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Human rights encounters in small places: the contestation of human rights responsibilities in three Dutch municipalities

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ABSTRACT

This article investigates engagements of local authorities with human rights in the field of irregular migration in a small town, medium-sized city and a rural municipality in the Netherlands. Although scholarship on human rights cities constitutes an important point of departure for this study, this article challenges the urban bias in this emerging body of research on the role of local authorities in processes of human rights localization. Drawing from theories of legal pluralism, scholarship on human rights practice and encounters and finally geographical insights, the article examines spatial dimensions of human rights practices of municipal actors in these three municipalities. More specifically, it investigates how in these municipalities the *presence* of and *encounters* with irregular migrants in local institutional spaces contribute to a local contestation of human rights *responsibilities* and examines how this process of contesting human rights responsibilities differs between these municipalities. The article draws on and develops scholarship on human rights encounters, by extending the scope beyond encounters at high seas and by explicating how power dynamics, temporalities and the sites of encounters can give rise to perceptions of duties that set these encounters apart from everyday sociabilities or encounters with difference. On the basis of a qualitative content analysis of municipal council documents and proceedings this study moreover found considerable differences with regard to how human rights responsibilities are contested locally by municipal actors. This study observed both differences among municipalities and differences among municipal actors within a single municipality in relation to these local understandings of human rights and perceptions of human rights responsibilities.

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"Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he

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attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

Eleanor Roosevelt

Introduction

In this often-quoted part of the speech for the 10th anniversary of the Universal Declaration of Human Rights (UDHR), Eleanor Roosevelt situates human rights within the context of everyday life, by evoking its everyday places, such as schools and workplaces. As human rights scholars and practitioners increasingly turn their gaze toward localities to investigate the role of cities and local actors in the realization and development of human rights¹, these words have not lost their saliency today. Discussions on localizing human rights need not focus on origins or sources of human rights norms but may equally be concerned with how human rights principles and norms are implemented, translated and contested locally, or as Merry calls it ‘vernacularized’ (2006).

But what does it mean for human rights to be localized in everyday spaces? And how can we adopt a more spatial understanding and investigate how processes such as the diffusion of human rights norms operate not only *in* certain spaces (e.g. schools) but also *through* them? It is this challenge which Jonathan Darling raises when he notes that “we must also be mindful of the locations through which frames of human rights move” (Darling 2016, 123). This therefore begs the question how to approach the local level as more than a mere stage and call attention to these spatial and geographical aspects of processes of human rights implementation, diffusion and contestation. Geographers, such as Ash Amin who has written extensively on the relation between social practices, processes and places, propose a relational approach to localities and place. This approach is “neither a-spatial (i.e. where the local is reduced to a mere stage) nor territorial (i.e. where the geographical local is all)” (Amin 2004, 38). Instead Amin suggests a *topological lens* to localities and the ‘politics of place’, which is attentive to spatial aspects of social processes and based on an understanding of the local as bringing “together different scales of practice and social action” (Amin 2004, 38).

Human rights scholars have engaged with this question of a local turn in human rights, by investigating how “processes of appropriation and local adaptation of globally generated ideas and strategies”, also known as ‘vernacularization’ take shape across various parts of the worlds and in different contexts (Levitt and Merry 2009, 441). By highlighting processes of adoption and translation of global norms, these scholars also address the contested binaries of ‘global’ and ‘local’ and shift the focus to the role of different *actors*, whose practices combine “local ways of thinking about grievances” and “transnational human rights concepts” and undermine such conceptual boundaries (Merry, 2006, 42). As Sally Engle Merry notes, these actors may be “local activists, human rights lawyers, feminist NGO leaders, academics, or a host of other people who have one foot in the transnational community and one at home” (2006, 42). In her work on translocal internationalism, Judith Resnik extends this framework to include

municipal actors such as mayors and members of city legislatures, who as “popularly elected officials, engage with transnational conventions or affiliate with transnational human rights efforts” (Resnik 2007, 50)². As (Vonk et al. 2016) and Sakkers (2017) have observed for the Dutch context, the question of how recent experiences with decentralization affect the fulfillment of constitutional duties of care and human rights responsibilities is becoming ever more salient and contested, after the decentralization of policy competences to local authorities in the field of social support and youth care in 2015 and employment and participation policy in 2017. Although this scholarship on human rights practice has widened the scope to include a broader range of actors *in* different settings and across different scales, the spatial aspects of human rights practices of local actors remain comparatively underexplored.

This article draws from these insights to examine how municipal actors in three Dutch municipalities bring in their own understandings of human rights as they respond to the plight of irregular migrants within the locality. As Oomen and Baumgärtel (*this volume*) note, irregular migration is increasingly becoming a fault line between political parties nationally, but also one that causes some cities to diverge from national policies, by invoking international human rights law in defense of local approaches to irregular migration. As refused asylum seekers do not possess a regular status, some municipalities, such as the municipality of Utrecht in the Netherlands, have turned to human rights law as a legal basis for the recognition of the position and needs of irregular migrants in the city (Oomen and Van den Berg 2014). In some instances, this process of connecting local grievances with global human rights norms results in a city explicitly basing its urban policies on international human rights (Oomen 2016; 1), “organizing itself around norms and principles of human rights” (Grigolo, 2016, 277) or framing itself as a ‘human rights city’.

This emerging body of literature on human rights cities often draws on empirical research conducted in more established and formal human rights cities such as Barcelona (Grigolo 2017) and Utrecht (Oomen and Van den Berg 2014) that explicitly base their urban policies on human rights. However, as Darling notes, some local engagements with human rights “fall between the formal notion of the human rights city and the radical challenges posed through a ‘right to the city agenda’” (Darling 2016; 122). This scholarship on the sub-national incorporation of human rights moreover tends to conflate cities with other types of locality, which is not surprising given that only recently cities were recognized as ‘the new kids on the block’ in the realization of human rights (Oomen, 2016, 3). This conflation has however been scrutinized because it ‘hides the very different and significant challenges in mounting a critical praxis of human rights anchored in rural or suburban areas’ (Goodhart 2019, 147). Although the limitations of this *urban bias* are increasingly being recognized, it is often not grounded in empirical research.

This article brings insights from theories of legal pluralism and the ethnography of human rights practice in conversation with insights from political geography (Darling 2017) and legal philosophy (Mann 2016) to investigate this broader spectrum of engagement of municipal authorities with human rights. It argues that scholarship on the politics of presence (Darling 2017) and human rights encounters (Mann 2016) offers a conceptual lens through which this broader spectrum of engagements of

municipal authorities with human rights and the spatial dimensions of human rights practices can be further explicated. More specifically, it investigates how in these municipalities the *presence* of and *encounters* with irregular migrants in local institutional spaces contribute to a local contestation of human rights *responsibilities* and examines how this process of contesting human rights responsibilities locally differs between these municipalities.

The article opens with a discussion of comparative approaches to the study of local engagements with human rights, followed by an introduction to the three municipalities included in this study. This is followed by an empirical analysis and discussion of human rights engagements in the field of refugee reception in these three municipalities.

Comparative approaches to the study of local engagements with human rights

In the recent trend that has also been coined a ‘local turn’, human rights scholars have approached the nexus between human rights and local governments in various ways³. As Michele Grigolo notes, these scholarly efforts have sought to examine how local governments enhance the relevance of human rights, as well as how human rights enhance the power of local governments to govern the city (2017, 68). Although this article recognizes that these local engagements with human rights should ultimately be studied vis-a-vis human rights commitments at the national level, this article zooms in on this second dimension and draws on what Grigolo calls a “sociological understanding of human rights practice” (2017, 68) that is not restricted to this narrower definition of human rights city or exclusively tied to urban contexts. More specifically, it examines *how* different actors in three Dutch municipalities engage with human rights, by studying what local municipal documents can tell us about the forms and rationale behind these engagements as well as their spatial and geographical settings, as stated in these documents. This effort should thus be seen against the backdrop of a broader inquiry into understanding and comparing explicit and implicit engagements with human rights in different settings and localities.

The merits, methods and challenges of comparing localities and cities have occupied urban theorists and geographers for decades and it is therefore interesting to bring some of these insights into this discussion. As Ayşe Çağlar and Nina Glick Schiller note, in recent years there has been a renewed interest in and debate on comparative methods and perspectives amongst urban scholars (2018, 24). This turn towards comparative urban studies and methods has been propelled by the scholarship of urban scholars such as Nijman (2007), McFarlane and Robinson (2012), Ward (2008) and more specifically in relation to cities and migration governance, by Ayşe Çağlar and Nina Glick Schiller (2018). Çağlar and Glick Schiller situate this recent turn towards comparative approaches against the backdrop of a more pervasive and long-standing distrust of comparative studies, because comparative assessments require a “degree of reductionism” which led many urban scholars to abandon comparative perspectives and “those remaining failed to delineate the variables being

compared” (Cross and Moore, 2002 as cited in Çağlar and Glick Schiller 2018, 24). They propose a multiscale perspective on cities and localities to maintain a focus on interconnectivities, which is inspired by the method of variation finding developed by Charles Tilly (1984). As Çağlar and Glick Schiller note, this method “establishes a principle of variation in the character or intensity of a phenomenon by examining systematic difference amongst instances” it begins by examining similarities and then “studies variations within characteristics defined as similar” (Tilly, 1984 as cited in Çağlar and Glick Schiller, 26).

This study drew from these insights to study variation in human rights engagements in and between three municipalities in the field of irregular migration. The website *open raadsinformatie* makes it possible to search the public archives of 108 Dutch municipalities simultaneously to ‘scope’ this spectrum of human rights engagements. In addition, the municipal digital archives of other (core) municipalities, *centrumgemeenten* that were missing from this first database were also included in this first scoping inquiry (Regioatlas 2018). On the basis of this initial scoping three municipalities were selected. Instead of focusing on those cities, such as Amsterdam, Nijmegen, Middelburg, The Hague and Utrecht, that have been called ‘pioneering cities’ in the context of human rights in the Netherlands (Van den Berg, 2016) this study selected three municipalities *ex negativo* from a wider sample of municipalities with explicit human rights engagements.

This article examines human rights engagements in the field of irregular migration in three municipalities, the medium-sized city of Almelo in the East of the Netherlands, the town of Waalwijk in the South and the smaller rural municipality of Tytsjerksteradiel in the North of the country. These municipalities were selected because they either qualify the formal definition of human rights cities⁴ only partially (Almelo) or not at all (Tytsjerksteradiel and Waalwijk). Although the initial scoping indicated human rights are being invoked in these municipalities in relation to irregular migration, these engagements have not resulted in the municipality explicitly basing its policies on a human rights perspective. Secondly, these municipalities represent a broader spectrum of types of locality; including a rural municipality consisting of villages (Tytsjerksteradiel) a small town (Waalwijk) and a medium-sized city (Almelo). This selection of these three municipalities should not be treated as representative of each of these types of localities. Instead it should be understood as a form of theoretical purposeful sampling (Charmaz 2006, 101) and variation finding, which first identifies a similar invocation - human rights in relation to irregular migration - but subsequently sets out to investigate *variations* in the form of commonalities and differences between local actors in these municipalities as they engage with human rights.

‘Engagement with human rights’ in this context refers to any invocation of human rights language and concepts in municipal council agreements, discussions and proposals and policy briefs dealing specifically with irregular migration. This article therefore draws from what Mark Goodale has called a “broader account of human rights practice”, defined as “the many ways in which social actors across the range talk about, advocate for, criticize, study, legally enact, vernacularize, etc., the idea of human rights in its different forms” (2007, 36). As Goodale moreover notes, “to

adopt such a broad definition of human rights practice is necessarily to reject all of the traditional analytical distinctions between ‘human rights law and the politics of human rights; between the abstract idea of human rights and its messy and contradictory emergence within situated normativities’ (2007, 37).

The empirical analysis which informs this article is based on a qualitative content analysis of municipal council proceedings and policy memos, municipal web content and local and regional press from 2014 until the present. These documents were imported into NVivo and coded using open and axial coding methods. This analysis focused on identifying the scope and variation in human rights practices documented and common themes in local documents, such as municipal council minutes that involve human rights language.

The involvement of Dutch municipal governments in the field of asylum, refugee reception and irregular migration

In the Netherlands the reception of asylum-seekers is entrusted to the Central Agency for the Reception of Asylum Seekers (COA), an independent administrative body that falls under the political responsibility of the Secretary of State of Security and Justice (COA, 2018). Local authorities can take the initiative to map and explore possible locations and to subsequently propose a facility to COA. COA can in turn contact the municipal government to make general inquiries about the possibility of opening a reception facility within a municipality. The opening of a new reception facility is preceded by a process in which COA, the municipal government and other stakeholders formulate an administrative and governance agreement (Ministry of Security and Justice 2015, 7). COA can only open a reception facility (AZC) after the municipal council has formally agreed. Although municipal governments⁵ are not entrusted with the primary responsibility for reception, several services, such as access to primary education for children and youth care do fall directly within the competencies and responsibilities of municipal governments (Association of Netherlands Municipalities 2015).

Local authorities are more directly involved in the integration of recognized refugees and are entrusted with the responsibility for housing allocation and social support. As part of the Housing Act (2014) all municipal governments in the Netherlands are obligated to provide housing to beneficiaries of international protection. The ministry of Interior determines the targets for municipalities bi-annually. As part of this housing policy and dispersal policy, refugees, upon successful completion of their procedure, are therefore dispersed across the country by COA and municipal governments allocate private or shared housing, usually in the public housing sector. This dispersal policies for refugees stands in contrast to the geographical distribution of reception centers for asylum seekers as there is no dispersal policy in place for asylum seekers as they await the outcomes of their asylum application in reception centers.

In contrast to this involvement and competencies of local authorities in the field of asylum and refugee reception, their role vis-à-vis undocumented or rejected asylum seekers is becoming an increasingly contested issue. In recent years municipal governments in major Dutch cities such as Amsterdam, Utrecht and Groningen have explicitly diverged from national asylum policies by offering

support to rejected asylum seekers in the form of shelter, basic (health)care and more recently also legal counselling. In their study Kos, Maussen, and Doornik (2016) analyze how municipalities in 7 Dutch cities have developed “ways of cushioning, bypassing, resisting and counteracting various aspects of exclusionary asylum policies” (2016, 2).

Having sketched the competencies of Dutch local authorities in the field of the reception of asylum seekers, the integration of refugees and in relation to refused asylum seekers, this article turns to discuss experiences with refugee reception in the municipalities of Almelo, Tytsjerksteradiel and Waalwijk. In two of these municipalities, Tytsjerksteradiel and Almelo, there is currently a reception center for which the Central Agency for the Reception of Asylum Seekers (COA) bears immediate responsibility. Both municipalities also have a relatively long history of refugee reception dating back to the mid-1990s (COA 2018). In Tytsjerksteradiel the reception center is no longer a ‘regular’ reception center but one of five ‘family centers’ in the Netherlands that have been especially created for families with underage children whose applications have been rejected (COA 2018). The facility is situated in Burgum, the largest (10 065 inhabitants) and most centrally located village of the municipality, which itself is constituted by 17 villages that altogether have a population of 31 963 inhabitants (Statistics Netherlands (CBS) 2018). In the municipality of Almelo (72 479 inhabitants) the center is a regular reception center in which asylum seekers stay to await the outcome of their asylum procedure, which is located on the northern outskirts of the city (CBS, 2018). In 2017 the municipality was one of the 39 municipalities that offered emergency reception to irregular migrants (Pro facto 2018), colloquially also known as ‘bed, bath and bread’ facilities. Lastly, in the town of Waalwijk (47 410 inhabitants) there is no reception facility (CBS 2018). As part of the dispersal policy, the municipality has however provided housing and other support to 365 recognized refugees in the past three years (Platform Opnieuw Thuis, 2018). As will be illustrated through the analysis of local municipal documents, it is the local presence of several undocumented children whose asylum application have been rejected that has shaped municipal council discussions on human rights.

The contours of human rights engagements in the field of irregular migration in Almelo, Tytsjerksteradiel and Waalwijk

In these three municipalities we can observe human rights ‘talk’ at the level of the municipal council. This often takes the form of an abstract reference to human rights principles, such as the principle of universality, and sometimes involves references to specific human rights instruments. The policy brief in which the executive board of the municipality Almelo elaborates on the policy for undocumented migrants, for instance states that the policy brief serves to outline “fundamental principles”, which is followed by an explicit reference to different sources of human rights, ranging from the European Convention on Human Rights (ECHR) to the Dutch Constitution, that are altogether cited as “a moral compass and point of departure for action”⁶.

In these instances, in which human rights are explicitly invoked they appear to serve a range of purposes. Human rights first of all appear to justify an explicit concern with the plight of irregular migrants and refused asylum seekers within the municipality. In the municipality of Waalwijk for instance, a municipal council member of the Christian democratic party put the plight of undocumented children on the agenda and called attention to a civil society-initiated campaign for an amnesty program for undocumented children. The councilor motivated her decision to put forward a proposal with a reference to, among other things, the Rights of the Child⁷. In 2014 the municipal council of Tytsjerksteradiel on the other hand, decided to request a “confidential, internal and informative memo about the position of residents of the family center in Burgum, their rights and equal treatment”. The justification for this memo, as stated in the report is that “the residents of the family location in Burgum do not have the same rights and responsibilities as other residents” which begs the question “how we as municipality deal and act upon this, especially given the principle of social equality”⁸.

In two of the three municipalities included in this study, the invocation of human rights appears to justify the development of a local approach to the presence of undocumented migrants (Almelo) and refused asylum seekers (Tytsjerksteradiel). This emphasis on human rights as a basis for action resonates with the shifting scope in human rights scholarship from a concern with human rights implementation to broader accounts of human rights practice (Goodale 2007, 37). As Barbara Oomen notes, “framing a given injustice as a human rights violation, opens the way to an international discourse with a great deal of legitimacy, the possibility of connecting with wider networks, coupling a local struggle to a universal cause, generating funding and other types of support and possibly even finding legal remedies” (2014, 492).

In the case of Almelo, beyond several references to human rights language, human rights also form the basis of a more comprehensive policy entitled “minimal local reception and human rights for rejected asylum seekers”. The existence of these policy memos detailing the relation between human rights and local policies and the allocation of a budget (138 789 euro in 2015) show that the relevance of human rights, stretches beyond discourse into local practice and policy⁹. In both cases the proposed (Tytsjerksteradiel) and implemented (Almelo) approach of the municipal council stands at odds with national asylum, reception and return policy, as human rights law gives stronger protection to the human rights of rejected asylum seekers than the national policy.

Human rights are moreover invoked as an additional or alternative frame of reference, or normative order on the basis of which national policies can be evaluated and the development of local approaches can be justified. This study found that these different sources of human rights law are sometimes understood as complementary, but in other instances international human rights norms are seen as conflicting with constitutional obligations. In Tytsjerksteradiel for instance, one of the municipal councilors challenged the interpretation of the council’s executive that the municipality’s competencies in the field of asylum are limited, by invoking article 93 and 94 of the Dutch constitution¹⁰ in reference to international human rights law and the rights of

the Child in particular, which she stated also oblige the municipality to protect the human rights of the families and children staying in the family location¹¹.

Theories of legal pluralism provide a conceptual framework that takes into consideration this coexistence of different normative orders and tensions or clashes between and within normative systems. The legal scholar Brian Z. Tamanaha for instance distinguishes between six sources of normative orders ranging from positive legal, customary, religious, economic/capitalist, functional and community/cultural normative systems (2008, 397). He moreover argues that “owing to the dominant tenor of their claims to authority, these coexisting sources of normative ordering are poised to clash” and distinguishes between clashes *between* different normative orders, such as between legal and non-legal normative orders and clashes *within* a given normative order (2008, 400), such as within the legal normative order.

So how are we to understand this local ‘use’ of human rights in light of these insights? The aforementioned reference of municipal human rights users to multiple sources of human rights¹², such as legal obligations derived from international human rights law and from the Dutch constitution, can firstly be understood as a conflict within the *legal order*, involving a conflict between international human rights norms and Dutch domestic law. However, it can also be interpreted as a conflict between legal and non-legal normative systems, such as between Dutch domestic law and the *moral* force of human rights, as part of cultural or customary normative systems. The explicit reference to a human rights instrument (ECHR) and the proclamation of ‘independent municipal human rights responsibilities’ in the Almelo policy brief supports the first interpretation that understands the adoption of a human rights frame as a deliberate turn to a different source of legal obligations within the *legal order* for a justification of a local practice or policy. However, the same policy brief simultaneously refers to human rights as a moral compass and the invocation can therefore also be understood as a conflict between a legal normative system (Dutch domestic law) and a non-legal normative system which, in the interpretation offered by the municipality, is constituted by an understanding of human rights as moral values. Although these insights are useful to tease out the different dimensions of human rights engagements, this analysis showed that human rights invocations in practice may defy such a neat categorization and differentiation between normative systems. This first section also illustrated that this combination of different considerations, such as humanitarian, legal or pragmatic ones, is not unique to human rights engagements in urban areas, as was analyzed by Van de Berg and Oomen (2014) in the Dutch urban context.

Encounters with irregular migrants and engagements with human rights locally

Beyond these general contours of human rights engagements in these three municipalities, this study identified two common themes when analyzing these engagements with human rights in the field of irregular migration. Firstly, the physical *presence* of and *encounters* with irregular migrants in the locality and secondly, local perceptions and contestation of the human rights responsibilities that arise from these encounters.

The following analysis examines how in each of these municipalities the presence of and encounters with irregular migrants shaped engagements with human rights, but also explains how perceptions and contestation of human rights responsibilities in response to these encounters differed between municipalities.

In all three municipalities we can observe references to the local *presence* of and *encounters* with rejected asylum seekers in municipal documents. In the case of the municipality of Almelo for instance, in the policy brief on the local policy towards undocumented migrants, it is stated that the issue of forced migration is one that locals feel strongly about because of the presence of a reception facility and the local presence of many refugees with an Armenian background. The policy brief does not explain why the presence of Armenian refugees gives rise to this local saliency, but it is likely that this is related to the comparatively low recognition rates for asylum applications of asylum seekers from Armenia (Eurostat 2018). In the same document we can moreover observe that the existence of an “own independent responsibility” is based in on the fact that “refugees are de facto in the municipality”. This instance therefore illustrates how presence is understood as ‘a social fact’ on the basis of which rights can be claimed (Nyers, 2010, as cited by Darling 2017, 190).

It is this potential normative value of *presence* as a political claim that Jonathan Darling puts forward in his reflections on forced migration and the city. For Darling, its value may lie in “offering a different starting point for discussion – one emergent from the relations of urban life rather than the imposition of sovereign authority” (2017, 191) Instead he probes us to consider how “claiming presence has the capacity to articulate a ‘political subjectivity and its expression to rights’ (Isin 2012, 109) that is delinked from assumptions of citizenship, and that is ‘transversal’ in assuming rights not through the fixity of residence, but through presence as both a statement of social fact and a transversal connection” (2017, 191). Darling invites us to think about forced migration and cities, the analysis of these three Dutch municipalities however demonstrates that the local presence of rejected asylum seekers is also invoked as a basis for municipal practices in local contexts that do not qualify as *urban*.

Although the municipal council proceedings and documents of these three municipalities refer to the local physical presence of refugees and although these references appear to justify a local approach or a municipal council consultation on the matter, the role of the irregular migrants as ‘claimants’ is rarely mentioned. Instead the council proceedings in these three municipalities tell the story from the perspective of the other party, the perceptions of municipal actors about the presence of and encounters with rejected asylum seekers in the locality. In the town of Waalwijk, the member of the municipal council who initiated the discussion on the plight of undocumented children, remarked that these nationwide debates on their plight and calls for an Amnesty for undocumented children directly concern two children in the municipality, children with whom all members of the council are familiar because they visited the council recently¹³. Finally, in the municipal council debates in Tytsjerksteradiel we can find multiple references to the physical presence of refused asylum seekers in the municipality as well as encounters with families prior to their involuntary return. The backdrop for these discussions is the forced return of Afghani families whose

asylum applications have been rejected from the local family reception center. At least two instances of such forced returns, as recorded in council reports, were preceded by protests organized by residents of the reception facility on the day that these families were taken from the family location and transferred to another closed ‘return’ center in another province. In her plea to offer protection to these families the municipal council member of the progressive green party also explicitly refers to “instances in which families who were facing deportation turned to the office of the municipality to seek support and awareness for their plight”. She subsequently describes her own feeling with “these events in our municipality” with the image of “having a knot in her stomach” and calls for “a local discussion about human rights, the duty of care and the role of the municipality in all this”, insisting that “it is not my task, not our task, to look the other way”¹⁴.

Beyond being experienced as a ‘social fact’ this insistence that “it is not our task to look the other way” resonates with what human rights scholar Itamar Mann has described as situation of “being bound simultaneously by two spheres of obligation: the obligation to one’s state [...] and the duties that emanate from the presence of another person” (2016, 160). In his book *Humanity at Sea*, Mann draws from his analysis of the history of maritime encounters with refugees in international waters and insights from legal and political theory, to ground human rights practice in such existential encounters. Mann proposes that we understand human rights encounters as creating “a potential opportunity from the perspective of the relatively powerful party [...] small as it may be – to correct the horrors of collective political decisions’ and ‘to exercise her own independent judgement against the determination by her state or by the ‘international community” (2016, 225). It is important to note however, as Moritz Baumgärtel does in his reflections on the matter, that “at the heart of the framework is a complex notion of a duty¹⁵ ‘that emanate[s] from the presence of another person’ and which is binding despite the absence of any positive legal obligations”. He also clarifies that “this is not to say that human rights law is irrelevant. Rather, they [*duties*] can also be grounded in the ‘existential challenge’ that may arise in encounters characterized by strong asymmetries in power, such obligations are elementary” (Baumgärtel 2019).

Although Mann and Baumgärtel discuss ‘human rights encounters’ in relation to maritime encounters at high seas, this article argues that this understanding of ‘human rights encounters’ resonates with references in municipal documents to encounters with rejected asylum seekers within the municipality, first of all because of it emphasizes the power asymmetry at play in these encounters. Such an understanding of human rights encounters with irregular migrants that are marked by strong asymmetries in power, stands in stark contrast with the approach to studying everyday encounters of migrants in cities developed by Nina Glick Schiller and Ayşe Çağlar. In their efforts to understand the relationship between migrants and cities across urban contexts, Glick Schiller and Çağlar examine how everyday encounters may produce urban sociabilities that affect the possibilities for migrant emplacement. The authors conceptualize sociabilities as everyday social “relationships of social support providing help, protection, resources and further social connections’ that ‘emerge from actors’ mutual sense of being human” (Glick Schiller and Çağlar 2016, 19). As a

result of their focus on settled migrants, they concentrate on the type of encounters that occur within “social spaces of residence, work or institutional activity, all constituted within the intersecting multiscalar networks of power” (Glick Schiller and Çağlar 2016, 20). Although this approach offers a promising perspective on migrant built on the criticisms of methodological nationalism, it is difficult to draw on this theory to further explicate how encounters with irregular migrants shape human rights engagements in these municipalities. Refused asylum seekers after all, often find themselves in what Baumgärtel describes as a “condition of dependency” and “vulnerability”, which seems to cast a shadow over this potential of such sociabilities in places of residence or work because vulnerable migrants, although present in the locality, find themselves as “outsiders in society” (Baumgärtel 2019).

Another thing that sets these encounters apart from sociabilities is that they involve a sense of immediacy¹⁶ and urgency that unsettles the ‘regular order of affairs’. In Tytsjerksteradiel, this immediacy and urgency resulted from the fact that the Afghan families received news of their involuntary return just days before and that exact timing of their removal from the family location was not communicated to them, which contributed to uncertainty and a sense of urgency on the part of the different actors involved. This second section has examined how encounters with irregular migrants feature in and shape local engagements with human rights, drawing on and developing scholarship on human rights encounters by contrasting this theory with other perspectives on encounters and sociabilities.

From encounters to local understandings and contestations of human rights responsibilities

Although in all three municipalities we can observe references to the presence and plight of refused asylum seekers and encounters with them, there are considerable differences between these municipalities with regard to the *perception of human rights responsibilities* on the part of municipal council members, executives, mayors and civil servants. In the town of Waalwijk, the municipal council for instance agreed to send a clear message to the “responsible ministry and the secretary of state” to “plead with the Secretary of State for a solution for the plight of undocumented children”¹⁷. In this case there is no indication that any of the local public officials consider it either possible or desirable that the municipality has its own independent human rights responsibility. Judith Resnik also refers to this sort of initiative as “expressive and hortatory, calling for a shift in national policies” and contrasts it with programmatic initiatives which “generate internal obligations by incorporating transnational precepts into local law” (Resnik 2007, 46).

This example of Waalwijk stands in stark contrast with the other two municipalities, in which the existence of an independent human rights responsibility is either assumed (Almelo) or explicitly contested (Tytsjerksteradiel). In the case of Almelo, the policy brief for “minimal local reception and human rights for rejected asylum seekers” opens by stating that “because of international and national turmoil, discussion and deliberation in the field of forced migration and after recent

commemorations of WW1”, it is “good to talk to each other about our own responsibility and moral compass as humans and as local governments”¹⁸.

In the municipality of Tytsjerksteradiel it is this question whether local governments have their ‘own’ ‘independent’ human rights responsibilities that is contested and perceived differently by the mayor and members and executives *within* the municipal council. The backdrop for this contestation is the forced return of Afghani families whose asylum applications have been rejected from the family reception center. After one such incident where residents protested the forced return of an Afghani family, the aforementioned council member of the progressive green party raised questions about responsibilities, as can be read from the following quote of the council minutes.

“We have been informed by the mayor about the events of the 4th of July. He explains that in such cases we are dealing with national policies. He also remarks that the municipality has little to no influence over this policy ... We therefore wonder what is this ‘little bit of influence’ that we do have? And can we exert more influence or demand influence? And does little or no influence also mean no responsibility? The fundamental question is what the role of the municipality is, in terms of governance, care and safety?”¹⁹.

After this initial probing and pleading by the councilor, the issue featured in a series of other council meetings and formed part of an exchange in the form of written questions which the party posed to the municipal council executive. The councilors involved asked the executive board how it implements articles 93 and 94 of the Dutch constitution²⁰ in relation to human rights and the rights of the Child of those staying in the family reception location. They also asked the executive board to explain if it is willing to examine and explicate its understanding of an independent duty vis-à-vis rejected families who are facing returns to unsafe countries of origin. In response to these questions, the executive board stated that the family center, a designated reception center for families with children whose asylum applications have been rejected, in and of itself constitutes a recognition of human rights and the Rights of the Child, but it did not identify who bears responsibility over this policy in this first answer. In its answer to the question about ‘own responsibilities’ it answered that the municipality does not have competencies in these areas (return policy).

These instances in Tytsjerksteradiel illustrate how a municipal council may be internally divided over the basis for local engagements with human rights, including the possibility of independent municipal human rights responsibilities, the identification of duty bearers and the extent of discretion²¹. Drawing from Resnik’s distinction between expressive hortatory practices and programmatic ones, we can therefore observe a disagreement within the municipal government about the desired course of action and the effects of purely expressive and hortatory initiatives, such as letters to the Secretary of State.

The comment “it is not my task, not our task to look the other way” moreover suggests that responsibilities in these contexts are understood as *collectively* imagined. However, in Mann’s understanding of human rights encounters, duties are grounded on highly *personal* existential experiences. It is this emphasis on this personal dimension, that Baumgärtel critically interrogates in his reflections on human rights encounters²². More specifically Baumgärtel argues that Mann’s phenomenological

theory should be expanded with a theory that explains ‘how ethical convictions can, *in substitution of* the physical encounter, result from the ‘imagination’ that is triggered by interpersonal communication’, which means investigating why “it be experientially meaningful to express and insist on human rights commitments” (Baumgärtel 2019). However, although this article recognizes a similar need to broaden the understanding of human rights encounters to include collectively imagined encounters and duties, it provides another perspective on and argument to develop this conceptualization of human rights encounters in this direction.

In the case of the encounters that shaped human rights engagements in these three municipalities, the encounters were neither obstructed nor substituted entirely by imagination. The references to encounters with irregular migrants that we can find in these municipal documents illustrate that it is neither always nor exclusively this *personal dimension* that gives rise to a sense of duty, but also point towards the importance of the *site of encounter*. In both Waalwijk and Tytsjerksteradiel the municipal councilors emphasized how these encounters took place in municipal office or town hall. The councilor in Tytsjerksteradiel emphasized in her plea that some Afghan families visited the municipal office to seek support, but did not specify to whom the families turned. On another occasion²³ Afghan families and other residents of the family location also attended a regular municipal council meeting in the town hall. Although none of the Afghan families and individuals spoke or explicitly addressed any member of the council during the meeting and no form of protest was staged, their presence in the municipal office was acknowledged explicitly by the mayor, executives and the councilors. Their presence also had an immediate effect because the municipal council, decided to conduct the entire meeting in Dutch, as opposed to the Frisian language, the official language of the region and the language in which municipal affairs are usually conducted.

This emphasis on the *site of the encounter* and absence of a clear identification of what Mann calls the relatively powerful party to the human rights encounter, is interesting because this reference to a quintessential public institutional space may be what makes it possible for encounters to be imagined as collectively experienced and for duties and responsibilities thus also to be understood as such. It also points towards the importance of these locations, such as the local town hall, not only as a simple acknowledgment of the locations *in* which encounters occur, but also as sites that in and of themselves are imbued with meanings that in turn may shape the way in which these encounters are imagined. In other words, such a reading offers insight into the spatial contexts and aspects of local human rights engagements, including local understandings of duties and responsibilities that may emanate from the presence of undocumented migrants as such, or more specifically from local encounters, in municipal institutional spaces. This reading finally also resonates with aforementioned geographical perspectives, such as Amin’s topological approach to localities and social action, as it is neither a-spatial, nor exclusively tied to the territorial local context.

Conclusion & discussion

This section offers concluding reflections about the assumptions and implications of this approach to studying variations in the engagements of local authorities with

human rights in small towns and non-urban contexts. This study firstly drew from scholarly work on comparative urban studies and human rights practice to distill sensitizing concepts, which served as points of departure and offered different vantage points during data collection and analysis. On the basis of open and axial coding of municipal council documents the article first sketched the contours of engagements with human rights in the field of irregular migration in three municipalities. More specifically it has examined how encounters with irregular migrants can give rise to a sense of collective responsibility and how these encounters occur not only in certain places, but may also be shaped through them.

This first part of the analysis focused on what these policy documents and political proceedings can tell us about understandings of human rights and the motivations offered by municipal actors in these texts for invoking human rights. This study found that these local understandings of human rights and the motivations offered in these texts for invoking human rights, resonate with a broader account of human rights practice (Goodale 2007) which takes account of the often “messy and contradictory emergency of human rights within situated normativities” (37). Human rights may for instance be invoked as a *moral* compass, but simultaneously involve an explicit reference to human rights understood as *human rights law* (ECHR). Moreover, human rights responsibilities as framed in these texts are sometimes, but not always, represented as standing in *conflict* with perceptions of other domestic legal obligations. The article therefore drew on insights from theories of legal pluralism (Tamanaha 2008) to understand this duality and complexity, but also found that invocations often defy the sort of straightforward categorizations between normative systems offered in this scholarship. It should be noted that this article did not propose a normative standpoint about human rights encounters or legal pluralism as such. Instead it offered a social-legal analysis of local understandings of human rights, followed by an interpretation of two themes: (i) perceptions of presence of encounters with irregular migrants and (ii) perceptions of human rights responsibilities that emerge from these encounters.

A question that arises regarding the implications of this approach, is how we can reconcile this understanding of perceptions of human rights responsibilities that emanate from the *presence of encounters* with irregular migrants, with a comparative approach that seeks to understand both commonalities and differences between localities’ engagements with human rights? It is important to note in this respect that these ‘human rights encounters’ are not exclusive to (urban) contexts, but instead are predicated on the presence of non-citizens who lack effective membership in a given space but who can nonetheless trigger an encounter. The article offers a perspective on local understandings of human rights in ‘small places’ such as the municipal office in a small rural municipality and thus draws attention to the potential relevance of human rights beyond the *urban* context of ‘human rights cities’ to also include more piecemeal actions of newer and smaller ‘kids on the block’. In other words, this study has provided a spatially aware examination of human rights engagements that is not restricted to specific urban contexts or an analysis of urban life.

Scholars working in the field of human rights localization have emphasized the need to move beyond documenting ‘piecemeal actions’ and have also taken a

normative stand by proposing that human rights should be mainstreamed and integrated in all aspects of policymaking where local authorities play a role (Marx et al. 2015). This article however takes a different, albeit complementary approach by zooming in on the *dynamics* and *tensions* that are involved in even the most specific or ‘piecemeal’ engagements with human rights (Marx et al. 2015) in the field of irregular migration. More specifically, it has attempted to deepen our understanding of this spectrum of engagements, by looking at *commonalities*, pertaining to the relevance of human rights in relation to irregular migration as well as *differences* in the self-understanding of municipal ‘human rights users’ about human rights responsibilities, discretion and the role of encounters. In this respect this study found considerable differences among municipalities and differences among municipal actors within a single municipality. In other words, human rights responsibilities are contested locally in small places and in different types of localities, but this process is far from being uniform, unequivocal or uncontested.

This analysis can therefore also be read as a response to Resnik’s skepticism about the “pastoral image of democratic processes at the local level” and her words of caution not to assume that “each locality spontaneously finds and then expresses its own internal commitments” (2007, 42). Future research on this nexus between local approaches to human rights and irregular migration will also need to study human rights encounters – encounters from which a sense of duty emanates – alongside encounters that result in an explicit rejection or indifference, as Gill (2018) and Darling (2018) also discuss in their reflections on the politics and fragility of welcome. To conclude and building upon this analysis, this article suggests that sites of encounters and the meanings associated with them should also form part of such analyses, alongside other dimensions, such as the temporalities of and power dynamics at play in these encounters.

Notes

1. See for instance Oomen, B., Davis, M. F., & Grigolo, M. (Eds.). (2016). *Global Urban Justice*. Cambridge University Press.
2. The role that local (and regional authorities) may play in enforcing human rights in the European context has more recently been studied by Marx et al. (2015).
3. Also see De Feyter, K., Parmentier, S., Timmerman, C., & Ulrich, G. (Eds.). (2011). *The local relevance of human rights*. Cambridge University Press
4. See introduction, and Grigolo (2016, 2017) and Oomen (2016, 1) cities in which local governments explicitly base their policies on human rights.
5. In this article the term ‘municipal governments’ is used interchangeably with local authority or local government.
6. Policy Memo municipality of Almelo 12th of May 2015; accessed through <https://www.almelo.nl/gemeenteraad>
7. Waalwijk minutes of the municipal council meeting which was held on the 7th of June 2018, accessed through https://www.waalwijk.nl/stad-en-bestuur/raadsinformatiesysteem_3638/
8. Tytsjerksteradiel municipal council meeting 24th of April 2014 *Politieke Termijnagenda* 2014-2018; accessed through Fryslan.gemeentedocumenten.nl
9. Policy Memo municipality of Almelo 12th of May 2015; accessed through <https://www.almelo.nl/gemeenteraad>

10. Article 93 and 94 of the Dutch constitution concern the (direct) effect of international law and the standing international treaties and resolutions vis-à-vis statutory regulations in force within the Kingdom.
11. In her argument the councilor drew on multiple sources, including a joint report published by the Dutch Association of Municipalities [Vereniging Nederlandse Gemeenten] and Amnesty International on local human rights engagements and commitments.
12. See Durmus and Oomen's introduction to this special issue.
13. The municipal council eventually decided to pass a motion in which it agreed to send a clear message to the "responsible ministry and the Secretary of State" and to "plead with the Secretary of State for a solution for the plight of undocumented children". This 'signal' took the form of an adoption of a resolution in the municipal council, a copy of which was sent to the government, parliament and the municipal councils of all Dutch municipalities. Since March 2018 134 municipal governments in the Netherlands have passed a similar motion in the municipal council as part of a nationwide campaign initiated by a civil society initiative "De Goede Zaak" (De Goede Zaak 2018). The municipality of Waalwijk stands out because it was one of the first municipal governments to adopt such a motion and because of the decision to send the motion and letter to the Secretary of State to all Dutch municipal councils.
14. Tytsjerksteradiel municipal council meeting 1st of August 2017 accessed through: <https://tytsjerksteradiel.groenlinks.nl>
15. In the reviewed literature and in the analyzed policy documents and proceedings the terms duties and responsibilities are often used interchangeably. Because the term responsibilities is used more commonly used in the literature on human rights localization reviewed in this article and because the term responsibility also features more prominently than 'duty' in policy documents and political proceedings, this article generally uses responsibilities, except in cases of direct quotes.
16. Darling (2018) in his reflections on the politics of welcome notes that there is often an 'immediacy to the demand to welcome' (224). The plight of irregular migrants and the encounters with them were also framed by local municipal actors in these municipalities as requiring immediate acknowledgment and action. This article has also foregrounded this immediacy and temporality and has differentiated human rights encounters from everyday sociabilities and 'encounters with difference' on the basis of, among other things, this immediacy and temporality.
17. Waalwijk municipal council meeting which was held on the 7th of June 2018, accessed through https://www.waalwijk.nl/stad-en-bestuur/raadsinformatiesysteem_3638/
18. Policy Memo municipality of Almelo 12th of May 2015; accessed through <https://www.almelo.nl/gemeenteraad>
19. Tytsjerksteradiel municipal council proceedings and inquiry dated 1st of August 2017; accessed through: <https://tytsjerksteradiel.groenlinks.nl>
20. Article 93 and 94 of the Dutch constitution concern the (direct) effect of international law and the standing international treaties and resolutions vis-à-vis statutory regulations in force within the Kingdom.
21. It is important to note here that in the Dutch system mayors have the formal competency to request the Secretary of State to use his or her discretionary competency to grant *asylum* in exceptionally harrowing circumstances. In the case of the aforementioned instance in which the municipality of Waalwijk set out its position concerning the plight of undocumented children, the mayor's request for the application of discretion was turned down by the secretary of State. This was therefore also a reason for one city council member to comment that although he supported the motion he nonetheless wondered about its effect and feared 'symbolism'. In Tytsjerksteradiel this formal discretion in the field of asylum does not feature in these discussions and instead the focus is on discretion in relation to return policy. It is therefore important to situate these discussions on discretion against this backdrop and to distinguish what

discretionary space local authorities have beyond this specific and ‘formal discretion’ of the secretary of state.

22. Baumgärtel is particularly concerned with the question whether this grounding in “highly personal, intimate, existential experiences’ [...] “means that resulting duties could be weakened by eliminating or diminishing the chances of personal encounters” (2019) as a result of increasing extra-territorialization of border control. Baumgärtel however is not convinced that this “concern for the rights of vulnerable migrants” has “disappeared in the face of such strategies”.
23. Tytsjerksteradiel municipal council meeting 28th of March 2019, accessed through: <https://ris2.ibabs.eu/Tytsjerksteradiel>

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