

Concept for a National Rapporteur Mechanism on trafficking in human beings

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 to report 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. To fulfil its mandate under international law (see below, section 1), a National Rapporteur Mechanism for the fight against trafficking in human beings would have to address all aspects of human trafficking. Furthermore, its monitoring of state measures would need to encompass all affected population groups rather than, for instance, concentrating only on the aspect of the sexual exploitation of women. Thus a National Rapporteur Mechanism on trafficking in human beings would have to address all forms of trafficking in human beings as well as severe forms of labour exploitation and the situation of all persons affected, using an intersectional and victim-centred approach and taking gender-based differences into account.

This paper outlines the core elements, roles and activities envisaged for a National Rapporteur Mechanism of this kind. 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 information and guidance for the dialogue and processes for establishing a National Rapporteur Mechanism on trafficking in human beings going forward.

1. Relevant legal provisions

The Convention of the Council of Europe on Action against Trafficking in Human Beings (Anti-trafficking Convention) and EU Directive 2011/36/EU (Anti-trafficking Directive) place an obligation on Germany to prevent trafficking in human beings, which is a violation of human rights, to safeguard and protect the rights of victims and to punish human trafficking in persons effectively. Both of these legal instruments contain provisions (Article 29, paragraph 4, of the Anti-trafficking Convention and Article 19 of the Anti-trafficking Directive) on the establishment of a structure (a special rapporteur or comparable mechanism) to monitor, assess and compile statistics in close cooperation with civil society and to report on the implementation of provisions of European law.

This mechanism should be structurally separate from a body charged with coordinating actions and policies for the executive branch.

2. Activities, roles and institutional identity of an independent National Rapporteur Mechanism on trafficking in human beings

2.1 Core activities and roles

Under the terms of Article 29, paragraph 4, of the Anti-trafficking Convention and of Article 19 of the Anti-trafficking Directive, the primary activities of the National Rapporteur Mechanism should be monitoring and assessing state action combatting trafficking in human beings, the implementation of domestic legislation requirements and developments in the system for the protection of human rights protection of relevance to human trafficking. According to the Group of Experts on Action against Trafficking in Human Beings (GRETA), a National Rapporteur Mechanism should formulate comprehensive recommendations in addition to monitoring and assessing state measures. As far as possible, 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 trafficking in human beings and the impartial identification of lacunae and needs for action.

Based on the rules governing implementation laid down in the applicable European and international provisions, the National Rapporteur Mechanism should set up a comprehensive and coherent system for the collection of data which will provide reliable information about the effectiveness of interventions and of measures to protect victims and to enforce their rights. This work should be carried out continuously through data collection activities, statistics and research. The National Rapporteur Mechanism should formulate practice-oriented recommendations based on its assessment of implementation and of the effectiveness of measures. In this way, National Rapporteur Mechanism can help ensure accurate targeting and effectiveness in the design and adjustment of anti-trafficking measures. Through its reporting on human trafficking, the mechanism can also contribute to a wide-spread and up-to-date understanding and acceptance of human rights obligations.

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 trafficking in human beings 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 human trafficking in Germany will be a core task of a future National Rapporteur Mechanism. These data are in the possession of a variety of bodies, 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 closely with the data holders to determine which data collections are of relevance, to identify possible synergies and areas of convergence and to 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 in this context to the characteristics specific to state and non-state bodies – in relation to any treatment of information from classified documents, for instance. 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 allowing the realistic depiction and assessment of the scope of human trafficking, of efforts to prevent and combat it and of the implementation of the core standards of the Anti-trafficking Convention and the Anti-trafficking Directive. 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 citizenship, for instance, can make weaknesses or lacunae in the implementation of human rights obligations apparent and thus 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 mechanism will determine whether and how these gaps can be filled, issue recommendations to this effect and provide guidance during their implementation. In isolated instances, 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

A comprehensive database of German case law on human trafficking already exists. It is operated by KOK, the German NGO Network against Trafficking in Human Beings (Bundesweiter Koordinierungskreis gegen Menschenhandel (KOK) e.V.). The National Rapporteur Mechanism can fulfil a complementary role vis-à-vis this important work by helping to disseminate the case law and making it accessible to those applying the law in practice. The aim will be to intensify discourse in this area of law and promote decision-making in conformity with the Convention, which will entail close cooperation with KOK. In addition, the National Rapporteur Mechanism will prepare its own evaluations of case law, focussing on the identification of deficits in implementation or in application and on examples of best practice. 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 report on its data-based assessment of the implementation of European and international provisions governing the fight against trafficking in human beings in Germany. This reporting on human trafficking in Germany will appear in a variety of regular and ad-hoc formats. A biennial data report containing practice-oriented recommendations addressed to policymakers, government agencies and civil society will constitute a core part of this reporting.

The report will present data from the online platform in time series covering the recent years and disaggregated – if possible – by age group, gender and other characteristics, if appropriate. The data report will also describe the key legislative processes during the two-year reporting period, concerning new legislation or the reform of existing legislation. It will also present a summary of the most recent developments in the relevant case law. 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

As envisaged by the DIMR, the National Rapporteur Mechanism will be guided by the standards of national, European and international anti-trafficking law in all of its work. It will consistently apply a human rights-based approach and make the rights of persons affected by human trafficking 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 any external body. However, it will strive to gear its offerings towards the practical needs of persons affected, policymakers and civil society. It will develop its recommendations on the basis of the compiled data 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 EU, the Council of Europe, the OSCE and the UN. 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. Its 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 fighting human trafficking 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 relevant Federal-Länder working groups (the group on trafficking in human beings and the group on combating human trafficking for the purpose of labour exploitation) and of the National Council on Combatting Sexual Violence Against Children and Young People (Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen), and it will support these bodies 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 under European law, 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 an important role in the fight against human trafficking, by providing extensive counselling and support to victims, by preparing statements/position papers, analyses and papers on the subject and also by representing the interests of victims in legislative proceedings and policy discussions at the national and international levels.

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 are 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 of 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 trafficking in human beings will first compile and then assess the available quantitative and qualitative data and findings in the field of human trafficking in and for Germany – guided by the European and international anti-trafficking provisions – 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 combatting trafficking in human beings 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- 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 contribute to increased awareness of human trafficking and needs for action in the public and the political arena in Germany. By establishing an independent National Rapporteur Mechanism on trafficking in human beings, Germany will be sending a clear signal to domestic, European and international audiences drawing attention to human trafficking 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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