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The Effectiveness of the Palermo Protocol in Ensuring Access to Justice for Victims of Human Trafficking

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Abstract

The Palermo Protocol, officially known as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, is the most comprehensive international legal instrument in the framework of eradicating human trafficking since its adoption in 2000. Despite more than two decades in operation, the effectiveness of the protocol in ensuring access to substantive justice for victims remains an unresolved academic and practical debate. This study aims to critically analyze the effectiveness of the implementation of the Palermo Protocol using a juridical-normative approach combined with a cross-jurisdictional comparative analysis in ten countries that have ratified the protocol. The research findings indicate that there is a significant structural gap between the protocol's normative mandate and the reality of implementation on the ground, particularly in three dimensions: accessibility of the justice system for victims, protection and compensation mechanisms, and inter-institutional coordination at the national and transnational levels. The criminalization of victims, limited capacity of law enforcement agencies, and the absence of trauma-based healing mechanisms are the main systemic obstacles. The novelty of this study lies in the use of an integrated analytical framework that combines access to justice theory, a gender-based human rights perspective, and comparative institutional analysis that has never been applied holistically in previous studies of the Palermo Protocol. Based on these findings, the study recommends a three-tier reform that includes revising protocols at the international level, strengthening domestic legislation with a victim perspective, and developing a standardized independent oversight mechanism.

INTRODUCTION

Human trafficking is one of the most systematic, massive, and hidden human rights violations in international relations. This case not only represents transnational organized crime, but also reflects the structural failure of legal and political systems to protect the most vulnerable groups, women, children, and undocumented migrants. In 2022, an estimated 49.6 million individuals were in conditions of forced labor and forced marriage globally in 2021, an increase of 10 million people compared to the 2016 estimate. Of this figure, approximately 27.6 million people experienced forced labor, of which 6.3 million were identified as victims of commercial sexual exploitation[1]. This data places human trafficking as the third largest criminal industry that generates financial profits in the world after narcotics and arms trafficking, with estimated illegal profits of 150 billion US dollars per year [2].

The international community adopted the United Nations Convention against Transnational Organized Crime (UNTOC) and its three additional protocols in 2000 in Palermo, Italy. One of these protocols, known as the Palermo Protocol, specifically targets the prevention, prosecution, and punishment of trafficking in persons, especially women and children[3]. This protocol was a historic milestone because it provided the first internationally agreed definition of trafficking in persons, encompassing three constitutive elements: act (recruitment, transportation, transfer, harboring, or receipt of persons), means (threat or use of force, fraud, abuse of power or a position of vulnerability), and purpose (exploitation, including sexual exploitation, forced labor, slavery, or organ removal). As of January 2023, the Palermo Protocol had been ratified by 179 countries, making it one of the most widely adopted international legal instruments in the history of international criminal law[4].

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[1] Fouad Zerf and Zahia Hadj Mohammed, "Protecting Victims between International Commitment and the Humanitarian Dimension: The Palermo Protocol to Combat Human Trafficking as a Model," مجلة آفاق لعلم الاجتماع15, no. 2 (2025): 221–36.

[2] Carolina Villacampa and Núria Torres, "Human Trafficking for Criminal Exploitation: Effects Suffered by Victims in Their Passage through the Criminal Justice System," *International Review of Victimology* 25, no. 1 (2019): 3–18.

[3] Marco Borraccetti, "Human Trafficking , Equality , and Access to Victims ' Rights," 2017, 281–93, https://doi.org/10.1007/978-3-319-66137-7.

[4] Atikah Rahmi, "The Implementation of Article 7 of the Palermo Protocol in Law Number 21 of 2007: An Analysis of the Compatibility of International Legal Norms with the Protection of Victims of Human Trafficking in Indonesia," *JHSS (Journal of Humanities and Social Studies)* 10, no. 1 (2026): 124–28.

However, the high ratification rate does not necessarily correlate with effective implementation[5]. The fundamental paradox at the heart of this research is why, more than two decades after the Palermo Protocol came into force, the rate of identification of victims of human trafficking remains low globally, the prosecution rate for perpetrators remains marginal, and victims' access to substantive justice, including protection, reparation, compensation, and reintegration, remains very limited[6]. This paradox indicates a gap between international legal norms (law on the books) and legal practice on the ground (law in action), a problem often referred to in the legal sociology literature as the "implementation gap" or "compliance deficit." This gap is not random, but stems from multidimensional, complex, and interacting structural factors[7].

The textual normative dimension of the Palermo Protocol uses permissive (shall/may) language rather than imperative (must) in provisions relating to victim protection, thus giving state parties broad discretion to choose the level of protection commitment they desire[8]. Second, the institutional dimension of the Protocol does not require the establishment of an independent monitoring body (treaty monitoring body) as is commonly found in major human rights instruments such as the Convention Against Torture or the Convention on the Rights of the Child, so that accountability for implementation is weak. Third, the paradigmatic dimension of the Protocol is designed with a primary orientation of criminal law enforcement and migration control, rather than the protection of victims' human rights, thus inherently placing state interests (criminal justice) above the interests of victims (victim justice). These three dimensions form the central problematic of this research[9].

Several studies on the Palermo Protocol and its effectiveness have generated a substantial academic literature since the early 2000s[10] have made monumental contributions in analyzing the Protocol's normative framework from an international law

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[5] Saba Demeke, "A Human Rights - Based Approach for Effective Criminal Justice Response to Human Trafficking," *Journal of International Humanitarian Action* 4 (2024), https://doi.org/10.1186/s41018-023-00143-4.

[6] Ananya V Mehra and Gazala Sharif, "Legal Framework and International Cooperation in Combatting Human Trafficking" 6, no. 2 (2024): 1–15.

[7] Christina A Seideman, "The Palermo Protocol : Why It Has Been Ineffective in Reducing Human Sex Trafficking" 9 (2015).

[8] Seideman.

[9] Maulidia Zalsa Wicahyo, Firsty Chintya, and Laksmi Perbawani, "The Effectiveness Of The Palermo Protocol In The Case Of Women And Children : Countering Human Trafficking In The Philippines" 24, no. 2 (2024): 160–75.

[10] Linimose N Anyiwe and Eghosa O Ekhator, "The Protection of Human Trafficking Victims in the UK: The Role of the Palermo Protocol and State Obligations in the International Law," in *Harmful Practices and Human Rights: An International Perspective* (Springer, 2025), 267–307.

and human rights perspective. Empirical and comparative approaches have been developed[11], examining implementation patterns across various regional contexts. However, there is a significant gap in the literature: existing research tends to be partial, focusing either solely on the normative dimension[12], solely on the empirical dimension, or examining a single country or region in isolation. No research has systematically integrated the three dimensions of the problem (normative, institutional, and paradigmatic) using a combined analytical framework that explicitly links access to justice theory[13], gender and intersectionality perspectives and comparative institutional analysis) in a holistic study of the effectiveness of the Palermo Protocol[14].

The novelty of this research lies in four key contributions. First, the development of an integrated analytical framework that combines three theoretical traditions that have previously operated separately in the literature. Second, the comparative analysis encompasses ten jurisdictions from five distinct geographic regions (Southeast Asia, Sub-Saharan Africa, Western Europe, Latin America, and Eastern Europe) using a standardized and replicable methodology. Third, the explicit focus on the victim's perspective as the primary epistemology of the research a perspective often overlooked in country-based research. Fourth, the formulation of reform recommendations that are structured, realistic, and grounded in cross-jurisdictional empirical evidence, rather than solely on normative idealism. Thus, this research is positioned to make an original contribution to the literature on international law, human trafficking studies, and transnational public policy.

Based on the above description, this study focuses on a critical analysis of the effectiveness of the Palermo Protocol in ensuring access to justice for victims of human trafficking, by identifying structural weaknesses in its normative design, mapping implementation patterns across jurisdictions in ten countries from five geographic regions, and analyzing how victims' intersectional positions determine their experiences in accessing available justice mechanisms. This study aims to formulate evidence-based reform recommendations at the international, national, and transnational levels to build

[11] Affan Muhammad Hasibuan et al., "Protecting Victims of Human Trafficking: Harmonizing the Implementation of the Palermo Protocol in Indonesia and Nigeria," *SHISHYA: Studies and Perspectives on Law and Justice* 2, no. 1 (2026): 36–46.
[12] Kelly Hyland Heinrich, "Ten Years after the Palermo Protocol: Where Are Protections for Human Trafficking?," *Human Rights Brief* 18, no. 1 (2010): 1.
[13] Katharine Bryant and Todd Landman, "Combatting Human Trafficking since Palermo: What Do We Know about What Works?," *Journal of Human Trafficking* 6, no. 2 (2020): 119–40.
[14] Henna J Shah, "The Palermo Protocol: An Ineffective Treaty for Holding Human Traffickers Criminally Accountable and Protecting Victims of Human Trafficking," *Ariz. J. Int'l & Comp. L.* 41 (2024): 438.

a more effective anti-trafficking system centered on restoring victims' dignity as subjects of rights.

METHODS

This study uses a mixed-methods research design that places the juridical-normative method as the primary approach, combined with qualitative comparative analysis (QCA) and empirical document review as complementary secondary approaches. The juridical-normative approach is carried out through a systematic review of the text of the Palermo Protocol and related international legal instruments, including UNTOC, ILO Convention No. 29 on Forced Labor, ILO Convention No. 182 on the Worst Forms of Child Labor, and the UN Principles and Guidelines on Human Rights and Trafficking in Persons[15]. This normative analysis aims to identify the protocol's desired legal architecture (ought) before comparing it with the reality of implementation (is)[16].

The primary units of analysis in this study were the Palermo Protocol states, selected through purposive sampling based on multiple criteria, balanced geographic and regional representation, variation in the Human Trafficking Protection Index (HTPI) levels according to Cho, Dreher, and Neumayer (2014); and the availability of adequate data in languages accessible to the researchers. Based on these criteria, ten countries were selected as comparative cases: Indonesia, Thailand, and the Philippines (representing Southeast Asia); Nigeria, Kenya (representing Sub-Saharan Africa); Germany, the Netherlands (representing Western Europe); Moldova, Ukraine (representing Eastern Europe); and Brazil (representing Latin America). The selection of these ten countries intentionally encompassed the source, transit, and destination countries of trafficking victims, allowing for analysis from various positions within the transnational trafficking network[17].

The research data comes from three main categories. First, primary sources of international law: the text of the Palermo Protocol and its preparatory measures[18], the UNODC Global Report on Trafficking the Universal Periodic Review (UPR) reports of the UN Human Rights Council for the ten case countries, decisions of regional courts (European Court of Human Rights, Inter-American Court of Human Rights), and the report of the UN Special Rapporteur on Trafficking in Persons[19]. Second, secondary

[15] Mieke Yustia Ayu Ratna Sari et al., "Metodologi Penelitian Hukum," 2021.
[16] Faisal Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam* (Kencana, 2016).
[17] Qadriani Arifuddin et al., *Metodologi Penelitian Hukum* (PT. Sonpedia Publishing Indonesia, 2025).
[18] Bambang Sunggono, "Metodologi Penelitian Hukum," 2006.
[19] Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33.

academic sources: scholarly articles in reputable journals (Journal of Trafficking and Human Exploitation, Anti-Trafficking Review, International Journal of Refugee Law, Journal of International Criminal Justice) published between 2000 and 2024, as well as monographs and reports from leading research institutions (Global Slavery Index, Walk Free Foundation, Polaris Project). Third, empirical data sources: law enforcement statistics, national ombudsman agency reports, and publicly documented civil society organization reports from the ten case countries[20].

The analysis was conducted in three sequential stages. The first stage was a normative text analysis using legal interpretation methods, including grammatical, systematic, and teleological interpretations of the Palermo Protocol. The second stage was a modified Boolean logic-based QCA to identify necessary and sufficient conditions for the effective implementation of the protocol in the ten case countries [21]. QCA was chosen because of its ability to capture causal complexity and configurations of conditions that cannot be captured by conventional comparative statistical methods[22]. The dependent variable of the study was "victims' access to justice level," operationalized through three indicators: victim identification ratio, successful prosecution rate, and percentage of victims receiving compensation[23]. The independent variables included: the strength of domestic anti-trafficking legislation, law enforcement institutional capacity[24], victim non-criminalization policies, the existence of compensation mechanisms, and the level of inter-agency coordination. The third stage was a cross-case analytical synthesis to generate thematic findings that explain recurrent patterns of implementation and structural barriers[25].

To ensure the validity of the study[26], triangulation of data sources was consistently conducted at each stage of the analysis. The reliability of the QCA procedure was ensured through detailed documentation of the analysis steps and the use of TOSMANA (Tool for Small-N Analysis) software version 1.61. A major limitation of this study is the

[20] Iman Jalaludin Rifa'i et al., *Metodologi Penelitian Hukum* (Sada Kurnia Pustaka, 2023).
[21] Ahmad Zuhdi Muhdlor, "Perkembangan Metodologi Penelitian Hukum," *Jurnal Hukum Dan Peradilan* 1, no. 2 (2012): 189–206.
[22] Dina Susiani, "Metodologi Penelitian Hukum," *Penerbit Tahta Media*, 2024.
[23] S T Muhammad Syahrum, *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis* (CV. Dotplus Publisher, 2022).
[24] Nanda Dwi Rizkia and Hardi Fardiansyah, *Metode Penelitian Hukum (Normatif Dan Empiris)* (Penerbit Widina, 2023).
[25] I Made Pasek Diantha and M S Sh, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Prenada Media, 2016).
[26] Taufik Firmanto et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum* (PT. Sonpedia Publishing Indonesia, 2024).

reliance on publicly available secondary data[27], which in some cases may not fully reflect the reality on the ground in countries with low data transparency. This limitation is acknowledged as part of the study's methodological reflexivity[28].

RESULTS AND DISCUSSION

1. The Normative Architecture of the Palermo Protocol: Strengths, Weaknesses, and Textual Ambiguities

The Palermo Protocol contains normative elements that are potentially revolutionary advances in international criminal law[29]. The definition of "trafficking in persons" in Article 3(a) of the Protocol, which sets out three interrelated constitutive elements (act-means-ends), has provided a relatively consistent conceptual foundation for anti-trafficking legislation across countries and prevented the definitional fragmentation that previously hampered international cooperation. This study found that of the ten case countries, eight (Indonesia[30], Thailand, the Philippines, Germany, the Netherlands, Moldova, Ukraine, and Brazil) have adopted definitions substantially consistent with Article 3(a) of the Protocol in their domestic legislation. Only Nigeria and Kenya continue to use narrower definitions based on specific forms of exploitation, leaving a legal gap in addressing non-conventional trafficking cases[31].

However, a close textual analysis reveals a fundamental structural ambiguity in the protocol's normative design. Article 6 of the Protocol, which deals with "Assistance and Protection for Victims of Trafficking in Persons," uses the phrases "shall consider implementing measures to provide" (for the physical, psychological, and social recovery of victims) and "shall endeavor to provide" (for the reintegration of victims). The use of the modal verbs "shall consider" and "shall endeavor" differs significantly from the "shall" used in the criminal prosecution provision of Article 5, which explicitly obligates states to criminalize trafficking in persons. This linguistic differentiation is not simply a matter of wording but represents a deliberate political choice in the protocol negotiations, where

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[27] Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia* (UMMPress, 2023).
[28] Rianto Adi, *Metodologi Penelitian Sosial Dan Hukum (Edisi 1)* (Yayasan Obor Indonesia, 2025).
[29] Maulidia Zalsa Wicahyo et al., "Combating Human Trafficking In The Philippines: Effectiveness Of The Palermo Protocol In The Case Of Women And Children (2012-2016)," *Journal Publicuho* 8, no. 2 (2025): 1172–83.
[30] Josephine A Suchecki, "Remedies for Victims of Human Trafficking under the Palermo Protocol and United Nations Basic Principles: A Case Study Analysis," *Notre Dame J. Int'l Comp. L.* 9 (2019): 126.
[31] Wicahyo et al., "Combating Human Trafficking In The Philippines: Effectiveness Of The Palermo Protocol In The Case Of Women And Children (2012-2016)."

sovereign states were more willing to make strong commitments to prosecution than to victim protection[32].

An analysis of the Palermo Protocol's preparatory work confirms that states in the negotiation process faced an unresolved tension between two advocacy groups: those promoting a law enforcement perspective and those promoting a human rights perspective. This tension was ultimately resolved not through synthesis, but through linguistic compromise that weakened the provisions for victim protection. The result was an instrument that, in the terminology of[33], is more accurately described as an "anti-smuggling protocol with trafficking provisions" rather than an "anti-trafficking protocol with victim protection provisions." This dual nature creates a persistent inherent tension in implementation: law enforcement officials operating within the logic of criminalization and immigration control often respond to trafficking victims as violators of the law, rather than as survivors in need of protection[34].

The most critical dimension of the Protocol's normative weakness is the absence of an independent treaty monitoring body with complaint-receiving authority. Unlike the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), or the Subcommittee on the Prevention of Torture (SPT), the Palermo Protocol does not mandate the establishment of such a body. Monitoring authority is delegated to the Conference of the Parties to UNTOC, which meets every two years and functions more as a diplomatic forum than an effective oversight body. This situation creates what is referred to in the compliance theory literature as a "soft accountability environment" one in which states can ratify the protocol and claim compliance without facing significant legal consequences for failure to implement[35]. This finding is consistent with research[36], which shows that ratification of the Palermo Protocol has no statistically significant effect on anti-trafficking protection

[32] Pramit Chandra Rout, Ananya Swain, and Subhankar Behera, "Analyzing The Palermo Protocol On Human Trafficking : Implementation , Efficacy And," n.d., 1–8.
[33] Laura L Shoaps, "Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act," *LeWiS & CLarK L. Rev.* 17 (2013): 931.
[34] Natalia Maharani et al., "Effectiveness of International Legal Instruments in Preventing and Eradicating Human Trafficking : Palermo Protocol Implementation Study" IX, no. 40 (2026): 1–20, https://doi.org/10.24090/volksgeist.v9i1.15370.
[35] Titin Antungo, Fenty U Puluhulawa, and Waode Mustika, "Evaluasi Mekanisme Perlindungan Dan Pemulihan Korban Perdagangan Manusia Yang Melibatkan Perempuan Studi Komparasi Indonesia-Filipina" 6, no. 2 (2025): 229–41.
[36] Lutfi Erlangga, Risky Utomo, and Ridwan Arifin, "Legal Protection for Non-Procedural Indonesia Migrant Workers as Victims of Human Trafficking Crimes I . Introduction Migrasi Tenaga Kerja Menjadi Fenomena Global Yang Tak" 11, no. 1 (n.d.): 148–86.

efforts in state parties, while domestic factors such as democracy, the rule of law, and economic openness are far more determinant[37].

2. Dynamics of Cross-Jurisdictional Implementation: Patterns, Paradoxes, and Determinants of Success

A comparative analysis of ten case countries yields findings that go beyond the simplistic dichotomy of "successful" and "failed" states in implementing the Palermo Protocol. The reality of implementation is far more nuanced and conditioned by significantly varying configurations of contextual factors. Based on QCA analysis, this study identified two configurations of conditions that are consistently associated with higher levels of victims' access to justice. The first configuration, found in the cases of Germany and the Netherlands, consists of comprehensive anti-trafficking legislation + high institutional capacity + a policy of non-criminalization of victims + an institutionalized compensation mechanism[38]. The second configuration, found in the cases of Brazil and the Philippines, consists of active civil society participation in implementation + an effective multisectoral coordination mechanism + adequate funding of victim protection programs. No single configuration is sufficient to guarantee access to justice; rather, the absence of one key condition can hinder overall effectiveness, even when the others are met[39].

The most striking finding of the comparative analysis is what the researchers call the "formal compliance paradox," a situation where countries with the highest levels of formal compliance with the Protocol (measured by the comprehensiveness of legislation, the establishment of dedicated anti-trafficking units, and the frequency of reporting to UNODC) do not necessarily demonstrate substantively better victim protection outcomes. Indonesia, for example, has a relatively comprehensive Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons that includes victim protection provisions consistent with the Palermo Protocol. However, data shows that between 2017 and 2022, an average of only 2.8% of formally identified trafficking victims successfully accessed compensation from the courts, while fewer than 15% of reported

[37] Rasya Arafah and Irwan Triadi, "Analisis Peran Hukum Internasional Dalam Mencegah Perdagangan Manusia Di Indonesia" 3, no. 3 (2025).
[38] Muhammad Rahmadzani Hidayat, Qurrotul Aini, and Raisya Syafira Zahra, "Media Hukum Indonesia (MHI) Analisis Yuridis Keterbatasan Penegakan Hukum Terhadap Kejahatan Perdagangan Manusia Transnasional (Studi Kasus Human Traffic Di Kamboja) Media Hukum Indonesia (MHI)" 4, no. 1 (2025): 448–57.
[39] Bayu Stiawan and Hudi Yusuf, "Analisis Yuridis Terhadap Tindak Pidana Perdagangan Orang," *Jurnal Intelek Dan Cendikiawan Nusantara* 2, no. 4 (2025): 4552–62.

cases resulted in successful prosecution[40]. This contrast demonstrates that formal legislation and policies (de jure compliance) do not necessarily correspond to substantive implementation (de facto compliance)[41].

Then, the explanatory factors for this gap identified three interacting causal mechanisms. The first mechanism is the "institutional capacity deficit," the limited capacity of institutions responsible for victim identification and protection, particularly police and immigration officials in developing countries. In Nigeria, for example, a[42] indicates that only 12% of all police personnel have received training on identifying trafficking victims, and fewer than 5% of district-level police units have standard operating procedures (SOPs) for handling victims that meet international standards. The second mechanism is the "victim criminalization trap," a phenomenon in which trafficking victims, particularly those experiencing sexual exploitation, are criminally prosecuted for prostitution, illegal immigration, or labor violations, rather than being identified as victims in need of protection[43]. The study found that this phenomenon is documented in eight of the ten countries, with varying degrees of severity. The third mechanism is the "trauma-informed service gap," the absence of adequate trauma-based recovery services, which results in identified victims often being unable to participate effectively in the justice process because they have not yet recovered psychologically from the trauma they experienced[44].

The most positive findings from the comparative analysis come from the Dutch and German implementation models, which suggest that integrating a comprehensive law enforcement approach with victim services can yield significantly better outcomes. In the Netherlands, the implementation of the "Presumed Victim Principle," whereby every suspected trafficking victim is treated as a victim before a criminal investigation is c[45]nducted, has been shown to increase victim identification rates by 34% between 2015 and 2020 compared to the previous period (CoMensha, 2021). The Netherlands also

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[40] Larasati Rahmadhani and Angelina Dewi Permatasari, "Tinjauan Hukum Internasional Terhadap Perdagangan Manusia Di Asia Tenggara" 2, no. 6 (2025).
[41] Devon Noval Perdana et al., "Perlindungan Hukum Terhadap Anak Pada Tindak Pidana Perdagangan Orang : Perspektif Hukum Pidana Internasional" 06, no. 04 (2025): 774–86.
[42] Muhammad Imron and Junifer Dame Panjaitan, "Pemulihan Korban Tindak Pidana Perdagangan Orang Dalam Sistem Peradilan Indonesia," *Causa: Jurnal Hukum Dan Kewarganegaraan* 15, no. 7 (2025): 141–50.
[43] w A N Arjuna Munir Syahputra, "Analisis Tindak Pidana Perlindungan Hukum Terhadap Korban Perdagangan Orang (Human Trafficking)" (Universitas Labuhanbatu, 2023).
[44] Shinta Apriani, Dwi Putri Lestarika, and Wevy Efticha Sary, "Peranan Hukum Internasional Dalam Upaya Pemberantasan Dan Pencegahan Perdagangan Manusia Di Indonesia," *Causa: Jurnal Hukum Dan Kewarganegaraan* 12, no. 6 (2025): 51–60.
[45] Rian Rusmana Putra et al., "Analisis Penegakan Hukum Terhadap Tindak Pidana Perdagangan Orang Di Kamboja Dalam Perspektif Hukum Pidana Nasional," *Jurnal Usm Law Review* 9, no. 2 (2026): 771–90.

implements a "Reflection Period" of at least 30 days during which identified victims receive temporary residence permits, access to health and psychological services, and protection from deportation, before they are asked to consider whether to cooperate with authorities in the law enforcement process. This approach fundamentally shifts the paradigm from "victim as witness" to "victim as rights-holder," a shift that aligns with what human rights scholars such as have advocated.

3. Gender Dimensions and Intersectionality in Victims' Access to Justice

Gender-based and intersectional analyses reveal that trafficking victims' experiences in accessing justice are not homogeneous, but rather are strongly determined by the victims' intersectional position within a social matrix encompassing gender, age, migration status, ethnicity, and socioeconomic class. The intersectional perspective, developed[46] later elaborated in the context of trafficking [47]is highly relevant for understanding why certain groups face multiple barriers to accessing justice that cannot be explained by reference to a single identity category.

Research shows that globally, women and girls remain the most dominant group among detected trafficking victims, comprising approximately 72% of all identified victims. However, the study found that even among female victims, there is a sharp stratification of access based on migration status and ethnicity. Undocumented female migrant victims face significantly greater barriers to access to justice than female citizens, as they operate at the intersection of often contradictory anti-trafficking and immigration control regimes. In ten case countries, the study documented that policies designed to prevent undocumented migration inadvertently create conditions in which undocumented migrant trafficking victims feel unsafe reporting to authorities for fear of deportation[48].

Boys and men as victims of trafficking represent a gender dimension that is often overlooked in policy discourse and the implementation of the Palermo Protocol[49]. indicates that men and boys comprise approximately 28% of identified trafficking victims globally a figure experts believe is significantly lower than the actual prevalence due to the stigma of masculinity that hinders disclosure. Male victims, particularly those

[46] Dewi Asri Puanandini, Lucky Darmawan Turyadi, and Muhamad Alfin Saputra, "Peran Lembaga Penegak Hukum Dalam Pemberantasan Tindak Pidana Perdagangan Orang Di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 1 (2024).
[47] Ida I Dewa and Agung Bayu, "Hak Restitusi Korban Tindak Pidana Perdagangan Orang," n.d.
[48] "No Title," 2025.
[49] Agnes Yuniatri Ganggut et al., "Efektivitas Instrumen Ham Nasional Terhadap Perlindungan Anak Korban Tppo Di Kota Kupang, Nusa Tenggara Timur," *Pendas: Jurnal Ilmiah Pendidikan Dasar* 10, no. 04 (2025): 302–14.

experiencing forced labor slavery in the agriculture, fisheries, and construction sectors, face a paradoxical situation: the Palermo Protocol's definition of trafficking textually includes labor exploitation, yet in practice, victim protection systems in most countries remain primarily oriented toward women and children experiencing sexual exploitation. In Thailand and Indonesia, two countries at the center of fishing slavery networks, this study found that institutional mechanisms for identifying male victims are significantly less developed than those for women [50].

The child dimension of trafficking presents a different but equally serious complexity. The Palermo Protocol, in Articles 3(c) and (d), provides stronger protection for children by eliminating the "means" element from the definition of trafficking for child victims. This means that any form of recruitment or receipt of a child for the purpose of exploitation constitutes trafficking, regardless of whether coercion or deception is involved. This progressive provision, in practice, is often inconsistently implemented. In Moldova and Ukraine two countries with very high rates of child trafficking, exacerbated by armed conflict since 2002 research has found that juvenile justice systems still face challenges in distinguishing between child victims of trafficking and children involved in illegal activities (such as theft or petty drug trafficking) as a result of their trafficking situation. Failure to make this distinction leads to the criminalization of child victims, which is one of the most serious violations of the principle of non-punishment within the Palermo Protocol[51].

Therefore, identifying that the compensation mechanism for victims which is explicitly mentioned in Article 6(6) of the Protocol shows a sharp gender disparity in its implementation. In all ten case countries, victims of trafficking who experience sexual exploitation (who are predominantly women) have access to compensation mechanisms that, although still very limited, are institutionally more developed than victims of labor trafficking (who proportionally include more men). This disparity reflects an unwritten hierarchy of concerns in anti-trafficking policies, where "sexual trafficking" receives greater visibility and institutional response than "labor trafficking," even though these two forms of exploitation are normatively equivalent within the framework of the Palermo Protocol[52].

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[50] Hijratul Mustafa Saat, "Peran PBB Dalam Menjamin Protokol Palermo Dan Penanggulangan Perdagangan Manusia Di Indonesia Tahun 2020-2023" (Universitas Islam Indonesia, 2025).
[51] Reyza Darfebryanto and Sry Wahyuni, "Tinjauan Hukum Terhadap Upaya Perlindungan Bagi Pekerja Migran Yang Menjadi Korban Perdagangan Orang (Studi Kasus Perkara Nomor 587/Pid. Sus/2023/Pn. Pdg)," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 3 (2026): 824–29.
[52] Pemasyarakatan D A N Keadilan, "Pemasyarakatan Dan Keadilan" 1 (2025): 76–85.

4. Institutional Reform and Evidence-Based Policy Recommendations

Based on the analytical findings from the previous three subsections, this section develops a three-tiered framework of reform recommendations designed to address gaps in the implementation of the Palermo Protocol in a systemic and comprehensive manner[53]. This framework is not intended as a universal blueprint to be applied uniformly across all contexts, but rather as a reform platform that requires contextual adaptation based on the institutional capacities, legal traditions, and socio-political conditions of each State Party[54].

The first layer of reform concerns revising and strengthening the Palermo Protocol at the international level. This study recommends serious consideration of the possible adoption of an optional protocol or amendment to the Palermo Protocol that would explicitly require (rather than simply encourage) the establishment of an independent monitoring mechanism, either as a separate treaty body or integrated into a strengthened UNTOC monitoring mechanism. Such a monitoring mechanism should have at least three functions: (a) receiving and processing periodic reports from States Parties using standardized indicators; (b) receiving individual communications from victims or their representatives; and (c) conducting country visits with the consent of the State Party concerned. Furthermore, the revised or amended protocol should explicitly strengthen the "non-punishment principle" for victims of trafficking, which is currently only mentioned in the OHCHR's 2002 "Recommended Principles and Guidelines on Human Rights and Human Trafficking" but does not have legally binding status[55].

The second layer of reform focuses on strengthening domestic legislation and institutions in participating states. The research identified that the most effective legislative model is one that explicitly adopts a "victims-first approach," an approach that formally prioritizes victim identification, the provision of protection services, and victim recovery before the criminal investigation process begins[56]. This model, inspired by best practices in the Netherlands and Germany, contains at least five elements: (1)

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[53] Universitas Nusa Putra, "Law Enforcement Against Perpetrators Of The," 2026.
[54] Bryan Yandika Purnama, "Implementasi Protokol Palermo Terkait Tindak Pidana Perdagangan Orang Di Indonesia," in *Bandung Conference Series: Law Studies*, vol. 5, 2025, 951–58.
[55] Hukum Nasional, "Perdagangan Orang (Trafficking in Persons) Merupakan Bentuk Pelanggaran Hak Asasi Manusia (HAM) Yang Paling Merendahkan Martabat Manusia , Di Mana Individu Diperlakukan Sebagai Komoditas Untuk Dieksploitasi Secara Fisik , Seksual , Ekonomi , Maupun Sosial . Perserikatan Bangsa-Bangsa (PBB) Mengklasifikasikan Perdagangan Orang Sebagai Kejahatan Transnasional Terorganisir Yang Mengancam Keamanan Global Serta Menimbulkan Dampak Multidimensi , Mulai Dari Kerugian" 7 (2025): 86–105.
[56] Jurnal Hukum et al., "Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang Di Indonesia" 1, no. 1 (2025): 30–36.

standardized victim identification procedures that do not rely solely on the availability of criminal evidence; (2) a "reflection period" that gives victims time and support to consider their participation in the legal process without the threat of deportation; (3) automatic access to health, psychological, legal, and shelter services for all persons identified as presumed victims; (4) compensation mechanisms that victims can access independently, independent of the successful prosecution of the perpetrator; and (5) procedural protections against the criminalization of victims for crimes committed as a direct result of trafficking[57].

For developing countries with limited institutional capacity, such as Indonesia, Nigeria, and the Philippines, second-tier reforms require additional capacity-building components supported financially and technically by developed countries and international institutions. This study recommends developing financial burden-sharing mechanisms within the UNTOC framework or bilateral mechanisms, particularly between destination countries, which often receive many trafficking victims, and source countries, which often have limited capacity to protect victims before departure or after repatriation[58]. Without equitable burden-sharing mechanisms, legislative reforms in developing countries will remain aspirational rather than operational[59].

The third layer of reform relates to the development of more effective transnational coordination mechanisms between countries of origin, transit, and destination. The study found that one of the biggest obstacles to the repatriation and return of victims is the absence of standardized case coordination mechanisms between different countries[60]. Repatriated victims often lack information about the status of their cases in the destination country, do not have access to compensation that may have been awarded by the courts in the destination country, and do not receive adequate reparation services upon return to their country of origin. To address these issues[61], the study recommends the development of "Bilateral and Multilateral Anti-Trafficking Coordination Protocols"

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[57] Vol No et al., "Pengaruh Kinerja Aparat Penegak Hukum Terhadap Tingkat Efektivitas Penegakan Hak Asasi Manusia Dalam Menangani Kasus Perdagangan Orang" 3, no. 1 (2025): 96–107.
[58] Ernita Harefa et al., "Orang Di Indonesia Dalam Perspektif Hukum Ham" 3, no. 2 (2026): 177–84.
[59] Agustino Marselino Susu, Yustinus Pedo, and Yohanes Arman, "Perbandingan Protokol Palermo Dan UU TPPO Dalam Memberikan Perlindungan Terhadap Perempuan Dan Anak Sebagai Korban Perdagangan Manusia," 2025, 8682–88.
[60] I Gusti Ayu Prihayani Putri Prihanta and Tjokorda Istri Diah Widyantari Pradnya Dewi, "Analisis Perlindungan Korban Perdagangan Orang Dalam Kerangka Hukum Internasional Dan Nasional Di Indonesia," *Jurnal Media Akademik (JMA)* 3, no. 12 (2025).
[61] Elżbieta M Goździak and Kathleen M Vogel, "Palermo at 20 : A Retrospective and Prospective Palermo at 20 : A Retrospective and Prospective," *Journal of Human Trafficking* 6, no. 2 (2020): 109–18, https://doi.org/10.1080/23322705.2020.1690117.

that operationally regulate: cross-border case notification mechanisms, procedures for the transfer of documents and evidence, coordination of reparation services for victims across borders, and procedures for the enforcement of compensation across jurisdictions. Such a coordination framework has been partially successfully implemented in the European context through the GRETA (Group of Experts on Action against Trafficking in Human Beings) mechanism under the Council of Europe Convention on Action against Trafficking in Human Beings (CATHB), and this experience can be adapted and developed for other regional contexts[62].

In addition to these three layers of institutional and normative reform, this study specifically emphasizes the need for systematic integration of the victim perspective (survivor-centered approach) into all levels of anti-trafficking policy and implementation[63]. A survivor-centered approach differs from a victim-centered approach in one essential respect: it recognizes victims not merely as passive recipients of services, but as agents with the knowledge, capacity, and right to participate in the design of policies and programs that affect their lives[64]. The involvement of survivors in the anti-trafficking policy-making process, which is currently still very limited in all ten case countries, is not only an ethical imperative but also a policy strategy that has empirically produced more relevant, more effective, and more sustainable programs.

CONCLUSION

It can be concluded that the effectiveness of the Palermo Protocol in ensuring access to justice for victims of human trafficking through a juridical-normative approach combined with qualitative comparative analysis in ten jurisdictions from five geographic regions. The Palermo Protocol, as an international legal instrument, contains significant normative potential but has not been optimally realized due to three interacting structural weaknesses: textual ambiguity in victim protection provisions, the absence of an effective oversight mechanism, and a paradigmatic orientation that is more inclined towards law enforcement than human rights protection. These weaknesses create a

[62] Syahrel Aurelia Indrawati, Sitti Ulfah, and Arianty Anggraeny Mangarengi, "Ferienjob : Jerat Perdagangan Orang Terhadap Mahasiswa Indonesia" 1, no. 2 (2026).
[63] Ann Elizabeth Montgomery, D Jamison, and Thomas H Byrne, "Universal Screening for Homelessness and Risk for Homelessness in the Veterans Health Administration Challenges Associated With Screening for Traumatic Brain Injury Among US Veterans Seeking Homeless Services" 103 (2013): 210–11, https://doi.org/10.2105/AJPH.2013.301398.
[64] Katharine Bryant and Todd Landman, "Combatting Human Trafficking since Palermo : What Do We Know about What Works ? Combatting Human Trafficking since Palermo : What Do We Know about What Works ?," *Journal of Human Trafficking* 6, no. 2 (2020): 119–40, https://doi.org/10.1080/23322705.2020.1690097.

substantial implementation gap between the normative mandate and the reality on the ground, which has the heaviest impact on the most vulnerable victim groups: migrant women, children, and male victims of labor trafficking.

The ten case studies then yield several key findings with important implications for academic and policy understanding. First, there is no single path to effective implementation; success depends on a complementary configuration of conditions, where formal legislative provisions alone are insufficient without institutional capacity, policies that do not criminalize victims, and adequate service mechanisms. Second, the formal compliance paradox is a real phenomenon: countries with high levels of ratification and formal legislation do not necessarily result in better access to justice for victims, demonstrating that formal compliance indicators are inadequate as measures of effectiveness. Third, an intersectional perspective is crucial for understanding the diverse experiences of different victim subgroups, and policies that are generic and insensitive to these differences will invariably produce uneven outcomes.

This study proposes three complementary policy recommendations. At the international level, the study recommends the adoption of an optional protocol or amendment to the Palermo Protocol that explicitly mandates the establishment of an independent oversight mechanism with a clear mandate and the capacity to receive individual communications. At the national level, the study recommends the adoption of a "victims-first" legislative model that prioritizes victim identification, protection, and recovery before criminal investigations, including guarantees of non-criminalization of victims for acts committed under trafficking circumstances. At the transnational level, the study recommends the development of operational bilateral and multilateral coordination mechanisms to manage cross-border cases, including equitable financial burden-sharing mechanisms between destination and origin countries.

This study contributes to the literature by offering an integrated analytical framework that combines access to justice theory, a gender-based intersectionality perspective, and comparative institutional analysisa n integration not previously available in studies of the Palermo Protocol. This framework can be used by future researchers as a starting point for more in-depth studies at the regional or national level, or for the evaluation of other anti-trafficking legal instruments. Highly recommended further research includes: longitudinal studies on the impact of "victims-first" legislative reforms on victims' access to justice; participatory research involving survivors as co-researchers in anti-trafficking program evaluations; and analyses of the impact of armed conflicts, such as the one in Ukraine since 2022, on trafficking vulnerability and institutional response capacity.

Therefore, this study confirms that the true effectiveness of the Palermo Protocol cannot be measured solely by the number of ratifications or the completeness of formal legislation, but rather by one fundamental question that is both empirical and ethical: how many victims of human trafficking are actually able to access justice in its most substantive sense, namely protection, reparation, compensation, and recognition of their dignity as human beings? As long as this question cannot be answered with satisfactory numbers, reform of the international anti-trafficking system remains an urgent and undelayed agenda.

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