DEFINING THE GAP:

DATA COLLECTION ON TRAFFICKING IN HUMAN BEINGS AND EXPLOITATION IN GERMANY – THE CIVIL SOCIETY APPROACH OF THE KOK

1. Report October 2020

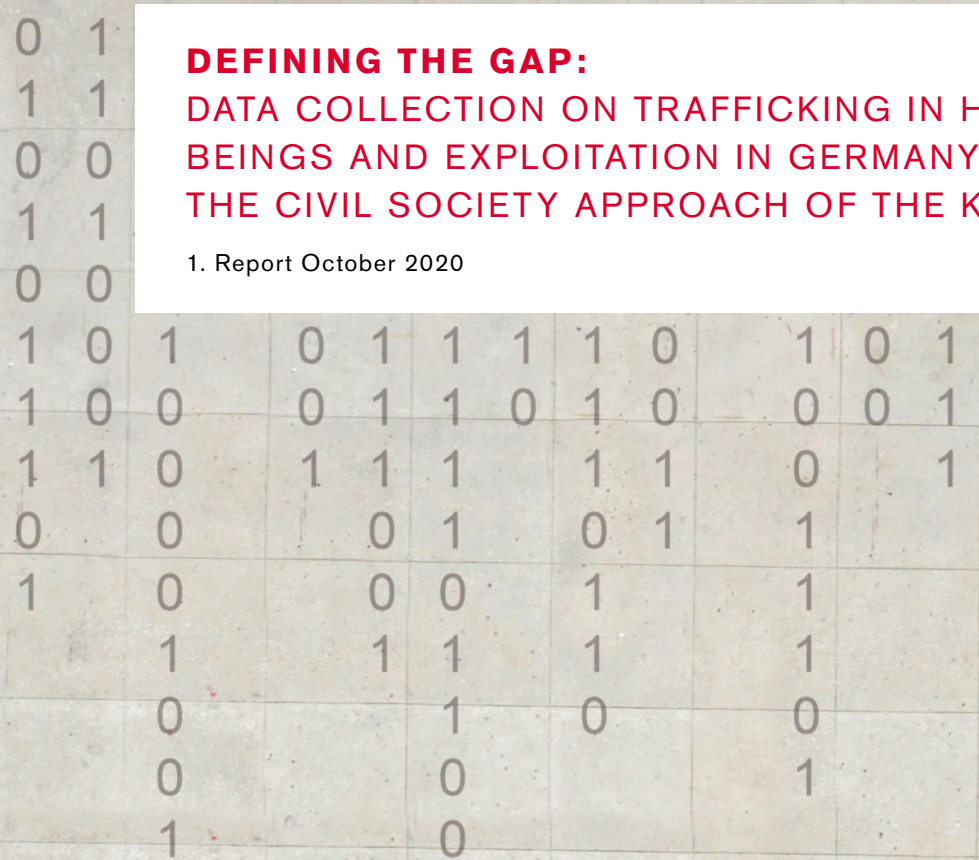**KOK** German NGO Network against Trafficking in Human Beings

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BEINGS AND EXPLOITATION IN GERMANY –
THE CIVIL SOCIETY APPROACH OF THE KOK

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FOREWORD

The collection of empirical data on the phenomenon of trafficking in human beings and exploitation is essential in determining the extent of this human rights violation, as well as in deriving from the findings policies and measures for the protection of those affected and the fight against this crime.

At the same time, data collection involves a variety of challenges. Trafficking in human beings and exploitation often take place in secret and are so-called control offences. In most cases, therefore, the occurrence of offences is determined in the course of checks by the police or other authorities – they often go unnoticed without control. However, low numbers of cases lead to the fact that the problem is seen as small, and that controls, as well as resources for the protection of those affected, are reduced. In addition to well-known sectors such as sex work, agriculture or construction, the care sector and domestic work can also be mentioned as examples. These are areas that are not easy to control. In addition, data collection in the field of trafficking in human beings is characterised by the high sensitivity of its content and by high demands on data protection and confidentiality.

There is as yet no data collection that measures the state of enforcement of the rights of the persons concerned.

Germany is a party to many human rights conventions giving rise to the obligation to guarantee protection against trafficking in human beings and to guarantee rights to the persons concerned as well as to ensure that they are recognised and that redress and compensation are granted to them. The EU Anti-Trafficking Directive also requires Germany to report regularly on the results of anti-trafficking measures. According to the Directive, it is the task of each EU Member State to establish a National Rapporteur or equivalent mechanism, to carry out *„assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking measures, including the gathering of statistics in close cooperation with relevant civil society organisations working in this field (…)"* (Lancaster University 2018). So far, this objective has been poorly implemented in Germany.

GRETA, the expert body that monitors the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, as well as the the protection of victims, explicitly underlines the importance of collecting and statistically evaluating disaggregated data without infringing the data protection rights of those affected by trafficking in human beings. GRETA recommends strengthening data collection by specialised non-gov-

ernmental organisations and using it in the development of policies against trafficking in human beings.[1]

Since 2012, KOK has been working intensively on data protection and data collection for victims of trafficking in human beings. Against the background of international recommendations and the concern to document the work of civil society with victims of trafficking in human beings as well as with the aim of strengthening the protection of their rights, the German NGO network against Trafficking in Human Beings – KOK has developed a data tool in collaboration with its member organisations, which should enable an evaluation of the measures against trafficking in human beings and the protection of those affected from a human rights perspective. The challenges and civil society perspectives that go with them are presented below.

We would like to thank the author Dr. Bärbel Heide Uhl, who has worked with and advised KOK for many years with her expertise as an expert on anti-trafficking policies, for writing this first insight into the KOK data tool and its discursive history.

Many thanks are also due to all members of the KOK Working Group on Data Protection and Data Collection. The knowledge and experience of the specialised specialist counselling centres for people affected by trafficking in human beings are the strength of the data tool.

KOK office

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[1] See GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany, Second Evaluation Round, 20 June 2019, para 55: "In order to create an evidence base for future policy measures, GRETA once again urges the German authorities to set up and maintain a comprehensive and coherent statistical system on THB by compiling reliable statistical data from all main actors, including specialised NGOs, on measures to protect and promote the rights of victims. Statistics regarding victims should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination. This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking provide information for the national data collection." (GRETA2019/07) (https://rm.coe.int/greta-2019-07-fgr-deu-en/1680950011)

1. INTRODUCTION

In July 2020, *The Guardian* reported that a victim of human trafficking had sued the British Home Secretary Priti Patel for seriously violating her right to privacy.

"The victim's legal team argue that the Home Office has unlawfully accessed legally privileged communication between the woman and her lawyers, has breached her human rights in terms of the personal information accessed without her consent, has breached data regulations and has failed to provide adequate guidance on the use of victims' personal information, leading to systemic problems" (Taylor 2020).

The victim had been formally recognised as a trafficked person by the Home Office and was supported by the Salvation Army. That body had been commissioned and financed by the Home Office to provide counselling and support for victims of trafficking. The provision of funding for the anti-trafficking work of the Salvation Army seemed to legitimise the access of the security authorities to sensitive counselling files. The lawyer for the victim, who was seeking a residence permit, noticed during the negotiations with the competent authorities that they were aware of intimate details about the client, including knowledge of her thoughts and feelings.

The case shows on many levels that data politics and governmental anti-trafficking interventions during recent decades can no longer be considered separately: victims – once identified by the competent authorities – are indeed granted legal rights to protection and residence permits. Trafficking in human beings, however, is regarded as part of the policy area of the fight against transnational organised crime, and this classification seems to enable the authorities to undermine the right to privacy, as well as the duty of confidentiality of advisers.

This example from Great Britain is not an isolated case. In their essay *Big data, little ethics: confidentiality and consent,* Nicole Behnam and Kristy Crabtree, from the humanitarian non-governmental organization International Rescue Committee, illustrate with various regional examples how donors negotiate to access sensitive data from counselling work with victims of human trafficking. The authors conclude:

"In the past decade there has been a shift towards the generation and use of 'big data' – large volumes of structured or unstructured data. However, a lack of accountability and little understanding of the unique risks associated with protection data have encouraged a movement among large donors to request more data and this could be damaging to individuals." (Behnam, Craptree 2019).

Access to sensitive data by authorities and/or donors is often justified on the basis of security considerations: If only relevant stakeholders, including law enforcement and authorities responsible for migration control, knew more about the perpetrators, migration movements and victim profiles, trafficking in human beings could be combated more effectively.

From a human rights point of view, this argument raises enormous concerns. Victims of trafficking have the right to protection and counselling, irrespective of their willingness to testify and their residence status. In addition, it is not the victim but the perpetrator who should be at the centre of the security investigations.

For civil society, therefore, the following questions occur: how can data be collected and evaluated in order to document the access to justice for victims of trafficking and at the same time to guarantee the right to privacy of victims and the protection of confidentiality for counsellors?

This is the subject of considerations as to how human rights protection can be guaranteed independently of law enforcement measures. Against this background, KOK initiated a process in 2012 in which these challenges are analysed and addressed and, as a result, the member organisations have decided, to develop a data tool, which will be presented in the following section of this report. The KOK data tool aims to make a paradigm shift by not concentrating on the identity and profile of victims, but by documenting access to justice for trafficked persons.

2. DATA POLITICS

2.1. Developments in anti-trafficking policies

Twenty-five years ago, the fourth and, for the time being, last UN World Conference on Women was held in Beijing. The outcome document of the conference– the *Beijing Platform for Action* – referred to action against trafficking in human beings as an independent strategic objective within the chapter on combating violence against women. From today's point of view, the definition of trafficking in human beings/women in the *Platform for Action* is still of interest: in the absence of migration policy debates, trafficking in women was defined as an act of violence against women. The definition included exploitation in prostitution, forced marriage and forced labour. As a result, victims of trafficking in human beings were not given any further identification features, other than that they were victims of different forms of violence, coercion and exploitation. The Beijing Platform for Action therefore focused on the human rights of victims, a view that has not lost its relevance to this day.

The first international legally binding definition of trafficking in human beings, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the *Palermo Protocol*), also has its 20th anniversary this year.

Unlike the Beijing Platform for Action, the definition of the *Palermo Protocol* includes a set of criminal elements that make up the criminal act of traf-

ficking in human beings. The recruitment and transport of persons (for the purpose of exploitation and forced labour) became part of the legally binding definition of trafficking in human beings which put international migration in the focus of governmental intervention against trafficking in human beings.

The integration of migration into the criminal offence of trafficking in human beings between Beijing (1995) and Palermo (2000), proved to be significant in many respects for future anti-trafficking measures: state measures against trafficking in human beings, which have emerged out of the policy of combating transnational crime, have thus been extended to informal and irregular migrant workers. As a result, it was not only the use of force, exploitation, wage deprivation and forced labour carried out in the formal and informal labour sector that was the focus of the intervention of law enforcement authorities in order to protect those affected by trafficking in human beings, but the profile and mobility of migrant workers (Roth et al. 2015:47ff.).

This is where state and intergovernmental anti-trafficking interventions have started in recent decades: a wide range of public awareness campaigns have been developed in countries of origin in Europe, Africa and South-East Asia, aimed at informing various target groups about the risks of migration. They focussed on deterrence by emphasising the dangers of those migrating for labour falling into the hands of traffickers (Andrijasevic 2007:24ff.)

Since the beginning of the 21st century, the implementation of governmental protection obligations towards victims has been carried out on the basis of official assessment of individual behaviour of victims. Only if a victim is identified as such by the competent authorities will he/she be granted access to the assistance system. The grounds for official identification are often non-transparent, based on the victim's behaviour, and are listed in numerous identification manuals (ICMPD 2009).

In retrospect, it seems surprising that the measures to identify victims were not included in the *Palermo Protocol.* The wording of the Protocol assumes that victims of trafficking would seek help and support on their own initiative and would not be dependent on official identification.

2.2. Data policy, migration and trafficking in human beings

The importance of collecting data in the field of international migration was highlighted not least by the UN's Global Compact for Safe, Orderly and Regular Migration (GCM), which was adopted by the majority of the international community in December 2018 (United Nations 2018). The Compact sets out 23 objectives, the implementation of which is to serve the global management of migration through policy instruments and processes based on the rule of law. Interestingly, the main objective of collecting data is listed at the beginning of the document:

Improve international comparability and compatibility of migration statistics and national data systems, including by further developing and applying the statistical definition of an international migrant, elaborating a set of

standards to measure migrant stocks and flows, and documenting migration patterns and trends, characteristics of migrants, as well as drivers and impacts of migration (Global Compact for Migration 2018:7, 17b).

The wording does not suggest the collection of data in order to monitor international protection of migrants, including victims of trafficking in human beings, but rather stresses a dehumanised language that refers to numbers and flows, instead of individual rights, of migrants. Thus, in the area of the first objective (collection of data), there is nothing on the documentation of access to justice for migrants. Rather, it is important to convince governments to understand the economic benefits of low-skilled migrant workers in countries of destination. (Global Compact for Migration 2018:7, 17 d,h).

The social scientists Ellen Percy Kraly and Bela Hovy contrast the GCM's claim to data collection on migration with alternative and complementary perspectives for an international data infrastructure in order to enable evidence-based migration policy (cf. Kraly, Hovy 2020). In reference to Bridget Anderson, they argue for researching human mobility without framing migration as a problem (Kraly, Hovy 2020:19). To this end, the entire mobility of all populations and communities should be analysed, and not just those who are denied residence permits and border crossing. Therefore, all theoretical approaches to international migration research should be based on critical analysis, including forced migration, the role of population data in human rights violations and the role of big data.

In recent years, criticism of disproportionate data collection and often non-evidence-based assumptions about trafficking in human beings has also been increasingly voiced by civil society and academic institutions. As early as 2012, the KOK, together with La Strada International, initiated the European NGO project *datACT – data protection in anti-trafficking action*, that examined strategies to guarantee data protection, as well as access to the right of privacy for trafficked persons (cf. Roth et al. 2015; see further remarks in Chapter 4).

Claudia Aradau, professor of political science at Kings College London, describes different forms of data collection in the fight against trafficking in human beings as "ignorance, secrecy and insecurity", and calls on all anti-trafficking actors to engage with practices of "responsible knowledge":

"So, to end, it seems to me that the challenges in relation to anti-trafficking concern how to know responsibly rather than simply the postulation of knowledge at all costs, and in particular, how to know in ways that are not destructive of freedom and human dignity" (Aradau 2015:14).

Aradau calls for data collection strategies to be seen as an integral part of human rights protection, and for both the way in which the data is collected and the logic of the survey to be communicated transparently.

"We need to get rid of the fantasy that there is such a thing as 'raw' data that will give us an understanding of how to act on the future, how to prevent human trafficking from reoccurring or happening. There is no such thing as raw data, nor is there any such thing as innocent data. Moreover, human rights have only limited efficacy against the logic of statistical data processing and preventive risk management. What is important is to make the ways

of reasoning about data visible – dispel the secrecy in processing of data in order to create conditions for the exercise of human rights" (Aradau 2015:14).

Social scientist Neil Howard also shares the criticism of data collection as a violation of basic rights of migrant workers. The data collection, and the administrative tasks based on it, lead to the depoliticisation of labour migration and to ignorance of the complex reality of working migrants (cf. Howard 2017).

By examining anti-trafficking apps, which are supposed to inform potential and actual victims of trafficking about the risks of trafficking, sociologists Kiril Sharapov and Jonathan Mendel come to the following conclusion: *"The apps and their creators rely on weak association rules to include much of everyday life (…) Scholars and activists need to be aware of the social and political effects of this ignorance in anti-trafficking action targeting these real or imagined networks"* (Mendel, Sharapov 2020:4).

The author of the present report also shares the questionable knowledge of trafficking in human beings and the consequences for marginalised groups: *"The identity (of a victim of trafficking) has not been anchored in a legalistic nor in a medical knowledge format, but was created by a specialized discourse, which has been inspired by the criminal law combating trafficking in human beings and by the institutional self-logics of international stakehold-ers, governments and civil society organizations and, in contrast to the anti-terror discourse, has no emancipatory counter-discourse"* (Uhl 2014:215).

The KOK data tool attempts to create an emancipatory counter-discourse. The focus of the data collection is not on the identity of victims of trafficking, but on the implementation of legal claims on behalf of those victims and the documentation of civil society counselling work.

2.3. National Rapporteurs or Equivalent Mechanisms in EU Member States

Due to the large discrepancy between assumed cases of trafficking in human beings and actual data collected by law enforcement authorities and protection agencies, the statistical recording of human trafficking cases has been at the centre of state anti-trafficking interventions since the 1990s.

The idea for the establishment of National Rapporteur or Equivalent Mechanisms was developed and set out in the Hague Ministerial Declaration 1997 for the first time. The EU anti-trafficking Directive 2011/36 and the Council of Europe Convention on Action against Trafficking in Human Beings also provide for the establishment of a National Rapporteur or equivalent mechanism. Germany has not yet fully implemented this obligation. However, many EU Member States have now created different formats for reporting centres.

3. KOK DATABASE:

TRAFFICKING IN HUMAN BEINGS IN GERMANY AND ACCESS TO JUSTICE

3.1. Idea, Origin, Mandate

The idea to develop a joint database by the member organisations of the KOK e. V. was born in 2013 within the framework of the project *datACT.* The impetus to do this, as a critical independent player in civil society concerning global data collection and evaluation of human trafficking, arose in response to the increasing appeals by governmental and international organisations to acquire more data on human trafficking (Roth et al. 2015:85). The central concern was, and is, to guarantee the right to privacy of victims of trafficking, and to create procedures to prevent violations of this right. It was initially agreed that all data collection endeavours must be based on the privacy methods of *Privacy by Design* and *Privacy Impact Assessment* (Roth et al. 2015:91ff.).

In addition, the intention was formulated, that a civil society database on trafficking in human beings is intended to prevent anti-trafficking NGOs from being exploited as data providers for state and inter-governmental data collection tools. Instead, they should be able to define the object and purpose of data collection independently and in their own right.

Unlike intergovernmental or governmental data collection, the KOK database does not focus on identity and mobility profiles of victims of trafficking, but rather places the implementation of human rights protection and access to justice at the heart of data collection.

A *data protection working group* was constituted in 2015 consisting of member organisations, the KOK office, the IT company Pragma Shift (later renamed 3plusx) and external experts, and has met regularly since then to develop the concept and technology of the KOK data tool. In the course of the last five years, the contents of the data fields were discussed, tried out, discarded, rethought and reformulated. The most important considerations were: are data sets essential to document the implementation of the legal rights of victims? What information is "nice to have" but not meaningful for the defined purpose of the database? Such information was excluded. The working group has carried out many trial runs and trial entries to test the built-in security levels of the database (decentralised inputs, different accesses, etc.). All identified trials and errors have been documented and archived so that the developmental history of the database can be viewed, and discussions and chains of reasoning can be traced.

The working principles of the working group can be summarised as follows (Uhl 2020:255ff.):

1. Data collection and hegemony

Assuming that data collection is not carried out in a non-intimidatory space, the KOK is aware of the responsibility that data collection can lead to attributions of individuals to marginalised groups, which can have serious consequences for future life. This responsibility is taken into account through data minimisation, data protection and the right to privacy. Victims of trafficking may withdraw their consent to the collection of data at any time.

2. Democratisation of data

Participating member organisations retain control over their data entered. This avoids a hierarchy between data delivery and data evaluation. The database can also be used at any time remotely by individual or cooperating member organisations.

As a critical civil society database, the KOK does not use global commercial data processing systems. Instead, all systems are developed specifically under the specification of the KOK working group, and a separate server is rented.

3. Data collection and human rights monitoring

Evidence-based knowledge is a prerequisite for designing and implementing effective measures to provide protection for victims. The collection of data is the basis for the development of knowledge and understanding. Data must be collected in a comprehensible, transparent and responsible manner.

At the same time, data collection tools and reporting bodies can continue to violate the right to privacy of marginalised individuals. They are not beyond the reach of anti-trafficking policies, but are an integral part of governmental, inter-governmental and civil society interventions against trafficking in human beings. As such, they must also be subject to human rights monitoring.

Against this background, the KOK General Assembly 2018 defined the mandate for a common datatool and determined its purpose:

"(…) The tool meets the requirements for dealing with particularly important informational rights of the persons concerned in the sense of datACT – data protection in anti-trafficking action. It largely dispenses with the collection of personal data. The traceability to the identity of clients should be avoided in any case – the tool will be audited externally. This will meet the requirements of anonymised documentation of anti-trafficking measures, which guarantees the fundamental right to informational self-determination of those affected".[2]

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[2] Excerpt from the Minutes of the KOK General Assembly from 14/09/2018, translated from the German original

3.2. Data protection monitoring

The framework for the input of case data by member organisations is created by signing a cooperation agreement with the KOK office. This defines the responsibilities for the joint collection of data, defines data security and data protection, and obliges the anti-trafficking NGO and the KOK office to implement the rights of the data subject, including the right to delete certain data sets.

In order to activate the input in the KOK data tool, the participating member organisations must also obtain a declaration of consent from the victim. The consent determines the data that is collected and stored, and additionally informs the victim of the purpose and period with regard to which data are to be collected, and inform the victim of the right to withdraw their consent. The declaration of consent has been translated into several languages.

The software of the KOK data tools is designed so that the individual member organizations only have access to their own entered data sets. The office of the KOK can only view the aggregated data released for evaluation. It is not possible to trace individual cases.

The entire KOK database procedure is subject to a regular data protection impact assessment.

3.3. Technical and functional implementation (and requirements for hardware and software)

Technical implementation is based on modular, step-by-step development. In a first, basic version, in addition to the basic framework/user interface, only basic functions for easy input and rudimentary output of the data were created. The architecture was designed in such a way that further expansion is easily achieved:

- User interface with a uniform and user-friendly screen design with the following features: clarity, legibility, uniform labels and symbols/icons, uniform interaction such as editing and storage of data sets

- Rights model with two user groups:
  ↪ "User" (single users) in user groups (according to the specialist advice centre (FBS)), which can in each case view and edit the data of their organization, and

  ↪ "Admins"(administrators), who can create and manage users

- User management for administrators (creating, editing, deleting access for users)

- Sign-in/unsubscribe function as personal access protection
- Data entry form (for structured input and processing of data)
- Tabular data overview per "case" (collected case data) with access only for the submitting body
- Tabular overview of all "cases" of an FBS, with four to five simple filters (e.g. by year, entry point, Identification number (ID)) with access only by the submitting body
- Summary overview of all "cases" in all FBS with four to five simple filters (e.g. by year, by entry point, by ID) with access only by KOK.

The following additions have been made in the process of expansion:

- Improved form for data entry, with greater clarity and ease of use
- Expansion of data management, better display and possibilities of sorting and filtering/evaluation of data
- Management (change, extension) of the controlled vocabulary used in the form
- Creation of a glossary to explain the input fields and document their development
- Introduction of a query interface for the creation of reports and graphical evaluations/data visualisations
- Different forms of visualisation and combination with case descriptions
- Export of reports in the form of CSV files (for further processing in Libre Office or Microsoft Excel)
- Snapshots for a possible time comparison and data aggregation at any time.

Typical formats for queries and reports are:

- Amounts per period (e.g. "number of residence permits per year"), comparisons with other periods ("Increase/decrease in residence permits per year compared to the previous year")
- Distributions per period (e.g. "Age range of the persons concerned per year"), supplementing comparisons with other periods.

The basic features of the software are as follows:

- Use/access via modern internet browser

- Data structure is kept expandable/changeable, even between development stages.
  The application can be operated with modern browsers; no additional software is required. Access to the editorial interface is also obtained in this way; this access is password-protected, and accesses are personal.

Measures for data security and data protection in the software and on the server:

- Direct personal information (name, address, contact details) is in principle not collected

- Indirect personal information (age, year of entry and other data) is only stored for limited periods (e.g. age groups, other data only on a year-by-year basis, i.e. instead of 01.01.1970, only 1970)

- Pseudonymisation: A system for assigning an identification/ID per case is set up. Only the affiliation of a record to an FBS can be taken from the ID. Assignment to a case/person is only possible within the FBS, but not in the database

- Secure, encrypted data transfer between input station and server via TLS/SSL

- Encryption of the hard drive(s) of the server and the backup at the provider

- Encryption of information and comments in the database. Although this allows real access by means of the software; the values in the database cannot be read when the database is accessed directly or by other programs

- Use of tools to automatically review and increase software security in software development

- Enforcement of secure passwords by the software; password generator for creating new receipts

- Regular updating of the software, the framework used and all components, as well as the operating system (e.g. as part of a maintenance contract that regulates and guarantees these ongoing tasks)

- Two-stage authorisation (password entry via web interface, plus sending a one-time PIN via e-mail)

- Geoblocking of non-Germany accesses.

Data security and data protection measures employed by the KOK office and member organisations

- Training of users of the software on protection of the input stations (operating system and browser) and the handling of the data, in particular of access data

- an analog method or a password manager was recommended for the storage of access data

- the input station (computers with browsers and internet access) should be updated regularly to install up-to-date security updates for the operating system and software

- Access to the computer should be secured by password

- Access to the Internet as far as possible via Ethernet (cable-bound) and not via WLAN

- It is recommended to use a Linux operating system with encrypted disks

- Each FBS has a scheme to assign the codes/ID assigned in the software to a case.

4. RESULTS

With the stated aim of documenting the implementation of access to justice for victims as well as the work of anti-trafficking counselling centres, the KOK data tool has focused on the following main topics: access to protection and justice for persons who have been trafficked, enforcement of legal rights, payment of unpaid wages and compensation, criminal proceedings.

The working group has also been guided by the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the EU anti-trafficking Directive 2011/36/EU.

The main features of the data tools are mapped by detailed data fields in order to document the work of anti-trafficking NGOs, as well as the implementation of the legal claims of data subjects.

In the following, the content architecture of the data tools is presented. The individual data fields do not represent the chronological process of the counselling work. Each NGO counselling centre participating in the data tool, or the respective employee, decides which data fields it completes and which it does not. KOK has deliberately decided against the policy of completeness in order to guarantee the autonomy of the NGOs and the privacy of victims.

However, the data tool makes it possible to count the data entries of the NGO. This allows comprehensible statements to be made in the evaluation of the representativeness of individual data fields.

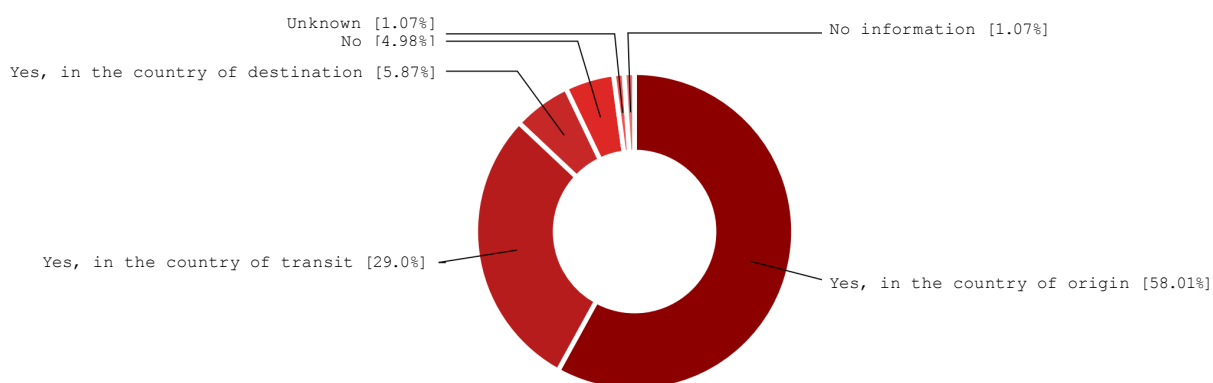|	Data fields KOK database	Policy areas: access to legal rights and documentation of civil society work	EU Directive 2011	Council of Europe Convention 2005
1/5	Data, status, contacts when recorded	Residence, subsistence, security, implementation of access to justice, education, health	Art. 11 (1) Assistance and support (2) based on reasonable grounds indication (3) unconditional access to assistance and support (4) Subsistence and material assistance	Art. 10 (2) Reasonable grounds Article 12 Support for victims Article 13 Reflection period Article 14 Residence permit
2/5	Activities of NGOs		Art. 11	Art. 10-12
3/5	End of counselling	Reason for the end of counselling and departure		
4/5	Compensation	Compensation, payment of unpaid earnings	Art. 17 Right of access to existing compensation schemes (no reference to the establishment of a state compensation fund such as the Council of Europe Convention) Art. 12 (2) Access to legal advice, legal representation, including compensation	Art. 15 (1) Ensuring that victims have access to information on court and administrative proceedings from initial contact (2) Free legal assistance (3) Right to compensation by perpetrators (4) State Compensation Fund
5/5	Criminal proceedings	Criminal proceedings/prosecution	Art. 4-7 Sanctions are interpreted more specifically than in the Council of Europe Convention: minimum custodial sentence (5 years) Article 7 Authorities shall be entitled to confiscate and confiscate items instrumental to the commission of the offences and the proceeds of crime.	Art. 23 Trafficking must be punishable with effective, proportionate and dissuasive sanctions, including custodial sentences for natural persons and confiscation of assets of legal persons.[5]

5   Ryszard Piotrowicz, *The Relationship between the Council of Europe Convention on Action against Trafficking in Human Beings and European Union Law*, paras 11–36 (paper is held by the author)

1. Access to protection and justice

The category of access to protection and justice documents all measures commonly classified as 'identification of victims'. The data tool collects information on the initial contact with the support system, age, gender, residence status and reflection period. Furthermore, information is gathered about the nature of the criminal offences as being identified from the point of view of the NGOs, the crime scene and the place of recruitment. Important for the documentation of the those affected is the collection of information regarding the respective assessment: on the security situation in the country of origin and in the country of destination for the individual, but also the family, the victim is interviewed and the answers entered in the data tool, as is the assessment of the security situation by the NGO.
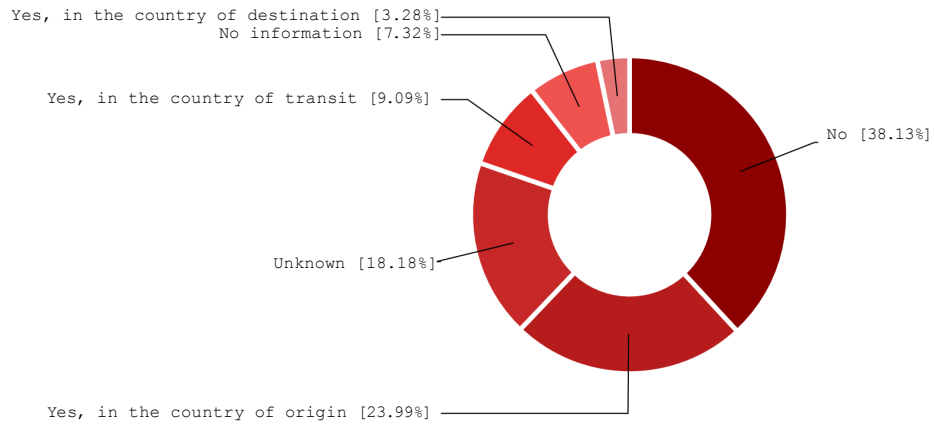
Example:[6]

Threat upon return from the victim's perspective

Unknown [1.07%]
No [4.98%]
No information [1.07%]
Yes, in the country of destination [5.87%]
Yes, in the country of transit [29.0%]
Yes, in the country of origin [58.01%]
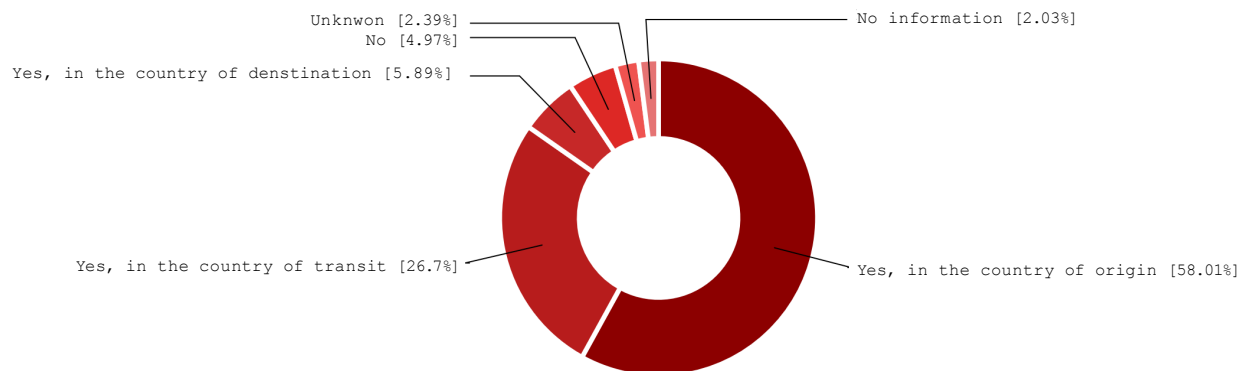
KOK data tool // 30.9.2020 17:46

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6   The percentages and the following example illustrations refer to the data entered for this value, not the total number of cases in the data tool.

Threat upon return from the perspective of the authority

Yes, in the country of destination [3.28%]
No information [7.32%]

Yes, in the country of transit [9.09%]

No [38.13%]

Unknown [18.18%]

Yes, in the country of origin [23.99%]

KOK data tool // 30.9.2020 17:46

Threat upon return from the perspective of the NGO counselling centre

Unknwon [2.39%]
No [4.97%]

No information [2.03%]

Yes, in the country of denstination [5.89%]

Yes, in the country of transit [26.7%]

Yes, in the country of origin [58.01%]

KOK data tool // 30.9.2020 17:46

2. The work of the NGO counselling centres in the implementation of access to justice

In this category, the individual counselling steps are extensively documented: psychosocial counselling and support, organisation of subsistence services, further education, language courses, medical treatment, crisis intervention, legal advice – to name but a few. Procedural support for victims by specialist counselling centres is also documented – including psychosocial support during criminal proceedings and residence procedures, including asylum procedures.
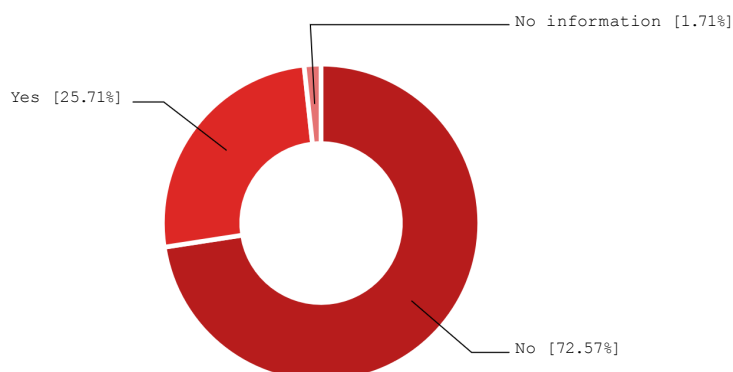
Example:

Provision of information by the NGO counselling centre

No [0.27%]

Yes [99.73%]
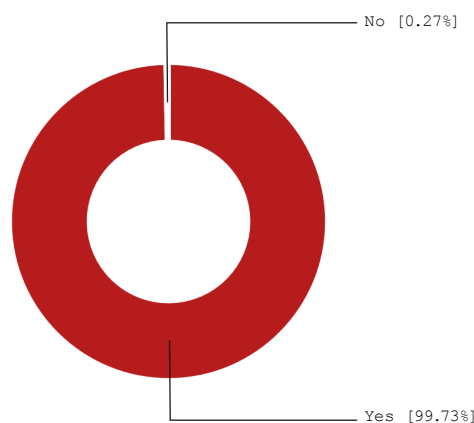
KOK data tool // 30.9.2020 17:46

Support of the victim during criminal trial

No information [1.71%]
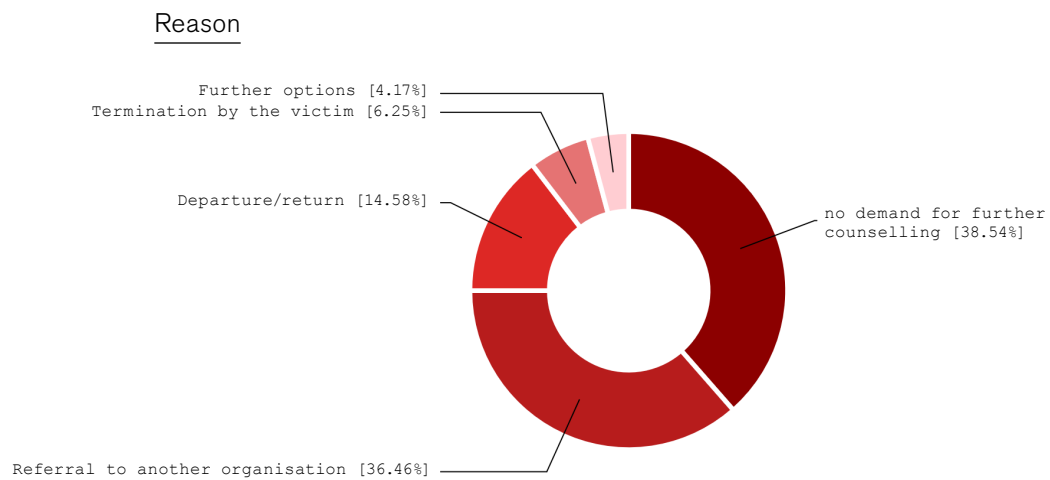
Yes [25.71%]

No [72.57%]

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3. Termination of consultation

The reasons for termination of a consultation are manifold and documented for the first time in the data tool. On the one hand, the termination of counselling may occur in the country of destination due to a lack of a residence permit and thus a forced return, or in the referral to other institutions. The work of the NGOs in assisting in the voluntary return to the country of origin is also collected in the data tool.

Example:

Reason

Further options [4.17%]
Termination by the victim [6.25%]
Departure/return [14.58%]
no demand for further counselling [38.54%]
Referral to another organisation [36.46%]

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4. Compensation and repayment of wages

While the Council of Europe Convention obliges States parties to implement a guarantee of compensation and payment of unpaid wages for victims, the EU Directive is rather vague in this respect, and only calls for a right of access to compensation proceedings. Both compensation and unpaid wages can be claimed in many ways in Germany. The data tool outlines comprehensively the possibilities of the compensation procedures, and also documents the reasons for rejected claims. The following information is collected: compensation/wages claimed, successful claims (including the amounts awarded), applications for victim compensation, statutory accident insurance, occupational accident, occupational disease and injured persons' pensions.

Example:

Compensation /claiming of wages

No information [3.1%]
Yes [5.43%]
Unknown [10.08%]
No [81.4%]

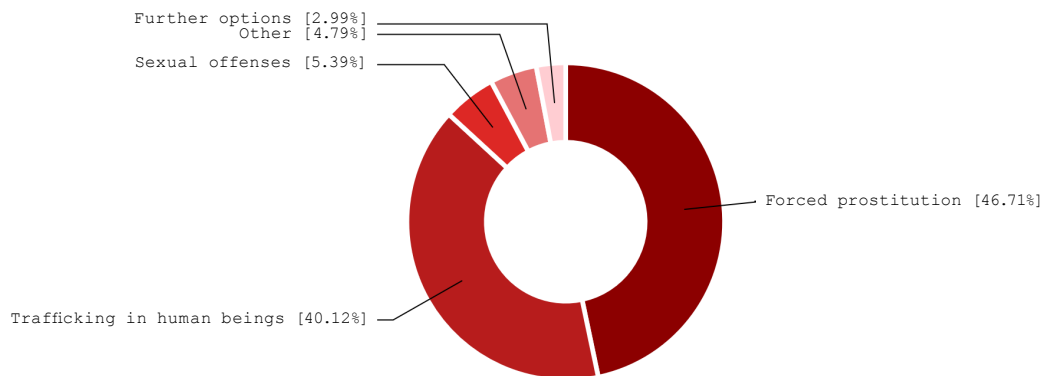KOK data tool // 30.9.2020 17:46
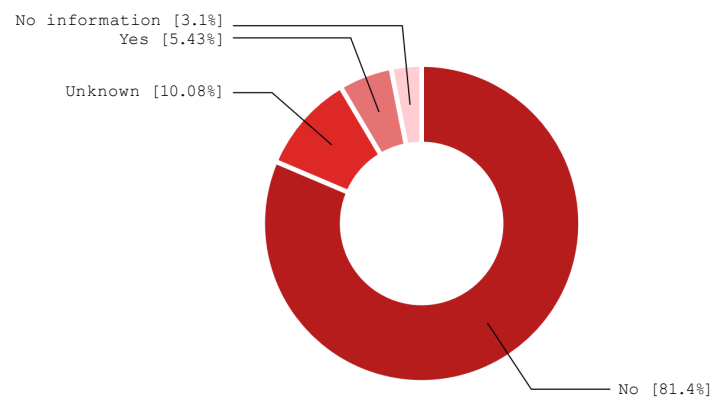
5. Prosecution

While the Council of Europe Convention calls in general terms for penalties in the sense of custodial sentences and confiscations from the perpetrators, the EU directive is more detailed in the implementation of criminal law and criminal proceedings. For example, the EU directive calls for a minimum sentence of five years' imprisonment (Piotrowicz 2020:33).

The KOK data tool provides an overview of how European law is implemented and at which procedural steps a prosecution fails, by outlining individual steps in investigations and prosecutions. In addition to information on the various stages of investigation procedures, the KOK data tool also collects data on the offences to be investigated: crimes against life and physical integrity, against sexual offences, against personal freedom, against property and against public order. Offences under other laws regimes are also noted: the fight against illegal labour, the transplantation law, the asylum law, the residence law, the narcotics law. The role of the victim in criminal proceedings is also documented: is she/he represented as a co-plaintiff? The convictions and the sentence are also documented.
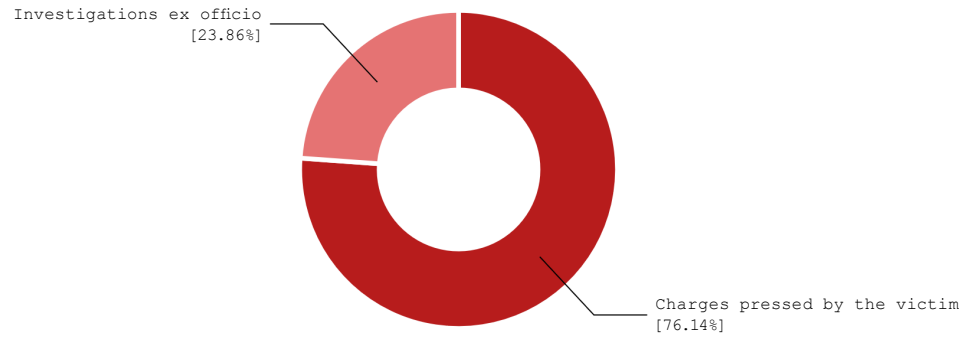
The extensive documentation is intended to provide information on why there are relatively few convictions for trafficking in human beings.
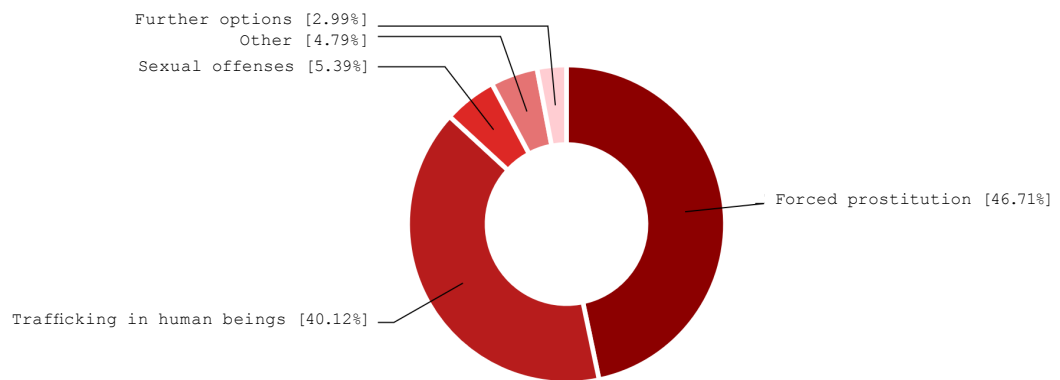
Example:

Investigation

Further options [2.99%]
Other [4.79%]
Sexual offenses [5.39%]
Forced prostitution [46.71%]
Trafficking in human beings [40.12%]

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Initiated by

Investigations ex officio
[23.86%]

Charges pressed by the victim
[76.14%]

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Investigation on following charges

Further options [2.99%]
Other [4.79%]
Sexual offenses [5.39%]

Forced prostitution [46.71%]

Trafficking in human beings [40.12%]

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5. CONCLUSION

The absence of a robust procedure for monitoring access to justice for victims of trafficking in Germany has led the KOK to develop a data tool, which can provide accurate, transparent and comprehensible statements on human rights violations.

The documentation of the work of civil society for the protection of victims was another reason to develop the data tool. Civil society work, including the work of human rights defenders, is increasingly restricted worldwide, a process described by the concept of "shrinking spaces" (OSCE 2018). The data tool is intended to help counteract this development and to show civil society stakeholders how to develop their own paradigms and principles for the documentation of their work.

At the same time, data collections and surveys are not neutral, i.e. non-hegemonic structures. They may seriously violate the human rights of marginalised individuals, support global surveillance capitalism, and be used as part of a repressive migration policy.

The NGOs represented in KOK have opted for a different way of collecting data: the KOK data tool tries to create a platform that makes it possible to include both the voice and the agency of victims, to show the complex and time-consuming work of civil society and to document the implementation of access to justice.

A comprehensive documentation and evaluation of the KOK data tool is planned for 2021. The tool can compare different time periods and link several data fields, so that even more complex questions about the lack of human rights protection for victims of trafficking in Germany can be answered.

Bibliography

Andrijasevic, Rutvica (2007):
Beautiful dead bodies: gender, migration and
representation in anti-trafficking campaigns.
Feminist Review 86, 2007 p. 24–44

Aradau, Claudia (2015):
Human Trafficking: Between Data and Knowl-
edge; In: Roth, Uhl, Wijers, Zikkenheiner:
Data Protection Challenges in Anti-Trafficking
Policies – A Practical Guide; KOK e. V. Berlin,
2015 p. 7–17

Behnam, Nicole; Craptree, Kristy (2019):
Big Data, little ethics: confidentiality and
consent; Forced Migration Review 06, 2019
https://www.fmreview.org/sites/fmr/files/
FMRdownloads/en/ethics/behnam-crabtree.pdf

Council of Europe GRETA Commission (2019):
Report concerning the implementationof the
Council of Europe Conventionon Action against
Trafficking in Human Beingsby Germany –
Sec-ond Evaluation Round; Strassbourg, France
ttps://rm.coe.int/greta-2019-07-fgr-deu-
en/1680950011

European Union (2011):
Directive 2011/36/EU of the European
Parliament and of the Council of 5 April 2011 on
preventing and combating trafficking in human
beings and protecting its victims, and replac-
ing Council Framework Decision 2002/629/JHA
https://eurlex.europa.eu/legal-content/DE/
ALL/?uri=CELEX:32011L0036

Howard, Neil (2017):
Of Coyotes and Caporali: How Anti-Trafficking
Discourses of Criminality Depoliticise Mobility
and Exploitation; In: Piotrowicz, R.; Rijken, C. &
Uhl, B. H. (eds.) (2017) Routledge Handbook of
Human Trafficking; 1st ed. p. 511–526

International Centre for Migration Policy
Development (ICMPD) (2009):
Guidelines for the Development of a Transnational
Referral Mechanism for Trafficked Persons;
Vienna 2009

Kraly, Ellen Percy; Hovy, Bela (2020):
Data and research to inform global policy:
the global compact for safe, orderly and
regular migration;
Springe, Comparative Migration Studies

Lancaster University (2018): Datacollection on
trafficking in human beings in the EU; European
Commission - Migration and Home Affairs
https://ec.europa.eu/home-affairs/sites/homeaf-
fairs/files/what-we-do/policies/european-agenda-
security/20181204_data-collection-study.pdf

Mendel, Jonathan; Sharapov, Kiril (2020):
*'Stick Them to the Cross': Anti Trafficking Apps and
the Production of Ignorance, Journal of Human
Trafficking*
https://doi.org/10.1080/23322705.2020.1801284

OSCE (2018):
*The critical role of civil society in combating
trafficking in human beings;* Vienna
https://www.osce.org/secretariat/405197

Roth, Pia; Uhl, Bärbel Heide; Wijers, Marjan;
Zikkenheiner, Wiesje (2015):
Data Protection Challenges in Anti-Trafficking
Policies – A Practical Guide;
KOK e. V. Berlin

Taylor, Diane (2020):
*British trafficking victim sues Priti Patel alleging
abuse of personal data;* The Guardian, United
Kingdom
https://www.theguardian.com/global-develop-
ment/2020/jul/30/british-trafficking-victim-sues-
priti-patel-alleging-abuse-of-personal-data

Uhl, Bärbel Heide (2020):
Data and responsibility – considerations on datafication,
civil society and anti-trafficking action
In: KOK (2020) Trafficking in Human Beings – Reflec-tions
on Protection and Rights; p. 255-257

Uhl, Bärbel Heide (2014):
Die Sicherheit der Menschenrechte:
Bekämpfung des Menschenhandels zwischen
Sicherheitspolitik und Menschenrechtsschutz.
transcript Verlag, Bielefeld, 2014

United Nations (2018):
Global Pact for Safe, Orderly and Regular
Migration
Marrakesch, Morocco, 2018
https://www.un.org/en/ga/search/view_doc.
asp?symbol=A/RES/73/195

United Nations (2000):
Protocol to Prevent, Suppress and Punish Trafficking in
Persons, Especially Women and Children, Supplementing
The United Nations Convention
Against Transnational Organized Crime;
Palermo, 2000
https://ec.europa.eu/anti-trafficking/sites/
antitrafficking/files/united_nations_protocol_
on_thb_en_4.pdf

United Nations (1995):
Report of the Fourth World Conference on Women
Peking, 1995
https://www.un.org/womenwatch/daw/beijing/pdf/
Beijing%20full%20report%20E.pdf