

Summary

Between control and support

An evaluation of the pilot 'protected reception for UMAs at risk'

Immediate cause

For many years now, it has been observed that part of the unaccompanied minor asylum seekers (UMAs) leave their reception centre for an unknown destination. The suspicion is that some of these UMAs have fallen victim to human smuggling and/or international human trafficking. The number of UMAs that has actually been found in a situation of exploitation has, however, been limited. The disappearance of UMAs hit the agenda once more when, between the fall of 2004 and the fall of 2005, 125 Indian UMAs turned out to have vanished from the large-scale reception centres for UMAs. Later it became known that approximately 140 Nigerian UMAs had disappeared from the asylum seekers' centres between January 2006 and October 2007. In the course of 2006, a number of measures were taken to prevent these disappearances, one of which was the tightening of security on the UMA campuses. In response to the disappearance of the Nigerian UMAs, a criminal investigation was started up (now known under the code name 'Koolvis').

In December 2006, the then Minister of Immigration Affairs and Integration proposed to the Lower House to set up a two-year pilot for UMAs who are thirteen or older and belong to the so-called 'risk category': 'minors of whom it has been established, based on the experiences of the Immigration and Naturalisation Service (IND), that they are greatly at risk of disappearing'. These youngsters would be received in special, small-scale centres, from which they would only be allowed to leave with prior permission or a staff escort, and where they would be coached intensively. Formally, the pilot 'protected reception' started on 1 January 2008, with room for 45 UMAs, divided among five locations. During this investigation, it was established that the target group has actually consisted on the one hand of UMAs who had (probably) been abused (the assumption being that this had occurred in the context of international human trafficking) before they were placed in protected reception, and on the other hand of UMAs who had (probably) been *destined* for exploitation, but who had not yet been in a situation of exploitation (exploitation pertaining to the sex industry, but also to other sectors, as well as to the removal of organs for the organ trade). At the end of 2008, the then State Secretary of Justice promised the Lower House that the pilot would be assessed by the Research and Documentation Centre of the Ministry of Justice (WODC).

Central questions and research methods

The report answers the following central questions:

- 1 To what extent and in what way does the pilot contribute to its objectives, which are:
 - a a decrease of the number of UMAs belonging to a risk category;
 - b a decrease of the number of disappearances of UMAs;
 - c an increase in the number of UMAs who return to their country of origin?

- 2 To what extent can the success or failure of attaining the quantitative results be attributed to the functioning of the pilot, in particular:
 - a on what grounds are UMAs selected to be placed in the pilot, and what indications are there after their placement, that these are really youngsters who have been brought to the Netherlands as part of international human trafficking, and who have already been exploited or are destined for exploitation?
 - b to what extent is the pilot successful in convincing the placed youngsters of the risks involved in human trafficking, and in bringing them to cooperate with the criminal investigation?
 - c to what extent does the pilot succeed in getting youngsters who have not been granted a residence permit to return to their country of origin?
 - d do the many different organizations involved cooperate in such a way that the signs given off by youngsters relating to human trafficking effectively lead to the detection and persecution of traffickers?
- 3 Which other results has the pilot yielded, for instance in the areas of the development of a working method and the cooperation between the organizations involved?
- 4 To what extent do the placement and stay of UMAs on locations for protected reception correspond with the relevant (inter)national legislation and regulations, and what might be needed to bring about such a correspondence?

The central questions have been worked up into a large number of research questions. These have been answered by means of the following methods:

- 1 the retrieval and analysis of figures, both from the implementing organizations involved and from the Immigration Policy Department of the Ministry of Justice;
- 2 interviewing staff of these and other organizations involved, a number of lawyers, and staff members of a number of reception facilities outside the pilot, and analyzing these interviews;
- 3 observing the extent of security at a number of locations for protected reception;
- 4 an analysis of a selection of case files by guardians of the Nidos Foundation and some files by the WODC;
- 5 an analysis of the relevant (inter)national legislation and regulations, as part of the research into the legal basis;
- 6 an analysis of the risk profiles of the Immigration and Naturalisation Service (IND).

At the start of the pilot, the precise procedure was not yet definite on a number of points. The description of the working method for the daily support of the youngsters, for instance, was only made definite by the middle of 2009. The description of the pilot's functioning in practice therefore chiefly relates to *the last phase* of the original two-year duration. In addition, the quantitative results (pertaining to the intake of UMAs, disappearances and returns), primarily relate to the results already attained within the pilot's duration, that is, before 1 January 2010.

Conclusions regarding the quantitative results

Intake

At the start of the protected reception pilot, the Indian and Nigerian UMAs were designated as groups at risk, to be followed later by the Chinese and Guinean UMAs.

These groups have indeed been the largest groups within the protected reception. Besides them, youngsters with other nationalities were placed in protected reception. Between August 2006 and December 2009, the number of first applications for asylum of UMAs with the before mentioned nationalities at risk decreased or stayed the same, while the total number of first applications for asylum of UMAs aged between 13 and 17 increased. The very small monthly intake of Indian boys as of the spring of 2008 suggests that both the criminal investigation under the code name IJbot and the protected reception have had the desired, deterrent effect. The number of Nigerian girls who apply monthly for asylum has been minimal as of the end of 2007, probably as a result of the arrests made during the Koolvis investigation.

Disappearances

Until mid-February 2010, of the 170 youngsters who had been placed in protected reception in 2008 and 2009, 19 (11%) have disappeared. At the start of March 2010, within the entire asylum system, a total of 25 former residents of protected reception facilities had been registered as having disappeared. The total number of disappearances from facilities of COA, the central agency for the reception of asylum seekers, has decreased in all types of reception (the protected reception included) since the start of the official pilot. The only exception were the campuses, where the absolute number of disappearances has increased again during 2009. This increase does not apply, however, to the *percentage* of disappearances, which has decreased when we add everything up. This seems to have been the result of a combination of factors, among which is the functioning of the protected reception.

Return

Since the start of the protected reception, there has not been an increase in the number of UMAs returning to their countries of origin. This is not surprising, given the fact that returning turns out not to be a prominent subject in either the support or the education. Similar to the situation in the regular reception for UMAs, this subject often cannot be discussed with the youngsters. Another likely factor to play a role in this is that many youngsters do not yet receive a definitive decision regarding their asylum application during their stay in protected reception.

Conclusions regarding the pilot's functioning

Selection

The grounds on which youngsters are selected for placement in protected reception are, in practice, sometimes just the nationality, sometimes a combination of nationality and individual characteristics, and sometimes only individual characteristics (when a youngster has been brought to the Netherlands without having to pay, by an unknown white man, for instance, and/or when a youngster has been assaulted by a travel agent, or makes a terrified impression). According to the organizations involved, the risk profiles of the IND hardly play a role in the selection. As was the intention at the start of the pilot, in practice, the Nidos Foundation is responsible for the selection, and the IND advises Nidos if it detects possible victims of human trafficking. The role played by the Military Police in the recommendations to Nidos, however, turns out to be smaller than expected. The guardians of the youngsters in protected reception often do support the placement in a later phase, but sometimes they do not. In many cases, there is a lack of hard evidence from criminal investigation, also because of the small number of youngsters who report a crime, and the fact that such reports for the most part end in dismissal. In those situations, during the whole of the trajectory, far-reaching decisions are subsequently made based on

appraisals that sometimes lack empirical foundation: decisions about the placement of youngsters in or out of a situation of deprivation of liberty (see hereafter).

Support

In practice, it turns out that the protected reception knows two types of presumptive victims of international human trafficking: youngsters who have already been sexually abused and of whom the supervisors assume that this is related to human trafficking, and youngsters who seem to have been destined for exploitation. The first group consider themselves far greater victims than the second group, and is more receptive to coaching and protection. Mentors, guardians and lawyers all have a hard time convincing especially the second group that they are in danger, even more so when they are not always so sure themselves that this is really the case. The reception facilities involved lay a remarkably different emphasis during the intensive daily coaching on the different locations situated in different parts of the country: while one facility emphasizes the prevention of disappearances, thereby exercising a 'healthy distrust' of the youngsters, the other facility puts the emphasis on the youngsters' personal development, by trying to make a 'warm nest' of the reception facility.

The description of the working method that has been made definitive by the middle of 2009, tries to give the supervisors more grip on the coaching in protected reception. At the beginning of 2010, all mentors had finished training in this working method. The staff working in protected reception facilities is not equipped to lend aid to youngsters with serious psychological problems (whether or not related to human trafficking). The referral to mental health care does not always go smoothly. A structural cooperation with organizations that are specialized in supporting victims of human trafficking is lacking as well.

Reports and criminal investigation

Although mentors, guardians and lawyers discuss the possibility of filing a report with the youngsters, the actual number of reports is small. According to the respondents, some of the youngsters are not yet ready for this. They say that other youngsters refrain from reporting because they claim not to be destined for exploitation, or because they are afraid, either of the police or of reprisals from the traffickers. Yet another reason is that the lawyer involved first wants to await the outcome of the asylum procedure.

When an UMA has filed a report, however, our respondents from the reception facilities, Nidos and the legal profession state that the case is often dismissed, or is never heard from again. The causes mentioned for this are a lack of concrete investigative indications, the fact that the events to which the report relates have taken place abroad, and an (assumed) lack of priority among the police. During the official pilot, only one large-scale criminal investigation was started, into the case of the Indian boys.

Conclusions regarding the legal basis of the pilot

The security measures that were announced at the start of the pilot have all been implemented at the phase 1 locations of the protected reception. During phase 2 of the supervision, the youngsters are granted more freedom and the security measures are more limited. A comparison with the relevant (international) legislation and regulations, case law and literature, teaches us that, different from what was intended beforehand, the placement and stay in protected reception must be qualified as deprivation of liberty. For this, Dutch legislation does not offer a foundation.

It is a violation of both international human rights treaties and the Dutch Constitution. The necessary judicial review is lacking as well, nor is any legal aid provided to the minor (that is to say, regarding his or her placement in protected reception). This compels the authorities to adapt the legislation and/or the existing practice.

(Other) bottlenecks

At the start of the pilot, there was no clear definition of which youngsters should be considered part of the pilot's target group. It is also unclear to what extent the legal definition of human trafficking played a part in this. The different target groups that in practice have been placed in protected reception, and the observed difference in approach between the two reception facilities responsible for the daily support in protected reception, suggest that a more detailed formulation of the support and maybe also a more differentiated support offer are necessary. Another bottleneck is the fact that UMAs who have been transferred to the follow-up reception are then coached much less intensively than they were in protected reception. Contrary to the original intention, they are in principle no longer watched extra carefully. According to their guardians, however, a part of these youngsters cannot yet sufficiently defend themselves against possible exploitation or abuse when they are transferred. Subsequently, a limited number of youngsters still vanish from the follow-up COA-reception.

How to proceed?

Taking into account the great vulnerability of at least a part of the youngsters staying in protected reception, and the fact that some of them have been placed there because they have experienced sexual abuse and/or exploitation, the continuation of some form of protected reception seems an obvious necessity. It is impossible, however, to continue the present practice. In the light of the desired objectives and working method of the protected reception, it is necessary to decide once more what extent of security is needed and wanted at the reception locations, and to provide for an adequate legal basis, taking into consideration the minors' legal position. A possible solution might be a form of reception that does not allow for any deprivation of liberty, but that does provide the intensive coaching necessary for part of the present population in protected reception.