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Remedies for Victims of Human Trafficking Under the Palermo Protocol and United Nations Basic Principles: A Case Study Analysis

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Remedies for Victims of Human Trafficking Under the Palermo Protocol and United Nations Basic Principles: A Case Study Analysis

Cover Page Footnote

University of Kentucky, 2016, summa cum laude; University of Notre Dame Law School, 2019, Dean's Circle Fellow. Thank you to Professor Christine Cervenak for her guidance throughout this process and for providing me with endless resources on this topic.

**REMEDIES FOR VICTIMS OF HUMAN TRAFFICKING UNDER THE
PALERMO PROTOCOL AND UNITED NATIONS BASIC
PRINCIPLES: A CASE STUDY ANALYSIS**

JOSEPHINE A. SUCHECKI*

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INTRODUCTION

A. *HUMAN TRAFFICKING IN GENERAL*

Multiple definitions of “human trafficking” exist, but there is little agreement on what exactly the phenomenon is, much less how it should be

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measured.¹ “The current internationally accepted definition of human trafficking comes from the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).”² Human trafficking is defined as,

recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.³

Exploitation includes, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁴

In 2016, the United Nations Office on Drugs and Crime (UNODC) produced its 2016 Global Report on Trafficking in Persons⁵ that outlined patterns and regional responses to trafficking issues.⁶ Between 2012 and 2014, victims were identified from 137 different countries in over 500 different trafficking flows.⁷ Trafficking for sexual exploitation was the most common, but the UNODC identified other exploitative purposes, such as child soldiers, forced begging, forced marriage, selling children, and forced labor.⁸ At any given time, 40.3 million people are in modern slavery.⁹ Women and children are disproportionately affected by the forced labor industry, as they make up 99% of the commercial sex industry and 58% in other sectors.¹⁰

Human trafficking has gained exposure through both public knowledge and academic research.¹¹ Through these avenues, it has transformed into a broader discussion about internationally controversial topics, such as: border security, organized crime, poverty, public health, and women’s rights.¹²

B. INTERNATIONAL RESPONSE ON HUMAN TRAFFICKING

¹ Lauren A. McCarthy, *Human Trafficking and the New Slavery*, 10 ANN. REV. L. & SOC. SCI. 221, 222 (2014).

² *Id.* at 223.

³ U.N. Office on Drugs and Crime (UNODC), *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* 42 (2004), https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf [hereinafter *Palermo Convention*].

⁴ *Id.*

⁵ See generally UNODC, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2016, U.N. Sales No. E.16.IV.6 (2016) [hereinafter GLOBAL REPORT].

⁶ *Id.*

⁷ *Id.* at 5.

⁸ *Id.* at 8.

⁹ *Forced Labour, Modern Slavery, and Human Trafficking*, INT’L LAB. ORG., http://www.ilo.org/sapfl/News/WCMS_182109/lang--en/index.htm (last visited Oct. 10, 2018).

¹⁰ *Id.*

¹¹ McCarthy, *supra* note 1, at 222.

¹² *Id.*

Over the last decades, the international community has made significant efforts to combat transnational organized crime through international cooperation. The first international treaty to further this purpose was the United Nations Convention Against Transnational Crime (Palermo Convention).¹³ The Palermo Protocol is one of three protocols that supplemented the Palermo Convention.¹⁴ The Palermo Protocol “was the first international instrument . . . with the purpose to unify the different national approaches . . . and therefore facilitate international cooperation in the prevention and prosecution of the trafficking of persons,” as well as to implement remedial measures for the victims.¹⁵

The purpose of the Palermo Protocol was threefold: “[t]o prevent and combat trafficking in persons, paying particular attention to women and children”; “[t]o protect and assist the victims of such trafficking, with full respect for their human rights; and . . . [t]o promote cooperation among State Parties in order to meet those objectives.”¹⁶

In May 2014, the United Nations High Commissioner for Human Rights issued a resolution that contained the Basic Principles on the right to an effective remedy for trafficked persons.¹⁷ Those Basic Principles on the right to an effective remedy for trafficked persons identified eighteen principles that can be divided into three broad categories: rights and obligations, access to the right to a remedy, and the forms of the right to a remedy.¹⁸ The forms of the right to a remedy category is subdivided into five subcategories: restitution, compensation, rehabilitations and recovery, satisfaction, and guarantee of non-repetition.¹⁹

Other practices have been interpreted under the “human trafficking” umbrella internationally, including the International Labour Organization (ILO) Forced Labor/Child Labour Conventions.²⁰ The European Union enacted legislation concerning the “prohibition and immediate action for the elimination of the worst forms of child labour” in response to the ILO Convention.²¹ The ILO recommended that Member States ratify the ILO Worst Forms of Child Labour Convention and, within one year of publication of the Convention, take steps pursuant to it.²²

¹³ *Palermo Convention*, *supra* note 3; REGINA CASTRO TRAUlsen, THE MEXICAN LEGAL REMEDIES FOR TRAFFICKING IN PERSONS VICTIMS AND ITS COMPLIANCE WITH INTERNATIONAL STANDARDS 1 (The Center for Civil and Human Rights, 2016), http://humanrights.nd.edu/assets/205389/ht_lgl_rems_traulsen.pdf.

¹⁴ TRAUlsen, *supra* note 13, at 1.

¹⁵ *Id.*

¹⁶ *Palermo Convention*, *supra* note 3 at 42.

¹⁷ U.N. High Comm'r for Human Rights (UNHCHR), *Summary of Consultations Held on the Draft Basic Principles on the Right to Effective Remedy for Victims of Trafficking in Persons*, U.N. Doc. A/HRC/26/18 (May 2, 2014) [hereinafter UNHCHR].

¹⁸ *Id.* at 12–13.

¹⁹ *Id.* at 13–15.

²⁰ Protocol of 2014 to the Forced Labour Convention, 1930, June 11, 2014, PO 29, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029 (discussing the adoption of a protocol to combat forced labor worldwide).

²¹ Commission Recommendation 2000/581/EC, 2000 O.J. (L 243) 41 (concerning the prohibition and immediate action for the elimination of the worst forms of child labor).

²² *Id.*

The ILO also released the *Global Employment Trends for Women in 2012*.²³ The report examined women's engagement in the labor market, as well as estimated and analyzed five key gaps between women and men that disadvantage women.²⁴ The report contained a multitude of policy measures that States could implement to reduce gender bias in their work decisions. Those policy instruments included: reducing the burden of house work through better infrastructure, reducing the burden of unpaid care for children or the elderly, balancing the gender division of paid and unpaid work, changing the costs and benefits of gender specialization, compensating for unequal employment opportunities based on gender, and public campaigns to challenge gender stereotypes.²⁵ In the *Global Employment Trends for Women 2014*, the ILO determined that women's unemployment rates in developed countries would continue to be higher than those of their male counterparts.²⁶

C. GOALS FOR THIS PAPER

The goals of this Note are to discuss the current international framework and assess how specific countries have responded to the Palermo Protocol. I will address how a group of specific countries complies with the current international obligations under the Protocol and the United Nations Principles on the right to an effective remedy for victims of trafficking in persons. I will also address how that same group of countries falls short in their implementation of the Protocol and United Nations Basic Principles. Finally, I will propose recommendations for future research and implementation of the Protocol.

I. UNITED NATIONS FRAMEWORK FOR VICTIMS' REMEDIES

A. BACKGROUND

In 2000, the United Nations Office on Drugs and Crime published the Palermo Protocol, supplementing the United Nations Convention Against Transnational Organized Crime.²⁷ The United Nations Convention Against Transnational Organized Crime demonstrated a global response to a global problem, stating, "[i]f crime crosses borders, so must law enforcement."²⁸ The

²³ Int'l Labour Org. (ILO), *Global Employment Trends for Women 2012* (2012), http://www.ilo.org/global/research/global-reports/global-employment-trends/WCMS_195447/lang-en/index.htm.

²⁴ *Id.* The five categories include: unemployment, employment, labor force participation, vulnerability, and sectoral and occupational segregation. *Id.* at v.

²⁵ *Id.* at xi-x.

²⁶ Anne Trebilcock, *Using ILO Sources to Vindicate Women's Economic Rights*, 108 AM. SOC'Y INT'L L. 265, 268 (2014). Because much of the ILO supervisory system is based on reporting and dialogue, despite the ILO Convention being treated with binding force under international law, there are multiple mechanisms that monitor how member states are giving effect to the conventions they have ratified. *See id.* at 266-68.

²⁷ *Palermo Convention*, *supra* note 3 at 43; *see also* UNHCHR, *supra* note 17.

²⁸ *Palermo Convention*, *supra* note 3, at iii.

purpose of the Convention Against Transnational Organized Crime was to “promote cooperation to prevent and combat transnational organized crime more effectively.”²⁹

In 2014, after the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to organize and further discuss the Principles for the right to an effective remedy, the organization drafted recommendations as to how States could fulfill their obligations to the Protocol.³⁰ The A/HRC/26/18 contains the Basic Principles on the right to an effective remedy for victims of trafficking in persons.³¹ Although A/HRC/26/18 is not binding on all countries, it is persuasive, as “it embodies the general international agreement regarding the right to [an] effective remedy for victims of trafficking in persons.”³²

B. PALERMO PROTOCOL

The Palermo Protocol was created to apply to the prevention, investigation, and prosecution of the offenses established in article 5 of the Protocol.³³ Article 5 mandated adoption of legislative measures in States to establish criminal offenses regarding trafficking in persons.³⁴ Those legislative measures needed to establish offenses that also included: attempting to commit the offenses, acting as an accomplice, and organizing or directing others to commit the offenses.³⁵ The Protocol also focused on the protection of victims of trafficking in persons, as well as prevention and cooperation among States.³⁶ I will briefly discuss the provisions in these sections as they apply to the case studies in this analysis.

Section II of the Palermo Protocol focuses on the protection of victims, victims’ status in receiving countries, and repatriation.³⁷ Article 6 of the Palermo Protocol states that each State has the obligation to “consider implementing measures to provide . . . physical, psychological, and social recovery [for] victims of trafficking in persons,”³⁸ “endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory,”³⁹ and ensure that “its domestic legal system contains measures [to] offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”⁴⁰ Article 7 permits legislation allowing victims to remain in receiving territories, either temporarily or permanently.⁴¹ Finally, article 8 provides that when the victim does return back to their

²⁹ *Id.* at 5.

³⁰ UNHCHR, *supra* note 17, at 3.

³¹ *Id.* at annex.

³² TRAUlsen, *supra* note 13, at 4.

³³ *Palermo Convention*, *supra* note 3, at 43.

³⁴ *Id.* at 42–43 (Article 3 of the Protocol relates to article 5 by defining the offenses that are subject to criminalization).

³⁵ *Id.*

³⁶ *Id.* at 43–48.

³⁷ *Id.* at 43–45.

³⁸ *Id.* at 44.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 44–45.

country of origin, States must facilitate and accept these victims without unreasonable delay.⁴²

States must also adopt measures that “prevent and combat trafficking in persons” and “protect victims of trafficking in persons, especially women and children, from revictimization.”⁴³ Section III of the Protocol also covers information measures and border security provisions that require States to cooperate across borders to secure the safety of victims through law enforcement training,⁴⁴ cross-border communication,⁴⁵ and proper documentation for victims.⁴⁶

C. UNITED NATIONS BASIC PRINCIPLES

The Basic Principles from A/HRC/26/18 highlight the fact that effective remedies are not often accessible to victims of trafficking in persons, as there are gaps between enactment and implementation of national laws and international standards.⁴⁷ The right to an effective remedy for victims of human rights violations is recognized under several instruments of international law aside from the Basic Principles.⁴⁸ The OHCHR provides that, “[i]n the case of trafficking in persons, the responsibility of the State to provide remedies always arises and should be extended to all individuals, whether citizens or non-citizens, under its jurisdiction.”⁴⁹

The Basic Principles are divided into four components: rights and obligations; access to the right to a remedy; forms to the right to remedy, which is split into five subparts: restitution, compensation, rehabilitation and recovery, satisfaction, and guarantees of non-repetition; and finally, right to remedy of child victims of trafficking.⁵⁰ I will discuss how the thirteen countries involved in the case studies comply, or fail to comply, with these Principles.

Based on the research conducted by the OHCHR, effective remedies largely remain inaccessible to victims, despite the existence of both international and regional frameworks.⁵¹ Some of the main obstacles in the OHCHR consultations included poor implementation of national frameworks, inadequate infrastructure, and limited resources to implement the frameworks.⁵² The Basic Principles by the OHCHR allow States to comply

⁴² *Id.* at 45.

⁴³ *Id.* at 45–48.

⁴⁴ *Id.* at 46.

⁴⁵ *Id.* at 47.

⁴⁶ *Id.* at 48.

⁴⁷ UNHCHR, *supra* note 17, at 3.

⁴⁸ *Id.* at 4. The obligation to provide remedies comes from the Palermo Protocol. The other human rights instruments that recognize the right to an effective remedy are: the Convention on the Elimination of All Forms of Discrimination against Women, the Recommended Principles and Guidelines on Human Rights and Human Trafficking, and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

⁴⁹ *Id.*

⁵⁰ *Id.* at 12–16.

⁵¹ *Id.* at 5–6.

⁵² *Id.*

with the Palermo Protocol, as well as implement a remedial system for victims of trafficking in persons. As different countries have a multitude of factors that can contribute to the success or failure of implementation of effective rights to remedies, it is important to evaluate these trends that can be addressed in future international legislation.

D. *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING—REPATRIATION AND REMEDIES*

Anne T. Gallagher provides the first comprehensive analysis of international law and human trafficking in her book, *The International Law of Human Trafficking*.⁵³ In the analysis on victims' remedies, she identifies the link between repatriation and identification of victims as a shortfall in the international remedial system.⁵⁴ In general, the quality of procedures for timely identification of the victim will greatly influence the destination State in making correct decisions about victim repatriation.⁵⁵ In a study conducted by the Organization for Security and Co-Operation (OSCE) in 2009, the OSCE identified serious issues with the repatriation process in Europe.⁵⁶ In addition to the issues identified, many victims are not given a "voluntary return" to their countries of origin, but rather, are subjected to forcibly return. Without a procedure for voluntary return, victims could be subjected to re-trafficking.⁵⁷

From the earliest stages, the Protocol has been concerned with the voluntary return of victims.⁵⁸ The standard for safe and voluntary return is well established in international law and policy.⁵⁹ It protects from "summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and her or his family."⁶⁰ It also provides for legislative protection of persons who "voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings."⁶¹

⁵³ ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* (2010).

⁵⁴ *Id.* at 338.

⁵⁵ *Id.*

⁵⁶ *Id.* Those difficulties included: "the identification of trafficked persons resulting in [the] possibly significant numbers of trafficked persons [would] not [be] given the opportunity to establish their status during proceedings to remove them; the detention of vulnerable people; the failure to conduct risk assessments to ensure the safety of the return and application of re-entry bans. [Simultaneously,] [l]egal advice and . . . emergency medical assistance are not available during the return process." *Id.* (quoting Organization for Security and Co-operation in Europe [OSCE], *Report of the Expert Group Meeting on Human Rights Protection in the Return of Trafficked Persons to Countries of Origin*, at 1 (June 24–25, 2009)).

⁵⁷ *Id.*

⁵⁸ *Id.* at 339.

⁵⁹ *Id.* at 341. The standard of safe and voluntary return is affirmed in the U.N. Trafficking Principles and Guidelines, other international and regional policy documents, and affirmed by other U.N. human rights treaty bodies and other human rights mechanisms. *Id.* at 341–42.

⁶⁰ Rep. of the UNHCHR to the ESCOR on Recommended Principles and Guidelines on Human Rights and Human Trafficking, U.N. Doc. E/2002/68/Add.1, at 9 (2002) [hereinafter E/2002/68/Add.1].

⁶¹ *Id.*

Those same Recommended Principles and Guidelines for Victims of Human Trafficking provide for access to remedies for the victims.⁶² “[T]rafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate legal remedies.”⁶³ “It is a well-established rule of international law that States have [an obligation] to provide a domestic legal remedy to victims of human rights violations.”⁶⁴

The most common forms of reparation for victims, which mirror A/HRC/26/18 include: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁶⁵ Compensation is the most common remedy, as it makes payable to the victim any wrongs that cannot be assessed by restitution.⁶⁶ Compensation can take the form of medical costs, costs of rehabilitation, transportation and housing, lost income, and legal fees.⁶⁷ Restitution helps restore the victim to their situation prior to the violation, if possible.⁶⁸ Many aspects of restitution can be complex and unavailable to certain victims, thereby opening the doors to compensation as a proper form of reparation instead. Rehabilitation seeks to restore the victim to their status and position in the eyes of the law.⁶⁹ Finally, satisfaction and guarantees of non-repetition seek to prevent future trafficking.⁷⁰

The form and extent of remedies will depend on the nature and circumstances of the breach, as well as the context of the States’ obligation. Overall, the goal of the remedies is to wipe out the consequences of the violation.⁷¹ The combination of voluntary repatriation with effective remedies to victims can, theoretically, provide victims of trafficking in persons with a path forward, where vulnerabilities to re-trafficking are minimized.⁷²

II. ACTIONS TAKEN BY THE UNITED STATES TO PROVIDE REMEDIES TO VICTIMS OF HUMAN TRAFFICKING

A. TRAFFICKING IN PERSONS REPORTS

⁶² *Id.* at 13–14.

⁶³ GALLAGHER, *supra* note 53, at 354–355 (citing E/2002/68/Add.1, *supra* note 60, at princ. 9) (citation omitted).

⁶⁴ *Id.* at 355. States have a duty to provide a domestic legal remedy under the Universal Declaration of Human Rights, as well as the European Convention on Human Rights and the American Convention on Human Rights. *Id.* at 355–56.

⁶⁵ *Id.* at 365.

⁶⁶ *Id.*

⁶⁷ *Id.* at 366.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 367.

⁷¹ *Id.* at 366–67.

⁷² See Martina E. Vandenberg, *The International Law of Human Trafficking*. By Anne T. Gallagher, 106 AM. J. INT’L L. 721 (2012) (reviewing ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* (2010)).

The United States signed the Palermo Convention on December 13, 2000.⁷³ The Department of State also created the Office to Monitor and Combat Trafficking in Persons to lead “the United States’ global engagement against human trafficking.”⁷⁴ The Department of State released the 2017 Trafficking in Persons Report (TIP)⁷⁵ “that measures government efforts . . . of prosecuting traffickers, protecting victims, and preventing the crime.”⁷⁶ The TIP Report analyzes human trafficking in countries around the world,⁷⁷ tier placements of countries,⁷⁸ and recommendations of how States should continue to respond to different trafficking crimes.⁷⁹ Today, there are still twenty countries that are not party to the Palermo Protocol, which are all analyzed in the 2017 TIP Report.⁸⁰ Countries in the TIP are broken into tiers, depending on their compliance with the Trafficking Victims Protection Act (TVPA).⁸¹ Tier 1 countries fully comply with the Trafficking Victims Protection Act; Tier 2 countries do not fully comply, but are making significant efforts to bring themselves within those standards; Tier 2 Watch List countries recognize the same standard as Tier 2, but recognize potential dangers to victims; and Tier 3 countries do not meet the minimum requirements and are not making significant efforts to do so.⁸²

Each year, the TIP Report has a theme, which is used to highlight a specific problem involving trafficking in persons.⁸³ In 2016, the TIP Report focused on prevention of trafficking, especially including ways that governments can identify at-risk people and reduce their vulnerability.⁸⁴ Part of the 2016 TIP report included a highlight regarding protection of victims from wrongful prosecution and further victimization.⁸⁵ The TIP references the Palermo Protocol as a source of establishment of rights to victims as a way to stop re-victimization.⁸⁶ What is interesting, though, is that despite the focus on preventing re-victimization and providing protection, there is no specific

⁷³ United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, T.I.A.S. 13127, 2225 U.N.T.S. 209. The United States’ compliance was qualified with the caveat of article 5, which stated, “[p]ursuant to Article 5, paragraph 3, of the Convention, I have the honour to inform you that, in order to establish criminal liability under the United States law with respect to the offense described in Article 5, paragraph 1(a)(i), the commission of an overt act in furtherance of the agreement is generally required.”

⁷⁴ *Office to Monitor and Combat Trafficking in Persons*, U.S. DEP’T STATE, <https://www.state.gov/j/tip/index.htm> (last visited Oct. 27, 2018).

⁷⁵ U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 2017* (June 2017), <https://www.state.gov/j/tip/rls/tiprpt/2017/index.htm>.

⁷⁶ *Id.* at 1.

⁷⁷ *See id.* at 56–437 (discussing each of the countries involved in the TIP report and how they comply with the Trafficking Victims Protection Act to combat human trafficking in the United States).

⁷⁸ *Id.* at 45–52. It is interesting how the Department of State uses the Trafficking Victims Protection Act as the benchmark for compliance when the countries are not bound by this piece of legislation.

⁷⁹ *See id.* at 56–437 (including recommendations to each of the countries analyzed).

⁸⁰ *Id.* at 13.

⁸¹ *Id.* at 45–52.

⁸² *Id.* at 45.

⁸³ *See id.* at 14–33.

⁸⁴ U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 2016* (2016), <https://www.state.gov/documents/organization/258876.pdf>.

⁸⁵ *Id.* at 26.

⁸⁶ *Id.* Although the Palermo Protocol “does not specifically address non-criminalization of trafficking victims, . . . one of the Protocol’s purposes is ‘to protect and assist the victims of such trafficking with full respect for their human rights.’”

framework set forth in the TIP to address these problems in the analysis of the different countries.⁸⁷

In the United States' analysis, however, the TIP identifies formal procedural guidelines employed in the United States to identify and refer victims to services.⁸⁸ The President's Task Force to Monitor and Combat Trafficking in Persons reports on agency accomplishments in combating human trafficking,⁸⁹ as well as multiple programs to increase enforcement in the United States and United States territories.⁹⁰

The 2017 TIP report focused on increasing criminal accountability of human traffickers and addressing challenges in prosecution.⁹¹ One of the TIP highlights included how to engage survivors of human trafficking, with best practices including: promoting survivor empowerment and self-sufficiency, using a victim-centered trauma approach, and protecting confidentiality.⁹²

The United States, similar to 2016, meets the TVPA standards and falls under Tier 1 in the 2017 TIP.⁹³ The United States government meets the standards for prosecution,⁹⁴ protection,⁹⁵ and prevention.⁹⁶ Similar to the overall themes that have plagued the post-Palermo Protocol victims' remedies, there is a trend in the TIP reports that represents many countries at least attempting to abide by the Protocol and TVPA, but in many instances, failing in enforcement. For example, in Thailand, the country is a "source, destination, and transit country" for trafficking victims.⁹⁷ The country was labeled as Tier 2 Watch List, as the government does not meet the minimum standards for the elimination of trafficking, but it is making significant efforts to do so.⁹⁸ Similarly, Kenya, a Tier 2 country, has demonstrated efforts to institute anti-trafficking laws in the country, as well as basic police training.⁹⁹ Since the institution of the Palermo Protocol in 2000, States have overwhelmingly increased legislation in human trafficking, but enforcement and accountability in the vast number of States continues to lag behind.

⁸⁷ *Id.* at 36 (setting out the methodology for the report).

⁸⁸ *Id.* at 387–93. Prevention measures include the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), as well as the National Human Trafficking Resource Center (NHTRC). *Id.* at 391. As far as procedural guidelines to aid in reporting and prosecution, multiple federal agencies are involved in the collection of data and training of officers at all levels to bring about adequate remedies for victims. *Id.* at 389.

⁸⁹ *Id.* at 391.

⁹⁰ *Id.* (examining the measures taken across the federal government in all states and territories to comply with international standards and to prevent future incidents of trafficking).

⁹¹ See generally TRAFFICKING IN PERSONS REPORT 2017, *supra* note 75.

⁹² *Id.* at 30.

⁹³ *Id.* at 415.

⁹⁴ *Id.* One of the pieces of legislation introduced in Congress included the Trafficking Survivors Relief Act, which would "allow victims to vacate federal convictions of crimes committed as a direct result of being subjected to trafficking."

⁹⁵ *Id.* at 416–18. Immigration, child welfare systems, and healthcare are the main programs implemented under United States legislation.

⁹⁶ *Id.* at 418–20. Civil enforcement continues to be a significant component of federal anti-trafficking efforts.

⁹⁷ *Id.* at 391.

⁹⁸ *Id.* at 387.

⁹⁹ *Id.* at 232.

B. RESPONSE TO THE PALERMO PROTOCOL—LEGISLATION

In addition to complying with the Palermo Protocol via legislation regarding the criminalization of trafficking in persons, the United States has also passed legislation to protect victims of human trafficking. The Trafficking Victims Protection Act sets forth minimum standards for the elimination of trafficking in persons.¹⁰⁰ The TVPA is used in the TIP reports and is the minimum standard for State compliance.¹⁰¹ The TVPA was passed in 2000 as a response to the Palermo Protocol, and has since been amended multiple times in Congress.¹⁰² Prior to the passage of the TVPA, punishment of trafficking offenses occurred through specific legislation of the offense, through topics such as immigration or involuntary servitude.¹⁰³ Because of the inadequacies of the pre-TVPA legal framework, victims were likely to be re-victimized—often deported back to a country where they were stigmatized and put in further danger.¹⁰⁴

“The TVPA’s scope is limited to severe forms of trafficking in persons.”¹⁰⁵ The legislation covers assistance to victims both in the United States and internationally.¹⁰⁶ The purpose of the TVPA was to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”¹⁰⁷ As the crime of human trafficking increased in severity and exposure, Congress saw a need “to appropriate punishment, giv[e] priority to the prosecution of trafficking offenses, and protect[] rather than punish[] the victims of such offenses.”¹⁰⁸

Victims in the United States, under this statute, are eligible for all federal and state benefits and services in the same way a refugee entering the United States would be.¹⁰⁹ The TVPA also allows victims protection while in

¹⁰⁰ TRAFFICKING IN PERSONS REPORT 2016, *supra* note 84, at 46. Those elements (as amended)—“(1)[t]he government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking; (2) [f]or the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault; (3) [f]or the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficient stringent to deter and that adequately reflects the heinous nature of the offense; and (4) [t]he government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.”

¹⁰¹ See generally TRAFFICKING IN PERSONS REPORT 2017, *supra* note 75.

¹⁰² 22 U.S.C. §§ 7101–7114 (2012).

¹⁰³ Angela D. Giampolo, Note, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. RTS. L. REV. 195, 197 (2006).

¹⁰⁴ *Id.*

¹⁰⁵ Giampolo, *supra* note 103, at 198 (citations omitted); see also 22 U.S.C. § 7102(9) (2012) (defining the elements of the offense with regards to “severe forms of trafficking in persons” as: “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”).

¹⁰⁶ 22 U.S.C. § 7105 (2012).

¹⁰⁷ 22 U.S.C. § 7101 (2012).

¹⁰⁸ *Id.* § 7101(b)(24).

¹⁰⁹ *Id.* § 7105(b)(1)(A).

government custody, including access to information, such as translation services, and the authority to stay in the United States during the investigation and prosecution of the crime.¹¹⁰

The TVPA provides adequate coverage for victims under A/HRC/26/18 for rights and obligations,¹¹¹ access to the right to a remedy,¹¹² and forms of the right to a remedy.¹¹³ The TVPA also provides for two new types of visas: “the T-visa, created specifically for victims of trafficking in persons; and the U-visa, available to noncitizens who have suffered severe abuse as a result of certain criminal activity, including trafficking.”¹¹⁴ The T-visa applicant must establish that he or she is a victim of a severe form of trafficking, as well as demonstrate several other criteria.¹¹⁵ The U-visa is not directed at trafficking victims, but rather victims of a set of enumerated crimes.¹¹⁶ Unlike the T-Visa, the U-Visa applicants are not entitled to refugee benefits or the immigration of certain family members.¹¹⁷

Where trafficking efforts have failed, the TVPA attempts to minimize resulting harm.¹¹⁸ Additionally, the Trafficking Act added four crimes relevant to human trafficking prosecution: “forced labor; trafficking with respect to peonage, slavery, involuntary servitude, or forced labor; sex trafficking of children or by force, fraud, or coercion; and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.”¹¹⁹

In 2005, Congress passed an amendment to supplement the TVPA, the Trafficking Victims Protection Re-Authorization Act (TVPRA).¹²⁰ The multiple amendments of the TVPRA focus on the domestic strategies to deal with the disparity between the estimated number of human trafficking victims in the United States and the number of victims who have received aid from the TVPA.¹²¹ The TVPRA established a program for rehabilitative facilities for adult or juvenile victims of human trafficking—a step forward in the United States legislative response to the Palermo Protocol and the tragedy of human

¹¹⁰ *Id.* § 7105(b); *see also* 45 AM. JUR. 2D *Involuntary Servitude and Peonage* § 19 (2018).

¹¹¹ 22 U.S.C. § 7105 (2012). The United States framework establishes a right to an effective remedy that is consistent with the Basic Principles. *See* UNHCHR, *supra* note 17, at 12.

¹¹² 22 U.S.C. § 7105 (2012). For example, victims of trafficking have access to information about federally-funded anti-trafficking programs. *See* UNHCHR, *supra* note 17, at 12–13.

¹¹³ 22 U.S.C. § 7105 (2012). There is no direct mention of the substantive forms, but those have been seen to, at least in some form, be included. *See* UNHCHR, *supra* note 17, at 13–16.

¹¹⁴ Ivy C. Lee & Mie Lewis, *Human Trafficking From a Legal Advocate’s Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U.C. DAVIS J. INT’L L. & POL’Y 169, 179 (2003).

¹¹⁵ *Id.* at 180. The applicant must “be physically present in the United States or its territories[,] . . . [must] comply with reasonable requests for assistance in the investigation or prosecution of trafficking by law enforcement[,] and . . . [must] show that he or she would suffer ‘extreme hardship involving unusual and severe harm’ upon removal from the United States.” *Id.* (citing Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965)).

¹¹⁶ *Id.* at 181.

¹¹⁷ *Id.*

¹¹⁸ Adam S. Butkus, Note, *Ending Modern-Day Slavery in Florida: Strengthening Florida’s Legislation in Combating Human Trafficking*, 27 STETSON L. REV. 297, 318–21 (2007).

¹¹⁹ *Id.* at 321.

¹²⁰ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-64, tit. I, §103(c), 119 Stat. 3558 (2006).

¹²¹ Giampolo, *supra* note 103, at 206.

trafficking, both domestic and abroad.¹²² Subsequent amendments have included provisions such as granting extraterritorial jurisdiction to the United States government.¹²³ The most recent amendment was passed in 2013.¹²⁴

Although the Trafficking and Violence Prevention Act consolidated legislation to create a federal civil remedy, it failed to sufficiently address human trafficking concerns.¹²⁵ There is a right to punitive damages for the victim, as well as a concurrent criminal action.¹²⁶ It has been posited “that a failure of the TVPA is the result of law enforcement’s tendency to undercut the humanitarian aim of protecting and assisting trafficking victims.”¹²⁷ Because prosecutors focus on the punishment of traffickers, many victims go without reparation.¹²⁸

Another limitation on the United States’ efforts to combat human trafficking is due to the lag of state anti-trafficking law and policy on prosecuting traffickers behind their federal counterparts.¹²⁹ All fifty states have criminalized human trafficking, but it is argued that states lack the key protections that would be handled in a comprehensive anti-trafficking regime.¹³⁰ The National Conference of Commissioners on Uniform State Laws created the Uniform Act on the Prevention of and Remedies for Victims of Human Trafficking, but that has yet to be implemented.¹³¹

C. POSITIVE STEPS TAKEN BY UNITED STATES COURTS

Another response to the epidemic of human trafficking in the United States was the development of prostitution courts in New York and New Jersey.¹³² These prostitution courts have tried to double as social welfare agencies, and can show how public welfare administration and criminal courts share similar ideas, but can reach much different ends.¹³³ For example, the courts focus on building self-esteem and teaching health classes to prostitution defendants.¹³⁴ Prostitution defendants normally face community service sentences, but could face incarceration if they do not complete the service, or continue to be placed

¹²² *Id.* at 224.

¹²³ Claudia G. Catalano, Annotation, *Validity, Construction and Application of Section 112 of Trafficking Victims Protection Act of 2000 and Subsequent Reauthorizing Provisions amending Chapter 77 of Title 18, United States Code*, 75 A.L.R. FED. 2d 467 (2013).

¹²⁴ Andrew Hall, Note, *The Uniform Act on Prevention of and Remedies for Human Trafficking*, 56 ARIZ. L. REV. 853, 859 (2014).

¹²⁵ Shannon Lack, Note, *Civil Rights for Trafficked Persons: Recommendations for a More Effective Federal Civil Remedy*, 26 J.L. & COM. 151, 152 (2007).

¹²⁶ 18 U.S.C. § 1595 (2015) (not including retroactivity for those acts before the passage of the statute); see also *Ditullio v. Boehm*, 662 F.3d 1091 (9th Cir. 2011).

¹²⁷ Lack, *supra* note 125, at 159.

¹²⁸ *Id.* at 160.

¹²⁹ Hall, *supra* note 124, at 853.

¹³⁰ *Id.* at 864.

¹³¹ *Prevention of and Remedies for Human Trafficking Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Prevention of and Remedies for Human Trafficking> (last visited Nov. 11, 2018).

¹³² Amy J. Cohen, *Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City*, 95 TEX. L. REV. 915, 915 (2017). The first Community Court opened in Manhattan in 1993, with four new prostitution courts that opened in New York City in 2013.

¹³³ *Id.*

¹³⁴ *Id.* at 958–59.

back in the system.¹³⁵ Although this step forward has not been clear of criticism,¹³⁶ these problem-solving courts look to treat prostitution defendants as victims, rather than criminals.¹³⁷

Many of the problems that still face the domestic prostitution realm are relevant to victims of human trafficking. Prostitution defendants largely do not trust law enforcement, and are usually labeled as criminals rather than victims.¹³⁸ A prostitution court “works within the preexisting system to create a pathway to social services.”¹³⁹ Although this might not be a perfect fit in terms of human trafficking victims under the Palermo Protocol, creating some kind of specialized proceeding would vastly increase the remedial access for these victims, as well as decrease recidivism and re-trafficking.

The United States, as a prominent global figure, meets the criterion under the Palermo Protocol and Basic Principles, but continues to fail in creating a systematic solution to the problem of human trafficking, both domestically and abroad. In order for other countries to follow suit in continuing to protect and prevent human trafficking victims, the United States must use its global prominence as a platform to function as a role model to other States.

III. INTERNATIONAL ANALYSIS OF VICTIMS’ REMEDIES

A. INTRODUCTION

The group of countries involved in the studies came from L.L.M. students at the University of Notre Dame, who analyzed the compliance of their own countries with the Protocol and United Nations Principles. Those countries are: South Africa,¹⁴⁰ Burundi,¹⁴¹ Colombia,¹⁴² Ecuador,¹⁴³ Panama,¹⁴⁴ Mexico,¹⁴⁵ Myanmar,¹⁴⁶ Venezuela,¹⁴⁷ Brazil,¹⁴⁸ Bulgaria,¹⁴⁹ the United Kingdom, and

¹³⁵ *Id.* at 958.

¹³⁶ See generally Mae C. Quinn, *Revisiting Anna Moscowitz’s Kross’s Critique of New York City’s Women’s Court: The Continued Problem of Solving the “Problem” of Prostitution with Specialized Criminal Courts*, 33 *FORDHAM URB. L.J.* 665 (2005).

¹³⁷ See generally Brynn N.H. Jacobson, Comment, *Addressing the Tension between the Dual Identities of the American Prostitute: Criminal and Victim; How Problem-Solving Courts Can Help*, 37 *SEATTLE U. L. REV.* 1023 (2014).

¹³⁸ *Id.* at 1025–26.

¹³⁹ *Id.* at 1051.

¹⁴⁰ ROBERT CAVE, *A CRITICAL ANALYSIS OF HUMAN TRAFFICKING IN SOUTH AFRICA: REMEDIES AND RECOMMENDATIONS* (The Center for Civil and Human Rights, 2016), http://humanrights.nd.edu/assets/205384/ht_lgl_rems_cave.pdf.

¹⁴¹ AUDACE GATAVU, *LEGAL REMEDIES FOR HUMAN TRAFFICKING IN BURUNDI* (The Center for Civil and Human Rights, 2016), <https://humanrights.nd.edu/assets/205385/>.

¹⁴² NATHALIA CONTRERAS PARDO, *LEGAL FRAMEWORK AGAINST TRAFFICKING IN PERSONS IN COLOMBIA* (The Center for Civil and Human Rights, 2016), <https://humanrights.nd.edu/assets/210533/>.

¹⁴³ JOHANNA VILLEGAS, *LEGAL REMEDIES FOR HUMAN TRAFFICKING IN ECUADORIAN LAW AND PUBLIC POLICY* (The Center for Civil and Human Rights, 2016), <https://humanrights.nd.edu/assets/205392/>.

¹⁴⁴ ELIOTT FITCH, *HUMAN TRAFFICKING IN PANAMA: A COUNTRY ANALYSIS* (The Center for Civil and Human Rights, 2016), http://humanrights.nd.edu/assets/205383/ht_lgl_rems_fitch.pdf.

¹⁴⁵ TRAUlsen, *supra* note 13.

¹⁴⁶ NWE NWE LWIN, *LEGAL REMEDIES FOR VICTIMS OF INTERNAL SEX TRAFFICKING IN MYANMAR* (The Center for Civil and Human Rights, 2016), <https://humanrights.nd.edu/assets/205388/>.

Lithuania.¹⁵⁰ The compliance rate and effectiveness of these programs under each State's domestic law is mixed.

Each of these countries has implemented some form of the Palermo Protocol, so the focus of the case studies is on the adequacy of the United Nations Principles in each of the countries.¹⁵¹ Those United Nations Principles include: rights and obligations, access to the right to a remedy, forms of a remedy, and a right to remedy of child victims of trafficking.¹⁵²

The goal of this analysis is to address these studies as a whole and find trends in the research from each of the countries. It is important to take this qualitative data and be able to compare it to other sources of human trafficking data, such as the TIP Report,¹⁵³ to see how the goals and reality align.

B. RIGHTS AND OBLIGATIONS¹⁵⁴

Articles 2, 6, 7, and 9 of the Protocol ensure that victims are treated with full respect of their human rights and are offered a full range of remedies provided by the State.¹⁵⁵ The duty of the States to provide remedies is invoked in three particular circumstances:

[i]n the case of violations that are the result of an act or omission by a State actor; . . . [i]n the case of violations that are committed by non-State actors but with the acquiescence, collaboration, knowledge or acknowledgment of the State; . . . [or,] [i]n the event of failure by the State to exercise due diligence to prevent, investigate, or prosecute a violation by private actors.¹⁵⁶

According to the Principles on the Right to Effective Remedy for Victims of Trafficking in Persons, States “shall provide and/or facilitate access to remedies as required by binding international law, including anti-trafficking instruments and international human rights law.”¹⁵⁷ Different regions have developed legal frameworks and policy initiatives that reaffirm the right to an

¹⁴⁷ ALEJANDRA FERNANDEZ SADER, REMEDIES FOR HUMAN TRAFFICKING IN VENEZUELA: CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK (The Center for Civil and Human Rights, 2016), <https://humanrights.nd.edu/assets/238169/>.

¹⁴⁸ MARCELLA RIBEIRO D'AVILA LINS TORRES, HUMAN TRAFFICKING IN BRAZIL: LEGAL REMEDIES: ADVANCES IN NATIONAL LEGISLATION (The Center for Civil and Human Rights, 2016), http://humanrights.nd.edu/assets/205412/ht_lgl_rems_torres.pdf.

¹⁴⁹ NEYSA NANKERVIS, COMBATTING TRAFFICKING IN PERSONS: BULGARIA'S RESPONSE TO A GLOBAL CRISIS (The Center for Civil and Human Rights, 2016), <https://humanrights.nd.edu/assets/205387/>.

¹⁵⁰ KAROLINA KISKYTE, LEGAL REMEDIES FOR HUMAN TRAFFICKING IN THE UNITED KINGDOM AND LITHUANIA (The Center for Civil and Human Rights, 2016), <https://humanrights.nd.edu/assets/205386/>.

¹⁵¹ See generally TRAUlsen, *supra* note 13.

¹⁵² UNHCHR, *supra* note 17, at 12–16.

¹⁵³ TRAFFICKING IN PERSONS REPORT 2017, *supra* note 75.

¹⁵⁴ UNHCHR, *supra* note 17, at 12.

¹⁵⁵ *Id.* at 42–44.

¹⁵⁶ *Id.*

¹⁵⁷ SADER, *supra* note 147, at 41.

effective remedy codified in the international human rights instruments.¹⁵⁸ In all of the case studies at issue, each of the countries has developed some kind of framework in accordance with the Protocol to address each of these components.

Overall, each of the countries complies with the Rights and Obligations section of the Principles, as the States have adopted binding laws on their national governments that, at least in theory, cover trafficking victims and define how the offenders will be prosecuted and who will be held responsible.¹⁵⁹ For example, one of the main purposes in Mexico's statute is to provide victims of trafficking with "a complete, adequate, prompt, effective, and proportional reparation for the harm suffered."¹⁶⁰ By establishing responsibility for these crimes, as well as coverage to victims, States are accountable on an international stage.

A drawback in some of the frameworks is the ambiguity in the statutory language.¹⁶¹ Some State's laws do not expressly address the classifications in the same way as the United Nations Principles, thereby creating a tension between the international protocol and enforcement in the States. A way to improve these issues would be to use the same classifications and standards that are used on an international level to provide consistency to victims who are trafficked around the world. When there are different legal standards or definitions for the same crimes, the victims are the ones who will suffer, not the offenders.

C. ACCESS TO THE RIGHT OF A REMEDY¹⁶²

Although States are under an obligation to provide some sort of redress for human trafficking victims, that access can be hindered.¹⁶³ Remedies for gross violations of international human rights law include the victims' right to the following under international law: "(a) [e]qual and effective access to justice; (b) [a]dequate, effective, and prompt reparation for the harm suffered; (c) [a]ccess to relevant information concerning violations and reparation mechanisms."¹⁶⁴ Remedies are necessary for the violations of human rights, as there is no enforceable right without some access to a remedy.¹⁶⁵ States that are not directly implicated in the trafficking or directly responsible for the victim

¹⁵⁸ UNHCHR, *supra* note 17, at 4. These different regional frameworks include: Council of Europe Convention on Action against Trafficking in Human Beings, the American Convention on Human Rights, the Association of Southeast Asian Nations anti-trafficking initiatives, the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child. *Id.* at 4–5.

¹⁵⁹ *See, e.g.*, FITCH, *supra* note 144, at app. 1.

¹⁶⁰ TRAUlsen, *supra* note 13, at 16.

¹⁶¹ *See* GATAVU, *supra* note 141, at 13.

¹⁶² UNHCHR, *supra* note 17, at 12–13.

¹⁶³ *See* Inter-Agency Coordination Grp. Against Trafficking in Pers., Issue Paper on Providing Remedies for Victims of Trafficking in Persons 3 (2016) [hereinafter Inter-Agency Coordination Grp.].

¹⁶⁴ G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, at 6 (Mar. 21, 2006).

¹⁶⁵ *See* Inter-Agency Coordination Grp., *supra* note 163, at 11.

still have an obligation to investigate and prosecute the offenses.¹⁶⁶ If the State fails to take reasonable steps to prosecute the offenses, the State may be obligated to pay remedies.¹⁶⁷

The right of a remedy remains out of reach for many victims, as States sometimes have inadequate remedies, but mostly because victims have inadequate information about the processes and procedures for obtaining them.¹⁶⁸ The main obstacles to effective remedies are “poor implementation and interpretation of existing . . . legal frameworks, limited resources [and] capacities” dedicated to this issue, and “gaps in the identification and tendency to criminalize victims.”¹⁶⁹

The case analyses seem to follow the same trends that are shown by the international organizations.¹⁷⁰ Ecuadorian law allows for victims to have access to criminal, civil, and labor remedies.¹⁷¹ Colombian law also partially complies with the international standards, as there are legally enforceable rights to remedies, but there are gaps to implementation.¹⁷² In Myanmar, the national framework falls short of providing access to remedies for victims of trafficking.¹⁷³ In the majority of States involved in the studies, there were no provisions in the national frameworks that provided for a reflection and recovery period for the victims, which includes access to housing, psychological and social services, legal access, and employment.¹⁷⁴

These analyses are representative of the research as a whole. Member States are obligated via the Protocol to establish access to the right to a remedy, which is present in each of the analyses.¹⁷⁵ The main issue with the implementation of these national frameworks is the prescriptive nature of the language in the Protocol that does not bind the States to any particular remedial scheme.¹⁷⁶ When States are not bound to a particular set of guidelines from a higher authority, it creates a discrepancy between expectations on the international level and reality. These issues also affect how victims will be treated in different countries, as victims will have different rights depending on which country they are rescued to.

D. FORMS OF A REMEDY

States shall provide “assistance and support aimed at restitution, rehabilitation, compensation and satisfaction and guarantees of non-

¹⁶⁶ *Id.* at 3–4.

¹⁶⁷ *Id.* at 4–5.

¹⁶⁸ *Id.* at 2.

¹⁶⁹ UNHCHR, *supra* note 17, at 5–6.

¹⁷⁰ See NANKERVIS, *supra* note 149. Bulgaria is a perfect exemplar of compliance to the Basic Principles, as there is partial compliance to the access to the right to a remedy, by only receiving a reflection period upon identification and cooperation in an investigation, as well as not having adequate housing and only mandating health care in emergency situations. *Id.* at 9–11.

¹⁷¹ VILLEGAS, *supra* note 143, at 8–11.

¹⁷² PARDO, *supra* note 142, at 10–11.

¹⁷³ LWIN, *supra* note 146, at 17.

¹⁷⁴ See, e.g., SADER, *supra* note 147, at 38.

¹⁷⁵ See generally TORRES, *supra* note 148, at 11.

¹⁷⁶ See UNHCHR, *supra* note 17, at 8.

repetition.”¹⁷⁷ The previous sections have focused on the access to a remedy overall, whereas the forms of a remedy focuses on the substantive aspect of remedies that are available to victims. Although the main forms of remedies are restitution and compensation, the other remedies, such as of rehabilitation, satisfaction, and guarantee of non-repetition, should also be available under the Principles.¹⁷⁸

1. Restitution¹⁷⁹

Restitution is concerned with the victim.¹⁸⁰ The goal is to restore the victim to their situation before the trafficking.¹⁸¹ A major form of restitution is the assistance given to victims after their rescue from sex trafficking. These essential services are: “adequate shelter; counselling and information about their situation and legal rights in a language that they understand; medical, psychological and material assistance; and employment, educational and training opportunities.”¹⁸² Because of ambiguities in language, the term “‘the best interest of the trafficked person’ should be clearly defined to avoid different interpretations.”¹⁸³

A reflection period, in which victims would be given physical, psychological, and social recovery is seen as being essential for the victims to overcome trauma and to be able to gain enough confidence to bring legal proceedings.¹⁸⁴ In almost all of the case analyses, the national frameworks do not have a reflection period as part of their legislation.¹⁸⁵

The Mexican framework complies with the Principles by providing for restitution, but the Protocol is not complete.¹⁸⁶ Similarly, in Venezuela, the criminal code provides for restitution, but the specifics of the program do not fit the Protocol, and therefore, are insufficient.¹⁸⁷ In Myanmar, on the other hand, the only restitution measures are the repatriation of victims to their original place of residence and the availability of damages to the victim from money confiscated by the offender.¹⁸⁸ In both of these circumstances, the State has set forth a framework that, in theory, fits with the Protocol, but in practice, comes up short.¹⁸⁹

One way to improve restitution as an effective remedy would be to grant unconditional assistance to victims. In many states, restitutive measures can be

¹⁷⁷ SADER, *supra* note 147, at 42 (citing UNHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1 (2002)) (citation omitted).

¹⁷⁸ See UNHCHR, *supra* note 17.

¹⁷⁹ *Id.* at 13–14.

¹⁸⁰ Inter-Agency Coordination Grp., *supra* note 163, at 11.

¹⁸¹ *Id.* This can present a challenge because it can expose the victim to re-trafficking or other human rights violations.

¹⁸² UNHCHR, *supra* note 17, at 7.

¹⁸³ *Id.* at 6.

¹⁸⁴ *Id.* at 7.

¹⁸⁵ See, e.g., NANKERVIS, *supra* note 149, at annex.

¹⁸⁶ TRAUlsen, *supra* note 13, at 18. There is no specific mention about restoration of liberty, recognition of citizenship, employment, or any specific provision on assistance of social reintegration. *Id.* at 18–19.

¹⁸⁷ SADER, *supra* note 147, at 38.

¹⁸⁸ LWIN, *supra* note 146, at 11.

¹⁸⁹ Accord CAVE, *supra* note 140, at 25–26.

dependent on the victim's cooperation in legal proceedings, which can put their residency at risk.¹⁹⁰ Also, because the language in the Protocol is not prescriptive, this can be an obstacle to a victim's realization of restitutive measures.¹⁹¹

Because each of the victims comes from diverse backgrounds, ethnicities, and cultures, the national frameworks need to address these individual circumstances of the victims and provide for them accordingly. Each victim has a different trafficking experience, requiring an individual assessment. If the States are not willing to fill the gaps and provide for more extensive coverage, victims will likely continue to be re-trafficked in the future.

2. Compensation¹⁹²

Compensation has been widely seen as an important component of a victim's remedies, but has been lacking in application.¹⁹³ Access to compensation can be hindered by the lengthy judicial process in both criminal and civil proceedings, victims not having access to lost wages, and having irregular immigration status.¹⁹⁴ Compensation can include: lost labor wages, the cost of physical or psychological medical treatment, recognition of the moral and emotional harm to the victim, as well as potential harm committed by the State.¹⁹⁵

Under South African law, which is one of the more compliant States in the case analyses, victims are often grossly undercompensated for the crimes committed against them.¹⁹⁶ A common theme to this under compensation is that State officials exhibit gender biases towards female victims of trafficking, and that many officials presume that the gender-specific injuries the female has suffered were not quantifiable, and therefore, would not receive compensation.¹⁹⁷ Also, many officials worry that by opening the door to compensation, potential victims would be incentivized to bring false claims.¹⁹⁸

In Colombia, the legislation establishes forms of compensation that include: physical and mental harm, lost employment, non-material damages, and, in some cases, legal expenses.¹⁹⁹ In the United Kingdom, victims are entitled to reparations under the domestic Modern Slavery Act, which allows compensation for any harm suffered resulting from the human trafficking crime.²⁰⁰ An important observation is that there is a "lack of awareness on the part of law enforcement and prosecutors about the existing legal avenues for

¹⁹⁰ UNHCHR, *supra* note 17, at 7.

¹⁹¹ *Id.* at 6.

¹⁹² *Id.* at 14–15.

¹⁹³ *Id.* at 8.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* Some collateral damage by the State can include re-victimization.

¹⁹⁶ *See* CAVE, *supra* note 140, at annex.

¹⁹⁷ *Id.* at 18.

¹⁹⁸ *Id.*

¹⁹⁹ PARDO, *supra* note 142, at 13. Under the legislation, the victim would not receive legal fees if she was unsuccessful on her claims. *Id.*

²⁰⁰ KISKYTE, *supra* note 150, at 9.

pursuing compensation.”²⁰¹ When there is a mandatory compensation order, that can increase the likelihood of victim reparation.

One way to improve the lack of compensation would be to allocate specific funds to support trafficking victims. A State-funded scheme could be an important component of victim restitution and the ability to re-integrate into society.²⁰² In the United Nations Principles, States stressed the importance of confiscating the proceeds from trafficking crimes and using those as part of compensation to the victims.²⁰³ Although there would not need to be a uniform system of compensation for every state, victims should have access to universal compensation, no matter the state in which they are recovered.

The trends in the case analyses follow what international observations have already set forth.²⁰⁴ There are compensation mechanisms in each of the states, but their level of success is varied.²⁰⁵ When victims have no way to provide for themselves after the rescue from trafficking, they are unlikely to pursue their compensatory options, absent a clear path.

3. *Rehabilitation and Recovery*²⁰⁶

Restitution and rehabilitation work co-extensively. Similarly, with restitution, “[t]he non-obligatory nature of recovery in the Palermo Protocol was identified as an obstacle to the effective realization of the right to restitution and recovery,” as it does not use “prescriptive language with regard to provisions on victims’ rights.”²⁰⁷

Rehabilitation and recovery can include: medical, psychological, legal, and other social care.²⁰⁸ The reflection period is also a pertinent part of the rehabilitation and recovery component.²⁰⁹ The goal of rehabilitation and recovery is to provide the victim with essential services that can prevent future incidents of trafficking and trauma. In order to achieve successful restitution and rehabilitation, suggestions have been made to establish anti-trafficking committees, centers providing a broad range of services, better funding for victim compensation, and legal counseling.²¹⁰

As previously stated, the reflection period that is obligated under the Protocol is not being adequately implemented in the states involved in the case analyses.²¹¹ Venezuela does not provide for unconditional legal assistance for the victim, as this can be dependent upon their willingness or capacity to cooperate in legal proceedings.²¹² In Brazil, the policy states that assistance is

²⁰¹ *Id.*

²⁰² UNHCHR, *supra* note 17, at 8.

²⁰³ *Id.* It was also suggested that resources for the funds should not solely result from the seizure of traffickers’ assets, but rather the states should also develop alternative means to raise funds for victim support and compensation. *Id.*

²⁰⁴ *See* TRAFFICKING IN PERSONS REPORT 2017, *supra* note 75 (discussing the country analyses).

²⁰⁵ *See id.*

²⁰⁶ UNHCHR, *supra* note 17, at 15.

²⁰⁷ *Id.* at 6.

²⁰⁸ Inter-Agency Coordination Grp., *supra* note 163, at 11.

²⁰⁹ *Id.*

²¹⁰ UNHCHR, *supra* note 17, at 7.

²¹¹ *See, e.g.*, TRAUlsen, *supra* note 13, at 20.

²¹² SADER, *supra* note 147, at 39.

not conditioned upon cooperation with legal prosecutions, but in practice, there are more incentives to the victim in exchange for cooperation.²¹³ Ecuador follows a similar protocol in which the victim's status is dependent upon their cooperation.²¹⁴

As with many of the states involved in the analyses, there is some kind of rehabilitation and recovery mechanism set up that aligns with the Protocol. Despite these steps forward, the actual implementation is flawed, as necessary services to the victim can be diminished if the victim is either too scared or unwilling to participate in criminal prosecutions. For states to improve, there cannot be conditional assistance, as it creates an incentive for the victim to not seek necessary help from the authorities. If the victim cannot trust the authorities, he or she will not seek any remedy, and will likely just be returned to the home country with the high risk of re-trafficking.

4. *Satisfaction*²¹⁵

Satisfaction is part of a non-financial form of reparation.²¹⁶ This involves acknowledging the violation and taking steps to prevent future violations.²¹⁷ Ways to secure satisfaction in the processes can include: verification of the facts and public disclosure of the truth, an official or judicial declaration restoring the rights of the victim, public apologies, and some measure of sanctions against the person liable for the violations.²¹⁸

Again, many of the national frameworks are spotty as to the implementation of this remedy.²¹⁹ Criminal proceedings are the most common form of satisfaction in the states present in the case analyses, but those can be hindered if the victim is unwilling or scared of participation.²²⁰ For example, Burundi provides for criminal processes against the offender as the primary means for fact-finding, as well as the possibility that the offender can be disbarred from political, civil, or family rights.²²¹

Panama also has strict penalties for engaging in human trafficking, which would, in theory, help to cease a continued violation, but outside of civil and criminal penalties, there are no additional measures taken to encourage a cessation of continuing violations.²²² Mexico presents some of the same issues as the other countries. There are some provisions in its domestic law regarding non-financial reparation, including the right to know the truth and the right to a public apology, but there is no provision aimed to cease continuing violence or one regarding judicial and administrative sanctions against specific persons.²²³

²¹³ TORRES, *supra* note 148, at 13–14.

²¹⁴ VILLEGAS, *supra* note 143, at 16.

²¹⁵ UNHCHR, *supra* note 17, at 15.

²¹⁶ *See, e.g.*, VILLEGAS, *supra* note 143, at 17.

²¹⁷ Inter-Agency Coordination Grp., *supra* note 163, at 12.

²¹⁸ *Id.*

²¹⁹ *See, e.g.*, VILLEGAS, *supra* note 143, at 17–18 (showing that Ecuador only complies with three of the elements that make up satisfaction, and that there is not specific action to compensate the victim for moral damages in a non-financial form).

²²⁰ *See, e.g.*, GATAVU, *supra* note 141, at 15.

²²¹ *Id.*

²²² FITCH, *supra* note 144, at 5.

²²³ TRAUlsen, *supra* note 13, at 20.

While there are positive steps taken in addressing these non-financial forms for reparation, there is still a lot of work to be done. As was established in South Africa, there are possibly issues with this kind of compensation to the victims, as there is always a possibility of gender bias toward the victims and worries about false claims. But, for the victim, having an official declaration that restores the person's rights and reputation, as well as a public apology, can help mend the wounds that otherwise cannot be healed through other means.

5. *Guarantee of Non-Repetition*²²⁴

The last form of substantive reparation is the guarantee of non-repetition. This form of relief can overlap with satisfaction because of its non-monetary nature.²²⁵ It requires “the effective investigation, prosecution, and sanctioning of traffickers, as well as taking all measures to protect the victim.”²²⁶ Other ways to strengthen this response are through more stringent legal action and taking action to address the causes of trafficking.²²⁷

These guarantees are essential in cases of trafficking due to the danger of re-trafficking.²²⁸ Some causes of trafficking are poverty, gender inequality, and discrimination.²²⁹ The guarantee of non-repetition is easy to legislate, but extremely difficult to put into practice. Because this goes to the core of human trafficking, authorities are faced with the challenge of trying to change overall social norms to prevent trafficking while also trying to get victims out of the trade.²³⁰

Ecuador does not provide for specific measures to protect victims from being re-trafficked.²³¹ There are provisions in its Constitution that recognize basic human rights and non-discrimination, but there is no specific implementation measure in the country.²³² In Myanmar, there are no laws that acknowledge the investigation of traffickers or any other measures that would prevent the re-trafficking of victims.²³³

These two examples are part of the broader idea—that some States have no provisions that protect the guarantee of non-repetition, and even when they do, it is not automatically a success. For the future, there needs to be more international accountability for the States to provide for some prevention mechanism that can change the social fabric in general. Otherwise, States can only continue to provide other remedial measures to the victims. If there is no success in prevention, this will be an ongoing cycle of both re-trafficking and the recruitment of new victims.

²²⁴ UNHCHR, *supra* note 17, at 15.

²²⁵ Inter-Agency Coordination Grp., *supra* note 163, at 12 (citations omitted).

²²⁶ *Id.* (showing that these measures to protect the victim can be implemented “through safe return, temporary or permanent residence status, and integration support”).

²²⁷ *Id.*

²²⁸ VILLEGAS, *supra* note 143, at 18.

²²⁹ Inter-Agency Coordination Grp., *supra* note 163, at 12.

²³⁰ See CAVE, *supra* note 140 (discussing gender biases in the State as a potential barrier to remedies).

²³¹ VILLEGAS, *supra* note 143, at 19.

²³² *Id.*

²³³ LWIN, *supra* note 146, at 13.

E. RIGHT TO REMEDY OF CHILD VICTIMS OF TRAFFICKING

Children need special access to remedies for breaches of their rights.²³⁴ Under the United Nations Principles, “children should be offered special protection and rehabilitation as victims of trafficking, or as minors under the care of parents or guardians who are themselves the victims of trafficking.”²³⁵ In this context, the vulnerability of children and their legal status should be developed to cater to these victims.²³⁶ Some specific recommendations with regard to child victims include: extending immigration relief to the families of victims, child care for parents, and access to school and education programs for children.²³⁷

Of all of the provisions in each case study, coverage for child victims is the least adequate. In Venezuela, there is no explicit protection of children and adolescents for the State to establish programs and projects for the protection of these victims.²³⁸ There are no obligations for procedures to obtain access to and enforcing remedies for children.²³⁹ In addition, Brazil has established the Child and Adolescent Statute that gives special care to children, but there is no mention of human trafficking victims.²⁴⁰

On the other hand, some States have taken positive steps to protect children. In Burundi, necessary measures are taken to identify the child’s family, and mentors are assigned to each child to stand for their interests.²⁴¹ Furthermore, Ecuadorian law provides physical, psychological, and social services to those child victims, with special attention to this vulnerable group.²⁴²

Overall, in each of the case studies, children are all covered in some way, but there are many gaps in the law that do not have special protections for these vulnerable victims. When these victims are able to get out of trafficking, they may be in a completely foreign country with no parents, guardians, and possibly without knowledge of the local language. Without special protections, there is no one who can speak up for these children, and they will potentially be re-trafficked after their rescue. The remedies for child victims are analogous

²³⁴ Inter-Agency Coordination Grp., *supra* note 163, at 7. “The UN Committee on the Rights of the Child recommends that states establish ‘effective, child-sensitive procedures’ to provide child-friendly information, advocacy, including access to independent complaints procedures and [access] . . . to the courts with necessary legal and other assistance.” *Id.*

²³⁵ UNHCHR, *supra* note 17, at 9.

²³⁶ *Id.* (“Participants recognized that children were especially vulnerable to intimidation by traffickers and to the social stigma that can accompany trafficking in persons. These factors should be taken into consideration in the development and implementation of restitution initiatives. A longer period of reflection for child victims was recommended, as it is important to ensure their informed consent through access to information in a medium accessible and appropriate for them. With regard to compensation, a suggestion was made that any compensation awarded to child victims should remain partially under the control of the State so that it may be used by the victims once they reach the age of majority in order to give them an opportunity to build their future.”)

²³⁷ *Id.* at 9–10.

²³⁸ SADER, *supra* note 147, at 40.

²³⁹ *Id.*

²⁴⁰ TORRES, *supra* note 148, at 14–15.

²⁴¹ GATAVU, *supra* note 141, at 15.

²⁴² VILLEGAS, *supra* note 143, at 25.

to the overall trends in the research, as the intentions to protect and compensate these victims is present, but the actual implementation is lacking, if any at all.

IV. TRENDS IN THE RESEARCH

Because of the sporadic and, at times, inaccurate representations of statistics on human trafficking, it is important to look at these case analyses and find patterns and outliers that can be used as models for future research and legislation to combat this epidemic. I will discuss which countries stand out for their compliance and non-compliance, as well as address the trends in the analyses and how each State can improve.

A. MODEL COUNTRIES

The first State that stands out in its relative compliance of the Protocol, in comparison to the other States, is Ecuador. Ecuador is a “source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor.”²⁴³ Because Ecuador is such a prevalent player in the global trafficking regime, it is crucial for the authorities to address these issues in their national framework. Ecuador adopted the Palermo Protocol on September 17, 2002, and subsequently adopted changes to the national law to comply with the international standards.²⁴⁴ These changes include: incorporating the national standards to the Ecuadorian Constitution,²⁴⁵ making human trafficking a national priority in 2004 through Decree No. 1981,²⁴⁶ and supporting national authorities to implement programs to prevent trafficking.²⁴⁷

With regards to remedies, the Ecuadorian Constitution recognizes that all victims of crimes shall benefit from protection and shall have access to reparation, which includes the five substantive provisions of the United Nations Principles.²⁴⁸ Although there are multiple policies and enforcement mechanisms under Ecuadorian law, a major drawback to this regime is the lack of uniformity in coverage to the victims. There are nine mechanisms in Ecuadorian law that attempt to incorporate the United Nations Principles.²⁴⁹

²⁴³ U.S DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 2015, at 146 (2015), <https://www.state.gov/documents/organization/245365.pdf>.

²⁴⁴ VILLEGAS, *supra* note 143, at 2–3.

²⁴⁵ *Id.* at 3 (indicating that there has been no specific law to address human trafficking, but that the Constitution prohibits the “slavery, exploitation, bondage, smuggling, and trafficking in human persons in all their forms”).

²⁴⁶ *Id.* at 5. After Decree 1981, Ecuador adopted the National Plan to Combat Human Trafficking, Illegal Smuggling of Migrants, Sexual and Labour Exploitation and Other Forms of Exploitation and Prostitution of Women, Children, and Adolescents, Child Pornography and Corruption of Minors, which was created in 2006 and updated in 2010. *Id.*

²⁴⁷ *Id.* at 6 (including the National Police Unit for Crimes Against Children and Adolescents, as well as the Unit Against Human Trafficking and Illegal Smuggling).

²⁴⁸ *Id.* at 8.

²⁴⁹ *Id.* at 6–7 (stating that these mechanisms are: “the Constitution, the Civil Code, the Organic Integral Penal Code, the Childhood and Adolescence Code, the Organic Code of the Judicial Branch, the Organic Code of General Processes, the Organic Law of Judicial Guarantees and Constitutional

Because there is such a disjunction in enforcement of the law, there is a higher risk of oversight problems when complying with the Principles and Protocol.

Overall, there are gaps in the access to remedies, such as a lack of a reflection period, requiring cooperation in the legal proceedings, and a lack of a provision that lays out specific remedies to the victims.²⁵⁰ The Ecuadorian schemes also have gaps in the substantive remedies, such as compensation.²⁵¹

Although there is a lack of resources to adequately update the National Plan to Combat Trafficking in Persons, Ecuador has taken positive steps in their national framework.²⁵² As is seen throughout all of the case analyses, many States have implemented some kind of enforcement mechanism in accordance with the Protocol, but the actual implementation of these programs can be underwhelming. Ecuador should take their mechanisms and create one uniform law to access trafficking in persons in the future to stop victims from falling through the cracks. Ecuador is considered, in this analysis, a compliant country because it is such a high-volume area for trafficking, and yet there is a substantial effort to make positive change.

The other country that stands out positively in this analysis is Mexico. Mexico implemented the Palermo Protocol and subsequently, reformed the criminal code to include human trafficking as a federal crime.²⁵³ Because of the initial ineffectiveness of the law, the Federal Congress issued the General Law on Human Trafficking in 2012.²⁵⁴ In 2013, the Federal Congress created an internal regulation²⁵⁵ to establish the mechanisms to coordinate the federal government in the prevention and investigation of the crimes.

The National Program to Combat Human Trafficking establishes four main goals.²⁵⁶ Victims can obtain reparation through criminal proceedings, administrative proceedings, and civil damages.²⁵⁷ Mexico formally complies with the international obligations and principles, but as with the majority of other countries in the analyses, the biggest issue lies in enforcement.²⁵⁸

Mexico provides for all of the five substantive forms of a remedy, and although there are gaps in the legislation, the uniformity of the laws helps identify these gaps in a more efficient manner, allowing the authorities to make changes.²⁵⁹ The biggest shortcoming in the law is the risk that victims will be

Control, and the Regulations for the System of Protection and Assistance to Victims, Witnesses, and Other Participants of the Criminal Proceedings”).

²⁵⁰ *Id.* at 8–11.

²⁵¹ *See id.* at 15–16. There are a lot of missing pieces that are recognized in the Principles but not in the Ecuador law, mainly with regards to a lack of specificity in the compensation regime. *Id.*

²⁵² *See generally* VILLEGAS, *supra* note 143.

²⁵³ TRAULSEN, *supra* note 13, at 5.

²⁵⁴ *Id.* at 5–6.

²⁵⁵ *Id.* at 6 (referring to the Regulation to the General Law for the Prevention, Punishment and Eradication of the Trafficking in Persons Crimes and for the Protection and Assistance to the Victims of such Crimes).

²⁵⁶ *Id.* at 9. These goals are: “[p]revent trafficking in persons crimes and promote the visibility of trafficking in persons crimes[;] [p]rovide integral attention, protection, and assistance to trafficking in persons crimes[;] [p]romote the effective investigation and prosecution of the trafficking in persons crimes[;] and [p]romote transparency and access to information regarding trafficking in persons data.” *Id.*

²⁵⁷ *Id.* at 11–16.

²⁵⁸ *Id.* at 26.

²⁵⁹ *See id.*

prosecuted for their own actions, which would affect their willingness to participate in legal proceedings.²⁶⁰

Mexico's legislation is broader and more encompassing than the law in Ecuador. Mexico is able to provide all of the substantive remedies in some form, as well as broad access to remedies set forth in the Principles. Mexico needs to address problems of enforcement and implementation in the programs if they want to have success in the long run. Other States can learn from Mexico's successful legislation when taking their own steps of compliance in the Protocol.

B. SPECIFIC PROBLEMS IN SPECIFIC COUNTRIES

One overarching theme of trafficking legislation that is prevalent in South Africa is the systemic discrimination against female victims.²⁶¹ State officials "ignore the specific vulnerabilities of female victims by failing to ensure that proactive measures are [fully] in place," as well as failing to provide the financial needs of the victims, such as post-assault medical care and relocation expenses.²⁶² As many of the injuries suffered by victims are gender specific, and the courts lack an understanding of these needs, women may only recover compensation for loss of property, rather than physical or psychological harm.²⁶³

Another specific problem that has wide-reaching effects internationally is present in Myanmar. Myanmar is a source and transit country for other Asian countries, and internal sex-trafficking is rarely researched due to society's perception and the gap between the international obligations and actual practice.²⁶⁴ In many other countries, there is either lack of knowledge or resources that contribute to the cycle of human trafficking.²⁶⁵ Even though Myanmar has incorporated the Principles and Protocol, there is neither effective protection for the victims of internal sex trafficking, nor are there adequate remedies.²⁶⁶ Cases of domestic sex trafficking generally fall into commercial sex exploitation, debt bondage, or sex slavery.²⁶⁷ The Myanmar national legal framework does not address the right to an effective remedy for victims of trafficking offenses, and because of the continued stigma against sex work in the country, there does not seem to be any realistic future to the access to a remedy.²⁶⁸

²⁶⁰ *Id.* at 22.

²⁶¹ CAVE, *supra* note 140.

²⁶² *Id.* at 14–15.

²⁶³ *Id.* at 16.

²⁶⁴ LWIN, *supra* note 146, at 1.

²⁶⁵ See TRAULSEN, *supra* note 13 (showing Mexico as an example of a country that formally complies with the Protocol, but does not have the enforcement mechanisms or effective use of resources to implement).

²⁶⁶ LWIN, *supra* note 146, at 2.

²⁶⁷ *Id.* at 14.

²⁶⁸ *Id.* at 19. The only way for Myanmar to take a significant step forward is to first address the social and governmental problems surrounding victims of sex trafficking within the borders of the country. Without any meaningful policy changes in that sense, the victims will never see adequate redress from the offenders or State. *Id.*

Finally, Burundi faces an abundance of issues regarding the human trafficking scheme. The State faces the same issues as many other countries, such as lack of training for officials and inadequate resources,²⁶⁹ but the State also faces a wide variety of trafficking issues that may not be experienced elsewhere. These include forced begging by children²⁷⁰ and the killing and mutilation of albinos for ritual beliefs.²⁷¹ While much of the Burundian law complies with the Protocol on its face, the substantive remedies are not adequate.²⁷² There is inadequate implementation of the laws, and authorities have made few efforts to bring justice to offenders and to protect victims.²⁷³ To move forward in a more significant manner, the State needs to address the problems of law enforcement training and raising awareness about the laws, so that victims know the scope of their rights.²⁷⁴

V. TRENDS AND RECOMMENDATIONS

The most prevalent trend seen in the case analyses and research is the lack of knowledge and resources regarding the sex trafficking epidemic globally. When authorities are not properly trained and informed about the warning signs and vulnerabilities of these populations, it is difficult to break the cycle. In a similar way, if authorities are unsuccessful in the prevention aspects of the Protocol, the resources used in recovery and compensation for the victims will never suffice as long as there is still the risk of re-victimization or new victims entering the trade. In almost all of the case studies, there was a mention of a lack of information to the public and authorities about trafficking in persons. If the parties to the Palermo Protocol are going to make significant headway in the fight against human trafficking in the upcoming years, there needs to be a bigger focus on the training of authorities.

The strongest recommendation in this sense would be to focus on the prevention and publicity about trafficking. When there is a lack of public knowledge, citizens do not see the problem and will likely continue to turn a blind eye. If the authorities focus more on the warning signs and prosecution of offenders, it can prevent future victims from being trafficked. When the offenders are publicized and prosecuted, others take note and not only would there be public knowledge about who the offenders are and what to watch for, but it would also cause a chilling effect to others if they know the kind of punishment that lies ahead.

There is a lack of resources devoted to the victims of human trafficking. Whether that be the remedies available under the Basic Principles or other

²⁶⁹ GATAVU, *supra* note 141, at 19.

²⁷⁰ *Id.* at 8.

²⁷¹ *Id.*

²⁷² *Id.* at 14–16. The access to a right of a remedy under the Burundian framework does not protect against prosecutions of the victim, remedies for legal proceedings, and there is a lack of measures to specifically address vulnerable categories of persons other than children. *Id.*

²⁷³ *Id.* at 17.

²⁷⁴ *Id.* at 18–19.

preventative organizations in a state. The fight against trafficking in persons will continue to be an underfunded and underutilized endeavor, unless State governments start to take the issue seriously. States need to be willing to cooperate across borders to help these victims and to bring justice—and it needs to start immediately.

The other major trend in all the case analyses was the prominence of gender inequality and discrimination against women. In countries, which have rich histories of discrimination and disparities in the opportunities for men and women, there may not be a push to eradicate this female-predominated crime. When the courts, law enforcement, and the public in general do not accept the physical and psychological injuries of female victims, those victims do not have the incentive to bring remedial actions. The countries in which women are especially discriminated against will continue to see minimal progress without a systemic alteration in their societal views.

Globally, we are seeing steps forward in efforts to combat sex discrimination and misconduct, whether it be in the United States²⁷⁵ or Middle Eastern countries,²⁷⁶ but there is still more work to do. Women are the predominant victims in the sex trade, and coupled with social norms and discrimination, it is difficult to address these issues when there is not a push to change overall societal norms. Despite these obstacles, change is possible. There needs to be judicial and law enforcement training that addresses the vulnerabilities of female victims. Many victims may be eligible for a variety of remedies, but if the authorities do not recognize these, the victims will not be adequately compensated or will face the risk of re-victimization. Women, without the possibility of rehabilitation or other non-monetary remedies, may feel disenfranchised about the proceedings and could fall victim once again.

Finally, the most drastic recommendation would be to require a universal standard under the Protocol for States to follow. In many of the states, without a succinct piece of legislation to follow, there is a much higher likelihood of an organization that is not meeting the standard. The Protocol does not provide for the States to set forth certain language or provisions in their legislation, and that is a major downfall in the international framework. The ambiguities in the language can cause a disparity in the way victims are treated in different countries, and can determine what kinds of remedies they receive, if any at all. State organizations are able to slip through the cracks when there is sporadic accountability, and that needs to change. Thousands of lives depend on it.

The Protocol and United Nations Principles were positive steps forward in the fight against trafficking in persons, but there is still more work to be done. Victims need a universal standard to understand their rights after their recovery. It is unfair to a victim to not only have the possibility of being in a country with no knowledge of the language or laws, but then to maybe not have any redress for those violations because the legal framework is

²⁷⁵ See generally Jenna McGregor, *Will the #MeToo Movement Speed Up the Number of Women in Leadership Roles or Slow it Down?*, WASH. POST (Dec. 26, 2017), https://www.washingtonpost.com/news/on-leadership/wp/2017/12/26/will-the-metoo-movement-speed-up-the-number-of-women-in-leadership-or-slow-it-down/?utm_term=.64d93f43180b.

²⁷⁶ See generally Aseel Bashraheel, *The Year the Ban on Women Driving was Lifted in the KSA*, ARAB NEWS (Dec. 26, 2017), <http://www.arabnews.com/node/1214576/saudi-arabia>.

inconsistent across borders. When the trafficking happens across countries, continents, and the world, there needs to be some consistency in the rights to the victim for the system to meet its purpose.

CONCLUSION

Although there have been positive steps taken to address remedial issues in trafficking in persons, there is still a lot of work to be done. The TIP Report in the United States, as well as implementation of the Palermo Protocol and United Nations Principles, create a system of accountability and standardization for States to follow and strive to implement. But despite these improvements for trafficking victims, many are still grossly undercompensated or at a high risk of re-victimization.

Each of the States in the case analyses adopted the Palermo Protocol after it passed in 2000, but none of those States fully comply with the United Nations Principles. This can be because of a variety of factors—lack of incentives, information, or resources—but the effect is still the same. To make significant and meaningful change, there needs to be more than just international agreement after international agreement. Victims need a voice. They need redress. They need a way out. And that takes more than something on paper. Change may take time, but the time is now for States to step up and provide meaningful remedies for victims of trafficking in persons.