup>7</sup> IOM prefers to speak of ‘irregular migrants’ to indicate people, who, owing to illegal entry or the expiry of their visas, lack legal status in a transit or host country. The use of ‘illegal’ is not totally avoided however, esp. not in quotations from other sources and when referring to illegal entry.

This leads us to the next qualification. Our main focus here is on cases in which there is a legal obligation to leave the Netherlands (or where such a legal obligation may occur in the near future<sup>8</sup>), and the ways in which this is encouraged and facilitated by policy measures. We therefore exclude legally residing migrants and refugees from our discussion, although they might also benefit from some of the instruments developed under voluntary return policy.

Finally, we want to emphasize that this report is meant to offer historical insight into where our current voluntary return policy came from, and which road was taken to get there. The report expressly does not purport to be an evaluation of the effectiveness of past or present voluntary return policy or any of its instruments. A discussion of the quantitative results of voluntary return policy can be found in the report *Assisted Voluntary Return from the Netherlands. An analysis of fluctuations in AVR participation (1992-2008)*, IOM (2010).

### 1.3 STRUCTURE OF THIS REPORT

As befitting a historical overview, the main structure of this report is chronological. It is divided into six core chapters which each represent a particular governmental period.<sup>9</sup> This highlights the political nature of voluntary return policy by clearly identifying how changes of government have led to distinct changes in this policy. Within the different chapters, however, the approach will be thematic rather than chronological, with each of three themes described above (context, positive instruments and negative instruments) being discussed in a separate section. Each section will include the main developments in the relevant thematic area during the government period at hand. Necessarily, not all specific incidents and debates about interventions towards specific groups of rejected asylum seekers or irregular migrants can be included. Therefore, we have chosen to intersperse the chapters with separate boxes, which highlight some of the most important examples of attempts to facilitate for particular national groups to leave the Netherlands voluntarily, and thereby highlight specific challenges that occur when voluntary return policy is put into practice.<sup>10</sup>

The report will show how some of the discussions and practices that started in the early 1990s may still be relevant today. From this perspective a ‘backward-looking’ approach to policy development and implementation may benefit future attempts to design programmes aimed at those not allowed to remain in the Netherlands to return voluntarily.

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<sup>8</sup> Such as for asylum seekers still in procedure. Although their situation cannot lead to the conclusion that they will inevitably be required to return, they are generally included as a target group for voluntary return policy.

<sup>9</sup> Formally, seven governments have been in office since 1989. However, the second and third governments of Prime Minister Balkenende have been combined in one chapter. This has been done because the third Balkenende government was a continuation of the previous government after one of the coalition parties left the government. The third Balkenende government only served for a short period, in anticipation of new elections.

<sup>10</sup> While we have attempted to place these boxes at logical places in the main text – usually corresponding to the time when the specific issues of the case first arose – they do not fit in neatly with the main chronology. As will be evident, the efforts to encourage the voluntary return of specific groups often cover a large period of time and are not confined to any specific government’s time in office.



## 2 – LUBBERS III<sup>11</sup> (November 1989 – August 1994)

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### 2.1 CONTEXT

#### 2.1.1 Voluntary return policy up to 1989

While our overview of voluntary return policy formally starts in 1989, the concept of voluntary return was part of Dutch asylum and migration legislation much earlier.<sup>12</sup> The idea of actively facilitating such voluntary return, however, emerged in the late 1980s, when the issue of return figured prominently on the political agenda. For most of that decade, immigration policy had been the responsibility of a coalition government composed of Christian Democrats (hereinafter: CDA) and Liberal Democrats (hereinafter: VVD), under the leadership of Prime Minister Ruud Lubbers. In two successive terms, this government had to react to the rapidly rising numbers of asylum applications, pressure on accommodation capacity and substantial backlogs in asylum procedures. Despite instituting a ‘discouragement policy’, aimed at making the Netherlands a less attractive destination for asylum seekers, asylum figures rose from 2.000 in 1983 to 5.600 in 1985 and 13.800 in 1989. After the fall of the Berlin Wall in 1989, the number of asylum seekers arriving in the Netherlands increased further. This rise was accompanied by an increasingly heated political and public debate about Dutch immigration policy, in which the issue of return started to figure more prominently.<sup>13</sup>

Since 1985, a programme to assist the return of certain categories of migrants who were legally resident in the Netherlands had been in place. This, however, was aimed at long-term residents or naturalized migrants, usually guest labourers who had arrived in the Netherlands in the 1960s and 1970s, as well as recognized refugees from certain countries. The programme provided assistance to these legally resident migrants with re-establishing themselves in their countries of origin. This programme did not cover the increasingly visible group of persons who were faced with a legal obligation to leave the Netherlands. As remigration policy in principle concerns a distinctly different target group in a distinctly different situation, this policy will not be discussed in detail in this report, and only highlighted where relevant to understand issues related to assisted voluntary return.<sup>14</sup>

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<sup>11</sup> In our indication of the various governments during the last twenty years, we will adhere to Dutch convention to denote a government by its Prime Minister. In this case, ‘Lubbers III’ denotes the third coalition government headed by Prime Minister Ruud Lubbers.

<sup>12</sup> This requirement was already incorporated in Article 15d (2) of the Aliens Act of 13 January 1965 and was maintained in subsequent revisions of the Act. A 1986 Policy Note on refugee policy also noted: “If the asylum procedure is ended and the individual has not been given a residence status, he will have to leave the country. In principle, he will be accorded the opportunity to independently depart for a country where his admission is guaranteed.” See *Tweede Kamer* 1985-1986, doc. 19637 no. 1-2.

<sup>13</sup> See, for example, WODC (2009), *Migratie naar en vanuit Nederland: een eerste proeve van de Migratiekaart*, The Hague, Research and Documentation Centre (WODC), Ministry of Justice: p. 99.

<sup>14</sup> It should be noted, however, that there is some overlap between the target groups for remigration and assisted voluntary return policy. In principle, legally resident, long-term migrants can also make use of AVR facilities. However, as it is generally more advantageous for persons falling under remigration policy to make use of those facilities, this is not a particularly important target group for AVR programmes. It is clear from media reports of the time that the issues of ‘return’ and ‘remigration’, consisting of two separate regulations, were often confused and used interchangeably. In fact, IOM was, for some time, involved in the implementation of both regulations (before the start of AVR in 1992, IOM was already implementing remigration programmes – in September 1994,

### 2.1.2. Voluntary return policy from 1989 onwards

When Lubbers secured a third term as Prime Minister in the 1989 elections, his CDA formed a coalition with the Labour Party (hereinafter: PvdA).<sup>15</sup> The coalition agreement between the parties highlighted the prevention of illegal residence as a central issue. Excluding migrants without a legal status from social services and amenities was considered key in limiting irregular immigration. This would be reinforced by a *humane and effective return policy*. The establishment of a Return Bureau, providing assistance to migrants wishing to leave the Netherlands voluntarily, was singled out as a major instrument in bringing about such a humane and effective return policy.<sup>16</sup> The 1989 Coalition Agreement's mention of a Return Bureau signalled the start of the development of a policy of assisting the voluntary return particularly of those persons with an (impending) obligation to leave the Netherlands. The main aim of the Return Bureau would be to "create a facility through which impediments to voluntary departure [could] be removed".<sup>17</sup>

## 2.2 POSITIVE INSTRUMENTS

Following the decision to establish a Return Bureau, negotiations were started with the International Organization for Migration (hereinafter: IOM), an intergovernmental agency that had already been implementing assisted voluntary return programmes in Germany (since 1979) and in Belgium (since 1984). In 1990, a cooperation agreement with IOM was signed, which paved the way for the establishment of an IOM mission in the Netherlands. This office was opened in The Hague on 1 May 1991, although it would be involved in the Remigration Scheme initially.<sup>18</sup> In December 1991, an operational agreement on the establishment of the Return and Emigration of Aliens from the Netherlands (hereinafter: REAN) programme was concluded between the Netherlands and IOM. The structure and content of the REAN programme were largely inspired by the Belgian Return and Emigration of Asylum Seekers ex-Belgium Programme (hereinafter: REAB) and the German Reintegration and Emigration Programme for Asylum-Seekers in Germany (hereinafter: REAG), also implemented by IOM. As far as positive instruments to facilitate voluntary return are concerned, the institution of the REAN programme was a key event. This programme continues to the present day and is still a core instrument for the implementation of return policy. For this reason, we will discuss this instrument extensively in this section.

The IOM Return Bureau and REAN programme became operational on 2 January 1992, marking the start of the official implementation of the Dutch policy to provide ways in which to facilitate voluntary return. REAN did not only provide facilities to assist eligible persons to either *return* to their country of origin, but also to leave the Netherlands for a *third country*

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the responsibility for their implementation was transferred to the Social Insurance Bank and NMI (Netherlands Migration Institute), while IOM did remain responsible for AVR). Also see Trouw (1995), "Terugkeerbureau helpt steeds meer mensen te remigreren", 15 February 1995.

<sup>15</sup> The 1989 elections mark the start of an almost thirteen year-long period in which the PvdA would leave a distinct mark on asylum and migration policy, and, consequently, on voluntary return policy. In three successive governments (the first time as the smaller coalition partner, the second and third time as the largest party) the PvdA would supply the State Secretary (Junior Minister) for Justice, responsible for migration affairs, and the Minister for Development Cooperation.

<sup>16</sup> Coalition Agreement 1989, pp. 43-44.

<sup>17</sup> *Tweede Kamer*, 1991-1992, doc. 22146, no. 2.

<sup>18</sup> IOM Netherlands annual report 2003: p. 2. Before this date, there was already an IOM presence at Schiphol International Airport (Amsterdam), but this office fell under the responsibility of the IOM mission in Belgium.

where they would be allowed entry.<sup>19</sup> Under the REAN programme, information, tickets and a small financial contribution would be available. The Return Bureau would act as a ‘back office’, with referrals being made by organisations in the field dealing with migrants, such as the Dutch Council for Refugees and the Legal Aid Bureaus. The Bureau was staffed primarily with former civil servants of the Ministry of Social Affairs.<sup>20</sup>

The intended beneficiaries of REAN were (and remain) defined quite broadly. The main target group of the programme was defined as “aliens who have come to the Netherlands with the intention to settle there, but who have not been granted a status that allows them to remain, and who want to leave voluntarily from the Netherlands but do not have sufficient financial means.” In line with the political and public debate about the rising number of asylum applications, this definition seems to have been geared primarily towards dealing with rejected asylum seekers. Irregular migrants, who were the main subject of concern in the Coalition Agreement, seem to have been added to the programme’s target group almost as an afterthought: “aliens who are in an illegal situation are not excluded as such”. Presumably, this was done with consideration to the fact that providing assistance to persons without a legal status was politically sensitive, particularly in light of efforts to exclude them from other government-sponsored services (see chapter 2.3). It seems that the general expectation was that irregular migrants were unlikely to participate in the REAN programme in large numbers.<sup>21</sup> Nevertheless, their inclusion, in combination with the definition of the main target group, left the return programme with a significant amount of flexibility in providing assistance to a wide variety of aliens..

The first REAN regulation established eligibility criteria for voluntary return assistance, which have not been altered significantly since. An overview of these criteria is provided in box 1 below.

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<sup>19</sup> In literature and parliamentary documents on Dutch return policy, the term departure policy is also often used. An alien without a legal status is legally obliged to leave the Netherlands (see article 61(1) of the Aliens Act 2000). This obligation can also be met by leaving for a third country, and the Return Programme thus facilitates this option. However, for this to be possible, the migrant needs to have legal access and the possibility of residence in that third country. As many migrants lack this, the majority of assisted persons can only meet their obligation to leave the Netherlands by returning to their countries of nationality.

<sup>20</sup> This was cause for criticism in some circles, as IOM and its Return Bureau purported to operate neutrally and independently.

<sup>21</sup> An IOM spokesperson was quoted as saying: “At the time, Parliament pressed for the scheme also to be applicable to illegally resident foreigners. In itself, this point of view is understandable, but I do not think that irregular migrants...will make use of the regulation. After all, irregular migrants have to work hard to maintain themselves, they almost all have work. They will not want to give up that existence.” See *Algemeen Dagblad* (1992), “Kansloze asielzoeker kan door de voordeur weg”, 3 January 1992. At that time, estimates of the number of irregular migrants in the Netherlands were still low, and thus warranted relatively little attention, compared to the very visible issue of asylum. A recent article on the issue suggests that estimates of the number of irregular migrants in the Netherlands stood at around 50.000 in the early and mid-1990s. This, as it turned out, was a significant underestimation; *Vrij Nederland* (2008), “Veel angst, weinig effect: analyse: twintig jaar illegalenbeleid”, 16 February 2008.

### Box 1: Return programme 1991 eligibility criteria

#### The beneficiary:

- had the intention of establishing himself permanently in the Netherlands;
- does not have a legal status that allows him to remain in the Netherlands;
- does not have sufficient means to pay for his return;
- is not a citizen of the European Economic Community;
- cooperates with the Return Office;
- will not engage in any further procedures to obtain a legal status in the Netherlands;
- has not disturbed public order;
- has not made use of the REAN programme or similar facilities earlier;
- does not request assistance for fraudulent reasons.

#### Other conditions:

- the departure of the alien can be effectively implemented;
- the provision of financial assistance does not exceed the allocated budget;
- the departure of the alien does not conflict with a forced removal procedure.

While on the whole, the regular implementation of the REAN programme by the Return Bureau was initially relatively unknown, a particular situation brought this policy, as well as the Bureau, to the limelight, namely the return of a group of Vietnamese asylum seekers, who had come to the Netherlands from Eastern Europe. Although numerically a relatively small group, the efforts and eventual failure to facilitate the return of these Vietnamese dominated headlines for several years in the early 1990s. In box 2, this situation is described in detail.

The REAN programme was initially launched as a two-year pilot. At the end of this period, IOM announced it was working on a new return scheme that would provide more options for returnees to rebuild their lives in their countries of origin (to start in 1995). This would include financial assistance for the first three months after return as well as providing credit for small business start-ups. In contrast to later initiatives, this expansion of assistance would be aimed both at asylum seekers and irregular migrants, as the latter also found their way to the Return Bureau.<sup>22</sup> The idea of an expanded programme, however, was not supported by the Dutch government. It was felt that this would clash with the general, and increasingly restrictive, tone of migration policy, which included debates on labelling employment of irregular migrants a criminal offense.<sup>23</sup> Additionally, it was believed that an expanded programme might act as a pull factor for asylum seekers and irregular migrants to the Netherlands, as expressed by a government official:

“Because of such a scheme, people might think that the Netherlands will help them set up a business in their own countries. This will of course encourage people to come. We’d rather see illegal immigrants getting vocational training, so they have better opportunities to find work in their homelands.”<sup>24</sup>

<sup>22</sup> IOM announced that in 1994, 15% of all REAN participants in the previous year had been irregular migrants. *Algemeen Dagblad* (1994), “Illegalen bereid om met premie terug te keren naar geboorteland”, 13 January 1994.

<sup>23</sup> *Algemeen Nederlands Persbureau* (1994), “IOM werkt aan nieuwe terugkeerregeling”, 31 July 1994.

<sup>24</sup> *Algemeen Dagblad* (1994), “Illegalen in eigen land een toekomst geven”, 1 August 1994.

Despite disagreement over the scope of assistance, the REAN programme was considered to be a valuable addition to the available instruments and a political success. As such, it was continued under the conditions as initially set in the agreement between the Dutch government and IOM, and its budget would increase considerably in the following years.

While the number of irregular migrants benefitting from return assistance was slowly rising, the REAN programme remained primarily organized to accommodate asylum seekers. The Return Bureau depended on intermediaries, such as the Refugee Council and Legal Aid Bureaus, for referrals, and their primary target group were asylum seekers.

### **Box 2: The return of 'Czechoslovak' Vietnamese**

Between 1989 and 1991, approximately 500 Vietnamese arrived in the Netherlands from Eastern Europe. Vietnam had 'lended' these migrants as free labourers to Czechoslovakia, East-Germany, Hungary, Russia, Bulgaria, and Poland, as a way to pay off debts to these countries. Roughly 150 of these Vietnamese left the Netherlands soon after arriving, but some 350 stayed and applied for asylum.<sup>25</sup>

As they were seen as economic migrants rather than refugees, the 'Czechoslovak' Vietnamese did not qualify for asylum. Initially, an attempt was made to send them back to the Eastern European countries from where they had arrived, but when it became clear that they would not be accepted, the possibility of repatriating them to Vietnam was considered.<sup>26</sup> During the spring of 1992, the Ministry of Justice and IOM designed a specific return programme for these Vietnamese. The programme would supply returnees with a financial contribution of about 1800 guilders<sup>27</sup>, and they would receive help with finding a home, education and work – in the form of extra educational training or start-up aid for launching a business.<sup>28</sup>

Before the programme was implemented, a political discussion about the connection between development aid and socio-economic assistance to facilitate the return of (rejected) asylum seekers started. Some regarded return as a perfect possibility to (financially) 're-integrate' returnees and their families, whereas others saw the assistance as a way of 'paying off' the regime to prevent it from violating the human rights of the returnees.<sup>29</sup> This debate slowed down the implementation of the return programme.

However, even after this discussion ended, actual return still did not materialize. Whereas Vietnam was initially simply presented as a safe country for return, later – when several Vietnamese protested and went on hunger-strike – the security situation in Vietnam was called into question. The safety issue was emphasized in the media and was, according to many Dutch newspapers and NGOs, the main reason for the asylum seekers not to return.<sup>30</sup> Several times, the Dutch government sought guarantees from Vietnam that it would not persecute returnees, but this was not considered sufficient by civil society organizations and the Vietnamese themselves.<sup>31</sup> This led to more than two years of uncertainty about the safety in Vietnam.

Vietnam urged the Netherlands to sign the preliminary agreement rapidly, while the Netherlands had a lot of requirements and did not want to sign before every detail was recorded, the reason being that this agreement set a precedent for tens of thousands of other (Asian) refugees.

<sup>25</sup> *Algemeen Nederlands Persbureau* (1994), "Terugkeerverdrag voor Vietnamezen wordt donderdag getekend", 7 June 1994; *Trouw* (1994), "Kamer akkoord: Vietnamezen na twee jaar alsnog terug", 30 June 1994.

<sup>26</sup> *Trouw* (1994), "Kamer akkoord: Vietnamezen na twee jaar alsnog terug", 30 June 1994.

<sup>27</sup> This is the equivalent of approximately EUR 800 at current rates.

<sup>28</sup> *NRC Handelsblad* (1992), "Justitie geeft miljoen voor terugkeer van Vietnamezen", 13 May 1992.

<sup>29</sup> *Trouw* (1992), "Lubbers ziet niets in zak geld voor Vietnamees", 22 February 1992; *Trouw* (1992), "Pronk wil wel steun aan ontwikkelingsprojecten bekijken", 26 February 1992.

<sup>30</sup> *Algemeen Dagblad* (1993), "Vertrekpremie slaat aan; Veel vluchtelingen doen beroep op regeling", 6 January 1993; *Trouw* (1992), "Vietnamezen schuwen terugkeer en zijn doodsbang voor regime", 9 May 1992.

<sup>31</sup> *NRC Handelsblad* (1992), "VluchtelingenWerk positief over terugkeerplan", 8 May 1992.

Besides, IOM did not want to make any mistake in returning Vietnamese, given that it would have consequences for the rest of the possible Vietnamese returnees.<sup>32</sup>

Some of the rejected asylum seekers launched appeals against their rejection. As a consequence, they were able to stay in the Netherlands in the meantime. It was however clarified that only those people that would withdraw from all procedures and would leave the country within six months would be eligible for the IOM programme.<sup>33</sup>

Because of all debates and indecision, no one had returned in the meantime. One and a half years of radio-silence followed. Afterwards, the Dutch government still emphasized that the Vietnamese should return, preferably voluntarily. In January 1994, the Dutch Minister of Justice, Kosto, even said: *'If it is necessary, they will all be forcibly removed from the country.'*<sup>34</sup>

A series of incidents that received a lot of attention in several Dutch newspapers finally led to abandonment of Vietnamese return. First, a Vietnamese ex-police officer claimed in an interview that Vietnamese would be placed in camps if they would return, since Vietnam considered fleeing to a capitalist state to be high treason. Secondly, a rejected Vietnamese asylum seeker could prove Vietnamese authorities were looking for him, and he was therefore no longer obliged to return. As a result, the Dutch Minister of Justice was requested to take a good look at the Vietnamese cases again.<sup>35</sup> Lastly, an official commission of legal experts was set up and publicly disapproved of the agreement between the Netherlands and Vietnam because of safety reasons.<sup>36</sup>

In the end, it was argued that the (rejected) asylum seekers had been waiting for more than three years and that they consequently were able to get a residence permit.<sup>37</sup> The attention for the case had by then totally diluted and the expiry of it was barely reported in any newspaper. Looking at return figures during the years 1993-1996, it can be concluded that under the IOM programme, 5 Vietnamese (out of 4.609 returnees to all countries during these years) left the Netherlands, while it was unknown whether they headed for Vietnam or for a third country.<sup>38</sup> In the end, the specially designed return programme remained virtually unused.

## 2.3 NEGATIVE INSTRUMENTS

The establishment of the assisted voluntary return programme coincided with a number of government initiatives to diminish irregular residence. One of these was the adoption of legislation to prevent persons without a legal status from obtaining a social security number, which had previously been possible. Although this was not explicitly presented as a means to encourage return, its impact on the issue of voluntary return was obvious and remains so to date. This measure, which was complemented by other legislation in a later stage, effectively made it more difficult for rejected asylum seekers and irregular migrants to build a life for themselves in the Netherlands in absence of a legal status. This, it was assumed, would lead to these persons opting for voluntary departure more often. At least in terms of participation in the REAN programme, this measure seems to have had some impact. IOM noted:

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<sup>32</sup> *NRC Handelsblad* (1994), "Kooijmans overlegt in Hanoi over asielzoekers", 10 March 1994.

<sup>33</sup> *Trouw* (1992), "Vietnamezen krijgen hulp bij terugkeer naar vaderland", 14 May 1992.

<sup>34</sup> *Trouw* (1994), "Uitzetting Tsjechische Vietnamezen afblazen", 28 June 1994.

<sup>35</sup> *Algemeen Nederlands Persbureau* (1994), "Ex-politiefchef: Vietnam stopt teruggekeerde asielzoekers in kampen", 9 August 1994.

<sup>36</sup> *Algemeen Nederlands Persbureau* (1994), "Verdrag Vietnamese asielzoekers deugt volgens juristen niet", 2 November 1994.

<sup>37</sup> *Volkskrant* (1995), "Vonnis kan gevolg hebben voor verblijf Vietnamezen", 3 June 1995; *Volkskrant* (1996), "Vietnamezen geven 'dankbaar' feest voor heel het land", 11 March 1996; J. Tas (2003), *IOM Nederland schakel in deportatieketen*, <http://www.gebladerte.nl/10902f57.htm> (accessed on 26 August 2009).

<sup>38</sup> IOM Netherlands annual reports 1994-1996.

“From interviews with irregular migrants we find that they have much fewer possibilities to fend for themselves than before... The freedom of movement of irregular migrants is getting smaller and the net is slowly tightened around them by changes in legislation: employers are afraid of hefty fines if they employ irregular migrants. These people no longer qualify for welfare benefits and housing.”<sup>39</sup>

In January 1994, a general obligation to carry means of identification came into force, which also facilitated the detection of irregular migrants. In April of that year, the first purpose-built facility for the detention of aliens were opened, in order to facilitate a more effective forced removal process. Here, the early signs of the interwoven nature of forced and voluntary return policy in the Netherlands show up. While there was a clear intention to employ the instrument of detention more often and more rigorously to enforce return, assisted voluntary return was explicitly presented as a means to reduce the necessity to detain migrants.<sup>40</sup> However, overall the Lubbers III government seems to have put greater emphasis on positive than on negative instruments to facilitate voluntary departure.

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<sup>39</sup> *Algemeen Dagblad* (1994), “Illegalen bereid om met premie terug te keren naar geboorteland”, 13 January 1994.

<sup>40</sup> *Tweede Kamer* 1993-1994, doc. 22300, chapter VI, no. 2.

## 3 – KOK I (August 1994 – August 1998)

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### 3.1 CONTEXT

The PvdA emerged as the largest party from the 1994 elections and formed a ‘purple’ coalition with the VVD and the Social-liberal Democrats (hereinafter: D66). This meant that the CDA would not be included in the government for the first time since its inception in 1977. The issue of immigration was an almost immediate source of conflict between the PvdA and coalition partner VVD. Despite agreements on immigration issues between the PvdA and the two coalition partners, the VVD’s party leader, Frits Bolkestein, continued to criticize what he saw as a ‘soft’ immigration policy, and called for far reaching measures to tighten immigration controls. While the VVD later declared to fully support the Coalition Agreement, the diverging views in the coalition were apparent.

The new government initially focused strongly on the admission side of migration policy, and in particular on reducing the number of asylum applicants. In October 1994 two new application centres – where asylum applications could be processed quickly – were opened. In November 1995, an action plan to make the asylum procedure more effective was presented.<sup>41</sup> Due to the high number of asylum applications in 1994 and 1995, there were large backlogs in processing asylum applications, and asylum centres were filled to – and beyond – capacity. The action plan was a response to this challenge, and was based on the outcomes of a series of reports commissioned by the government, which evaluated the various measures implemented since 1994.<sup>42</sup> In the area of return, a noteworthy suggestion in the so-called ‘Berenschot report’ was to look at the possibility of a regularisation exercise, to help clear backlogs and ‘clean up’ the system. In a letter to Parliament, the government rejected this suggestion, stating that it saw possibilities for overcoming current problems without implementing such a far reaching measure. The first of these reasons was the expectation that a larger number of returns would be effected in 1996. As such, ‘preventing’ a regularisation exercise became explicitly connected to the success of return policy. In addition to the expected success of return policy, the idea that a regularisation exercise could be avoided was reinforced by a decrease in asylum applications at the time the action plan was presented.

The action plan suggested more active implementation of return, using a ‘two-track policy’. Here, the track of voluntary return remained an important instrument (see chapter 3.2), but forced removal would be more explicitly used ‘where possible’ (see chapter 3.3). This presents a subtle, but relevant change in relation to the previous government’s position. The Lubbers III government presented voluntary return as the main means to implement departure, with forced return primarily being used to remove persons for whom public order concerns

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<sup>41</sup> TK 1995-1996, 19637, no. 145, 21 November 1995.

<sup>42</sup> The Court of Auditors (*Algemene Rekenkamer*) delivered a report on immigration policy (see *Tweede Kamer* 1995-1996, doc. 24440 no. 1 and 2, 5 October 1995), while an evaluation of the Aliens Act was presented at the same time (see *Tweede Kamer*, 1995-1996, 19637, no. 138). The State Secretary had also commissioned a report (the ‘Berenschot’ report, based on the two previously mentioned reports, to investigate whether measures taken so far were adequate to meet the challenges faced (*Tweede Kamer*, 1995-1996, 19637, no. 141, 31 October 1995)).



existed. The concept of the ‘two-track’ approach suggests that either option could be applied, depending on which of the two would prove to be more effective in individual cases.

However, the Kok I government would find itself confronted with a growing number of persons obliged to return. In 1994, a temporary protection measure for Iranians was lifted.<sup>43</sup> In 1995, a number of important asylum countries (Angola, Somalia and Zaire<sup>44</sup> (currently the Democratic Republic of Congo)) were also declared generally safe for return in quick succession. With the conclusion of the Dayton agreement in November 1995, the possibility of the large-scale return of Bosnians also opened up.<sup>45</sup> A group of approximately 2.000 Tamils from Sri Lanka were added to this in March 1997. Removals to these countries, however, would prove difficult to implement. Of the countries mentioned above, despite protection policies having been abolished, individual assessments of return possibilities were still to be made. In a parliamentary debate in December 1995 the State Secretary of Justice, Elizabeth Schmitz, noted that the group that still needed to be subjected to an individual assessment consisted of some 11.000 cases. In addition, there were 2.750 persons that could not be returned due to lack of cooperation of the countries of origin, and a further 2.300 who could not (yet) be removed due to the security situation in their home countries. In all, this amounted to 16.800 rejected asylum seekers who could not be removed, but who were still accommodated in Dutch reception centres.<sup>46</sup>

In response to this ‘return crisis’, Schmitz presented a proposal for ‘an integrated approach to return policy’ in February 1996. This would prove the first policy document in which return policy was addressed as a separate policy area.<sup>47</sup> The ‘integrated approach’ focused on closer cooperation between the Ministries of Justice, Foreign Affairs and Development Cooperation. Its main objective was to deal with the ‘clogged’ asylum system and reception centres overburdened by persons with an obligation to leave:

“This is an undesirable situation, because reception places meant for other asylum seekers remain occupied. Furthermore, prolonged delay of return sends the wrong signal, which can undermine support for the reception of genuine asylum seekers in the long run. A central issue in return policy is therefore that an asylum seeker of whom is determined that he does not have a right to remain in the Netherlands, actually has to return to his country of origin. This creates clarity, both for the asylum seeker as for society.”<sup>48</sup>

The letter re-emphasized the adoption of the two-track policy towards return. While the preference for voluntary return was maintained as “the most desirable option, both for the alien and for the government”, forced return was firmly placed at the side of voluntary return as its “unavoidable complement”.

The ‘integrated approach’ letter was complemented by the first Return Policy Note, which was presented by Schmitz in June 1997. She announced that progress was being made in streamlining the asylum procedure, and that return would now come at the top of the

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<sup>43</sup> The protection for Iranians would be re-instated at the end of 1997 due to concerns over the security of returnees; see also box 5 in this report.

<sup>44</sup> See, for example, Trouw (1995), “Plan tot uitzetting wekt onrust onder Zairese asielzoekers”, 20 March 1995.

<sup>45</sup> The case of Bosnian returnees is discussed in box 3 in this report.

<sup>46</sup> TK 1995-1996, doc. 19637, no. 174, 11 December 1996. Also see Trouw (1995), “Schmitz raakt 17.000 asielzoekers niet kwijt”, 12 December 1995.

<sup>47</sup> Up to then, return had generally been addressed as a sub-set of asylum policy.

<sup>48</sup> TK 1995-1996, doc. 19637, no. 174, 23 February 1996: 1-2.

migration agenda.<sup>49</sup> While the policy note reiterated the importance of realizing effective return, and instituted several new measures to ensure this (discussed in chapters 3.2 and 3.3), the main focus of the note was not on individual return trajectories. In fact, the note is remarkable for its candour about the limits of return policy and its attempt to temper expectations of the outcomes of return policy:

“At different occasions the government has emphasized that the question of return is far from simple and that reality forces us to admit that a completely watertight approach in this area does not exist. Every time, this is reinforced during working visits to other countries and in the various fora where the problem of return is discussed: all western countries face similar problems as the Netherlands where it concerns return and, so far, nowhere ‘the solution’ has been found.”

In an interview with a newspaper, Schmitz reiterated this by stating: “I do not think we will be able to achieve spectacular results”.<sup>50</sup> The policy note rather seemed to focus on reshaping the climate in which return took place and was perceived. Firstly, Schmitz aimed to deliver a clear message on the issue of return, both to migrants and to the general public. This message was exemplified by the motto: “no admission means return”. This message would have to be conveyed to newly arrived asylum seekers as early in their procedures as possible. This would require a change in attitude of governmental agencies and civil society organizations: “Relaying the message ‘keep in mind that the outcome of the procedure could be either admission or return’ is far from a self-evident issue for those working with asylum seekers on a daily basis [including the Central Reception Agency, Dutch Council for Refugees and lawyers] and will definitely require a cultural change”.

Schmitz’ approach in this respect is primarily one of reinforcing responsibility, both of the alien and of those organizations providing support: “Aliens can deal with that responsibility very well [...]. The ones who come here are often the strongest. This is also the reason I have spoken about support. Assistance providers also need to know their responsibilities and carry them conscientiously.”<sup>51</sup> The recognition of responsibility would also require, according to the policy note, a general perception of a fair asylum system: “the policy has an important psychological effect. As an alien in the Netherlands you will get a fair assessment of your chances. But not everyone can just come here. Projecting this image is something that we have not done enough yet”. This image of fairness also encompassed the idea that when return would be necessary, this could be done in safety. In order to enhance the perception of fairness, the policy note also sought to institute a special residence permit for persons who could not return – although they tried - through external circumstances.

Schmitz’s return policy note was the subject of much criticism, including from coalition partners VVD and D66, as well as from the main opposition party CDA. Schmitz was accused of insufficiently ensuring that asylum seekers who did not return voluntarily would be forcibly removed.<sup>52</sup> Nevertheless, many of the instruments related to voluntary return, both positive and negative, found their basis in the Policy Note.

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<sup>49</sup> *Tweede Kamer*, 1996-1997, doc. 25386, no. 1, 3 June 1997.

<sup>50</sup> *Trouw* (1997), “Schmitz verwacht niet dat veel asielzoekers terugkeren door nieuw beleid”, 4 June 1997.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Trouw* (1997), “Terugkeerbeleid Schmitz onder vuur”, 4 June 1997; *Trouw* (1997), “Kamer wil actiever optreden tegen asielzoekers die uit Nederland weg moeten”, 12 June 1997.

The Kok I era is one of rapid development of and intense debate about the return policy. With its increasing prominence, the issue of ‘voluntary return’ also became the subject of criticism. As noted in the introduction to this report, questions were raised about the extent to which departure based on a legal obligation could constitute voluntariness. In October 1997, Dutch newspaper *Trouw* reported on a discussion meeting on the issue of return, in which terminology had been an issue: ‘Schmitz acknowledged that the term ‘voluntary return’, as used by the government, did not completely cover the issue. “I really understand that people are not enthusiastic to return,” said the State Secretary.’ As suggested by participants, Schmitz announced that rather than voluntary return, official documents would start incorporating the term ‘facilitated return’.<sup>53</sup>

## 3.2 POSITIVE INSTRUMENTS

### 3.2.1 The involvement of civil society in voluntary return policy

While the 1997 Return Policy Note pushed for the participation of civil society actors in the issue of voluntary return, early signs of these actors’ involvement already emerged earlier during the Kok I period. A first, clearly documented example of this was the *Knooppunt Vrijwillige Terugkeer* (hereinafter: KVT), a cooperative effort of several organizations dealing with asylum seekers and migrants.<sup>54</sup> By the end of 1994, the KVT, which had already been established in 1993, received media attention for successfully facilitating the resettlement of a family from Yugoslavia to Chile.<sup>55</sup> The stated goals of the KVT were to support aliens to return to their countries of origin or third countries, based on voluntariness and safety.<sup>56</sup> The focus of the KVT was to enhance the possibilities of aliens after departure from the Netherlands (e.g. by helping set up a business or other support). It also aimed to be beneficial to the receiving community.<sup>57</sup> Although the KVT disappeared off the scene several years later<sup>58</sup>, it became clear that civil society would have an increasingly important role to play in ensuring voluntary return, but particularly also – as acknowledged in the Return Policy Note – in making the issue of return acceptable to the general public. This was recognized by the Dutch government, as Schmitz noted: “A support base for return policy needs to be established. I want to involve refugee organizations and the like in this. I have heard that the word return is no longer taboo in those circles”.<sup>59</sup> The main instrument to foster

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<sup>53</sup> *Trouw* (1997), “Kerken hebben geen monopolie op humaan zijn”, 6 October 1997. The article notes that the participants had pushed for the term ‘facilitated removal’, but that this term was not adopted by the State Secretary.

<sup>54</sup> While most members were civil society organizations such as INLIA, the Dutch Red Cross, Eurasyl, Humanitas, the Dutch Council for Refugees and the Council of Churches, the KVT also include the Central Reception Agency for asylum seekers and IOM.

<sup>55</sup> *Algemeen Nederlands Persbureau* (1994), “Vrienden zwaaien Joegoslavisch gezin uit naar Chili”, 2 November 1994.

<sup>56</sup> It seems that the KVT was also aiming to position itself within the debate on which countries would be considered safe for return. A letter of the Dutch Bar Association to Parliament noted that: “since some time, the ‘Committee Voluntary Return, Resettlement and Reintegration for Aliens’ [the cooperative structure behind the KVT] is drafting plans for the establishment of ‘think tanks’, in which experts will take part who are willing and able to assess whether return can be considered safe and what constitutes a safe country”. See letter of 8 March 1994 and annex,

<http://www.advocatenorde.nl/NOVA/NovWet.nsf/325c45408f2b433cc12564a6004b963d/c6cc8a3fb34499d5c12564e40037eae3?OpenDocument>.

<sup>57</sup> *MigratieInfo* (1995), “Het Knooppunt Vrijwillige Terugkeer: ondersteuning bij hervestiging in herkomst- of derde land”, *MigratieInfo*, Vol. 1, No. 3: 10-12.

<sup>58</sup> The last reference to the KVT was found to date from 1999.

<sup>59</sup> *Trouw* (1997), “Schmitz verwacht niet dat veel asielzoekers terugkeren door nieuw beleid”, 4 June 1997.

cooperation from civil society was to provide subsidies to engage in voluntary return activities among their own target groups, a practice that continues to date. The KVT was one of the early recipients of these subsidies. As such, to some extent, the work of NGOs and other civil society actors became instrumentalized within the framework of the government's voluntary return policy. At the same time, civil society organizations were often staunch critics of (aspects of) the government's return policy and in some cases actively opposed its implementation (see chapter 3.3).

### 3.2.2 The REAN programme

In 1995, Schmitz presented an overview of the results of the first three years (1992-1994) of the REAN programme implemented by IOM to Parliament. In this letter, she reaffirmed the starting point of Dutch return policy as ensuring that any person not allowed to remain in the Netherlands would effectively leave. This should preferably be done on a voluntary basis, but forced removal - particularly in cases where there is a threat to public order or the danger of the alien absconding - would remain an option. The Return Programme was presented as 'stimulating the voluntary departure of aliens without infringing on the starting points of return policy'. As such, the return programme was subject to 'unequivocal conditions' and a monitoring system aimed at preventing abuse of the programme. The programme, it was stated, "is not intended as an alternative to other forms of removal, but should be seen as a supplement to removal policy", already reflecting the two-track approach that would later be forwarded.

The letter showed that there was a slight decrease in REAN returns from 1992 to 1993, followed by a significant increase in 1994. The evaluation identified three reasons for this pattern:

1. Assistance providers had initially been hesitant to cooperate with the Return Bureau of IOM. This hesitation was now being overcome, as evidenced by the increasing numbers of referrals the Bureau received from them.
2. The Return Bureau was relatively unknown in the initial stages of its existence. An intensive information campaign had improved the knowledge of the Bureau's existence and services.<sup>60</sup>
3. Measures to intensify the supervision of aliens within the country were likely to have led to increased willingness to participate in the programme.<sup>61</sup>

The evaluation concluded that "the experiences of the past three years show that the REAN programme is a valuable supplement to the removal policy as the government wishes to pursue it: effective but humane" and that "the return regulation [REAN] thus increasingly appears to offer aliens an alternative to forced removal from the Netherlands". Furthermore, it noted that the costs per person of assisted voluntary return were lower than that of forced removals (NLG 1.507 versus NLG 2.356 respectively in 1994<sup>62</sup>).

The letter pledged continued support for the REAN programme, which allowed the initial pilot to become a long-term feature of the voluntary return programme. IOM's proposed to expand the programme and with this evaluation the expansion with some additional features

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<sup>60</sup> Including 'the distribution of folders and posters in several languages in locations such as police stations, asylum seekers' centres and reception centres'.

<sup>61</sup> *Tweede Kamer*, 1994-1195, doc. 19637, no. 129, 8 May 1995. Also see IOM Netherlands annual report 1995, annex I for an English translation of the evaluation.

<sup>62</sup> The equivalent of EUR 685 and EUR 1.070 respectively.

could be realised. It stated that the government would examine the possibilities of expanding the scope of the programme, by complementing it with “simple but effective measures to be taken in the country of origin, such as a contribution, subject to a maximum, towards the costs of transporting household goods or of furnishing the new home, or towards the costs of training in the country of origin to enable individuals in question to get jobs”.

Also, the State Secretary would investigate whether such measures could be complemented by “preventive, educational programmes in those countries”. Such Migration Information Programmes would be geared towards “providing potential migrants with objective and reliable information about the Netherlands, to prevent people migrating based on unrealistic expectations”.<sup>63</sup> In the end, very few of such preventive programmes were actually established. The additional assistance to returnees, particularly focused on support in their countries of origin, however, would become an important aspect of the instrument of assisted voluntary return, as will be discussed below.

### Box 3: Return to Bosnia-Herzegovina

During the 1992-1995 war, about one million people fled Bosnia-Herzegovina. The number of people that reached the Netherlands was estimated at some 28.000, mostly Bosnian Muslims. The majority of them received a status that would permit them to stay in the Netherlands.<sup>64</sup> However, for about one third of all Bosnians in the Netherlands it remained unclear whether they would eventually be required to return or not. The process of granting asylum, arguably due to the strain of large numbers of arrivals, appeared unsystematic; persons arriving earliest were rejected, while later arrivals in similar situations received a residence permit.<sup>65</sup> At the end of 1995, following the signing of the Dayton Agreement, the Dutch government considered that Bosnia-Herzegovina was safe for return and it was assumed that most Bosnians would do so, possibly requiring some financial support from the Dutch government.

The announcement spread concern among the Bosnian population in the Netherlands. Some felt that return would not be prudent as, despite the peace agreement, ethnic and religious tensions, were far from settled, a fear particularly expressed by those individuals of mixed ethnic origins.<sup>66</sup> Also, those who had been in the Netherlands for a long time, and thus thought they would be allowed to stay, were told that return might be required of persons staying in the Netherlands for a period of up to five years.<sup>67</sup>

In order to address these fears, the Immigration and Naturalization Service (hereinafter called IND) set up a hotline (*Meldpunt*) where Bosnians could get informed about their situation in relation to the proposed return.<sup>68</sup> Parallel to this, a number of measures were implemented to assist the voluntary return to Bosnia-Herzegovina. One of these was the so-called ‘look and see’-pact, which allowed Bosnians with a Dutch residence permit to visit their former places of

<sup>63</sup> A particular inspiration for this seems to be the Migration Information Programme for Romania, which started in 1992 and which mapped migration flows from that country and implemented information campaigns about the dangers of illegal migration and the possibilities for legal migration. According to IOM, after two years “the emigration flow and the inclination to emigrate have decreased”. See MigratieInfo (1994), “Migratie Informatie Programma voor Roemenië”, Vol. 1, No. 2: 6-7.

<sup>64</sup> Ministry of Justice (2005), *Etnische groepen uit Bosnië & Herzegovina, Kroatië, Macedonië, Servië & Montenegro en Slovenië in Nederland: een profiel*.

<sup>65</sup> *Trouw* (1998), “We willen wel, maar kunnen niet terug: Bosnische vluchtelingen vrezen gedwongen terugkeer”, 7 September 1998. *Parool* (1996), “Justitie wil animo voor terugkeer voorzichtig peilen”, 4 January 1996.

<sup>66</sup> *Algemeen Nederlands Persbureau* (1996), “Meerderheid vluchtelingen ex-Joegoslavië wil terug”, 29 February 1996.

<sup>67</sup> *Parool* (1996), “Justitie wil animo voor terugkeer voorzichtig peilen”, 4 January 1996.

<sup>68</sup> *Ibid.* Also see MigratieInfo (1996), “Meldpunt voor Bosniërs”, second quarter of 1996.

residence, in order to assess whether they could restart their lives there.<sup>69</sup> Also, the basic facilities offered under the REAN programme were temporarily expanded for Bosnians. This was done in 1997 in response to the fact that return figures were lagging far behind expectations. The expanded assistance included the guarantee of a job upon return, something that has not been offered in any Dutch programmes since.<sup>70</sup> Moreover, in the summer of 1998, a 'return training' was established, providing education, reorientation on the Bosnian context and language courses.<sup>71</sup> At the same time, the possibility of resettlement to the United States (and to a lesser extent to other resettlement countries) opened up for large numbers of Bosnians.<sup>72</sup>

In 1999, research concluded that the Bosnian return programme had not reached the desired number of departures, although it was considered more successful than any of the other country-specific programmes implemented during the same time.<sup>73</sup> It has been suggested that the experiences of the Bosnian return programme were instrumental in improving the management of subsequent programmes.<sup>74</sup>

### 3.2.3 Post-arrival reintegration and the role of development cooperation

The case of the Vietnamese asylum seekers had already shown cooperation, on an ad hoc basis, between the Ministries of Justice, Foreign Affairs and Development Cooperation. With the 'integrated approach', the particular roles of each would become more clearly defined in return operations.<sup>75</sup> A particular focus of the new return policy, as discussed above, was to improve possibilities for returnees to rebuild their lives. The necessary support however, would not be individual "but will benefit both the returnees and the population already residing in the relevant region". Initially, Angola, Eritrea, Ethiopia and Somalia (with the possible addition of Sri Lanka) would be considered for such expanded return programmes. In the end, only programmes for Angola and Ethiopia were established (see box 4 below).

Such programmes would require significant input from the Ministry of Development Cooperation. After several years of discussion on how the support should be streamlined, in November 1996, the first policy note on Migration & Development was presented. The note acknowledged that there was a need for closer re-alignment of domestic and foreign policy objectives, particularly in the area of migration.<sup>76</sup> In this context, the note confirmed the idea that development cooperation could offer a significant contribution to the return of migrants from the Netherlands<sup>77</sup>:

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<sup>69</sup> MigratieInfo (1998), "Remigratie en vrijwillige terugkeer naar Bosnië-Herzegovina", second quarter of 1998.

<sup>70</sup> Ibid.

<sup>71</sup> *Algemeen Nederlands Persbureau* (1998), "Bosnische asielzoekers krijgen cursus 'terugkeren'", 3 August 1998.

<sup>72</sup> The large numbers involved, as well as the bureaucratic intricacies of the resettlement process, sometimes caused problems. This resulted, among other things, in a demonstration of 20 Bosnians wishing to get resettled at the IOM office in the Hague; see *Trouw* (2000), "Emigratie loopt stuk op ambtenarij", 1 November 2000.

<sup>73</sup> Muus, P. and P. Muller (1999), *Beeldvorming onder (uitgeprocedeerde) asielzoekers en vluchtelingen over terugkeer- en remigratie(beleid)*, The Hague, Research and Documentation Centre, Ministry of Justice.

<sup>74</sup> K. Koser (2001), *The Return and Reintegration of Rejected Asylum Seekers and Illegal Migrants: An Analysis of Government-Assisted Return Programmes in Selected European Countries*, Geneva, IOM: p. 14.

<sup>75</sup> It seems that the Bosnian return scheme was also mostly seen as a one-off operation, while the discussion about an integrated approach sought to establish a framework for all future return programmes.

<sup>76</sup> The note quotes from the Foreign Affairs note 'The re-alignment of foreign policy', *Tweede Kamer*, 1994-1995, doc. 24337, no. 2: "These new times have consequences for Dutch migration policy. Domestic policy increasingly needs to take international aspects into consideration. Conversely, foreign policy needs to be aware of the contribution it can provide to the solution of domestic issues that are influenced by international developments".

<sup>77</sup> The scope of the policy document is much broader than return, and also covers, for example, the root causes of migration and the reception and repatriation of refugees in their regions of origin.

“Even though this [group] in many cases consists of people with better education and better opportunities than their countrymen who have stayed behind, and development policy remains primarily targeted towards the disadvantaged in their own countries, migrants in our country deserve attention for three reasons.

Firstly, for humanitarian reasons: migrants who have left their familiar surroundings for political reasons or for their survival deserve our attention and, where necessary, our support. The motivation for this is the same as our concerns about the improvement of the destinies of those who stayed in their countries.

Secondly, among them, there can be migrants who, because of their education and experience, also in the Netherlands, have the potential to contribute to the development of their countries of origin on return.

[...]

Thirdly, because countries of origin, among which developing countries, are demanding attention for the problems associated with the return and reintegration of large numbers of displaced and refugees from their regions but also outside of those.”<sup>78</sup>

From this perspective, financial resources for development cooperation would be made available to support the Dutch return policy under the condition that return was *voluntary* and only used for *rejected asylum seekers* and not irregular migrants.<sup>79</sup> In line with Schmitz’ approach, the Migration & Development note emphasizes the importance of providing prospects to potential returnees: “an increasing number of immigrants in our country comes from developing countries, of which many, if provided with a reasonable prospect, would prefer to return”.

The role of development aid would not only be connected to specific programmes, but would also be used in general negotiations about return and readmission with countries of origin. Only two days after the release of the Migration & Development note, State Secretary Schmitz told *Trouw* that the authorities of Somaliland, which had refused to cooperate in forced returns, would accept voluntary returns of Somalis on the condition that the Dutch government would provide the region with development aid.<sup>80</sup>

VVD party leader Bolkestein had earlier also suggested that cuts in development aid would be used as sanctions against countries not facilitating the readmission of their nationals. While this position was not supported by either the government or Parliament, there was broad-based consensus that the promise of development aid should be used as a bargaining chip to entice countries of origin to be more cooperative in return procedures.

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<sup>78</sup> TK 1996-1997, doc. 25108, no. 1, 14 November 1996: 3-4.

<sup>79</sup> The note also promises contributions to the remigration of persons legally residing in the Netherlands. This will not be discussed here (also see introduction).

<sup>80</sup> Not all of Somalia had been declared safe for return. Somaliland was singled out as one of the places where return would be possible, and negotiations with the de facto authorities there were conducted to that effect. See also Trouw (1996), “Schmitz maakt uitzondering voor afgewezen Somalische asielzoekers”, 16 November 1996.

At the same time, the Ministry of Foreign Affairs was encouraged to push for more agreements on return and readmission, and to more closely observe the security situation in asylum countries, so that steps could be taken more quickly in case of positive developments.

#### Box 4: GTAA Ethiopia and Angola

The first structured attempt at a country-specific return programme, in which both the stimulation of return and the creation of better reintegration prospects in the country of origin were incorporated, took the shape of the GTAA scheme. Initially, country-specific schemes were proposed for Ethiopia, Angola, Somalia, Eritrea and Sri Lanka; only the former two would be implemented, as the security situation in the other countries was considered not suitable for instituting return projects, and extensive contacts between the Dutch government and the two selected countries had already taken place.<sup>81</sup> It was considered to be particularly urgent to address the situation of rejected Ethiopian asylum seekers as they had already been subject to eviction from reception centres before this became a general practice for most other nationalities.<sup>82</sup> This, it was argued, ensured that large numbers of Ethiopian failed asylum seekers could be expected to participate; a first estimate put the number of potential participants for the Ethiopian scheme at 700 to 900.<sup>83</sup> While in Angola the civil war would continue until 2002, a period of relative calm was considered to make return possible. An estimated group of 300 Angolans was targeted for return through the GTAA scheme.<sup>84</sup>

The scheme was a clear outcome of the push for an integrated approach, with the Ministries of Justice, Foreign Affairs and Development Cooperation all actively involved, both in the Netherlands and in the countries of return. IOM and the Dutch Migration Institute (*Nederlands Migratie Instituut*) were also involved in the implementation. The facilities under the GTAA scheme, in addition to the normal assistance provided under REAN, included vocational training, financial assistance for up to nine months after arrival in the country of origin, as well as individual and communal reintegration grants, administered by specially established Project Offices in Addis Abeba and Luanda.<sup>85</sup> Agreements which made the implementation of the scheme possible were signed with Ethiopia in August 1997 and with Angola one month later. The Project Offices were opened in the spring of 1998. The GTAA scheme, both in terms of resources (the project was budgeted at NLG 21 million and involved a range of different actors from the Dutch government, the governments of the countries of return, as well as other institutions) and in terms of the scope of the assistance provided to returnees was ambitious and unprecedented in Dutch return policy. In retrospect, with only the experience of the (failed) ad hoc operation for the return of the 'Czechoslovak Vietnamese' (see box 2) under its belt, and the Bosnian operation ongoing, the GTAA scheme was a high-risk undertaking. The reputation of the assisted voluntary return programme, as well as the cooperative relationship between the different Ministries, would be staked on its success.

The scheme for Angola turned out to have very little time to prove itself. A deteriorating security situation led to the suspension of the obligation to return in August 1998. In October of that year, the Project Office in Luanda was closed.<sup>86</sup> No Angolan returnees had been assisted by the GTAA

<sup>81</sup> *Ravage* (1998), "Back to Africa: terugkeerprojecten van start", no. 262, 26 June 1998: <http://www.ravagedigitaal.org/1998/KLAAR/Nr%20262/HTML/6298ar06.htm> (accessed on 14 October 2009).

<sup>82</sup> As discussed in chapter 3.3.2, eviction from asylum centres only really took flight after Schmitz' Return Policy Note. As of July 1997, eviction would be applicable to rejected asylum seekers of all nationalities, but for Chinese, Eritreans and Ethiopians, this was already implemented earlier. See <http://www.xs4all.nl/~ac/verwijderingen/verwijd.html> (accessed on 16 October 2009).

<sup>83</sup> Dutch daily *Het Parool* reported that the scheme target 872 Ethiopian failed asylum seekers, see *Het Parool* (1997), "Ministeries: geen oprotpremie", 13 May 1997.

<sup>84</sup> *Tweede Kamer* 1999-2000, doc. 19637, no. 525.

<sup>85</sup> Here, applications for reintegration project grants, both for the individual returnee and for his/her immediate community could be made. The Project Offices would then monitor the implementation of the projects. The Offices also acted as an information point for newly-arrived returnees. See *Tweede Kamer* 1998-1999, doc. 19637, no. 418, 3 March 1999 (mid-term evaluation of GTAA scheme).

<sup>86</sup> *Leeuwarder Courant* (1998), "Terugkeer asielzoekers vlot niet", 2 October 1998.



scheme. The Ethiopian programme fared little better; when a mid-term evaluation of the scheme was presented to Parliament in March 1999, only nine Ethiopians had returned within the GTAA framework, and no communal reintegration projects (one of the highlights of the scheme, reflecting its 'development-oriented' approach to return) had been initiated.<sup>87</sup> At the end of the scheme, which continued until the end of 2000, fourteen Ethiopians were reported to have returned.<sup>88</sup>

Several theories about the lack of results were put forward. IOM suggested that the return countries' "turbulent political situation [...] does not stimulate voluntary return"<sup>89</sup>, which seems to have played a very significant role. Not only did hostilities in Angola flare up shortly after the start of the programme, fighting between Ethiopia and Eritrea continued for much of its duration as well. The mid-term review also pointed to the fact that rejected asylum seekers were still relatively well able to maintain themselves as illegal residents.<sup>90</sup> Furthermore, it was noted that there had been problems obtaining travel documents from the Ethiopian and Angolan governments, and that many of the targeted rejected asylum seekers had started new procedures for residence in the Netherlands.<sup>91</sup> An overestimation of the target group could also have been added to this.<sup>92</sup>

The disappointing results had an immediate impact on plans to set up programmes for other countries, which were shelved. These programmes had been made contingent on "Ethiopia proving itself".<sup>93</sup> At the time of the 1998 elections, it was already clear that the GTAA scheme would not meet its high expectations. Although the Kok II government was composed of the same parties as the Kok I government, the new Minister for Development Cooperation abandoned the position of her predecessor in relation to voluntary return, including close involvement in country-specific return and reintegration projects. An attempt was made to salvage the GTAA scheme by getting other European countries on board and making it into a multilateral project, but this did not succeed. Informal consultations with Belgium, France, Germany and the United Kingdom led to the conclusion that the respective countries' main target groups were too different to make participation in GTAA worthwhile.<sup>94</sup>

The failure of the GTAA scheme also led some to criticize the idea of voluntary return as such, as well as the way in which the government had pursued it. One opposition member of parliament noted that voluntary return should always be intimately connected to forced removal, and that in this case there had barely been any pressure to leave, as sanctions for non-departure (that is, detention and deportation) were hardly used for these groups.<sup>95</sup> Another member of parliament of the VVD party (which was part of the government) had earlier gone as far as to see "a confirmation of my suspicions that return on a voluntary basis is determined to fail" in the failure of GTAA.<sup>96</sup>

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<sup>87</sup> Ibid.

<sup>88</sup> As reported by K. Koser (2001), *The Return and Reintegration of Rejected Asylum Seekers and Irregular Migrants: an analysis of government-assisted voluntary return programmes in selected European countries*, Geneva, IOM. Of the total budget of NLG 21 million, about NLG 2,25 million had actually been spent, amounting to more than NLG 160.000 (some EUR 73.000) per person.

<sup>89</sup> *Algemeen Nederlands Persbureau* (1998), "Weinig animo vrijwillige terugkeer Ethiopiërs en Somaliërs", 9 September 1998.

<sup>90</sup> K. Koser (2001), *The Return and Reintegration of Rejected Asylum Seekers and Irregular Migrants: an analysis of government-assisted voluntary return programmes in selected European countries*, Geneva, IOM. Koser describes the GTAA in this 2001 report, and also suggests that removing the possibility of illegal residence would increase participation in assisted voluntary return programmes.

<sup>91</sup> Parliamentary debate on (inter alia) the GTAA scheme, see *Tweede Kamer* 2000-2001, doc. 19637 no. 586, 16 May 2001.

<sup>92</sup> Koser suggests that the initial target group of 700-900 Ethiopians had later been revised to about 300.

<sup>93</sup> *Parool* (1998), "Terugkeer asielzoekers vrijwel onmogelijk", 7 October 1998.

<sup>94</sup> *Tweede Kamer*, 2000-2001, doc. 19637, no. 525, 17 May 2000.

<sup>95</sup> Ibid. Comments by CDA member of parliament Verhagen.

<sup>96</sup> VVD member of parliament Kamp in *Trouw* (1998), "Vrijwillige terugkeer impopulair", 10 September 1998.

### 3.2.4 Monitoring of returnees

A unique feature of the return policy of the Kok I government was the monitoring of those asylum seekers that had returned to their country of origin. Although this instrument was primarily used for those forcibly removed, it was instituted to improve the perception of fairness of both the asylum and return process, intending to show that return could take place in safety. Monitoring, which is presented as an instrument in the 1996 letter on the ‘integrated approach’ to return was a response to a call from various organizations like the Dutch Council for Refugees, Members of Parliament, judges and Development Minister Pronk.<sup>97</sup> Monitoring would involve, in certain cases, that Dutch embassy employees would be able to follow the progress of returnees. Additionally, returnees would be provided with contact details of the local Dutch embassy. Also, if IOM would implement return projects with a follow-up component in the country of origin (e.g. training or work placement), Schmitz suggested, this would be another means to keep the returnee in the picture.<sup>98</sup> Monitoring could also be done by the United Nations High Commissioner for Refugees (hereinafter: UNHCR) or other agencies.

Monitoring would become a controversial issue. Problems with the concept of monitoring included the extent to which a monitor (either an ‘active’ monitor, following a returnee, or a ‘passive’ monitor in the sense that a returnee could contact a Dutch embassy) could intervene in case of security problems, how this would impact on the position of the monitor (e.g. the embassy) and which criteria were employed.<sup>99</sup> Another issue was the extent to which monitoring could take place effectively in case of the return of larger groups.<sup>100</sup> The issue of monitoring would become particularly relevant when returns to Iran were resumed. This situation is discussed in box 5 below. In the end, the practice of monitoring was limited to the Kok I period and abandoned afterwards.

#### Box 5: The monitoring of Iranian returnees

A temporary protection policy for Iranian asylum seekers had been in place for several years when, in October 1994, the Ministry of Foreign Affairs released a report stating that the situation in Iran had changed sufficiently so as to allow for return. This decision coincided with the Iranian authorities, who had previously refused to readmit Iranians who would be returned, seeming more amenable to cooperation.<sup>101</sup> Until the end of 1996, when temporary protection was reinstated, returns to Iran took place, first voluntarily and later also forced.

In response to questions, Schmitz and her counterpart at the Ministry of Foreign Affairs, Patijn, reported to the Parliament on the issue of monitoring of Iranian returned rejected asylum seekers in October 1997. In various debates and motions during the year, Parliament had demanded a clarification of the way in which monitoring took place for this group. The forced return of Iranian

<sup>97</sup> *Parool* (1996), “De monitor is nabij op afstand”, 16 March 1996.

<sup>98</sup> In her letter, Schmitz noted that effective return was hampered by a number of policy-related and technical impediments, including the security situation in countries of origin, and the lack of documents of many rejected asylum seekers. Through closer monitoring of countries of origin, Schmitz noted, it was possible to more quickly anticipate on positive developments which enable return. Indeed, in 1995, categorical protection [prima facie protection on a group basis] for Sri Lanka, Iran, Angola and Somalia had been cancelled, making individual determination of status, and possibly return (if one was not eligible for asylum) possible.

<sup>99</sup> *Parool* mentions Development Minister Jan Pronk calling for monitors to be able to ensure that a returnee could travel back to the Netherlands in case of problems

<sup>100</sup> In a Parliamentary debate, the State Secretary noted that active monitoring was only possible for groups up to forty people at once. For larger groups this would not be possible. See *Tweede Kamer*, 1995-1996, 1996/37 no. 185.

<sup>101</sup> *Trouw* (1994), “Justitie: Iran weer ‘veilig land’: Ministerie zwijgt over plotseling terugsturen asielzoekers”, 1 November 1994.

rejected asylum seekers had been resumed in May 1996, after Iran had been declared generally safe. This was heavily contested by interest groups and Iranians themselves.

The letter reported that forced returns to Iran were accompanied by 'a relatively intensive form of monitoring'.<sup>102</sup> This included the observation of proceedings at the airport in Tehran by a Dutch immigration officer stationed at the embassy, house calls after about three days after return and staying in touch with returnees for prolonged periods.<sup>103</sup> At the end of 1996, the Iranian authorities objected to Dutch monitoring, considering it an intervention in internal affairs. After discussions with Iran, the Ministry of Foreign Affairs decided to discontinue active monitoring in 1997, to prevent other forms of (passive) monitoring also becoming impossible.<sup>104</sup> Throughout 1997, monitoring took place by providing forcibly removed persons with the phone number of the Dutch embassy in Tehran.<sup>105</sup> While a motion to that extent had been adopted by Parliament, the Cabinet did not see the need for expanding the monitoring mechanism for returned asylum seekers. This led to heavy criticism from Parliament, who read the letter to mean that no effective monitoring had been undertaken in Iran since the end of 1996, and that they had been falsely informed by the Cabinet.<sup>106</sup> This even led to a motion of disapproval against the State Secretaries for Justice and Foreign Affairs and the Minister of Foreign Affairs, but this gained insufficient support in Parliament, with the coalition partners backing the Cabinet, after those involved had apologized.<sup>107</sup>

At the same time as the debate took place, the NGO Prime reported that two returned Iranians had disappeared after their arrival in Iran, with a third one possibly executed.<sup>108</sup> Of the two who had disappeared, it later became clear that they had returned voluntarily using the REAN programme.<sup>109</sup> According to a Ministry of Justice spokesperson, this meant the Dutch government did not have any responsibility to monitor them.<sup>110</sup> IOM confirmed that its return programme did not have a monitoring mechanism.<sup>111</sup>

The episode with the Iranians showed the difficulty of the practice of monitoring. After the elections in 1998, the practice would be abandoned altogether. The measures taken during the Kok I period, it was argued in the Coalition Agreement, made monitoring superfluous: "After

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<sup>102</sup> In all 34 cases this happened in 1996. *Tweede Kamer*, 1997-1998, doc. 19637, no. 280.

<sup>103</sup> The letter states that not all returnees were subjected to all or any of these forms of monitoring, depending on the situation. For example, from October 1996, monitoring at the airport was to those who lived outside Tehran, for whom a house call would only be scheduled in case of problems. For those residing in Tehran, monitoring took the form of house calls, rather than monitoring at the airport.

<sup>104</sup> Additionally, it is noted, this decision was strengthened by the fact that, until the end of 1996, there were no indications that concrete problems occurred upon return, as well as those returning were found to be able to maintain contact with acquaintances in the Netherlands, who could also notify the embassy of potential problems.

<sup>105</sup> The letter notes that in 1997, the number of forced returns decreased considerably, with only 16 cases up to the moment of the submission of the letter to Parliament.

<sup>106</sup> *Volkskrant* (1997), "Ex-asielzoekers wordt aan zijn lot overgelaten", 29 October 1997.

<sup>107</sup> *Trouw* (1997), "Motie van afkeuring over monitoring Iraanse asielzoekers krijgt alleen steun van de oppositie", 5 November 1997.

<sup>108</sup> In a later article, it was reported that this third person, whose grave had been found in late November by embassy employees, had died in a traffic accident which – according to Prime – had happened under suspicious circumstances. *NRC Handelsblad* (1997), "Graf van asielzoeker in Iran gevonden", 28 November 1997.

<sup>109</sup> *Het Parool* (1997), "Vervolgde Iraniërs gingen uit vrije wil terug", 7 November 1997.

<sup>110</sup> *Het Parool* (1997), "Vervolgde Iraniërs gingen uit vrije wil terug": "If rejected asylum seekers return voluntarily, all responsibility of the government ends. The extra safeguard of monitoring by the embassy only relates to forced removals. It is horrible that something may have happened to those people, but since they are voluntary returnees, [the Ministry of] Justice is not at fault", 7 November 1997.

<sup>111</sup> "According to the rules of the game of voluntary return, neither the Dutch embassy nor the IOM are obligated to undertake monitoring. The returnee himself needs to ask for the phone numbers of the embassy or IOM. It is unclear whether the two Iranians have asked for these phone numbers. *Het Parool* (1997), "Vervolgde Iraniërs gingen uit vrije wil terug", 7 November 1997. Elsewhere, IOM also stated: "Our office in Tehran could have set up something like monitoring with [...] UNHCR, but the ministry never asked us for it", but added "although one observer is better than none, do not expect miracles of monitoring". *Het Parool* (1997), "Enkeltje Iran en 500 piek", 8 November 1997.

improvement of situation reports (*ambtsberichten*) and a more reliable asylum procedure, there is no reason to supervise the safety of returned aliens in the country of origin through specific monitoring measures”.<sup>112</sup> While monitoring resurfaced as a discussion topic from time to time, government-initiated measures to follow returned asylum seekers were never re-established.

### **3.2.5 The expansion of resettlement possibilities**

While not an official policy instrument deployed by the Dutch government, there is one last development in relation to the possibility of rejected asylum seekers and irregular migrants to voluntarily leave the Netherlands that deserves mention. As discussed earlier, the REAN programme does not only facilitate return, but also – if this is legally possible – resettlement to a third country. In 1998, near the end of the Kok I period, the United States, which ran a large resettlement programme, announced that resettlement would also be possible for certain groups of Bosnian, Burmese and Iranian refugees without any family ties in the US. Up to that point, only those with family ties were eligible. As temporarily protected persons were also covered by the programme, this opened up the possibility of a life in the United States, rather than eventual return to the country of origin for a significant group of asylum seekers in the Netherlands, most notably Bosnians. While the facilitation of resettlement was part of the Dutch government’s return policy (through the Netherlands Foundation for Resettlement for Refugees), the scope of resettlement possibilities depended on the policies of other countries. By integrating the tasks and staff of the Foundation for Resettlement into the IOM office, and by a more active pursuit of resettlement in individual cases, both the United States and other resettlement countries such as Canada and Australia, the Dutch government sought to capitalize on this new opportunity for its return policy.<sup>113</sup> As a result, the number of voluntary departures in the form of resettlement would increase significantly in the late 1990s and early years of the twenty-first century.<sup>114</sup>

## **3.3 NEGATIVE INSTRUMENTS**

### **3.3.1. Use of detention**

In April 1994, the first special facility for the detention of aliens was opened. This facility, of which more would follow, was set up to make the removal process more effective. In that same year, Parliament agreed with a new measure to not only detain migrants who could be forcibly removed, but also those who were ‘unreturnable’, for example, because of lack of documents. Detention, it was suggested, would be an effective way to pressure these aliens to identify themselves and thus to realise their removal.<sup>115</sup> As such, the use of detention of rejected asylum seekers and irregular migrants to be returned became more institutionalized. However, detention remained a last resort. For asylum seekers, other negative incentives were put in place to encourage them to return.

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<sup>112</sup> Coalition Agreement 1998

<sup>113</sup> *Algemeen Nederlands Persbureau* (1998), “IOM verzorgt voortaan emigratie vluchtelingen naar Amerika”, 14 January 1998.

<sup>114</sup> After which this number dropped again. The role of resettlement as a means to leave the Netherlands voluntarily is discussed in chapter two of the report *Assisted Voluntary Return from the Netherlands. An analysis of fluctuations in AVR participation (1992-2008)*, IOM (2010).

<sup>115</sup> *Trouw* (1994), ‘Kamer akkoord met detentie asielzoekers’, 19 October 1994.

### 3.3.2 The Ter Apel Removal Centre and eviction from reception centres

In response to the capacity problems of the reception centres, which were filled with many persons obligated to return, a Removal Centre was opened in the town of Ter Apel in September 1996. There, the ‘difficult cases’ would be presented with a clear choice: “Aliens whose removal is difficult for technical reasons (lack of travel documents) will be placed in that centre. They have the choice between voluntary departure through the IOM Return Bureau or forced removal.” The Removal Centre would come to include a special unit for identification research and was tasked to ensure departure within three months of arrival in the Centre. If neither voluntary nor forced return would be realized, due to lack of cooperation on the part of the asylum seeker, he/she would lose his right to government-sponsored accommodation.<sup>116</sup> The practice of evictions from reception centres had already been instituted, and became increasingly common during 1996, where there had been considerable leniency before then.<sup>117</sup>

The implementation of the two-track policy in Ter Apel, return within three months, either voluntarily or forcibly, however, did not meet the high expectations. Part of the problem seems to have been the fact that asylum seekers were asked to travel from their reception centres to Ter Apel independently. In July, *Trouw* reported that a considerable number of persons failed to arrive in Ter Apel.<sup>118</sup> This led to calls for organized transport to the centre. Earlier, the VVD had already called for centres for rejected asylum seekers to be ‘closed’, i.e. that freedom of movement would be restricted.<sup>119</sup>

While Schmitz pushed for consistent application of the eviction practice, to ensure that the Dutch government was not “putting a premium on non-cooperative behaviour” by continuing to provide support and accommodation, this put her in conflict with the municipalities that hosted the asylum centres.

In January 1997, it became public that several municipalities, in contradiction to government policy, were refusing to evict and withdraw welfare from asylum seekers whose claims had been rejected and who refused to cooperate in return. They argued that this part of the central government’s policy of encouraging return left local governments to deal with the consequences, particularly the fact that they would have to deal with destitute persons living on the streets of their communities. In a parliamentary debate of the ‘Apeldoorn’ affair – named after the first municipality to publicly announce its refusal to evict rejected asylum seekers, broad political support was given to Schmitz’s return policy and her intention to keep local governments to their obligations. She did announce that further consultations with the municipalities would take place, and that for the most severe cases, including families with small children, temporary accommodation could be provided in the Ter Apel centre. The

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<sup>116</sup> In October, the VVD had called for an investigation into the possibility of a ‘closed reception’ of rejected asylum seekers, i.e. detaining rejected asylum seekers immediately after the rejection of their applications (this is generally not possible, as the Aliens Act grants them a period for ‘independent departure’). The VVD saw the Ter Apel Removal Centre as a potential location for this, but this was not supported by the PvdA and D66. As such, Ter Apel would become a [semi-open] facility, where periodic reporting was necessary but asylum seekers had freedom of movement at all other times.

<sup>117</sup> See, for example, *Het Parool* (1996), “Justitie zet asielzoekers steeds vaker op straat”, 27 March 1996.

<sup>118</sup> *Trouw* (1996), “Naar Ter Apel loopt uit op onderduiken”, 12 July 1996. It was reported that of a group of 141 persons who were referred to the Removal Centre, 65 had disappeared en route, with another 27 absconding shortly after arrival (the Removal Centre was not a detention facility and asylum seekers had freedom of movement).

<sup>119</sup> *Trouw* (1995), “VVD wil ‘gesloten opvang’ uitgeprocedeerde vluchtelingen”, 26 October 1995.

continuation of the operation of this centre, despite the problems discussed earlier, also received broad-based support from parliament.<sup>120</sup>

The problems surrounding the eviction policy were re-emphasized in September 1997, when the Council of Churches, together with the INLIA foundation, set up a series of tents in the small town of Dwingeloo. There, a group of twenty rejected asylum seekers was accommodated, who were ‘unreturnable’ due to ‘technical reasons’, i.e. the lack of documentation. The government contested this was due to a lack of cooperation on the part of the asylum seekers, who had consequently been evicted from government reception centres or the Ter Apel centre.<sup>121</sup> The churches had a history of accommodating such asylum seekers, and set up the camps because other facilities were already filled.<sup>122</sup> After a debate with parliament, Schmitz agreed to establish a commission to review the criteria for assessing (non)cooperation. However, she did not see the need to readmit them to government reception centres.<sup>123</sup> The commission’s report, presented to Parliament in March 1998, primarily reiterated some of the principles of Schmitz’s return policy note. The commission concluded that an active role could be expected from asylum seekers to enable their return, and that it was their own responsibility to show they had done this with due diligence. This, according to the commission, was also the case when a foreign representation (embassy) was uncooperative. If an asylum seeker could show (s)he had proceeded with due diligence and was unable to return, (s)he would not be evicted and even be eligible for a residence permit. The commission also concluded that a rejected asylum seeker could be required to state to his/her embassy that (s)he was willing to return voluntarily, if this would lead to documentation, even if this willingness did not actually exist.<sup>124</sup>

### 3.3.3 Measures to combat illegal residence

Throughout the Kok I period, further reducing the possibility of illegal residence was a central concern. The previous government had already passed legislation making it impossible for persons without legal residence to obtain a social security number. However, large numbers of irregular migrants who had arrived in the Netherlands before this change in the law were still present in the Netherlands. This group was referred to as the ‘white illegals’, as they did not have a residence status, but paid taxes and had certain socio-economic rights based on their social security number. In March 1995, a policy was instituted to deal with this group. Those having lived in the Netherlands for more than six years, and who had worked and paid taxes in that period, would be granted a residence permit. All others were required to leave the Netherlands and could be subjected to forced removal if they refused to return of their own accord. The policy quickly became controversial, as cases of persons living in the Netherlands for a long time did not meet the criteria for a residence permit.<sup>125</sup> The most notable case was that of Mr Gümüş – a Turkish tailor who had lived in Amsterdam since 1989 – and his family, whose application was denied and who was told to leave the Netherlands. This led to a much-publicized campaign by neighbours to allow the family to remain in the Netherlands. Even the Amsterdam City Council and other officials of some other municipalities became involved, openly criticizing Schmitz’ policy. This put Schmitz and Parliament in a difficult position, as Alink describes:

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<sup>120</sup> Trouw (1997), “Brede Kamersteun voor uitzettingsbeleid Schmitz”, 30 January 1997.

<sup>121</sup> Trouw (1997), “Schmitz: asielzoekers in tentenkamp werken tegen”, 24 September 1997.

<sup>122</sup> De Volkskrant (1997), “Raad van Kerken richt tentenkamp in voor twintig asielzoekers”, 23 September 1997.

<sup>123</sup> De Volkskrant (1997), “Kerken en justitie blijven het oneens over tent-asielzoekers”, 18 October 1997.

<sup>124</sup> TK 1997-1998, doc. 19637, no. 322, 23 March 1998: p. 6.

<sup>125</sup> F. Alink (2006), *Crisis als kans? Over de relatie tussen crises en hervormingen in het vreemdelingenbeleid in Nederland en Duitsland*, Amsterdam University Press: p. 118.

“While a broad political majority had demanded tough measures against irregular residence of the State Secretary, only part of the political field (including supporters of a strict irregular migration policy) wanted to face the consequences of this policy.”<sup>126</sup>

Despite mixed messages from politicians and the general public, the Kok I government continued with their efforts to curb illegal residence. Shortly before the 1998 elections, The Linkage Act (*Koppelingswet*) was adopted. This Act established a link between the residence status of aliens and their right to use government-sponsored services and benefits. Thus, it became impossible for rejected asylum seekers and irregular migrants to make use of such facilities as adult education, rent subsidies and government-sponsored housing, registering for health care insurance, driving licenses, child support and unemployment benefits.<sup>127</sup> As a result, remaining in the Netherlands without a legal status would become decidedly more difficult. In this way, the Linkage Act also reinforced the government’s return policy, based on the assumption that rejected asylum seekers and irregular migrants were more likely to leave voluntarily if their possibilities to support themselves in the Netherlands were reduced.

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<sup>126</sup> Ibid: p. 121.

<sup>127</sup> An exception was made for facilities such as medically necessary health care, education of minors and legal assistance.

## 4 – KOK II (August 1998 – July 2002)

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### 4.1 CONTEXT

A second government under the leadership of Wim Kok, again consisting of the PvdA, VVD and D66, was installed after the 1998 elections. State Secretary for Justice Schmitz was succeeded by Job Cohen (who himself would be replaced by Elsa Kalsbeek at the end of 2000<sup>128</sup>), while the Minister for Development post transferred from Jan Pronk to former World Bank director Eveline Herfkens. Asylum and migration continued to be a top priority for the Kok II government. The Coalition Agreement of 1998 included extensive provisions related to asylum and, explicitly connected to that, return policy. A major aim was to improve and accelerate the asylum procedure, in order to reduce “long-term uncertainty about ‘staying or returning’ for asylum seekers”. An amended Aliens Act (which would come into force in April 2001) would be the main instrument for this. This was called the New Aliens Act 2000 (Nieuwe Vreemdelingenwet 2000).

After a decrease in the middle of the previous government period, asylum applications were on the rise again, which provided the backdrop for much of the debate on asylum and return policy during the Kok II period. The capacity to deal with asylum seekers (both new arrivals and old caseloads) was again under heavy pressure. In September 1998, the central reception agency for asylum seekers (hereinafter: COA) announced that it was unable to accommodate the large numbers of newly arrived asylum seekers, which it projected to rise to 48.000 in 1998 and possibly even 60.000-70.000 the following year. Not only did this strain the reception capacity, but government agencies were also struggling to register all new arrivals and process their asylum applications. The system, as Cohen put it, was in danger of ‘derailing’, and far reaching measures would have to be taken.<sup>129</sup> These measures included the institution of ‘waiting lists’ for the application centres, with new arrivals – rather than being immediately admitted to the asylum procedure, receiving an appointment to be registered in the system at a later date.<sup>130</sup> In the mean time, those who could not arrange shelter of their own, would be accommodated in special emergency reception locations, consisting of army tents providing ‘very basic’ facilities.

The setting up of these camps coincided with very bad weather. In the weeks after their establishment, media images of muddy, rained out camps with leaking tents led to widespread protest against this type of accommodation from civil society, but also from within the PvdA, Cohen’s own party.<sup>131</sup> The hastily instituted measures also irked local governments, who felt insufficiently consulted in this matter.<sup>132</sup> Additionally, the issue led to

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<sup>128</sup> Cohen left his post as State Secretary to become mayor of Amsterdam.

<sup>129</sup> *Trouw* (1998), “Cohen wil meer asielzoekers terugsturen naar hun eigen land”, 10 October 1998.

<sup>130</sup> In principle, the waiting list was set up on a ‘first come, first safe’ basis, although those who were in an emergency situation and those in possession of documents proving their identity and nationality were given priority. *Trouw* (1998), “Cohen wil meer asielzoekers terugsturen naar hun eigen land”, 10 October 1998.

<sup>131</sup> *Trouw* (1998), “Vluchtelingenwerk: tentenkampen niet humaan”, 13 October 1998. *Trouw* (1998), “Kamerlid Middel: Tentopvang kan zo niet”, 14 October 1998. Under these various pressures, the most criticized camp, located in the town of Ermelo, was closed shortly after its establishment, but other emergency locations remained open. *Trouw* (1998), “Cohen sluit na kritiek tentenkamp in Ermelo”, 16 October 1998.

<sup>132</sup> *Trouw* (1998), “Ook na vijfen een bed in Zevenaar”, 16 October 1998.



considerable conflict between the VVD on the one hand, and the PvdA and D66 on the other, with the former calling for stricter measures than the other coalition partners were willing to accept.<sup>133</sup>

While the new Aliens Act was seen as a major instrument to reduce the influx of asylum seekers, as well as shorten their procedures, again, the government turned to return policy to solve the most immediate problems. In June 1999, Cohen presented a new Return Policy Note to Parliament, which elaborated on central principles from the Coalition Agreement.

While the Policy Note adopts some of the approach presented by Schmitz in 1997, it is clear that there is ambiguity towards the legacy of her policy. Cohen feels the need “to stress that there is no question of significant shortcomings in the policy presented to Parliament in 1997”, but at the same time includes a lengthy discussion of the problems that remained unresolved despite his predecessors efforts.

While the number of persons who were obligated to return and were still residing in government-provided shelter had declined, Cohen notes that still more than 5.000 such cases remained.<sup>134</sup> Of those, however, the State Secretary expected that only some 1.000 would be effectively returned, as they hailed from countries where return did not encounter significant problems. Another 780 hailed from countries where return was considered impossible for security reasons<sup>135</sup>, while another 3.200 would be difficult to return, due to lengthy procedures to obtain travel documents from the authorities of the country of return and a lack of return and readmission agreements.<sup>136</sup>

In his Note, Cohen applies the same basic starting points as his predecessor: the motto that ‘non-admission means return’, the emphasis on the own responsibility of the alien to return, and the preference for independent (i.e. voluntary) facilitated return.<sup>137</sup> An important addition is the institution of a ‘hard deadline’ for departure, following four weeks after the final rejection of an asylum application. Up to then, the ‘cooperation criterion’ had been employed, which took into consideration the rejected asylum seeker’s willingness to cooperate with his/her return. If cooperation was forthcoming, but return could not be realized immediately, he/she would remain entitled to government facilities. The four-week deadline meant that this practice would be abandoned and that all rejected asylum seekers would have to be transferred to the Removal Centre or evicted from their accommodation four weeks after the

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<sup>133</sup> *Volkskrant* (1998), “VVD wekt toorn PvdA en D66”, 15 October 1998. Prime Minister Wim Kok noted the seriousness of this conflict by stating: “The political gain of making these agreements [about asylum policy] is now overshadowed by a row that gives the impression that there is not even a beginning to consensus on this difficult issue in the coalition”. See also *Trouw* (1998), “Volgens Kok wekt ruzie tussen kamerleden over asielzoekers verkeerde indruk”, 17 October 1998.

<sup>134</sup> As of 1 May 1999, COA accommodated 63.116 persons, of whom over 58.000 were still involved in legal proceedings and thus not returnable.

<sup>135</sup> The Policy Note mentions Afghanistan, Angola, Burundi, the Democratic Republic of Congo, FR Yugoslavia and Rwanda in this respect.

<sup>136</sup> The Policy Note specifically mentions Algeria, China, Egypt, Eritrea, Iraq, Iran, Liberia, Lebanon, Sudan, Somalia, Sri Lanka and Syria, as well as the situation of Palestinians.

<sup>137</sup> The Policy Note reinforces the earlier shift in terminology, although the term voluntary return is still also used in the document, by stating: “Independent return remains (...) the most preferable option. In the past this option was named ‘voluntary’. Experience has taught us, however, that when it concerns return, there is usually not really any voluntariness. More often there is a situation in which the alien realizes that – now that admission to the Netherlands has definitively been denied – a further prolongation of stay in the Netherlands can no longer be considered a realistic option”.

final decision in their cases. This would be implemented on the basis of the ‘Phase Plan 2000’ (*Stappenplan 2000*<sup>138</sup>) (see chapter 4.3).

This meant that the responsibility for return now lay unequivocally with the asylum seeker. Although the asylum seeker’s own responsibility was already emphasized by the Kok I government, the ‘cooperation criterion’ ensured that this responsibility was shared with the government. With these new measures, the balance of responsibility would tip completely towards the person obliged to return, a principle that remains central to return policy to date.

To make the ‘return within four week after rejection’ principle possible, the Note proposed a wholesale restructuring of the way in which return was organized, by improving cooperation between the different ministries and governmental agencies involved in the return process (including the Immigration Service, the police and Royal Constabulary, and COA). This would be done by appointing a project leader for return to oversee the joint implementation of return, as well as the establishment of a National Organ for Coordination of Return (LOTO). At the local level, Regional Integrated Return Teams (RITTs) would be established, aimed at improving cooperation between government agencies at the implementation level, as well as improve operational cooperation with municipalities, NGOs and IOM. The task of the RITTs was, inter alia, to ensure that return became an integral part of the procedure (e.g. in relation to activities by COA in reception centres), voluntary return was stimulated, and that enforcement measures would be effectively taken upon failure to return voluntarily.

On 1 April 2001, the new Aliens Act 2000 (*Vreemdelingenwet 2000*) entered into force. This provided a watershed between the ‘old caseload’ of potential returnees, which were dealt with by the old system (i.e. the Phase Plan 2000 and earlier Plans) and the ‘new caseload’ of persons who were rejected under the new Act (for which the Phase Plan was no longer applicable, see chapter 4.3). Kalsbeek, who at the start of the year had taken over from Cohen, prioritized the return of the old caseload as this would be a precondition for an effective implementation of the return policy under the Aliens Act 2000.<sup>139</sup> To do so, Kalsbeek set up a Project Departure and Return, which would ensure that the old Phase Plans would be processed in a structured and timely manner. All old cases would be assigned to a case manager, who would ensure that eviction took place and, to the extent possible, the person involved had returned, primarily by stimulating the decision to return voluntarily in personal counselling sessions.

In June 2001, a new target group for return policy would be introduced: unaccompanied minors (UAMs) claiming asylum. From 1996 to 2000, the number of unaccompanied minors arriving in the Netherlands, primarily from China, Angola, Sierra Leone and Somalia, had risen from some 1.600 to 6.700.<sup>140</sup> Up to that point, UAMs claiming asylum had automatically been accorded the right to remain, even if they did not meet the criteria for protection as a refugee. In Kalsbeek’s proposal, those not eligible for an asylum permit would, in principle, have to return if either (1) the minor could cope sufficiently independent in the country of origin, or (2) if this was not the case, adequate reception facilities were available

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<sup>138</sup> This followed earlier Phase Plans, which were employed during the Kok I administration, but were based on the ‘cooperation criterion’, rather than the four-week deadline.

<sup>139</sup> *Tweede Kamer*, 2001-2002, doc. 19637, no. 648, 1 February 2002.

<sup>140</sup> *Volkscrant* (2001), “Dam tegen komst jonge vluchtelingen; Einde aan automatische verblijfsvergunning minderjarige asiellozoekers”, 13 April 2001.

in the country of origin.<sup>141</sup> Those not able to return would receive a temporary status for a maximum of three years, during which the possibility of return would be investigated. If return would remain impossible after those three years, a permanent status would be accorded. An exception was made for those over the age of fifteen upon arrival. For them – if not qualifying for asylum – their temporary permit would be revoked upon reaching the age of eighteen, and they would have to return under the same policy conditions applying to adults.<sup>142</sup> The proposal was met with overwhelming support by Parliament.<sup>143</sup> Although specific instruments to stimulate the return were implemented only in the following government period (these will be discussed in detail in chapter 5), the proposal put UAMs firmly on the return agenda, where they have remained ever since.

## 4.2 POSITIVE INSTRUMENTS

### 4.2.1 Changes in outreach structure of REAN

As in the previous period, the basic criteria for REAN assistance to persons voluntarily departing the Netherlands remained unchanged. However, part of Cohen's approach was to ensure that asylum seekers would be exposed to the idea of voluntary departure as soon as possible. In addition to the restructuring of the way in which governmental agencies operated, Cohen also saw an important role for IOM in this process. Cohen stated his intention to "provide IOM with a stronger position within the Dutch return policy". A main instrument to do so was to provide IOM with the opportunity to start its own regional outreach network. In the course of 2000 IOM's reorganization of its outreach system was completed. Up to that time, persons wishing to make use of the REAN programme or related, country-specific assistance programmes, were referred to IOM's Return Bureau by other organizations or assistance providers. The Return Bureau acted as a back office in this respect. From 2000 onwards, IOM hired additional staff and opened new locations to be able to be in direct contact with asylum seekers in government-operated reception centres.<sup>144</sup> In this way IOM would be enabled to inform asylum seekers about the possibilities of voluntary return assistance, the lack of which was singled out as one of the problems why the REAN programme had not met its target. Besides that a more directly engagement with potential returnees would solve practical problems related to their return.<sup>145</sup>

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<sup>141</sup> These facilities could be parents, other family members, but also private or public institutions. Whether these facilities were adequate would be assessed against standards in the country of origin, rather than those in the Netherlands.

<sup>142</sup> *MigratieInfo* (2001), "Terugkeer centraal in nieuw ama-beleid", Vol 7(2): 12-13.

<sup>143</sup> *NRC Handelsblad* (2002), "AMA campus is tekentafelmodel", 28 November 2002; *Volkscrant* (2002), "Kamer stemt in met campus voor ama's", 28 November 2002.

<sup>144</sup> Initially, six 'district offices' and 22 new staff members were deployed, many of whom working 'mobile' to run consultation hours in all asylum centres. The permutation of the districts (some merged shortly after the introduction of the new system) and of the staff differed over the next few years, but the central premise, direct outreach to potential returnees remains the same up to date. See *MigratieInfo* (2000), "IOM-districtskantoren van start", Vol. 6(1): 2-3.

<sup>145</sup> *Het Parool* (1999), "Vrijwillige terugkeer niet langer taboe", 20 July 1999: "For three government periods already, [the Ministry of] Justice is struggling with 'return' together with IOM, but IOM is far from well-known. With the upcoming expansion with (...) regional offices, this will no longer be the case, says [IOM Chief of Mission] De Dycker. IOM reacts to requests for assistance, we are not used to actively reaching out. Outreach gives us the label: extension of Justice. Our neutrality is our strength. The drawback of this discreet position is that many asylum seekers have never heard of IOM".

This new system required close cooperation with COA, the central reception agency for asylum seekers. Not only was COA responsible for the management of the reception centres, and would therefore host IOM's outreach activities, its own role in promoting return had increased, with staff integrating the issue of return into their programmes of facilities and activities (such as training and counselling) in the centres. Under the new policy, the daily programme offered to those having received an initial rejection of their asylum claims would have to be geared solely to return, rather than integration in the Netherlands. COA staff would also be responsible for personally impressing upon rejected asylum seekers that they had an obligation to return, as well as being responsible for evicting persons who had failed to leave within the four weeks prescribed for this. With COA's central role in the return process and IOM's physical presence at the asylum centres, cooperation between the two was crucial. To establish a clear division of responsibilities and facilitate the exchange of information, COA and IOM signed an operational agreement.<sup>146</sup>

While the new strategy was focused on asylum seekers, in the following years consultation hours were set up in various locations in the larger cities, to reach out to irregular migrants and to rejected asylum seekers who had been evicted from asylum centres. Increasingly, this group would come to be included in IOM's outreach activities as well. In 2000, IOM started a project in cooperation with the Pauluskerk (Church of Paul), which provided shelter and assistance to irregular migrants and failed asylum seekers in Rotterdam. The project focused on aliens from South Caucasian states and Russia, with the aim of assisting approximately 150 persons, through intensive counselling and information provision, to return.<sup>147</sup>

#### **4.2.2 Development cooperation and voluntary return**

Cohen's Return Policy Note came only months after the release of the mid-term review of the GTAA scheme (see box 4), which made clear that the significant investments made in an elaborate programme for the return and reintegration of Ethiopian and Angolan asylum seekers had not yielded the expected results. The GTAA scheme was the main vehicle for the cooperative relationship between the Ministry of Justice and the Ministry of Development Cooperation in the area of voluntary return. When the report was presented, the new Minister for Development Cooperation, Eveline Herfkens, had already implied that she was not in favour of her Ministry's involvement in such schemes. Perhaps unsurprisingly, the 1999 Return Policy Note, although emphasizing the need to provide positive prospects in the country of origin to returnees, remained remarkably aloof on the issue of linking development cooperation and return programmes. The Note merely stated that more clarity about the role of development cooperation in voluntary return policy would be provided later in the year.

This clarification came in a letter from Herfkens to Parliament in November 1999. The letter made clear that she did not share her predecessors views that voluntary return (as part of the broader Migration & Development note) was an important issue for her Ministry: "I do not regard the theme of Migration and Development, considering more urgent priorities aimed at effectively combating poverty, as the core of my policy".<sup>148</sup> Although not completely abandoning involvement, Herfkens no longer sanctioned the use of development funds for facilitating the return of legally resident migrants, other than for recognized refugees. She would continue to support the facilitated return of rejected asylum seekers (this was set down

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<sup>146</sup> *MigratieInfo* (2000), "Convenant COA en IOM", Vol. 6(2): pp. 18-19.

<sup>147</sup> *MigratieInfo* (2002), "Samenwerking IOM en Pauluskerk", Vol. 8(2): 12-13; *Rotterdams Dagblad* (2002), "Organisaties voor migratie bij elkaar: al honderden vluchtelingen terug naar thuisland", 10 June 2002.

<sup>148</sup> *Tweede Kamer* 1999-2000, 19637, no. 485, 17 November 1999.

in the 1998 Coalition Agreement) but no longer wished this would take the form of bilateral arrangements such as the GTAA and its Project Offices. She indicated that a multilateral framework for reintegration projects could be considered.<sup>149</sup> The role of the Ministry for Development Cooperation would become much more passive, no longer actively involved in setting voluntary return policy for particular groups, but facilitating the Ministry of Justice, which would have to demonstrate in each case that development funds would be strictly necessary to make return possible. The condition that such funds would not only benefit the returnee, but also the receiving community, was maintained.

This did not mean, however, that no country-specific projects were implemented during this period; an important example of this is the return of large numbers of evacuees from Kosovo (see box 6).<sup>150</sup> However, in general, such programmes were either more focused on providing extra incentives in the Netherlands (rather than setting up extensive structures in the countries of return) or were largely outsourced to other agencies, such as IOM, with the Dutch government having a place in the background.

After Kalsbeek took office as State Secretary of Justice, she tried to re-establish close working relations between the two ministries in the area of voluntary return. She had announced that she would investigate the possibility of tailor-made, country-specific programmes for returnees in support of her Project Departure and Return (see chapter 4.1). A letter from Kalsbeek to Parliament mentions a meeting between the two ministries to look for synergy, which could be found in multilateral contributions for the reception and reintegration of returnees in specific countries. Kalsbeek announced that she would draft a list of priority countries to this end.

#### **4.2.3 Civil society and local government initiatives related to sustainable return**

Whereas the central government struggled internally with the issue of return and reintegration, other actors started to set up initiatives to provide rejected asylum seekers with positive prospects in their countries of origin. At the end of 2001, the Catholic Organization for Relief and Development (Cordaid), one of the Netherlands largest development NGOs, CMC (Catholic missionary development organization) and IOM announced the launch of the initiative *Maatwerk bij Terugkeer* (Mediation Agency for Return). This initiative would focus specifically on providing information about, and mediating in possibilities for, post-return reintegration of voluntary returnees. This would take place parallel to the REAN programme, providing basic assistance to enable travel to the country of origin, with *Maatwerk bij Terugkeer* providing additional resources for sustainable reintegration. This would be done by tapping into the knowledge and experience of NGOs, churches and IOM missions in the countries of return.<sup>151</sup>

Earlier, another initiative had been launched in the South of the Netherlands, called *Hersteld vertrouwen in de toekomst* (HIT), set up by COA, in cooperation with various organizations working in that part of the country. The aim of HIT was to provide returning asylum seekers with a better chance in the labour market of their countries of return and to help them become self-sufficient, e.g. through training and other support.<sup>152</sup>

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<sup>149</sup> Although cooperation with other European countries in this respect turned out not to be feasible, see box 4.

<sup>150</sup> A letter to parliament mentions programmes for Iraq, Somaliland and the Czech Republic, Slovakia, Romania and Bulgaria also being active. *Tweede Kamer*, 2001-2002, doc. 19637, no. 648, 1 February 2002.

<sup>151</sup> *MigratieInfo* (2001), "Maatwerk bij Terugkeer", Vol. 7(5): 13-14.

<sup>152</sup> *MigratieInfo* (2001), "Werken met het oog op integratie of terugkeer", Vol. 7(3): 45.

In the same year, local initiatives to provide training to asylum seekers who were likely to return were set up. In the province of Gelderland, for example, some 750 asylum seekers were offered a vocational training, with similar activities taking place in other provinces and municipalities. Despite criticism of some opposition parties, who feared that such initiatives would create a pull factor for new arrivals, Kalsbeek supported them.<sup>153</sup> In the following years, many more such initiatives would be developed.<sup>154</sup>

### 4.3 NEGATIVE INSTRUMENTS

In the the first years of the Kok II period, the negative incentives to voluntary return were mainly organized through Phase Plans (*Stappenplannen*), documents that set out exactly the steps to be taken with relation to return in each step of the procedure (after initial rejection, after the rejection of an administrative appeal, after judicial review and after the official period for voluntary return had passed), including information provision and, eventually, eviction from the reception centre.<sup>155</sup> Also, the plan set out the exact possibilities of each of the government agencies involved, so as to ensure that rejected asylum seekers were evicted ‘more often, quicker and in larger numbers’.<sup>156</sup>

The new Aliens Act 2000 would provide the main vehicle for the implementation of negative instruments during the Kok II period. It instituted the ‘all-encompassing decision’: a rejection of an asylum claim would automatically invoke the responsibility to return, as well as activate measures such as eviction from asylum centres, if necessary. Up to then, return and/or eviction orders had to be provided separate from negative asylum decisions. As these were no longer separate decisions, return or eviction could no longer be appealed in court, only the decision to reject asylum would be at issue. Those receiving a first negative decision would be required to cooperate in the preparation of their return, so they would be able to return, at the latest, four weeks after this decision had been taken by the judicial first instance.

The foregoing development was complemented by the measures to intensify the use of forced removal, which were laid down in Cohen’s 1999 Policy Note. This would be done by (1) instituting or expanding activities that facilitate the return, of their own accord, of aliens in detention, (2) making use of detention not only to facilitate the de facto forced removal, but also to ensure that the potential returnee is available for such removal (with a maximum of four weeks of detention prior to removal), and (3) making more extensive use of the possibility to declare as unwanted: aliens who do not meet their obligations to report during their period for voluntary return.

Despite new policy measures, aimed at effectively returning rejected asylum seekers, the criticism of municipalities – to which Cohen’s predecessor Schmitz had also been subjected, did not abate. Only a few days after Cohen presented the new Return Policy Note, the Court

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<sup>153</sup> *Het Parool* (2002), “Een cursus, en dan het land uit”, 31 January 2002; NRC Handelsblad (2002), “Cursus emigranten niet aanzuigend”, 30 January 2002.

<sup>154</sup> In 2005, the Advisory Committee on Aliens Affairs (ACVZ) published an inventory of projects stimulating the voluntary return of rejected asylum seekers. At that point, sixteen separate initiatives were identified. See A. Odé (2005), *Voorstudie: Inventarisatie van terugkeerprojecten voor (ex)asielzoekers*, The Hague: ACVZ.

<sup>155</sup> Officially, the return policy of 1999 did not come into force until 11 February 2000. For the group that had received a negative decision before that date there was a Phase Plan. In this plan, it was not the four week period that determined the eviction from asylum centres, but the ‘cooperation criterion’, i.e. whether the alien was sufficiently cooperative in realizing his/her return. TK 2001-2002, 19637 no. 648, 1 February 2002.

<sup>156</sup> *Het Parool* (2000), “Op straat zetten moeder met kind vuurproef voor Cohen”, 20 July 2000.

of Audit (*Algemene Rekenkamer*) released a report on the quantitative results of Dutch return policy between 1990 and 1997.<sup>157</sup> The report concluded that in this period, approximately 60% of all rejected asylum seekers had been registered as leaving the Netherlands of their own accord, but under the category ‘unknown destination’. While this was consistent with the idea that rejected asylum seekers have their own obligation to leave, the Court noted that the fact that it is unknown what happens to an increasingly large group of individuals was disconcerting. The Court did not have data to prove or disprove that significant numbers of these individuals remained in the Netherlands illegally. This, however, seems to have been the impression of municipalities. In November 2000, the Association of Dutch Municipalities (hereinafter: VNG), called for a more ‘tailor-made’ approach to return, particularly in problematic cases where more time to prepare return than provided under Cohen’s policy might be necessary. The problems of increased evictions and the stagnation of return were discussed in a symposium, but this did not lead to changes in policy.<sup>158</sup>

In June 2001, however, a compromise was reached between the VNG and State Secretary Kalsbeek. It was agreed that those who – according to the Phase Plan 2000 – would have to be evicted, but whose return with IOM was impending shortly after the end of their four week period, would get temporarily accommodation, arranged by IOM. Additionally, Kalsbeek promised that those subjected to a Dublin claim would be able to enjoy government-sponsored accommodation, while their transfer to another European country was pending.<sup>159</sup> Since October 1998, this had not been the case; their reception had been stopped as a result of overburdened asylum centres.<sup>160</sup>

#### **Box 6: Return to Kosovo**

During the 1998-1999 war in Kosovo, at the time part of the Federal Republic of Yugoslavia or Serbia and Montenegro, the Dutch government decided to evacuate approximately 4.000 Kosovar refugees. They were selected from Macedonian refugee camps and received a temporary residence permit upon arrival in the Netherlands. Others from Kosovo, who had fled to the Netherlands independently (an estimated 3.000 ethnic Albanians), however, were not eligible for the automatic award of a temporary residence permit, and had to go through the Dutch asylum procedure. The Dutch government had emphasized that the stay and reception of the 4.000 evacuees would be limited to one year, although some conflicting messages reached the evacuees. A discussion of a possible regularisation exercise for particular groups of (rejected) asylum seekers, was said to potentially include Kosovars as well.<sup>161</sup> This did not materialize, however. In fact, the issuance of temporary statuses was halted earlier than expected, in July 1999.<sup>162</sup>

<sup>157</sup> *Tweede Kamer*, 1998-1999, 26626, no. 1 and 2.

<sup>158</sup> *Algemeen Nederlands Persbureau* (2000), “VNG: meer tijd nodig voor uitzetting bepaalde groepen asielzoekers”, 13 November 2000.

<sup>159</sup> *Algemeen Nederlands Persbureau* (2001), “Meewerkende uitgeprocedeerde asielzoeker krijgt enkele dagen onderdak”, 28 June 2001.

<sup>160</sup> *Trouw* (2001), “Dublin-claimanten weer opvangen”, 29 June 2001.

<sup>161</sup> *Volkskrant* (1999), “Nieuwe kans asielzoekers; Kamer verdeeld over plan Justitie”, 30 April 1999.

<sup>162</sup> Temporary statuses were awarded to evacuees between 21 April and 16 July 1999. See letter from Minister for Large Cities and Integration Policy to municipalities regarding the accommodation of Kosovars, 6 August 1999: <http://www.nieuwsbank.nl/inp/1999/08/0806F028.htm> (accessed on 7 October 2009). A possible reason for this decision lies in the end of the NATO bombardments in June 1999, see <http://www.nato.int/kosovo/all-fce.htm> (accessed on 13 October 2009).

At the end of July 1999, large-scale repatriation to Kosovo had started.<sup>163</sup> Although some doubts were expressed about the security situation in Kosovo, many Kosovars were reported to want to return quickly, in order to rebuild their houses before the start of winter.<sup>164</sup> Also, the fact that the Kosovars wanted to return to their original job, may have contributed to the haste with which Kosovars sought to return.

As early as mid-August 1999, one thousand persons had already returned to Kosovo from the Netherlands.<sup>165</sup> By the start of 2001, some 3.000 of the 4.000 evacuees were reported as having returned, as well as approximately 600 Kosovars who arrived in the Netherlands outside the framework of the evacuation programme.<sup>166</sup> From the end of August 2000, the assistance programme for Kosovars was gradually wound down. Some extra facilities [luggage, Mother Theresa Society] were no longer offered. However, the provision of monetary support would continue to be available until the end of 2001<sup>167</sup>, although during that year the number of Kosovars participating in the return programme dropped significantly.<sup>168</sup>

In conjunction with the programme for Bosnia, the return of Kosovars was hailed as a success in most circles, both in terms of the numbers of participants and the speed with which return had taken place, and would serve as an example for other country-specific programmes, such as for Iraq and Afghanistan.<sup>169</sup>

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<sup>163</sup> From 21 July 1999 onwards, charter flights were used to transport evacuees back to Kosovo. In some cases, several flights per day took place. See *Volkskrant* (1999), “Eerse groep vluchtelingen terug naar huis in Kosovo”, 20 July 1999.

<sup>164</sup> Initially, the Dutch government had planned to set up a ‘look and see’ programme (such as for Bosnia) so that Kosovars could return home temporarily (up to one month) to assess the situation on the ground before they would permanently return. Given the large-scale uptake of the return programme, this was later deemed unnecessary. See *MigratieInfo* (1999), “IOM helpt Kosovaren bij hun terugkeer naar huis”, Vol. 5(3) (third quarter 1999).

<sup>165</sup> *Algemeen Nederlands Persbureau* (1999), “Duizendste vluchteling terug naar Kosovo”, 18 August 1999.

<sup>166</sup> *Tweede Kamer*, 2000-2001, doc. 19637 no. 556.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Het Parool* (2002), “Asielzoekers minder vaak vrijwillig weg”, 31 January 2002. It is unclear whether this drop in participation can be attributed to the phasing out of special return facilities for Kosovars, or whether this was a natural consequence of the earlier large-scale uptake of the programme, enabling the vast majority of Kosovars interested in returning to do so soon after a measure of stability was attained in Kosovo.

<sup>169</sup> *Volkskrant* (2001), “Premie voor vrijwillige terugkeer Irakezen”, 26 June 2001; *Volkskrant* (2002), “Terugkeer Afghanen mislukt”, 22 August 2002.



## 5 – BALKENENDE I (July 2002 – May 2003)

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### 5.1 CONTEXT

The 2002 elections signalled the end of the ‘purple’ coalition of PvdA, VVD and D66. While the CDA returned as the largest party, the pre-election headlines had been dominated by Pim Fortuyn, who had established a new political party, the List Pim Fortuyn (hereinafter: LPF), and which – despite Fortuyn’s assassination shortly before the election, became the second largest party in Parliament. Fortuyn had made immigration and asylum a central part of his campaign, calling for a regularisation exercise for failed asylum seekers and subsequent strict policies to counter further non-Western immigration. As a result, immigration and asylum issues dominated the election agendas of most parties to an unprecedented extent.<sup>170</sup> A coalition was formed between the CDA, the LPF and the VVD, with Jan-Peter Balkenende of the CDA becoming Prime Minister. Under this government, migration affairs were removed from the portfolio of the State Secretary for Justice and a ministerial post for Alien Affairs and Integration was created. This post was occupied by LPF-member Hilbrand Nawijn, a former director of the Immigration Service and former migration lawyer. The ministerial post for Development Cooperation was scrapped, with the responsibility for development policy transferring to a State Secretary within the Ministry of Foreign Affairs.

As a result of internal struggles within the LPF, the Balkenende I government had a short life. Only four months after taking up its duties, the cabinet fell. It continued its work with a demissionary status until new elections could be held. In the end, the Balkenende I government was in function for slightly less than a year. As a result, the impact of this government on the implementation of voluntary return policy remained limited; most issues that arose during this period were the outcome of earlier decisions.

However, the Balkenende I government does seem to have had a significant impact on the general discourse on immigration and aliens affairs. While immigration policy had become increasingly restrictive under the Kok and Lubbers governments, the Balkenende I took this to a new level. The 2002 Coalition Agreement sought to institute a strongly restrictive migration policy, with an explicit connection to the issue of integration. The Coalition Agreement identified a number of problems related to the integration of migrants, and sought to limit the number of new immigrants who were perceived to be ‘difficult to integrate’. This is in contrast to the Lubbers and Kok governments, who mainly focused on limiting the number of asylum seekers and the pressure they put on the administrative system. With regard to asylum seekers, the Coalition Agreement also included a much more explicit negative perspective on asylum seekers than previous governments, stating: “in practice, asylum seekers often turn out to be economic migrants, who present themselves without documents to prevent a correct assessment of their asylum applications”.<sup>171</sup>

For the first time, or at least much more clearly than before, irregular migrants were included as target group of the government’s policy. The coalition planned to commission research into the scale of illegal residence in the Netherlands, which – until then – had been a matter

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<sup>170</sup> See, for example, *Leeuwarder Courant* (2002), “Streng Nederland”, 15 June 2002.

<sup>171</sup> Coalition Agreement 2002: 15.

of speculation. The Agreement also stated plans to clamp down on irregular migrants, with a proposal to criminalize illegal residence, and more severe sanctions for employers of irregular workers.<sup>172</sup>

This tougher approach was also evident in its perspective on return. The Coalition Agreement focused primarily on the implementation of forced removal, rather than seeing forced removal as a ‘fall back’ if voluntary return would fail. The coalition sought to centralize the organization and coordination of forced removal in a single location, maximize the use of the instrument of detention, and exclude uncooperative countries of return from development assistance. Finally, the Agreement explicitly stated that local governments should not provide shelter to evicted rejected asylum seekers.

## 5.2 POSITIVE INSTRUMENTS

### 5.2.1. Return activities for unaccompanied minors<sup>173</sup>

In line with Kalsbeek’s earlier proposal on the return of unaccompanied minors, a special instrument was implemented in 2002. This would be a special accommodation for UAMs over the age of fifteen, according to a ‘campus-model’: “The campus is a living, working and learning community with a 24-hour programme, where youths develop and prepare for return after the conclusion of their asylum procedure”.<sup>174</sup> The first of these campuses, under the auspices of COA, was opened in the town of Vught in November 2002, amid heavy criticism. Civil society organizations believed the campus’ regime to be too harsh on the young asylum seekers. Also, within the first two weeks only, nine UAMs had left the grounds of the campus and disappeared.<sup>175</sup> Despite these problems, the parliament supported Nawijn in continuing the pilot. In the course of 2003, a second campus in the town of Deelen was to be opened.<sup>176</sup>

In addition to the new campus model, the Balkenende I government planned to investigate possibilities to set up or sponsor reception facilities for UAMs in several countries of origin so that this would no longer be a barrier to return.<sup>177</sup> During the Balkenende I period, an agreement was reached with an orphanage near Luanda, which would receive Angolan UAMs (the largest group of UAMs in the Netherlands) who could not return to family members. This arrangement, however, would not be uncontroversial (see chapter 6).

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<sup>172</sup> To date, this proposal has not been implemented.

<sup>173</sup> The issue of the UAM campuses is included here under the heading ‘positive instruments’. However, the campus had both a positive (reorientation to life in the country of origin) and a negative function (separation from Dutch society to prevent integration that would make return more difficult). As its starting point, however, the campus had the function to facilitate the transition from stay in the Netherlands to return, and as such is discussed here as a positive instrument.

<sup>174</sup> MigratieInfo (2002), “Terugkeer central in het campusmodel voor ama’s”, Vol. 8(2): 4-6.

<sup>175</sup> *NRC Handelsblad* (2002), “Ama-campus is tekenafelmodel”, 28 November 2002. In February 2003, the number of ‘disappeared’ UAMs from the campus had risen to 21; see *Algemeen Nederlands Persbureau* (2003), “Tweede Kamer: opvangmogelijkheden jonge vluchtelingen onderzocht”, 13 February 2003.

<sup>176</sup> *NRC Handelsblad* (2002), “Ama-campus is tekenafelmodel”, 28 November 2002. The campus in Vught remained open for two years. The campus in Deelen would be closed a year earlier (see chapter 6).

<sup>177</sup> Initially, this investigation was set to focus on Angola, Sierra Leone, Guinea, China, Togo, Afghanistan, the DRC, Somalia, Nigeria and Mongolia; see *Algemeen Nederlands Persbureau* (2003), “Tweede Kamer: opvangmogelijkheden jonge vluchtelingen onderzocht”, 13 February 2003. Of these, only facilities in Angola and DRC were eventually realized (see below and chapter 6).

### **5.2.2. (Re)emergence of a post-arrival reintegration perspective?**

The Balkenende I period saw a re-emergence of calls from politicians for a closer link between return and development cooperation. This link had been minimized under the Kok II cabinet. While initiatives to provide would-be returnees with better prospects in their countries of origin (by NGOs, churches and other civil society actors), several Members of Parliament now also reiterated the need for ‘prospects’ as a means to encourage aliens to take up voluntary return.<sup>178</sup> This coincided with new (REAN Plus) schemes being launched for Afghanistan and Angola at the start of 2003.<sup>179</sup> Both schemes focused on information provision (through IOM) of reintegration possibilities in the countries of origin, but maintained the ‘hands off’ approach to implementation of reintegration by providing small reintegration grants for returnees.<sup>180</sup>

## **5.3 NEGATIVE INSTRUMENTS**

### **5.3.1. Legal and political climate**

As already discussed, the Balkenende I government fostered a much more restrictive immigration policy than previous governments, and it had planned to implement an array of negative instruments related to return. While almost none of these could be implemented, the short-lived Balkende I period coincided with the first results of the new Aliens Act 2000 - which had entered into force the year before - starting to become visible. The Director of the Immigration Service reported that a decrease in asylum application was expected for 2002; he explicitly connected this to the effects of the new Aliens Act. Minister Nawijn welcomed these results, but called for even stricter measures, including increasing the percentage of asylum applicants rejected at the Application Centres – where an initial assessment of their claims was made – to 80%.<sup>181</sup> IOM noted in different articles that the “psychological effects” of the Aliens Act – which also made eviction from asylum centres easier – and the more negative political climate led to more applications for voluntary return assistance.<sup>182</sup> It was also noted that the attitudes of organizations providing assistance to asylum seekers had become ‘more realistic’.<sup>183</sup>

### **5.3.2. Support for failed asylum seekers and irregular migrants**

While the new Aliens Act seemed to be successful in reducing the influx of asylum seekers and there were some indications that the more restrictive climate had an impact on voluntary return, the implementation of the negative instruments to enforce departure remained problematic. As with earlier governments, a gap remained between the objectives of the

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<sup>178</sup> Examples include an article from two parliamentarians of the ChristianUnion party, see *Volkskrant* (2002), “Verleid meer asielzoekers tot vertrek: beleid gaat uit van ‘eens een status, altijd een status’: Armenië zou kunnen dienen als pilotproject”, 20 September 2002. In May 2003, another article, this time by a member of the CDA, was published, which reiterated this call; see *Haagsche Courant* (2003), “Meer werk maken van terugkeerbeleid asielzoekers: Mensen moet een toekomstperspectief in het thuisland worden geboden”, 13 May 2003.

<sup>179</sup> Which also incorporated the accommodation facilities for unaccompanied minors returning to Angola.

<sup>180</sup> IOM Netherlands annual report 2002.

<sup>181</sup> *Algemeen Nederlands Persbureau* (2002), “Vreemdelingenwet zorgt voor daling aantal asielzoekers”, 31 Augustus 2002; *Algemeen Dagblad* (2002), “Minister Nawijn wedt op het verkeerde paard; analyse”, 2 September 2002.

<sup>182</sup> *Leeuwarder Courant* (2002), “Streng Nederland”, 15 June 2002.

<sup>183</sup> *Volkskrant* (2002), “Asielzoekers keren steeds vaker terug: vooral Joegoslaven vrijwillig thuiswaarts”, 31 August 2002. It should be noted, however, that while AVR numbers had risen in relation to 2001, the number of returnees had been much higher in 1999 and 2001; see *Assisted Voluntary Return from the Netherlands. An analysis of fluctuations in AVR participation (1992-2008)*, IOM (2010).

central government and the willingness of local governments to participate in this. Very shortly after taking office, Minister Nawijn would clash with municipalities on this issue. In August 2002, an interview with Nawijn appeared in *De Volkskrant*, in which he expressed his concern with the unwillingness of municipalities to implement return policy, e.g. by continuing to provide accommodation for rejected asylum seekers and irregular immigrants. If they would continue to do so, he stated, municipalities would be forced by the central government to cooperate.<sup>184</sup> These statements provoked strong reactions from the municipalities (VNG), who suggested that it was the central government, rather than local governments, which was to blame for the failure of return policy:

“Forcibly removing rejected asylum seekers is a task of the central government. In practice, little happens. Those people [rejected asylum seekers] are left to decide for themselves whether and when they leave. They end up on the street and this forces municipalities to do something, if only, to guarantee public order is maintained. If the central government would make sure these people left, there would not be any problem<sup>185</sup>.”

In the wake of the conflict, several municipalities openly acted contrary to Nawijn’s demands, by continuing or setting up emergency accommodation facilities.<sup>186</sup> A report by the Ministry of Justice, published in November, showed that over half of all municipalities (some 170) confronted with rejected asylum seekers who had been ‘put on the street’, provided assistance to this group. While Nawijn had revoked his threat to force them to cooperate, he maintained the position that such assistance should be stopped, as it ‘undermined return policy’.<sup>187</sup> Until the end of the government period (and beyond), tension between the Minister and the municipalities continued.

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<sup>184</sup> *Volkskrant* (2002), “Verbod hulp gemeente aan illegaal”, 28 August 2002.

<sup>185</sup> *Algemeen Nederlands Persbureau* (2002), “VNG haalt hard uit naar Nawijn”, 28 August 2002. The VNG resented Nawijn discussing the issue of rejected asylum seekers and irregular migrants as if one single group, and suggested municipalities were also responsible for the latter: “That’s not the concern of municipalities. Irregular migrants are the responsibility of the Aliens Police”.

<sup>186</sup> See, for example, *Volkskrant* (2002), “Culemborg trotseert opvangverbod Nawijn”, 13 September 2002; *Trouw* (2002), “‘Het asielbeleid is onrealistisch’; Opgang uitgeprocedeerden; ‘Die vertrokken zouden zijn, zitten illegaal in de grote steden’”, 17 October 2002.

<sup>187</sup> *Trouw* (2002), “Merendeel gemeenten helpt asielzoeker”, 15 November 2002.

## 6 – BALKENENDE II AND III (May 2003 – June 2006; July 2006-February 2007)

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### 6.1 CONTEXT

Despite the fall of the first Balkenende government, the CDA retained its status as the largest party, and Balkenende was able to form a second cabinet. The CDA entered into a coalition with the VVD and D66. The LPF lost 18 of its 26 seats in Parliament and did not return to government. The ministerial post for Development Cooperation was restored and occupied by Agnes van Ardenne (CDA), who had been State Secretary for that portfolio in the Balkenende I cabinet. The post of Minister of Alien Affairs and Integration was taken up by Rita Verdonk of the VVD. On 30 June 2006, due to a controversial decision by Verdonk, one of the coalition parties, D66, left the cabinet.<sup>188</sup> The remaining two parties, CDA and VVD, would form the temporary Balkenende III administration, of which the main task was to prepare new elections. Given the large measure of continuity between the Balkenende II and III administrations, the relevant developments with regard to voluntary return policy are discussed in a single chapter.

In many ways, the focus of Balkenende II/III with regard to migration was much like the previous government's. The Coalition Agreement noted that "effective return policy of rejected asylum seekers (including UAMs) [was] a necessary part of asylum policy", and that a separate organization should be set up to deal with this issue.<sup>189</sup> The connection between integration and return, which was explicitly made by the previous government, was taken a step further in the Return Policy Note of November 2003. Whereas (like for the Lubbers III and Kok I and II administrations) effective return was seen as crucial to maintaining a working asylum apparatus, the Note also made a very overt link to broader social issues, particularly the maintenance of public order, security and the overall viability of the welfare state:

"It is self-explanatory that the design and governance of a state based on the rule of law are difficult to reconcile with the presence of a large group of people being unlawfully present on Dutch territory. Unlawful residence, furthermore, results in a weak economic and vulnerable social position for those involved. This vulnerability can result in exploitation and may seduce people to engage in unlawful or criminal activities. In this sense, unlawful residence is a political, administrative and social issue... In addition, large numbers of unlawfully remaining aliens form an administrative burden for

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<sup>188</sup> In May 2006, a television documentary about the Member of Parliament Ayaan Hirsi Ali (of Verdonk's VVD party), originally of Somali descent, alleged that she had lied about her background and therefore might have gained Dutch nationality on fraudulent grounds. After an investigation, Verdonk concluded that legally, Hirsi Ali should be considered not to have received Dutch nationality. After further investigation (which was requested by Parliament), however, Verdonk concluded that Hirsi Ali was entitled to Dutch nationality after all. However, this was on the condition that Hirsi Ali would sign a statement that she had misled Verdonk and regretted this. When the Prime Minister, in a parliamentary debate, suggested that this statement had been demanded to prevent loss of face for Minister Verdonk, coalition partner D66 stated not to want to continue being part of a government with Minister Verdonk. As the two other governing parties, CDA and VVD supported Verdonk, D66 withdrew from the government, thus signaling the end of the Balkenende II cabinet.

<sup>189</sup> This eventually happened under the Balkende IV administration, see chapter 7.

(municipal) governments and negatively impacts on public support for Dutch aliens policy.”<sup>190</sup>

As with earlier policy, the Note firmly maintains the adage that ‘non-admission means return’, and that the responsibility for this return lies with the rejected asylum seeker or irregular migrant. However, in contrast to her predecessors, which left some margin for those who were practically unable to realize their return - for example due to reluctance of embassies of their countries of origin to provide them with travel documents - Verdonk took a very firm stance on the issue of responsibility by stating “whoever wants to return, can return”. While the policy of providing resident permits to those who were objectively found to be unable to return was maintained, Verdonk’s explicit assumption was that in basically all circumstances voluntary return should be possible, provided that those required to leave the Netherlands would actively pursue this option. In this respect, Verdonk emphasized the obligation of all states to readmit their own nationals. Implicitly then, this approach meant that when return (either voluntary or forced) failed, this would be attributable, first and foremost, to the unwillingness of the individual involved, rather than to external factors.<sup>191</sup>

An important focus of the Balkenende II/III government would also be to deal with the ‘old caseload’ of asylum seekers still falling under the regime of the old Aliens Act (arrivals before 1 April 2001). Of these, it was said some 26.000 were still remaining in the Netherlands. For this reason, the Coalition Agreement stated that the government would:

“at the shortest possible notice...establish a regulation through which a residence status will be provided to a limited and yet to be specified group of asylum seekers, who are still in the same asylum procedure for more than five years due to inactivity on the part of the government.”<sup>192</sup>

Those falling outside the scope of the special regulation would have their applications processed as quickly as possible. In addition, the return of those in the ‘old caseload’ who had been rejected, would be expedited by means of a large-scale special ‘Return Project’, which would incorporate both the stimulation of voluntary return and additional measures in the area of forced return (see chapters 6.2 and 6.3). In addition, the government sought to restructure the organization of return, by opening specialized reception locations, dealing with the various phases of return (see chapter 6.3.2). This all was intended to lead to a ‘water-tight approach’, with only legal residence or return remaining as possible outcomes of asylum and immigration procedures.

In the following years, however, public opinion increasingly turned against the government’s plans to return the rejected asylum seekers who had entered the Netherlands before the entry

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<sup>190</sup> *Tweede Kamer* 2003-2004, doc. 29344, no. 1, 21 November 2003: p. 6.

<sup>191</sup> Some advocates disputed the assumption that return was possible as long as the individual involved would cooperate. In December 2006, the Dutch Council for Refugees (*VluchtelingenWerk Nederland*) wrote a letter to Minister Verdonk stating that various embassies were known not to provide documents to potential returnees, even if the rejected asylum seeker fully cooperated. This was refuted by the government. See, for example, *Trouw* (2006), “Ambassades traineren’: VluchtelingenWerk: acht herkomstlanden werken terugkeer asielzoekers al in Nederland tegen.”, 16 December 2006.

<sup>192</sup> Coalition Agreement 2003: p. 11. In addition, Verdonk stated that she would use her discretionary powers to grant residence to some rejected asylum seekers and irregular migrants for whom return would be considered particularly harsh. On 14 January 2003, Verdonk’s predecessor Nawijn had publicly stated that all those for whom return would be particularly harsh could have their cases reviewed. This led to a large wave of applications to the Minister for residence permits, which Verdonk had inherited.

of the new Aliens Act. Rather than the proposed limited regularisation exercise, the possibility of a general regularisation exercise for all ‘old caseload’ asylum seekers was being advocated.<sup>193</sup> Shortly after the parliamentary elections in November 2006, a motion to institute a general regularisation exercise was adopted by a majority of Parliament. This would be implemented by the Balkenende IV government, which officially took up its function in February 2007 (see chapter 7).<sup>194</sup>

While the return of asylum seekers demanded a lot of attention, return policy of the Balkenende II/III governments was also characterized by a strong focus on irregular migrants. This group had mostly been dealt with only implicitly by the Lubbers III and Kok I and II governments. The Balkenende I government had put irregular migrants on the agenda and the return of irregular migrants was pursued by Verdonk. Combatting irregular residence was prioritized in the Coalition Agreement. In 2004, the Return Policy Note was supplemented by the first Policy Note on irregular migrants, which outlined the measures taken to discourage illegal residence (see chapter 6.3.1), and, in connection to this, encourage voluntary departure.<sup>195</sup>

## 6.2 POSITIVE INSTRUMENTS

### 6.2.1. Unaccompanied minors

The Balkenende II/III government period saw a continuation of a return policy for unaccompanied minors. The changes in admission policy for minors, instituted by Kalsbeek, opened the door for extensive return activities, of which the most prominent had been the opening of the UAM campuses. Due to disappointing results, particularly in the area of voluntary return, the campus experiment was halted by the Balkenende II government. In the fall of 2003, the campus in Deelen was closed.<sup>196</sup> In November 2004, in the wake of an evaluation of the government’s UAM policy, a decision was made to close the remaining campus in Vught as well. Of the 436 minors who had stayed at the Vught campus, only six had voluntarily returned, while more than 100 had left the campus ‘with unknown

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<sup>193</sup> See, for example, *Trouw* (2005), “Wij pleiten voor een general pardon”, 23 February 2005; *Trouw* (2006), “De rampzalige praktijk van Verdonk: de 26.000”, 4 November 2006; *Het Parool* (2006), “De hand over het hart, voor zo’n 12.000 mensen”, 29 November 2006.

<sup>194</sup> Verdonk refused to implement the motion, which forced her to step down as Minister for Aliens Affairs and Integration for the last few months of the Balkenende III administration.

<sup>195</sup> *Tweede Kamer* 2003-2004, doc. 29537 no. 2, 23 April 2004. It should be noted that research had shown that the number of illegally residing aliens was much larger than previously assumed. The research, which was undertaken on the request of the Balkenende I government, estimated that the number of illegally residing aliens in the Netherlands was between 113.000 and 163.000 (for 1997-2000); see G. Engbersen et al (2002), *Illegale vreemdelingen in Nederland: Omvang, overkomst, verblijf en uitzetting*, Rotterdam, RISBO, Erasmus University. Later estimates put the number between 125.000 and 225.000; see, for example, *Algemeen Nederlands Persbureau* (2005), “Onderzoek bepleit naar illegale vreemdelingen”, 2 February 2005. Near the end of the Balkenende III governmental period, a large group of irregular migrants ‘disappeared’ as they came from Bulgaria and Romania, which became Member States of the European Union on 1 January 2007, thus losing their irregular status; see, for example, *NRC Next* (2007), “Ani durft naar buiten: Bulgaarse sinds jaarwisseling niet meer illegaal”, 5 January 2007.

<sup>196</sup> *Rotterdams Dagblad* (2004), “Campus faalt met terugkeer”, 5 July 2004; *Algemeen Nederlands Persbureau* (2003), “Campus voor jonge asielzoekers blijft open”, 27 November 2003.

destination'.<sup>197</sup> It was noted that voluntary return outside the framework of the campus was slightly more successful.<sup>198</sup>

The foregoing may be connected to the efforts made to guarantee 'adequate reception facilities' in some of the countries of origin of unaccompanied minors whose families could not be tracked down. After the agreement with Angola concluded by Nawijn, Verdonk officially inaugurated the reception facilities for returning Angolan UAMs in September 2003.<sup>199</sup> In June 2005, a similar arrangement was made for UAMs from the Democratic Republic of Congo.<sup>200</sup> These facilities were cause for criticism, as virtually no returning UAM made use of them. Rather, it was reported in a number of articles, when returned to their countries of origin, family members – which the UAMs often said they did not have – picked up the returnees. As such, the question arose whether the financial investment in the reception facilities was justified.<sup>201</sup> While this criticism on the lack of use of the facilities is justified, it should be noted that the reception facilities in Angola and DRC served an important purpose for the Dutch government in overcoming legal barriers to imposing an obligation on unaccompanied minor asylum seekers whose cases had been rejected to depart from the Netherlands. Dutch guidelines on unaccompanied minors require that 'adequate reception' is available in the country of origin before return is possible. By ensuring that reception facilities were guaranteed, the government was able to impose an obligation to return on Angolan and Congolese minors who did not have, or alleged not to have, family who could receive them. This seems to have been an important reason behind the fact that the arrangements in Angola and DRC were continued by the Balkenende IV government as well.

### 6.2.2. Focus on reintegration gains momentum

The so-called 'Return Project', aimed at rejected asylum seekers falling under the regime of the old Aliens Act, took up a prominent place in the implementation of the Balkenende III government's return policy. In this project COA, IND, Aliens Police (VP), Military Police (Koninklijke Marechaussee) and IOM closely collaborated. This was coordinated by the new national body SCV (Stafdirectie Coördinatie Vreemdelingenketen). The project would rely on intensive counselling, a case management approach, and a combination of incentives and increasing pressure to return. With regard to the incentives, the Project incorporated a cash grant. This cash grant (EUR 1.750 for an individual, and EUR 875 for each dependent minor) would be available only in the first period after rejection of an asylum seeker's application, thus incentivizing a quick decision to return.<sup>202</sup> The scheme, called Reintegration Regulation

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<sup>197</sup> "AMA campus in Vught wordt gesloten",

[http://www.regering.nl/Actueel/Pers\\_en\\_nieuwsberichten/2004/November/05/Ama\\_campus\\_in\\_Vught\\_wordt\\_gesloten](http://www.regering.nl/Actueel/Pers_en_nieuwsberichten/2004/November/05/Ama_campus_in_Vught_wordt_gesloten) (accessed on 12 February 2010).

<sup>198</sup> See *Rotterdams Dagblad* (2004), "Campus faalt met terugkeer", 5 July 2004. This article notes that in 2003, 44 UAMs had left the Netherlands using the assistance of IOM, while in the first five months of 2004, another 35 UAMs had returned.

<sup>199</sup> *Algemeen Nederlands Persbureau* (2003), "Verdonk opent opvangtehuis in Angola", 24 September 2003.

<sup>200</sup> *Volkscrant* (2007), "Zicht kwijt op uitgewezen kind: Nederland betaalt in Angola en Congo mee aan 'adequate opvang' die niet wordt gebruikt", 19 March 2007.

<sup>201</sup> *NRC Handelsblad* (2003), "Nog geen ama's in opvanghuis Angola", 12 December 2003; *Volkscrant* (2003), "Angolees weeshuis asielzoekers is debacle", 13 December 2003; *Parool* (2004), "Terug naar Angola: Ama's of gelukzoekers?", 16 March 2004; *Volkscrant* (2007), "Zicht kwijt op uitgewezen kind: Nederland betaalt in Angola en Congo mee aan 'adequate opvang' die niet wordt gebruikt", 19 March 2007. It should be noted that this criticism has not been limited to the Balkenende II/III period. The Balkenende IV government, which continued the reception schemes in Angola and DRC, were subjected to similar criticism; see, for example, *Telegraaf* (2009), "Opvanggeld naar gebakken lucht", 25 March 2009.

<sup>202</sup> This would be available in addition to the small financial incentives provided under the standard REAN programme.



for the Return Project (*Herintegratieregeling Project Terugkeer*, hereinafter: HRPT) was administered by IOM, who would ensure a presence at all locations where the Project was implemented (see chapter 6.3).<sup>203</sup> The basic assumption behind the HRPT scheme was that the grant would enhance the possibilities of (rejected) asylum seekers to rebuild their lives in the countries of origin, as had been the case in the REAN Plus schemes, while the ‘limited-time offer’ filled the government’s policy need for quick and effective solutions.<sup>204</sup> According to media reports, a rise in returns could be identified shortly after the scheme had started, and it was thus generally hailed as a success.<sup>205</sup> However, it was also noted that, even though the HRPT scheme might have contributed to an increase in the number of returns, the majority of rejected asylum seekers still opted to remain in the Netherlands.<sup>206</sup> In 2006, the HRPT scheme was followed by the Return and Reintegration Regulation (*Herintegratieregeling Terugkeer*, hereinafter: HRT), which provided the same financial benefits, but was no longer restricted to ‘old caseload’ asylum seekers; more recent arrivals could also be supported.

The focus on reintegration support would be further elaborated in July 2004, when the Minister for Development Cooperation, Agnes van Ardenne, and Verdonk presented a new Policy Note on Migration and Development.<sup>207</sup> This Note would firmly draw the topic of development cooperation back into voluntary return policy. The Note stated that the government was willing to support (rejected) asylum seekers in their return and reintegration, provided that they were from countries prioritized by Dutch development policy. The Policy Note took a look back at earlier projects and programmes that were aimed at providing would-be returnees with positive prospects. The Note reiterated that the GTAA approach had failed, but that results of the REAN Plus programmes had been much more encouraging.<sup>208</sup> This would explain the choice for the setup of the HRPT scheme.

An important addition to the Note was the acknowledgement of increasing calls by civil society organizations, including development NGOs, to focus on the provision of services and support of returnees after arriving in their countries of origin.<sup>209</sup> In this light, the

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<sup>203</sup> *MigratieInfo* (2004), “Intensief programma stimuleert vrijwillige terugkeer: Project Terugkeer uitgeprocedeerde asielzoekers oude Vreemdelingenwet”, Vol. 10, no. 2: pp. 4-6; *MigratieInfo* (2004), “IOM Herintegratieregeling Project Terugkeer”, Vol. 10, no. 3: pp. 12-13; *Algemeen Nederlands Persbureau* (2004), “Eerste acht asielzoekers met dubbele premie terug”, 23 June 2004.

<sup>204</sup> In the case of the HRPT, however, the geographical limitation (i.e. only being available to nationals of certain countries) would be abandoned.

<sup>205</sup> *Algemeen Nederlands Persbureau* (2004), “Steeds meer asielzoekers terug naar eigen land”, 9 August 2004; *Telegraaf* (2004), “Steeds meer asielzoekers keren terug”, 10 August 2004; *Algemeen Dagblad* (2004), “Vertrekpremie succesvol: steeds meer asielzoekers keren terug naar land van herkomst”, 10 August 2004.

<sup>206</sup> See, for example, *NRC Handelsblad* (2004), “Vertrekpremie”, 10 August 2004.

<sup>207</sup> *Tweede Kamer* 2003-2004, doc. 29693, no. 2, 9 July 2004.

<sup>208</sup> As reasons for the lack of success of GTAA, the Note pointed to problems in the cooperation by countries of origin; the fact that some migrant organizations had discouraged return; that the alternative for return – irregular residence in the Netherlands – was too attractive at that time; the lack of a real risk of forced removal; and the inability of governmental agencies to accurately estimate the number of potential candidates for the programme. As reasons for the encouraging results of the REAN Plus programmes, the Note stated that the cooperation of countries of origin had been sought more actively and set down in formal agreements. Also, the Note suggested that at the time of the implementation of the REAN Plus programmes the attractiveness of irregular stay in the Netherlands had been reduced significantly, and the risk of actual forced removal had increased.

<sup>209</sup> See, for example, *Algemeen Nederlands Persbureau* (2004), “Vooral maatwerk helpt asielzoekers bij terugkeer”, 5 February 2004. In this article, one of the largest Dutch development organizations, Cordaid, called on the government to set up an independent knowledge centre to bring together information about various (governmental and non-governmental) initiatives that supported the return of asylum seekers.

government expressed its willingness to financially support existing and new non-governmental initiatives that focused on post-return reintegration of (rejected) asylum seekers.

As such, in the Balkenende II/III period, public calls for more extensive reintegration assistance for returnees (which had been expressed earlier but had been met with limited support from the government) coincided with political willingness and a pressing policy need (the successful implementation of the Return Project). This opened the door to a much more reintegration-focused voluntary return policy, which would be continued by the Balkenende IV administration (see chapter 7). During this period, the first – and as yet only – large-scale, multilateral return and reintegration programme, RANA, was set up (see box 7).

### **Box 7: Return and reintegration of Afghans**

For almost much of the 1990s and the early part of the new millennium, Afghan asylum seekers were automatically entitled to temporary protection in the Netherlands, as a result of the instable situation in Afghanistan. When in 2002 Afghanistan was considered safe<sup>210</sup>, a part of the estimated 25.000-38.000 Afghans in the Netherlands<sup>211</sup> were urged to return to their country of origin. Therefore, at the end of 2002, on request of the Dutch Immigration- and Naturalization Service, a REAN Plus programme – which had already been in existence for Iraq and Angola – was established to facilitate the Afghans' voluntary return.

It soon became clear that more European countries had to deal with large numbers of Afghan asylum seekers opting for return. Therefore, for the first time, a large number of European countries collaborated in setting up a return and reintegration programme. The result was *Return and Reintegration of Afghan Nationals to Afghanistan* (hereinafter: RANA)<sup>212</sup>, which aimed to assist up to 5.000 Afghan nationals from all participating EU Member States.<sup>213</sup> The RANA programme offered facilities both for voluntary returnees and those who had been forcibly removed from Europe. For the Netherlands, this meant that (for some time) two projects aimed at Afghans were running simultaneously – REAN Plus provided mainly financial reintegration assistance while RANA focused more on practicalities such as (primary) accommodation, education, medical facilities, transport and establishment of businesses.<sup>214</sup> This built on the success of business start up opportunities offered under UK's return programme.

RANA's official evaluation<sup>215</sup> concluded that the scheme had been a success and that especially its link between return and sustainable (economic) reintegration had had a significant added value for returnees. The programme realised the return of roughly 800 Afghans from the Netherlands and around 5.000 from all EU Member States within four years, of whom

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<sup>210</sup> Although some – such as the Federation of Afghan Organizations (Favon) – objected against this and declared Afghanistan still unsafe, officially, from 15 September 2002 on, the Netherlands no longer followed a protection policy for Afghanistan. Twentsche Courant (2003), 'Afghanen weigeren terug te keren, dus rest de illegaliteit', 1 August 2003.

<sup>211</sup> Estimates reported in *Algemeen Dagblad* (2002), "Minister Nawijn wedt op het verkeerde paard", 2 September 2002, and *Algemeen Nederland Persbureau* (2003), "Afghanen in Nederland willen niet praten over terugkeer", 20 May 2003.

<sup>212</sup> The project's funding was granted by the European Commission with the majority of co-financing provided by the governments of Denmark and Germany:

<http://iom.fi/files/Information%20sheets/IOM%20Helsinki/RANA%20Programme.pdf> (accessed on 18 October 2009).

<sup>213</sup> IOM missions in Europe were mainly concerned with assisting returns, while IOM in Kabul was involved in post-arrival reception and reintegration assistance. Website IOM Belgium: [www.belgium.iom.int/RANA](http://www.belgium.iom.int/RANA) (accessed on 19 October 2009).

<sup>214</sup> REAN Plus started at the end of 2002 and ended at the beginning of 2004, while RANA started in June 2003 and lasted until April 2007.

<sup>215</sup> International Organization for Migration (2007), *Return, Reception and Reintegration of Afghan Nationals to Afghanistan: External Evaluation*.

approximately 60% had been voluntary returnees.<sup>216</sup> Despite the apparent numerical success, the evaluation stressed that the increase in return figures could not just be attributed to the RANA programme. It concluded that national policies for Afghans' asylum determination – cancelling group protection - had significantly impacted on the decision to return. Also, since 2002, Afghanistan's overall security situation seemed to be improving, which undoubtedly led to an increase of returnees. In the case of RANA, then, in contrast to some earlier return programmes, assistance, consistent admission policies and conditions in the country all coincided to make relatively large-scale return possible. The reintegration elements of the programme, as well as the combination of providing services in the country of origin to both voluntary returnees and forced returnees, have become replicated in subsequent country programmes. As yet, however, the Europe-wide coordination and implementation has so far been elusive to copy for new programmes.

### **6.2.3. Return facilitation for irregular migrants**

As discussed above, both the Balkenende I and the Balkenende II/III governments' return policies had a much more explicit focus on irregular migrants. In September 2003, an IOM-led project aimed at reaching out to irregular migrants, with a view to enabling voluntary return, was sanctioned by the government. The *Randstad Return Initiative*<sup>217</sup> (hereinafter: RRI) was a follow-up to the earlier cooperation between IOM and the Pauluskerk (see chapter 4.2.1), but without a geographical limitation of the target group. The RRI project would primarily rely on counsellors who had the same national or ethnic backgrounds as the main groups of irregular migrants, in order to more effectively reach those who were 'off the radar' for governmental agencies such as the Immigration Service and COA. The project required close cooperation between IOM and civil society organizations who provided services to irregular migrants, as well as with local government bodies.<sup>218</sup> The return of irregular migrants had always been facilitated through the REAN programme, but active outreach to this group – such as was instituted for asylum seekers in official reception centres in 2000 – had been limited. As a result, the RRI project (and successive projects) was an important positive instrument to make voluntary return policy more 'irregular migrant-focused'.<sup>219</sup>

### **6.2.4. Facilitation of voluntary return from detention**

A further extension of return assistance facilities was aimed at those remaining in detention centres. As early as 1999, the stimulation of voluntary return for migrants who were detained had been a topic of debate. This was fed by the reality that a large number of those who were detained in order to facilitate forced removal, could not effectively be returned in the face of resistance and a lack of cooperation by the migrants involved. Under State Secretary Cohen, the Ministry of Justice had started providing courses in areas such as masonry and car mechanics to detained migrants, with a view to providing them with new skills to be used in their countries of origin, thus hopefully encouraging them to cooperate in their return procedures<sup>220</sup>. At that time, there was discussion about giving IOM a specific role in this process, by providing information about voluntary return, and facilitating return through the REAN programme for those in detention centres who chose to no longer resist their return. At that time, IOM did not consider this activity within its scope, and first wanted to build on

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<sup>216</sup> Ibid.

<sup>217</sup> 'Randstad' refers to the four largest cities in the Netherlands, being Amsterdam, Rotterdam, The Hague and Utrecht, where most irregular migrants remain and on which the project specifically focused.

<sup>218</sup> IOM Netherlands annual report 2003: p. 17.

<sup>219</sup> Follow-ups to the RRI project were launched in 2006 and 2009. The special outreach to irregular migrants is continued by IOM to date.

<sup>220</sup> *Tweede Kamer* 1998-1999, doc. 26646 no. 1, 25 June 1999; *Tweede Kamer* 2001-2002, doc. 26338 no. 6, 20 October 2001.

relationships with the different organizations involved in the return process.<sup>221</sup> Under the Balkenende III administration, however, these different viewpoints were resolved, and IOM started a pilot project in one detention centre, providing counselling and practical assistance to detained rejected asylum seekers and irregular migrants, which ran in 2005 and 2006.<sup>222</sup> This was, among other things, the result of academic research on migrants in detention which put voluntary return from detention back on the agenda.<sup>223</sup> On this issue, IOM stated:

“The reason to provide information and have discussions about return at this location is that people will choose return on account of the support by IOM. The report by Professor Van Kalmthout, published in 2004, shows that aliens have little confidence in the government insofar as it deals with organizing return (forced removal). This confidence would possibly exist in IOM. This is why the Minister for Aliens Affairs and Integration has agreed with IOM that IOM will have a more intensive presence in detention centres.”<sup>224</sup>

With this development, negative instruments (detention and the threat of forced removal) and positive instruments (the provision of AVR services) became closer, both conceptually and physically, than ever before. It should be noted, however, that the connection between these different instruments was already made before the REAN programme even became operational, when the government noted that the programme “would be an important additional instrument within the framework of a qualitatively better removal policy. Also, it may contribute to limiting the use of detention for aliens”.<sup>225</sup> With the extension of REAN services to detention facilities, in some cases, the period of detention could indeed be shortened.

## 6.3 NEGATIVE INSTRUMENTS

### 6.3.1. Combating irregular residence

The Balkenende II and III administration actively pursued a policy of discouraging illegal residence. It was the first government to consider ‘irregular migrant policy’ as a distinct subfield of overall migration policy, as evidenced by the Policy Note on irregular migrants.<sup>226</sup> As part of the proposed measures, police supervision of irregular residence would be intensified, making arrest of irregular migrants more likely. In January 2007, an arrangement was concluded between the central government and the regional police forces, which established a quota for checks and arrests of irregular migrants, which, if realized, would entitle the forces to a bonus.<sup>227</sup> Most of the proposed measures, however, would be aimed at persons employing or renting accommodation to irregular migrants, who could be subjected

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<sup>221</sup> An IOM representative stated at the time, “it is not our objective to convince people that they should go back to their countries. This is what governmental organizations are for; we do not engage in forced removals. It takes time to get to know each other, as there is a distinct difference in [the Ministry of] Justice’s identity and ours.” See *Het Parool* (2000), “Uitzetting asielzoeker vertraagd”, 22 January 2000.

<sup>222</sup> *MigratieInfo* (2006), “Voorlichting aan mensen in vreemdelingenbewaring”, Vol. 12, No. 3: 8-9.

<sup>223</sup> A. van Kalmthout et al (2004), *Terugkeermogelijkheden van vreemdelingen in vreemdelingenbewaring: een onderzoek naar verhinderende, bemoeilijkende of vergemakkelijkende factoren van terugkeer van vreemdelingen in vreemdelingenbewaring*. Nijmegen, WLP.

<sup>224</sup> *MigratieInfo* (2006), “Voorlichting aan mensen in vreemdelingenbewaring”, Vol. 12, No. 3: 8.

<sup>225</sup> *Tweede Kamer* 1991-1992, doc. 22300, VI, no. 2: p. 57.

<sup>226</sup> *Tweede Kamer* 2003-2004, doc. 29537 no. 2, 23 April 2004.

<sup>227</sup> *Vrij Nederland* (2008), “Veel angst, weinig effect: analyse: twintig jaar illegalenbeleid”, 16 February 2008.

to heavy fines. This, it was expected, would significantly reduce both the exploitation of irregular migrants, and their possibilities of illegally residing in the Netherlands.<sup>228</sup>

### 6.3.2. Restructuring the organization of return: ‘water-tight approach’

An important part of the return policy of the Balkenende II/III government was the search for a ‘water-tight approach’, in which asylum seekers and other migrants would either gain a legal status or return. In this approach, the problem of rejected asylum seekers ending up ‘on the streets’ and, by extension, in the care of local municipalities, would have to become a thing of the past. Initiated by Minister Nawijn, the Balkenende II/III government saw the opening of two new ‘Removal Centres’ (*Uitzetcentra*), from where forced removal of rejected asylum seekers and irregular migrants could be implemented more effectively.<sup>229</sup> Additionally, Verdonk split the government-sponsored asylum centres in those for asylum seekers who would be granted a status, and ‘return locations’ for asylum seekers who were (or soon would be) rejected. From there, intensive information provision and counselling (mainly by COA) would help prepare these asylum seekers for return.<sup>230</sup> Another organizational innovation, developed in light of the Return Project, was the opening of a Return Centre. This centre was intended to accommodate rejected asylum seekers whose voluntary return had not been realized while still remaining in a regular reception centre. The asylum seeker would be subjected to a ‘limited freedom of movement’ regime for a maximum period of twelve weeks.<sup>231</sup> During this period, an intensive investigation of the possibilities of return (both voluntary and forced) would take place. If, at the conclusion of this phase, return had not been realized, the asylum seeker would either be transferred to a detention location (if there was a reasonable prospect of forced removal) or be evicted from the Centre. This intensive approach, it was argued, should lead to a large number of rejected asylum seekers being returned effectively.<sup>232</sup>

The new ‘water-tight’ approach, however, was also subjected to much criticism. It was argued that a large number of rejected asylum seekers would end up ‘on the streets’ after all; many disappeared before they were summoned to the Return Centre, others left the Centre after their arrival. In other cases, as a result of non-cooperation, return would not be realized in the Return Centre, and detention (lacking a reasonable prospect of forced removal) would not be possible. This was true both for the ‘old caseload’ and those having arrived after the entry into force of the new Aliens Act 2000.<sup>233</sup> Like her predecessors, this repeatedly led Verdonk to clash with municipal governments, who – contrary to agreements – had started to provide accommodation for rejected asylum seekers who had been evicted from the governmental reception centres.<sup>234</sup> Criticism of gaps in the ‘water-tight approach’, which had

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<sup>228</sup> *Volkskrant* (2004), “Strengere maatregelen in illegalennota”, 23 April 2004.

<sup>229</sup> *NRC Handelsblad* (2003), “Uitzetting vaak slechts op papier: Ministerie van Justitie ligt niet op schema met terugkeerbeleid”, 31 July 2003.

<sup>230</sup> *Tweede Kamer* 2003-2004, doc. 29344, no. 1, 21 November 2003.

<sup>231</sup> The Return Centre is not a detention location, but limitations on the freedom of movement, such as daily reporting, were implemented.

<sup>232</sup> *MigratieInfo* (2004), “Intensief programma stimuleert vrijwillige terugkeer: Project Terugkeer uitgeprocedeerde asielzoekers oude Vreemdelingenwet”, Vol. 10, No. 2: pp. 4-6.

<sup>233</sup> *Trouw* (2004), “Asielzoeker na tijdelijk onderdak toch op straat”, 14 October 2004; *Volkskrant* (2004), “Lukt terugkeer niet, dan rest alleen het illegale bestaan op straat”, 27 January 2004.

<sup>234</sup> *Algemeen Nederlands Persbureau* (2004), “Verdonk treedt op tegen gemeentelijke noodopvang”, 16 December 2004; *Volkskrant* (2005), “Verdonk tikt gemeenten op vingers”, 24 December 2005; *NRC Handelsblad* (2006), “Humaniteit is voor iedereen het sleutelwoord: enquête: burgemeesters werken mee aan het asielbeleid tenzij een gezin op straat komt te staan”, 25 February 2006.

promised to make municipal accommodation of rejected asylum seekers obsolete, fuelled calls for the general regularisation exercise that was eventually adopted.

## 7 – BALKENENDE IV (February 2007 - February 2010<sup>235</sup>)

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### 7.1 CONTEXT

In February 2007, a new coalition government of CDA, PvdA and the Christian Union Party (hereinafter: CU) took up office, led by Balkenende as Prime Minister. Migration policy would mainly be part of the portfolio of State Secretary of Justice<sup>236</sup> Nebahat Albayrak (PvdA), with Bert Koenders (also PvdA) becoming Minister responsible for development cooperation. The increasing importance of the topic of return in migration policy over the last two decades seems to have culminated in the Balkenende IV period, as the government stated: “*The highest priority within aliens policy is to realize the actual departure of aliens who are not (no longer) allowed to remain in the Netherlands*”.<sup>237</sup>

With regard to migration policy, the implementation of the regularisation exercise for ‘old caseload’ asylum seekers would be one of the main challenges for the new Balkenende IV government. In the Coalition Agreement, this exercise was specified as covering all those who had submitted an asylum application before 1 April 2001 (the entry into force of the new Aliens Act), and who, during 2006, had been covered by the Return Project, or had been accommodated by municipal ‘emergency shelter’.<sup>238</sup> The implementation of the regularisation exercise would be linked very directly to return policy, as the Coalition Agreement made it conditional on reaching an agreement with the municipalities to cooperate on the return of those not covered by the regularisation exercise, as well as of those rejected asylum seekers covered by the new Aliens Act 2000. This would include municipalities no longer providing accommodation to asylum seekers no longer entitled to government-sponsored facilities.<sup>239</sup> These starting points were formalized in an agreement between the Ministry of Justice and the VNG on 25 May 2007.<sup>240</sup> This was intended to be a final resolution of the long-running conflict between the central and local governments about the eviction of rejected asylum seekers; the municipalities would get a fair resolution to the

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<sup>235</sup> For practical reasons, this report is updated to the end of 2009. However, on 20 February 2010, the Balkenende IV cabinet fell as a result of a disagreement over military action in Afghanistan, after which the PvdA left the government. The Balkenende IV administration became a minority government, which will function with a demissionary status until parliamentary elections in June 2010. As some of the measures proposed by the Balkenende IV government in the area of voluntary return are still being implemented, and their impact is as yet unclear, this chapter provides only a brief discussion of the main focal points for this period, rather than an in-depth discussion of each of them.

<sup>236</sup> The post of Minister of Aliens Affairs and Integration reverted to the State Secretary role.

<sup>237</sup> *Tweede Kamer* 2008-2009, doc. 19637 no. 1263, 14 April 2009, emphasis added.

<sup>238</sup> The generic term used for ‘unofficial’ facilities, provided by or on behalf of municipal governments, to asylum seekers who had been evicted from state-sponsored asylum centres.

<sup>239</sup> Coalition Agreement 2007: pp. 43-44.

<sup>240</sup> “Bestuursakkoord tussen de Staatssecretaris van Justitie en de Vereniging van Nederlandse Gemeenten inzake het vreemdelingenbeleid”, 25 May 2007.

problem of having to take care of evicted asylum seekers, while the central government would see an end to municipal practices which it considered to be undermining overall return policy. This was reiterated in a letter by the State Secretary to Parliament:

“[it is] important that aliens receive a coherent signal that, when there is no longer a right to remain, departure from the Netherlands is necessary. In the last few years, however, return policy has been the subject of public debate, in which there has also been a difference of perception between the central government and several other governments related to the cancellation of facilities [for rejected asylum seekers]. This has negatively impacted on the effectiveness of return policy. Evictions have not always taken place and aliens were confronted with an ambiguous message. This strongly reduced the stimulus to heed the call to meet the legal obligation to leave the country. The agreement with the VNG, concluded on 25 May 2007, is crucial in getting the return process back on track, achieving the full cooperation of rejected asylum seekers in the return process, end municipal accommodation facilities [for rejected asylum seekers] and realize an implementation of the Aliens Act 2000 in keeping with the law.”<sup>241</sup>

The implementation of the effective return of those not entitled to remain under the regularisation exercise, of ‘new’ asylum seekers that had their applications rejected, and of irregular migrants, would become the concern of a new organization, the Repatriation and Departure Service (*Dienst Terugkeer & Vertrek*, hereinafter: DT&V).<sup>242</sup> The DT&V, which started its operations at the start of 2007, would bring a number of different tasks related to return, which were previously scattered among different agencies, such as the Immigration Service, Aliens Police and Royal Constabulary, under one roof. Although these different agencies would still have a role to play in the overall process, the consolidation of return-related tasks in one organization was generally considered a precondition for a more effective return policy.<sup>243</sup> The DT&V would have a ‘stick and carrot’ mandate, encouraging voluntary return (undertaken by the alien or supported under the REAN programme) when possible, and enforcing return (through detention and forced removal) when necessary. To this end, the DT&V would build on the ‘case management’ approach used earlier during the Return Project, in which a series of individual sessions with the asylum seeker or irregular migrant, conducted by a DT&V officer, would have to explore the possibilities of return, while also ensuring that this process would take place efficiently and timely. This would be done in close cooperation with the above-mentioned agencies, as well as COA (for those still accommodated in asylum centres) and IOM (for those choosing to return voluntarily).<sup>244</sup> This reflected the government’s position that:

“[...] the own responsibility of the alien [...] for his own departure is and remains the starting point of return policy, since cooperation of the alien in return is crucial. The instrument of the all-encompassing decision [as established in the Aliens Act 2000], which allows the government to enforce

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<sup>241</sup> *Tweede Kamer* 2007-2008, doc. 29344, no. 67, 24 June 2008: pp. 13-14.

<sup>242</sup> Coalition Agreement 2007: p. 44.

<sup>243</sup> This was the direct result of a report of the Court of Audit (*Algemene Rekenkamer*), published in September 2005, which had recommended establishing a separate return organization. The establishment had been prepared under the Balkenende III government, but the new organization would take up its actual duties only during the Balkenende IV period.

<sup>244</sup> See [www.english.dienstterugkeerenvertrek.nl](http://www.english.dienstterugkeerenvertrek.nl) (accessed on 2 February 2010).

return after the period granted for [voluntary] return has ended, and to engage in cancellation of facilities, as well as the possibility of using measures to limit or eliminate [through detention] freedom of movement, is crucial for an effective return policy.”<sup>245</sup>

In this way, the Balkenende IV government’s focus was a logical continuation of the previous administration’s policies. In contrast to Verdonk’s ‘water-tight’ approach, however, Albayrak warned that, while she aimed to achieve this goal as much as possible, this approach “in the sense that aliens either get a permit or are being returned, even with these additional measures [proposed by the Balkenende IV government (see chapters 7.2 and 7.3)] will be impossible to fully realize”.<sup>246</sup>

## 7.2 POSITIVE INSTRUMENTS

### 7.2.1. Reintegration assistance for voluntarily returning asylum seekers

The support for a more reintegration-focused approach to voluntary return, which had started gaining significant momentum during the Balkenende III period, continued to grow. An important impulse for this came when ten organizations dealing with groups of asylum seekers and migrants, jointly presented a vision on return and reintegration to the State Secretary for Justice and the Minister for Development Cooperation.<sup>247</sup> The organizations, representing a wide scope of actors (non-governmental, governmental and international), proposed a cooperative and complementary approach, which would enable “persons who are not allowed to stay in the Netherlands, to return safely, in dignity and with a prospect of rebuilding their lives”.<sup>248</sup> The approach would focus on investing in people from the moment they arrived in the Netherlands, cooperation between different actors that could benefit potential returnees, and achieving sustainability after return.<sup>249</sup> This initiative, which would lead to process in which the organizations would seek to establish a coordination platform, the Platform on Sustainable Return, was greeted with enthusiasm by different political parties, and the government agreed to make available a sum of up to EUR 10 million for the eventual Platform, which would be drawn from the Development Cooperation budget of the Ministry of Foreign Affairs.<sup>250</sup> The focus on reintegration and sustainability had been incorporated in the 2008 Policy Note on International Migration and Development. Apart from the continuation of funding of a general scheme to provide a cash grant for the purpose of reintegration for (rejected) asylum seekers<sup>251</sup>, the Note specifically supported in-kind reintegration assistance (particularly provided to returnees after their arrival in their countries

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<sup>245</sup> *Tweede Kamer 2007-2008*, doc. 29344, no. 67, 24 June 2008: p. 14.

<sup>246</sup> *Ibid.*

<sup>247</sup> COA, Cordaid, IOM, Nidos (guardian organization for unaccompanied minor asylum seekers), HIT Foundation, the Global Society Foundation (*Stichting Mondiale Samenleving*, hereinafter: SMS), the Dutch Council for Refugees (*VluchtelingenWerk Nederland*), Pharos, HealthNet TPO and SAMAH.

<sup>248</sup> Letter of 19 November 2007, <http://www.iom-nederland.nl/dsresource?objectid=1247&type=org> (accessed 10 October 2009).

<sup>249</sup> *Ibid.*

<sup>250</sup> *Algemeen Nederlands Persbureau* (2008), “CDA: steek OS-geld in terugkeer asielzoekers”, 4 October 2008; *Volkskrant* (2008), “CDA: geld Koenders voor uitzettingen”, 6 October 2008; *Nederlands Dagblad* (2008), “Asielzoeker bij terugkeer helpen: Tweede Kamer vraagt tien miljoen euro”, 6 October 2008; *Algemeen Nederlands Persbureau* (2008), “Coalitie wil meer geld voor vertrek ex-asielzoekers”, 4 November 2008.

<sup>251</sup> The HRPT scheme, which was intended for the reintegration and encouragement of return of ‘old caseload’ asylum seekers, had been replaced in 2006 with the HRT scheme, which, from then on, would also make reintegration grants available to ‘new caseload’ asylum seekers.



of origin), which could be implemented by IOM, development NGOs with links in those countries, or through the Platform on Sustainable Return (*Platform Duurzame Terugkeer*, hereinafter: Platform).<sup>252</sup>

### 7.2.2 Facilitation of voluntary return from detention

Following the steps by the Balkenende III government in October 2007, the pilot project, in which the REAN programme was made more readily accessible to detained migrants, was followed by a larger scale project, implemented by IOM in cooperation with DT&V, to facilitate voluntary return from detention locations (Assisted Voluntary Return from Detention, hereinafter: AVR).<sup>253</sup> An assessment of the removal of rejected asylum seekers and irregular migrants showed that the provision of AVR services in detention had a positive impact on the overall effectiveness of the return function of detention locations, and a more permanent scheme was recommended.<sup>254</sup>

The situation of detained migrants, and the problems they faced in return, had also drawn the attention of civil society actors, led by protestant organizations, which proposed to set up a 'Return House', which would offer an alternative to detention for rejected asylum seekers and irregular migrants who agreed to cooperate in their voluntary return, as well as for those who could not be forcibly removed and were in danger of being 'put on the streets'.<sup>255</sup>

## 7.3 NEGATIVE INSTRUMENTS

While the Balkenende IV period saw the development of the next step in the encouragement of voluntary return, through far-reaching plans for the provision of reintegration assistance, as well as an unprecedented interest from different actors to contribute to realizing voluntary return, the pursuit of negative instruments would also occupy a central place on the agenda. As already discussed, with the establishment of the DT&V, the success of overall return policy was linked even closer to the possibility to encourage voluntary return and have a strong threat of forced removal in a flexible, and case-by-case, manner. This naturally led to a strong focus on the negative instruments. In the first part of 2009, the second annual report of the Committee Integral Supervision of Return (CITT) was made public. The CITT had organized inspections of several agencies involved in return, and had held extensive discussions with a range of relevant actors. The Committee made a range of recommendations to further improve the operational effectiveness of forced removal, which

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<sup>252</sup> *Tweede Kamer 2007-2008*, doc. 305373, no. 11: p. 39-41.

<sup>253</sup> *Algemeen Nederlands Persbureau* (2007), "IOM helpt bij vertrek uit bewaring", 30 October 2007; IOM Netherlands annual report 2007.

<sup>254</sup> See, Committee Integral Supervision of Return (*Commissie Integraal Toezicht Terugkeer*, hereinafter: CITT), *Annual report 2008*.

<sup>255</sup> The civil society actors proposing to set up a 'Return House' were *Kerk in Actie* (part of the Protestant Churches in the Netherlands), INLIA, the protestant development NGO ICCO, the Salvation Army, in cooperation with the religious counsellors of the Ministry of Justice and IOM. Moreover, see, for example, *Reformatorisch Dagblad* (2008), "Kerken beginnen opvanghuis voor illegalen", 23 June 2008; *Friesch Dagblad* (2008), "Terugkeerhuis voor illegalen", 24 June 2008. The increasing involvement of the protestant church in the issue of return is also evidenced by the publication of guidelines for assisting returning asylum seekers, which aimed to assist local church communities in their work with this group. See, *Kerk in Actie* (2008), *Draaiboek terugkeer: een draaiboek voor terugkeer van niet toegelaten asielzoekers voor diaconieën van de Protestantse Kerk in Nederland*:

[http://www.kerkinactie.nl/site/uploadedDocs/Draaiboek terugkeer\\_def KIA.pdf](http://www.kerkinactie.nl/site/uploadedDocs/Draaiboek_terugkeer_def_KIA.pdf) (accessed on 17 September 2009); *Algemeen Nederlands Persbureau* (2008), "Kerkelijk draaiboek voor terugkeer asielzoekers", 25 June 2008.

would also have an effect on the willingness of aliens to depart voluntarily, by making the ‘stick’ component of the ‘carrot and stick’ approach more salient. The Committee particularly urged State Secretary Albayrak to prioritise the forced removal of aliens who had engaged in criminal acts.<sup>256</sup>

Albayrak also continued the use of reception locations with limited freedom of movement for those who were considered still to be cooperating with their return, after their right to regular government-sponsored accommodation had ended. This measure would specifically be used for groups for whom detention was undesirable, particularly families with children, and who also should not simply be evicted from regular centres in absence of alternatives.

While the Balkenende IV government had committed to providing effective solutions for all rejected asylum seekers – either through the regularisation exercise or through intensive stimulation of return – municipalities continued to struggle with new cases of persons who had neither returned nor had gained a status, and were thus left without accommodation. Despite the agreement with the municipalities to make ‘emergency shelters’ a thing of the past, the Balkenende IV government still faced resistance on this issue. At the end of 2009, when the final deadline for closure of the shelters was approaching, it was reported that a number of municipalities – in contravention to the agreement related to the regularisation exercise – planned to continue their facilities for rejected asylum seekers.<sup>257</sup> In line with this, an evaluation of the implementation of the regularisation exercise concluded that – while the implementation had been successful – a proportion of aliens would remain to occupy the gap between a status and return, and that this problem would remain a feature of Dutch migration policy.<sup>258</sup>

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<sup>256</sup> CITT (2009), *Jaarverslag 2009*, [www.commissieterugkeer.nl](http://www.commissieterugkeer.nl) (accessed on 27 December 2009); *Algemeen Nederlands Persbureau* (2009), “Meer asielzoekers uitzetten”, 26 March 2009; *Spits* (2009), “Aantal uitzettingen omhoog”, 27 March 2009. See also *Tweede Kamer 2008-2009*, doc. 19637 no. 1263, 14 april 2009, for specific measures taken by Albayrak in relation to this recommendation. As these measures deal specifically with forced return, they are not discussed in detail in this report.

<sup>257</sup> *Vrij Nederland* (2009), “Gemeenten negeren Albayrak”, 28 November 2009.

<sup>258</sup> *Trouw* (2009), “Generaal pardon is groot succes: onderzoek prijst tijdelijke regeling, maar sluit nieuwe ronde niet uit”, 14 November 2009.

## 8 – CONCLUSION

The last two decades have shown a steady increase in the importance of return policy on the Dutch political and public agendas. Whereas it is presented mainly as a sub-field of asylum policy at the end of the 1980s and beginning of the 1990s, the Return Policy Notes of 1997 and 1999 establish return as a policy area in its own right, although with unmistakable links to other migration-related policy fields. Also, the issue of return slowly moves from the ‘final consideration’ in migration issues, to ‘highest priority’ in the Balkenende IV period. This trend can be related, amongst other things, to the change in view on return policy. Whereas in the first decade, effective return policy was mainly seen as a necessary precondition to run an effective admission procedure and a way to unburden the administrative and logistical pressures of the asylum system, by the new millennium, return was framed as integral to the maintenance of the welfare state, as well as security and public order.

Voluntary return started out as, and firmly remains, the backbone of return policy: those who are required to leave the Netherlands are expected to do so of their own accord. Put in the words of the successive Policy Notes: a rejected asylum seeker or irregular migrant is expected to take his/her own responsibility in fulfilling the legal obligation to depart. The way this responsibility has been considered, however, has changed. During the Lubbers III and Kok I period, the government was assumed to share some of this responsibility; as long as the individual could show he/she was working on return in good faith, the government would take responsibility for accommodation and other facilities necessary during the asylum seeker’s stay in the Netherlands. This was a reflection of the confidence that existed in asylum seekers to ‘do the right thing’. This confidence gradually waned, which was reflected in the way the Dutch government redefined its role towards those required to leave. With the institution of the 28 days for departure under the Aliens Act 2000, whether or not an asylum seeker cooperated in return became much less relevant to the government’s actions. This would be even the case if failure to return within this period may have been attributable to external factors. These external factors became less relevant from the government’s perspective, culminating in the Balkenende III perspective that ‘everyone who wants to return, can return’. From this point of view, failure to return is primarily interpreted as evidence that the rejected asylum seeker or irregular migrant acted in bad faith, and actively sought to frustrate his/her return. This is particularly clear when we compare statements of Schmitz, who actively sought to temper expectations about the effects of return policy, to those of Verdonk, who sought to close all the possible gaps in return policy, leading to a ‘water-tight’ approach.<sup>259</sup>

In order to manage return, the range of instruments to facilitate departure and discourage irregular residence has become larger and more sophisticated. This is particularly clear for the positive instruments employed. Here, the provision of Assisted Voluntary Return (AVR) services has taken centre stage throughout the whole of the two decades described here. The REAN programme, which was launched as the first dedicated instrument to facilitate the

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<sup>259</sup> The Balkenende IV government has reversed this trend slightly, by acknowledging that it is impossible to close all the gaps between return and residence (see chapter 7.1). In this respect it is also interesting to note that in 2004, Olde Monnikhof and De Vreede found that most policy makers and practitioners in the field of return believed that the eventual decision to return was mainly made by asylum seekers based on their perception of the situation in their countries of origin, which were almost impossible to influence by the instruments employed by the Dutch government. M. Olde Monnikhof and J. de Vreede (2004), *Terugkeerbeleid voor afgewezen asielzoekers Evaluatie van het terugkeerbeleid '99 en het terugkeerbeleid onder de Vreemdelingenwet 2000*, The Hague, Research and Documentation Centre of the Dutch Ministry of Justice (WODC): p. 79.

voluntary return of rejected asylum seekers and irregular migrants, is still in operation today, and its basic starting points have remained virtually unchanged. This is true, for example, of the definition of the target group of the programme (see chapter 2.2), which remains very broadly defined. This has kept the instrument flexible to be able to include different target groups in the programme, if the political or practical need arises, but it also keeps certain target groups outside the immediate scope of the programme at times. As discussed, initially the programme was focussed on asylum seekers residing in asylum centres of COA, although irregular migrants could always benefit from AVR services. The latter group became of particular interest much later.

While the criteria for REAN have stayed the same, the way in which the programme was made accessible has changed significantly. The major change came with the ‘decentralization’ of the outreach efforts of IOM, which linked the main provider of voluntary return assistance directly to its beneficiaries, rather than working exclusively through referrals. Activities for outreach to non-asylum seekers were gradually added, first for migrants residing in the big cities and subsequently for those in detention.

The scope of the assistance available – in addition to REAN – has also expanded. From an early approach in which voluntary returnees could mainly rely on a ticket, increasingly financial assistance and – eventually – services for reintegration in countries of origin have been offered. It should be noted, however, that this expansion of voluntary return assistance has been focused almost exclusively on asylum seekers, with irregular migrants (including those in detention) still only able to benefit of the most basic REAN provisions.<sup>260</sup>

The development of the current reintegration-focused approach saw an interplay between the activities of civil society organizations, which often showed the government how more extensive assistance could be beneficial, and the subsequent political willingness to link development goals with migration management goals. This last trend, however, has been far from smooth, with the relationship between the need for effective departure from the Netherlands and the need of migrants and their communities to have positive prospects and preventing negative outcomes of return on countries of origin being re-negotiated throughout the last twenty years. As a result, this process has been bumpy and slow, with the first links between development and return already being evident in the early 1990s. However, the reintegration-focused approach, which aims to reconcile these two interests, really took off in the last few years.

The expanding efforts to make voluntary return a practical and attractive option are mirrored by increasingly strict measures to make irregular stay in the Netherlands more difficult or unattractive. This is the other pillar of return policy: the notion that voluntary return will only work if there is sufficient pressure on individuals to choose this option.<sup>261</sup> As Olde Monnikhof and de Vreede have noted: “If the negative instruments would not exist, no asylum seeker would consider leaving the Netherlands. It is important, however, to not only threaten with negative instruments but also to actually implement them”.<sup>262</sup> The ‘stick and carrot’ approach to return has brought voluntary and forced return closer to each other than

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<sup>260</sup> Exceptions however do exist for medical cases/vulnerable cases (vulnerability before status).

<sup>261</sup> See, for example, *NRC Handelsblad* (2004), “Geen vrijwillige terugkeer zonder enige dwang: in EU-landen keren steeds meer terug naar land van herkomst”, 10 August 2004.

<sup>262</sup> M. Olde Monnikhof and J. de Vreede (2004), *Terugkeerbeleid voor afgewezen asielzoekers: Evaluatie van het terugkeerbeleid '99 en het terugkeerbeleid onder de Vreemdelingenwet 2000*, The Hague, Research and Documentation Centre of the Dutch Ministry of Justice (WODC): p. 80.

ever before. The DT&V, which now is the governmental agency responsible for ensuring return, uses both instruments in parallel. The provision of AVR services in detention centres is perhaps the best indicator of how intertwined forced and voluntary return have become in the overall Dutch return policy.

In the last decade more and more general measures have been developed and implemented that limit the possibility of irregular migrants and rejected asylum seekers to build a life in the margins of society. These exclude them from social services, make employment a less rewarding proposition, and increase supervision of aliens, thus making it more likely that those not allowed to remain in the Netherlands are identified.

A specific role within these restrictive instruments was played by the cancellation of government-provided facilities for rejected asylum seekers. As this report shows, the eviction of asylum seekers from reception centres has been reiterated time and time again as a necessary signal to those rejected, that they would have to return. Even so, the range of instruments to combat irregular residence has not prevented rejected asylum seekers from disappearing off the radar screen of the central governmental bodies dealing for them. A recurring problem – and a significant source of tension – has been that there have been groups of homeless rejectees, for whom municipalities and civil society groups have then seen themselves forced to find temporary solutions. So far, none of the cabinets seem to have been able to find an effective reconciliation of the need for negative action to ensure that asylum seekers take their own responsibility to leave the Netherlands, and the reality that not all of them will do so and present local communities with an imperative to assist them, even if this undermines the concept of return policy.

In addition to this continuing challenge for voluntary return policy, the organizational field in which this policy is being implemented has become more complex in the last few years. In particular, the DT&V has been given a prominent role to play in the overall process. Additionally, activities in the area of providing voluntary return assistance is no longer limited to IOM and a small number of other initiatives. A wide range of actors has emerged, all with their own perspectives on return, as well as their own approaches. This progressively complex field calls for significant coordination efforts, which provides another key challenge for the implementation of return policy in the Netherlands. As mentioned in Paragraph 7.2. ten organisations signed the so-called ‘vision letter’ (visiebrief) on sustainable return in November 2007. This resulted in a Platform and a Foundation on Sustainable Return, in which an ambitious attempt is being made to provide complementary services, leading to sustainable return.

Furthermore, the increasing ‘internationalization’ of the issue of voluntary return, not the least due to the focus that is shifting to the prospects of returnees in their countries of origin, adds to this complexity.<sup>263</sup> The current state of return policy, therefore, is by no means a final destination. Significant old and new challenges will still have to be dealt with in the years to come. If the last twenty years show us anything, it is that there seems to be an almost unlimited scope for improvement of policies, for innovation and for new approaches to assist migrants during their road towards, and their actual, voluntary return.

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<sup>263</sup> The issue of return has always been an international one, but with new schemes being developed aimed at bridging encouragement of departure from the Netherlands with the provision of better prospects in countries of origin, international cooperation, both between governments and by non-governmental actors in the Netherlands and countries of origin, becomes increasingly important for the effectiveness of return policy.