0. Preliminary remarks

Within a project funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), the German Institute for Human Rights (DIMR: Deutsches Institut für Menschenrechte) has been developing a concept for one (or two) National Rapporteur Mechanism(s) to report on trafficking in human beings and on gender-based violence. For this purpose, the DIMR has been engaging in discussions with the relevant federal ministries since January 2020 and interviewing the relevant departments in the Federal States (Länder), as well as civil society counselling services and lawyers active in these areas. This exchange has focused on how best to define the roles and activities of the National Rapporteur Mechanism(s), and identifying possible communication formats and work formats, opportunities for cooperation and substantive focal areas for these activities.

Informed by the results of these interviews, the DIMR has decided to advocate the establishment of two separate National Rapporteur Mechanisms, one on gender-based violence and another on trafficking in human beings. Although the issues of gender-based violence and human trafficking overlap in some areas, this consideration is outweighed by the many respects in which they differ. First and foremost: the groups of persons affected by these two phenomena differ, and so, too, do the circumstances, characteristics and motives of the perpetrators. The range of data that, in combination, can serve as the basis for their assessment, the relevant legal frameworks and the institutions and organisations involved in the fight against them all differ as well. The same can be said with regard to the prevention, support and intervention measures to be evaluated. These differences are also reflected in the various structures of the federal and Länder governments: the bodies that deal with human trafficking are generally not those that address gender-based violence.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”) is the baseline for determining the mandate and area of activity of a future National Rapporteur Mechanism; in other words, the primary purpose would be to monitor all forms of gender-based violence falling within the scope of this Convention and the measures taken to combat such violence. It is necessary to distinguish between this area and the area of activity of a future National Rapporteur Mechanism on trafficking in human beings, which should address all forms of trafficking in human beings as well as severe forms of labour exploitation, taking gender-based differences into account.

This paper outlines the core elements, roles and activities envisaged for a National Rapporteur Mechanism on gender-based violence. As one of the outcomes of the project for the BMFSFJ referred to
above, it is based both on the conversations mentioned above and the expertise of the DIMR. It is intended to serve as a source of both information and guidance for the dialogue and processes for establishing a National Rapporteur Mechanism on gender-based violence going forward.

1. Relevant legal provisions

The Istanbul Convention, which entered into force in Germany on 1 February 2018, places an obligation on Germany to protect women against all forms of violence and to prevent, prosecute and eliminate violence against women and domestic violence, which affects women disproportionately. Article 10 of the Convention lays an obligation on Germany to designate or establish “one or more official bodies responsible for the coordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention.”

The monitoring and independent human-rights assessment of the Convention’s implementation are the activities that fall within the remit of a National Rapporteur Mechanism of the kind envisaged herein. This mechanism should be structurally separate from a co-ordination body at the executive level, if such a body exists.

2. Activities, roles and institutional identity of an independent National Rapporteur Mechanism on gender-based violence

2.1 Core activities and roles

It follows from the provisions of the Istanbul Convention cited above that the primary activity of a National Rapporteur Mechanism would be that of continually and independently monitoring state measures to implement the Istanbul Convention and providing constructive input throughout the implementation process, with the aim of ensuring the protection and realisation of the rights of all persons affected. Article 10 of the Convention provides in particular for the analysis and dissemination of the statistical and scientific data sources described in more detail in Article 11 of the Convention: this activity also falls within the remit of the National Rapporteur Mechanism.

Based on this understanding of the provisions of the Istanbul Convention, the National Rapporteur Mechanism should set up a comprehensive and coherent system for the collection of data, in order to acquire reliable data on the effectiveness of interventions and of measures taken to protect victims and to enforce their rights. The continual analysis of data, statistics and research is of central importance for the operation of the National Rapporteur Mechanism envisaged herein. Based on measurements of implementation and effectiveness informed by human rights, the National Rapporteur Mechanism will formulate practice-oriented recommendations. In this way, the National Rapporteur Mechanism can help to make it possible for measures to prevent and combat gender-based violence to be designed and/or adjusted so as to be accurately targeted and effective. Through its reporting on gender-based and domestic violence, the National Rapporteur Mechanism can also promote widespread and up-to-date understanding and acceptance of human rights obligations.

The National Rapporteur Mechanism should be structured as an independent body and should maintain close partnerships with civil society, the research community and other relevant stakeholders, as this will facilitate the objective evaluation of the implementation of policy and legislative measures to prevent and combat gender-based violence against women and the impartial identification of lacunae and needs for action. Based on the provisions of the Convention, the Council of Europe’s Group of Experts on Action
against Violence against Women and Domestic Violence (GREVIO) also recommends that an independent National Rapporteur Mechanism be entrusted with these activities.

In view of the structures that already exist in Germany and the requirements set out above, as well as the preliminary results of the interviews conducted within the project, the National Rapporteur Mechanism on human trafficking to be established in Germany as envisaged by the DIMR will perform the following core activities:

**Structured pooling of existing data as the basis for systematic monitoring**

Collecting and pooling existing data to serve as a basis for reporting on gender-based violence in Germany will be a core task of a future National Rapporteur Mechanism. These data are held by entities such as state agencies at the federal and Länder level, research institutions, centres providing counselling and/or protection to victims and the national federations of the latter (“data holders”). On the basis of an overall review to determine what types of data are required for effective monitoring, the National Rapporteur Mechanism will work with the data-holders to determine which data collections are of relevance, to identify possible synergies and areas of convergence and jointly develop concepts for improving the collection of data.

The National Rapporteur Mechanism will base its activities on a comprehensive data protection plan and on separate cooperation agreements drawn up with the individual data holders. Due consideration will be given to the characteristics specific to state and non-state bodies in this respect. Before being shared with the DIMR, all data relating to individuals will be anonymised and, if necessary, aggregated to ensure that they do not allow the direct or indirect identification of individual subjects. The data will be depicted on an online platform that is visually engaging, updatable, accessible and clearly structured.

**Development, refinement and use of indicators for measuring effectiveness**

The National Rapporteur Mechanism will develop a set of indicators that can depict and measure the reality of violence against women and domestic violence, its prevention and the fight against it and the implementation of the core standards of the Istanbul Convention. The set of indicators will be based on data collected from data holders and/or acquired directly by the National Rapporteur Mechanism and will constitute the basis for the assessment of state measures. For the purposes of these assessments, the indicators will be integrated into human rights analysis matrices. These matrices make it possible to analyse the status of implementation of the human rights obligations deriving from the operative articles of the Convention.

The human rights analysis matrices first explain the specific normative substance of the relevant article and describe how the human rights obligation is currently implemented in German law. Following the matrix format for analysis of human rights indicators put forth by the Office of the High Commissioner for Human Rights (integration of structural, process and outcome indicators), they then depict (a) whether the relevant domestic law provisions adequately implement the obligations (structural indicators) and (b) whether the state’s implementation measures are working; for instance, what proportion of the target population is covered under a government programme (process indicators). The matrix then sets out outcome indicators (c), which measure whether and how structures and processes are having a positive impact of the de-facto implementation of the Convention, i.e. trends visible in the compiled case data. Thus the human rights analysis matrices, and the indicators they contain, can be used to determine whether implementation in conformity with the Convention is moving forward and making progress or whether, and in some cases why, it continues to be problematic in some respects.
The aim is to create a range of data that can serve as the basis for the comparison of the status of implementation over time or among different Länder or regions and, by doing so, to support the co-ordinated planning and evaluation of policy measures and programmes. A presentation of the indicators disaggregated by gender, age and disability, for instance, can make weaknesses or lacunae in the implementation of human rights obligations apparent and identify areas where action is needed. The set of indicators will be subjected to a careful review with respect to their quality and feasibility, which will examine their understandability and the feasibility of their collection as well as at their informative value and thus practical utility.

**Identification of gaps in data and research and, if necessary and appropriate, data-acquisition and research activity by the National Rapporteur Mechanism**

If data gaps become evident as the National Rapporteur Mechanism is compiling the sets of indicators and filling in the human rights analysis matrices, the National Rapporteur Mechanism will determine whether and how these gaps can be filled, issue recommendations to that effect and provide guidance during their implementation. In individual cases, if appropriate, the National Rapporteur Mechanism may itself carry out data acquisition and/or research activity to support its reporting. The feasibility of such activity will be carefully examined with the assistance of participating external experts – specialist practitioners, civil society experts and researchers – and a cost/benefit analysis will be performed.

**Observation of legislative processes and evaluation and dissemination of case law**

To date, there is no comprehensive and systematic database for case law that covers all the areas of law that are of relevance for the implementation of the Istanbul Convention in national law. The National Rapporteur Mechanism will therefore construct a case-law database, with due consideration to opportunities for complementarity and cooperation with existing tools covering relevant fields of law. The aim will be to intensify discourse in this area of law and promote decision-making in conformity with the Convention by disseminating relevant case law, with a special focus on the identification of deficits in implementation or application as well as best practice examples. The National Rapporteur Mechanism will also analyse relevant statutes (existing and planned) as a way of contributing to well-targeted and effective legislation.

**Reporting and practice-oriented recommendations**

The National Rapporteur Mechanism will use its data-based assessment of the implementation of European and international provisions in Germany to report on the prevention of and fight against gender-based violence in Germany. This reporting will appear in a variety of regular and ad-hoc formats. A biennial data report containing practice-oriented recommendations addressed to policymakers and government agencies will constitute a core part this reporting.

The data from the online platform will be, to the extent possible, disaggregated by characteristics such as age group, gender and other characteristics such as citizenship, if appropriate, prepared in time series and presented in the report. The data reports will also contain an overview of the key legislative processes in the two-year reporting period, concerning new legislation and the reform of existing legislation, and a summary of the most recent developments in the relevant case law. Human rights analysis matrices will be used for this purpose. The report may have special focuses, and present more in-depth analyses or, if appropriate, the results of the National Rapporteur Mechanism’s own research in those areas. The National Rapporteur Mechanism will also publish statements/position papers, papers on specific issues or information sheets on selected current topics.
2.2 Institutional identity and definition of focus areas

The work of the National Rapporteur Mechanism will be guided by the standards of national, European and international law relating to the fight against gender-based violence. It will consistently apply a human rights-based approach and make the rights of persons affected by gender-based violence its primary focus. All of its activities will be based on the basic principles of non-discrimination, participation and accessibility. As an independent entity, the National Rapporteur Mechanism will not take instructions from the government or any external body. However, it will strive to gear its offerings towards the practical needs of victims of human trafficking, policymakers and civil society. It will develop its recommendations on the basis of the data compiled and research findings. Its staff will be made up of professionals from a range of fields, enabling an interdisciplinary approach appropriate to the complex phenomenon they address.

Specific focal areas and questions for analysis will be selected in a transparent and clearly understandable manner. Through regular and ad-hoc consultations, the National Rapporteur Mechanism will incorporate input and impulses from policymakers, government agencies, the research community, counselling services and civil society into its work. It will also take on board the recommendations of relevant bodies of the Council of Europe, the EU, and the United Nations. The National Rapporteur Mechanism will continuously review and analyse the legal situation and current case law, research literature and statements/position papers, reports and expert opinions issued by government agencies and civil society.

Through its public relations activities, the National Rapporteur Mechanism will position itself as an independent, professional and cooperative body. The public relations work will include publishing and disseminating the various regular and ad-hoc reporting formats described above and the current results of data acquisition through its own website and over social media channels. It will also send out a regular newsletter and organise conferences and workshops on current issues.

3. Cooperation between the National Rapporteur Mechanism and the Federal and Länder governments and civil society

The National Rapporteur Mechanism will be one supplementary and unique element within the overall structure for combatting gender-based violence against women in Germany. It will systematically compile figures, data, facts and findings in Germany and make them accessible to all institutions and organisations at the federal and Länder level involved in policymaking, administration or civil society for use in the (further) development of appropriate measures. To ensure good linkages with these actors, the National Rapporteur Mechanism will regularly attend the meetings of the Federal-Länder working group on domestic violence and, if appropriate, the meetings of other relevant Federal-Länder working groups, such as the groups working on the elimination of female genital mutilation in Germany and on the implementation of the Victim Protection Directive (2012/29/EU), or those of other advisory bodies at the federal level and will support these with reports on the most recent data and findings.

Stable structures for cooperation between the competent federal ministries and the National Rapporteur Mechanism will be developed and, as appropriate, formalised in cooperation agreements. The range of possible options includes bilateral meetings for exchange between specialised units and meetings for exchange with the entire ministerial group. Workshops could be offered with the federal ministries in connection with specific occasions or emergent needs. As assisting the Government in fulfilling its
various international reporting obligations is one of the purposes of its biennial data report, the National Rapporteur Mechanism will consult with the ministries and schedule the release of the data report with this objective in mind.

Close cooperation with the Länder governments and their agencies will also be essential for the National Rapporteur Mechanism because they hold various responsibilities and types of data that are of key relevance, particularly with respect to criminal prosecutions and the protection of victims. The National Rapporteur Mechanism will strive to realize bilateral exchange formats with the competent ministries/departments at the Länder level analogous to those envisioned for the federal level.

With a view to the requirements of the Istanbul Convention, close cooperation with support structures in civil society will be absolutely vital for the work of the National Rapporteur Mechanism. Civil society organisations in Germany fulfil important roles for the fight against violence against women and domestic violence.

Close cooperation with civil society will enable the National Rapporteur Mechanism to take up current problems in de facto implementation and will ensure that the perspectives and needs of persons affected receive due consideration. The participation of civil society organisations will occur through regular cooperation in the acquisition and collection of data as well as in ad-hoc and time-limited formats, such as workshops and consultations on specific issues.

In the view of the DIMR, it would, in principle, be advisable to set up an advisory board for the National Rapporteur Mechanism to support its activities and contribute to its further development.

4. Added value brought by a National Rapporteur Mechanism

National Rapporteur Mechanisms monitor and carry out data-based assessments of the implementation of international conventions. The two National Monitoring Mechanisms at the DIMR – which monitor implementation of the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities – have already demonstrated ways in which bodies of a comparable nature can support the state in implementing international conventions.

The National Rapporteur Mechanism on gender-based violence will first compile and then assess the available quantitative and qualitative data and findings in this field in and for Germany, thereby facilitating the design of policy at the federal and Länder level that is robust, evidence-based and better co-ordinated and coherent. By systematically compiling and processing existing data in close cooperation with the data holders and, when appropriate and necessary, acquiring additional data to supplement them, the National Rapporteur Mechanism will obtain valid information regarding the impacts of measures and where additional action is needed. In this way, the effectiveness and targeting of measures, programmes and structures to combat violence against women and domestic violence can be systematically improved. To this end, the National Rapporteur Mechanism will address practice-oriented recommendations to the competent actors.

The National Rapporteur Mechanism will make the results of its work available to the Federal and Länder governments and legislatures and also to the public, while respecting the applicable provisions on the protection of personal data. Thus the Federal Government, for example, will be able to draw on the data compiled by the National Rapporteur Mechanism when fulfilling its own reporting obligations vis-à-vis the Bundestag, the public and supra-national and international organisations. In close consultation with the responsible agencies, the National Rapporteur Mechanism can also develop
service-oriented contributions towards improving the acquisition and evaluation of data on the part of government data holders at the federal and Länder levels.

Should they have questions relating to the convention in connection with a current need for action, policymakers and government agencies can suggest that the National Rapporteur Mechanism subject them to expert analysis. The National Rapporteur Mechanism will also be pro-active in communicating any findings indicating that action is necessary to the relevant bodies. The National Rapporteur Mechanism will be able to respond swiftly to questions and positions emerging in political discourse and support policymakers and government agencies with data- and science-based recommendations.

The activities and publications of the National Rapporteur Mechanism will raise awareness in the public and the political arena in Germany of all of the forms of violence falling within the scope of the Istanbul Convention and of needs for action. In establishing an independent National Rapporteur Mechanism on gender-based violence, Germany will be sending a clear signal to domestic, European and international audiences drawing attention to violence against women as a human rights violation and strengthening the perspective of the protection of victims.

5. Outlook for the foundation of the National Rapporteur Mechanism

A limited-term start-up or pilot phase for a National Rapporteur Mechanism is, in principle, possible and could occur within the framework of a funded project. Within the foreseeable future, however, the activities and powers of a nation-wide independent National Rapporteur Mechanism should be clearly defined in a manner ensuring long-term stability – by federal statute for example.

In order for an independent National Rapporteur Mechanism to construct and make available a comprehensive and coherent system for the collection of data, there must be a sound legal basis for its powers and for its cooperation both with the state data-holders at the federal and Länder levels and with the relevant civil society organisations. The National Rapporteur Mechanism will require sufficient staff, including qualified specialists, working on a continuous basis before it can operate independently of legislative periods.

Creating a statutory basis to underpin the work of the National Rapporteur Mechanism should therefore be a medium-term objective.

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