TRIAL International

Enforcing the Unenforceable:

Non-Binding Obligations and Bosnia & Herzegovina's Duties to War Crime Survivors

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BiH

Bosnia and Herzegovina

CAT/Convention

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CoM/Council

Council of Ministers, BiH

CRSV

Conflict-Related Sexual Violence

CSO

Civil Society Organisation

ECHR

European Convention on Human Rights

ECtHR/Court

European Court for Human Rights

EU

European Union

FARC

Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo / The Revolutionary Armed Forces of Colombia – People's Army

GDPR

General Data Protection Regulation

ICTY

International Criminal Tribunal for Yugoslavia

NGO

Non-Governmental Organisation

SJP

Special Jurisdiction for Peace

SOL

Statute of Limitations

UNCAT/Committee

United Nations Committee against Torture

UNGA

United Nations General Assembly

UNSC

United Nations Security Council

1. INTRODUCTION

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT' or 'Convention') was adopted by UN General Assembly in 1984.[1] It solidified the understanding of the absolute prohibition of torture in customary international law as a *jus cogens* norm.[2] The CAT contains 33 Articles and is split into three parts — respectively, they deal with substantive provisions that State parties must incorporate into their national laws; the mandate of the UN Committee Against Torture ('UNCAT' or 'Committee'), which is the treaty body overseeing adherence of State parties to the obligations of the CAT; and the procedural and technical matters of ratification, amendments, and reservations.[3]

The UNCAT's monitoring activities also include the ability to conduct confidential inquiries into allegations of torture.[4] Following these inquiries, the Committee releases reports, termed concluding observations, with conclusions on whether the State party has violated any of its obligations under the Convention, as well as recommendations aimed at rectifying the breaches.[5] The key difficulty with this system, however, lies in the fact that States have no obligations, under the Convention, to follow through on the recommendations in UNCAT concluding observations, and there is no enforcement mechanism to ensure any form of compliance — in essence, UNCAT decisions are non-binding.[6] State parties *are* obligated to offer some form of redress and compensation to a complainant if the Committee finds that there had been a violation of a Convention provision — however, while the State party must indicate the method(s) it has chosen to offer such redress, there is nothing to indicate that the State follow the recommendations laid out by the UNCAT.[7]

UNCAT effectiveness, therefore, has a tendency to be viewed as inconsistent, due to its dependence on the State party, the issue at hand, the timing of the decision, and many other factors.[8] The lack of an enforcement mechanism has, at face value, a severely undermining effect on the Committee — however, a soft power approach recognising the value of Committee recommendations for use as leverage on governments by Non-Governmental Organisations, as well as by the broader intergovernmental community, counteracts this effect and increases the efficacy of the UNCAT.[9] The broad understanding among scholars in the fields of international law and soft power is that normatively, States who are committed to human rights protection broadly will comply with obligations even in the absence of enforcement mechanisms, but only so long as the costs of compliance are low.[10] With the prohibition of torture being such an important ideal to protect, both as a *jus cogens* norm but also from a core humanitarian standpoint, it makes sense to not have to rely on voluntary compliance alone, and instead explore means of encouraging State parties to comply with non-binding obligations in the absence of strict enforcement mechanisms. Indeed, this becomes particularly important in the cases of State parties which do not naturally fall into the bracket of being committed to human rights protections without any external compulsion.

1 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Convention against Torture].

2 Convention Against Torture Initiative, UN Convention Against Torture - Explainer 2 (2019).

3 Lene Wendland, A Handbook on State Obligations under the UN Convention against Torture 15, 17-19 (2002).

4 *Id.* at 18-19; Convention against Torture, *supra* note 1, art. 20.

5 Lene Wendland, *supra* note 3, at 18-19.

6 *Id.*

7 *Id.*

8 Ronagh McQuigg, *How Effective is the United Nations Committee Against Torture*, 22 Eur. J. Int'l L. 813, 827 (2011).

9 *Id.* at 827-828.

10 Andreas von Staden, *The Conditional Effectiveness of Soft Law: Compliance with the Decisions of the Committee against Torture*, 23 Hum. Rts. Rev. 451, 451 (2022).

This publication was created as part of the project "Fighting impunity and promoting transitional justice in Bosnia and Herzegovina" with the aim of presenting the current process of (non)implementation of the Decision of the United Nations' Committee against Torture. Through several chapters that show the comparative practice of other systems, models of implementation of decisions of hybrid courts will be described, the importance of diplomatic or intergovernmental pressure, as well as the efforts of the non-governmental sector and media advocacy on this issue.

Despite these perceptions, recent empirical research has established that there is actually a positive correlation between ratification of human rights treaties like the CAT, and the levels of respect for human rights exhibited by a country.[11] The difference is merely that States who have ratified such treaties are often held to even higher standards of accountability than those which have not, resulting in an endless loop of shifting goalposts whereby a State's efforts for compliance are always seen as insufficient and more is always expected of them.[12] While this is certainly not a negative impact, in that it makes countries more likely to continue striving for further global acceptance of their human rights track records, it does perpetuate the harmful (and ultimately, false) perception that non-binding obligations, such as those in UNCAT decisions, are ineffective. In reality, the data shows a causal link between CAT ratification and human rights compliance.[13] Extending this to UNCAT decisions, it follows that the recommendations often do have an impact, even if not immediate or overtly pronounced, in influencing better compliance among countries, based on factors including general respect for human rights, reputational concerns, and more. Respect for UNCAT decisions must therefore not be allowed to backslide, and the importance of encouraging compliance is magnified.In the case of Bosnia and Herzegovina (BiH), the country's history with war crimes, torture, and accountability is a long and tumultuous one, despite the Bosnian War in itself having culminated only three decades ago. In the time since, cases concerning the violence and atrocities that took place during the war have been heard by various courts and tribunals, ranging from the domestic courts to hybrid courts and the International Criminal Tribunal for Yugoslavia. In 2019, the UNCAT put out concluding observations in *Ms. A v. BiH*, a landmark case which saw the Committee place accountability on Bosnia for the first time for failed obligations in ensuring access to justice for a survivor of sexual violence during the war.[14] In its concluding observations, the Committee highlighted four recommendations for BiH to effectuate in an effort to rectify the harms to the complainant: these included ensuring the provision of fair and adequate compensation as well as psychological and medical care for the victim, a public apology, and the establishment of a national-level reparation scheme and framework law for the benefit of all victims of the war.[15] The significance of the decision therefore went beyond just the impact on the individual complainant, and instead was intended to have positive effects on the greater legal system that dealt with war crime accountability and reparations for victims in BiH. However, in the six years since the decision was enacted, little to no efforts have been taken by the Bosnian government to follow through on any of these recommendations.[16] There are many factors that have influenced this inaction, many of which are discussed in Section 3. Yet, the biggest concern remains the lack of a clear avenue for enforcing compliance with the non-binding obligations set out by the Committee. There are options that could be availed, ranging from formal and procedural recourses to soft power diplomacy — the only obstacle is to improve awareness of these avenues, and also consider the value in adopting a multi-pronged approach in this road to enforcement.

11 Christopher J. Farriss, *The Changing Standard of Accountability and the Positive Relationship between Human Rights Treaty Ratification and Compliance*, 48 Brit. J. Pol. Sci. 239, 239 (2017).

12 *Id.* at 239-240.

13 *Id.*

14 *Bosnia: Landmark Decision for a Survivor of Sexual Violence*, TRIAL Int'l (Dec. 07, 2020), https://trialinternational.org/latest-post/bosnia-landmark-decision-for-a-survivor-of-sexual-violence/.

15 *Ms. A. v. Bosnia and Herzegovina*, Comm. against Torture, ¶ 9, U.N. Doc. CAT/C/67/D/854/2017 (Aug. 2, 2019).

16 TRIAL Int'l, Policy Brief on unaddressed issues for survivors of war crimes, 4-5 (2024).

2. HYBRID COURT DECISION ENFORCEMENT AND ACCOUNTABILITY

Sometimes also called "internationalised courts", hybrid courts incorporate aspects of both the international law and the domestic law of the nation(s), and are established by treaty or legislation.[17] Hybrid courts aim to address serious international crimes, and are typically based locally in the region in which said crimes took place.[18] Examples of hybrid courts include the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Regulation 64 Panels in the Courts of Kosovo.[19] The degree to which a hybrid court's decisions are binding depends on how it is incorporated — specifically, whether it is recognised by the national legal system.[20] Hybrid courts also often lack independent enforcement mechanisms.[21] Together, these factors can greatly hinder the efficacy of such courts.

Hybrid courts aim to rectify three issues faced by purely international or purely domestic courts during periods of transitional justice. First, the perceptions of legitimacy of these 'pure' courts by the local populations is severely limited, which in turn hinders the ability for decisions to be effectively implemented.[22] Second, local capacity-building for long-term legal change in post-conflict situations is seen to be more viable under hybrid systems.[23] And third, purely international or domestic courts have proven ineffective in developing and applying substantive norms that retain their efficacy in long-term criminalisation of mass atrocities (best achieved by international courts) while also being accepted by local legal professionals and the general population (best achieved by domestic courts).[24] Hybrid court systems therefore attempt to incorporate the most relevant elements of both international and domestic courts while eliminating these three problems.

The integration of a hybrid court into a national system can take various forms — direct incorporation through constitutional or legislative avenues, or establishment within or alongside existing national judicial structures.[25] Cambodia, Sierra Leone, and Lebanon are the most common examples of situations where hybrid tribunals were established as avenues for implementing international law while allowing for administrative autonomy for each State.[26] The Special Jurisdiction for Peace (SJP) is an example of a fully national hybrid court established in Colombia through a constitutional amendment in 2017.[27] The SJP was commissioned during the 2016 peace agreement with the Revolutionary Armed Forces of Columbia - People's Army (FARC), with the aim of accounting for the war crimes and other violence committed during

17 Ariel University Center for the Research & Study of Genocide, *Hybrid Courts*, Ariel University, https://campuscore.ariel.ac.il/wp/rsg/hybrid-courts/ (last visited July 2, 2025).

18 Int'l Crim. L. Servs., International, Hybrid and National Courts Trying International Crimes 9-11 (n.d.).

19 *Id.*

20 *Id.*

21 *Id.*

22 Laura A. Dickinson, *The Promise of Hybrid Courts*, 97 Am. J. Int'l L. 295, 300-305 (2003).

23 *Id.*

24 *Id.*

25 Int'l Crim. L. Servs., *supra* note 15, at 9-11.

26 Juan Rodríguez, *Legal Pluralism and Transitional Justice in Colombia: Is the Special Jurisdiction for Peace a Hybrid Tribunal?*, 26 Segye Heonb. Yeongu [World Const. Stud.] 229, 252 (2020).

27 Andrés Zuluaga & Liliana Giraldo, *The Special Jurisdiction for Peace in Colombia: Possible International Conflicts of Jurisdiction*, 17 Rev. Jurid. [Legal Journal] 29, 31-34 (2020).

the preceding conflict.[28] The SJP applies Colombian law, but must also adhere to international humanitarian and human rights law.[29] The Timor-Leste Special Panels and the Special Court for Sierra Leone are examples of localised hybrid courts with similar mandates in terms of integrating international law into the national legal systems of their respective countries.[30] However, while the former is integrated within the domestic judicial system of Timor-Leste, the latter is an autonomous judicial body that functions alongside the Sierra Leonian judiciary.[31]

The establishment and functioning of hybrid courts is thus varied and tends to be specific to the approach chosen by each country — the only constant is the ultimate aim of such institutions as the arbiters of justice and reform in post-conflict periods. When UNCAT decisions (which are non-binding, but still widely respected, as established in Section 1) are handed down for further implementation by such hybrid courts, the issue of noncompliance can become particularly profound. The central question of this report therefore focusses on what avenues exist when these ultimate arbiters fail survivors who have been deemed deserving of justice and compensation by international bodies. Mechanisms of response in the face of such non-compliance can take many forms, all of them relying on soft power, and can be grouped into five broad categories.

2.1. UNCAT FOLLOW-UP PROCEDURE

In May 2003, the UN Committee Against Torture adopted a follow-up procedure to its concluding observations.[32] Under Rule 72 of the UNCAT's rules of procedure, the Committee has the ability to identify and request additional information on specific obligations it has recommended to State parties in its concluding observations.[33] The obligations identified are those which the Committee deems to be most important based on a number of criteria discussed below, and the procedure involves appointing a follow-up rapporteur who works in conjunction with the country rapporteurs to assess State efforts to comply with the obligations.[34] The follow-up rapporteur also reports back based on this assessment at each Committee session.[35] Much of the ability for the Committee to compel State compliance is grounded in the reporting requirement under Article 19 of the Convention against Torture.[36]

The selection of obligations for follow-up is generally based on the consideration that they "must contribute to the prevention of torture and the protection of victims", and the guidelines for follow-up procedure by the UNCAT lists four pertinent examples:

(i) if the obligation is intended to significantly strengthen legal safeguards for people facing deprivation of liberty;

(ii) if it allows for prompter and more impartial investigations of torture allegations;

(iii) if it aids the general prosecution and punishment of perpetrators;

(iv) if it allows for redress for victims.[37]

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28 *Id.*

29 *Id.*

30 Yves Beigbeder, *The Special Court for Sierra Leone*, *in* International Criminal Tribunals: Justice and Politics 125, 125 (2011).

31 *Id.*

32 *Follow-Up Procedure: Committee against Torture*, United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/en/treaty-bodies/cat/follow-procedure (last visited July 2, 2025).

33 *Id.*

34 Comm. against Torture, *Rules of Procedure*, U.N. Doc. CAT/C/3/Rev.7, rule 72 (July 5, 2023).

35 *Id.*

36 Convention against Torture, *supra* note 1, art. 19.

37 Comm. against Torture, *Guidelines for follow-up to concluding observations*, U.N. Doc. CAT/C/55/3, ¶ 7 (Sep. 17, 2015).

Owing to the significance of the obligations imposed by the UNCAT in *Ms. A v. BiH*, not only in terms of redressal and access to justice for Ms. A but also with respect to the larger ramifications for the legal and reparatory processes in the country, it is clear that such recommendations are exactly of the kind that the general guidelines identify as being worthy of follow-up

The follow-up procedure has been utilised by the Committee right from its conception in 2003, with varying results. The mechanics of the process is two-fold — either the Committee launches a follow-up request (typically at least one year after its concluding observations) and sets a deadline which isn't met, in which case a formal reminder is sent; or, the follow-up request is addressed, following which the Committee requests further clarification or (rarely) announces that the obligations have been satisfactorily met.[38] In the event that two successive formal reminders are ignored, the Committee sends a request for a meeting, as happened in late October 2024 with the Syrian Arab Republic.[39] BiH itself has had follow-up requests from the Committee, which it has largely complied with in previous instances (as late as 2019), though they have always been met with requests for further clarification.[40] In July 2023, a rapporteur provided an 'A' grade for the quality of response to follow-up procedure by a country for the first time.[41] Lithuania responded to the follow-up request with a detailed report that included specific responses to each of the key recommendations by the Committee, and the systematic approach led to the public recognition and commendation by the rapporteur and the Committee.[42] In the world of soft power diplomacy, such commendations can be powerful incentives for countries to comply with or at least seriously address committee-recommended obligations.

It is unclear why the UNCAT has not already followed up on its recommendations to BiH in the *Ms. A* case. The standard practice is to follow up approximately one year after the initial decision in the event that the State party has not taken any effective action in carrying out the recommendations. However, note that there is no strict deadline by when the Committee can follow up on its concluding observations. The noncompliance has certainly not been ignored by the broader community, with ample pressure on the Bosnian government from non-governmental organisations and other interested parties. Formal follow-ups from the Committee itself can further aid this process, and facilitate more lasting efforts towards compliance.

There have been instances where the UNCAT has deemed that a case it has decided required no further follow up. In *Elmi v. Australia* (1999), the UNCAT found that the deportation of Sadiq Elmi, a Somali national, by Australia would be a breach of Article 3 of the Convention Against Torture[43] due to a finding of serious risk of torture if Elmi were to return to Somalia, and found that Australia has an obligation not to follow through on deportation.[44] In response, Australia informed the Committee that the Minister for Immigration and Multicultural Affairs had allowed Elmi to make a renewed application for a protection visa and obtain refugee status.[45] While this procedurally fulfilled the UNCAT-imposed obligation on a technicality, the reality is that the

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38 Comm. against Torture, *Follow-up procedure to conclusions and recommendations 16 May 2003–30 May 2025*, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeI&ctl00_ContentPlaceHolder1_radResultsGridChangePage=13 (last visited July 2, 2025).

39 *Id.*

40 *Id*; Comm. against Torture, *Concluding observations on the sixth periodic report of Bosnia and Herzegovina: Addendum*, U.N. Doc. CAT/C/BIH/CO/6/Add.1 (Mar. 11, 2019).

41 *Committee against Torture Adopts Reports on Follow-up to Concluding Observations, Individual Communications and Reprisals*, United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/en/meeting-summaries/2023/07/committee-against-torture-adopts-reports-follow-concluding-observations (Jul. 24, 2023).

42 Comm. against Torture, *Information received from Lithuania on follow-up to the concluding observations on its fourth periodic report*, U.N. Doc. CAT/C/LTU/FCO/4 (Dec. 21, 2022).

43 Convention against Torture, *supra* note 1, art. 40.

44 *Elmi v. Australia*, Comm. against Torture, ¶ 7, U.N. Doc. CAT/C/22/D/120/1998 (May 25, 1999).

45 *Australia: Follow-Up-Jurisprudence Action by Treaty Bodies*, Bayefsky, https://www.bayefsky.com/html/australia_cat_follow_juris.php (last visited July 2, 2025).

Minister found Elmi's application to be unconvincing and denied the visa.[46] Rather than spend any longer in detention while waiting for the option to continue making renewed applications, Elmi then chose to voluntarily return to Egypt. The UNCAT found that the initial allowance for a renewed application was in line with its recommendation, and therefore considered the case closed with no further need for a follow up.

Elmi v. Australia is different from *Ms. A* in three significant ways. First, the UNCAT has not marked *Ms. A* as a closed case, since the half-step measures that BiH initiated certainly do not meet the *de minimis* threshold that the Committee used in *Elmi*. Second, the concluding observations in *Elmi* was on the finding of a significant *future* risk of torture *if* Elmi were to be repatriated. Conversely, *Ms. A* firmly established a violation by Bosnia of the complainant's Article 14 right to fair and just compensation.[47] As such, the obligations imposed are arguably more compelling in *Ms. A*, in the instance that they are meant to address a violation that has indisputably already taken place. Third, despite the fact that Australia signed and ratified the Convention, it has no domestic legal requirements that Elmi's situation be assessed in accordance with the provisions of the CAT.[48] On the other hand, Bosnia has taken significant measures to bind its domestic legal framework to the CAT provisions, including raising the prohibition of torture to the level of constitutional law in the country, and modelling its criminal code after the Convention to a large extent.[49] The implications of the two cases and the procedural history are therefore very different, and the UNCAT should be encouraged to formally follow-up on *Ms. A* and obtain an update on the efforts of the Bosnian government.

2.2. DIPLOMATIC OR INTERGOVERNMENTAL PRESSURE

The influence of the international community is often the most common avenue for affecting change that is associated with the 'soft-power' dynamic, and is perhaps the simplest to analyse. This mechanism works as follows — a violation (or at least a likelihood of the same) is established, followed by the imposition of an obligation; in the event that the obligation is not respected, the international community (either individual States or larger groups or organisations, or even intergovernmental bodies) apply significant pressure on the relevant country through diplomatic avenues, sanctions, and other techniques intended to coerce the country into complying with the obligation.

One example of this dynamic is seen in *Agiza v. Sweden* (2005). Ahmed Agiza was an Egyptian national who was denied asylum deported from Sweden despite his claims that he would be tortured upon arrival in his home country under false allegations of terrorism links.[50] The Committee found that Sweden knew, or should have known, at the time of deportation that there was a high risk that Agiza would be tortured in Egypt.[51] Based on this finding, the Committee observed that Sweden has an obligation to ensure a right to an effective remedy for the complainant.[52] Despite the finding, Sweden was initially slow on the uptake, and refused to admit any wrongdoing in the case. However, things were complicated because of the period in which the deportation took place, since it was during the relative peak of the U.S. War on Terror

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46 Nicholas Poynder, *When All Else Fails: Seeking Protection under International Treaties*, Project SafeCom (Apr. 28, 2003), https://safecom.org.au/poynder.htm.

47 *Ms. A.*, *supra* note 12, at ¶ 7.5.

48 Joanne Kinsor, *Non-Refoulement and Torture: The Adequacy of Australia's Laws and Practices in Safeguarding Fugitives from Torture and Trauma*, 25 AIAL Forum 16 (2000).

49 Press Release, Comm. against Torture, Committee against Torture begins review of report of Bosnia and Herzegovina (Nov. 8, 2005), available at https://reliefweb.int/report/bosnia-and-herzegovina/committee-against-torture-begins-review-report-bosnia-and-herzegovina (last visited July 2, 2025).

50 *Agiza v. Sweden*, Comm. against Torture, ¶¶ 2.2-2.5, U.N. Doc. CAT/C/34/D/233/2003 (May 20, 2005).

51 *Id.* at ¶ 13.4.

52 *Id.* at ¶¶ 13.6-13.7.

and resulted in allegations from a Senator in the Council of Europe Parliamentary Assembly that European countries like Sweden were involved in efforts to detain and mistreat persons with suspected terrorist ties.[53] Broader discussions in the international community began to spring up, centring on the acknowledgement that protecting human rights and cracking down on terrorism should never be mutually exclusive.[54] Eventually, the growing pressure from diplomatic and other channels resulted in Sweden revoking its decision to repatriate Agiza,[55] and also granting him compensation and permanent residency.[56]

Pressure from the international community was a key avenue in the *Agiza* case, and the ties of Sweden to the regional organisation in the form of the European Union must not be ignored. General and broad-scale pressure from the international community at large can be effective if the matter is one of pressing urgency and unprecedented levels of human rights violations — however, targeted pressure from smaller, regional organisations can prove even more effective, particularly with the unique position of Bosnia. BiH has been embroiled in the process of EU accession for many years now, with the latest update being that the European Council opened accession negotiations in March 2024.[57] Improving the visibility of the UNCAT recommendations within the European community, such that there is greater visibility and resultant pressure on BiH, is therefore another effective means of improving compliance with the obligations.

2.3. NON-GOVERNMENTAL ORGANISATIONS AND MEDIA ADVOCACY

The role of NGOs and the media in the context of pressuring compliance from State actors is very similar to that of international actors covered in the previous section. The primacy difference is that, rather than direct statements of disapproval and appeals to countries on a political and diplomatic level, NGO and media involvement include a few additional steps, in terms of publishing reports, conducting further investigations and research, and generating publicity.

In *Alzery v. Sweden* (2006), a companion case to *Agiza*, the U.N. Human Rights Committee examined the case of another Egyptian national deported from Sweden despite the significant risk of torture.[58] The case followed much the same procedure as that of *Agiza*, and arrived at the same conclusion.[59] Indeed, the pressure that Sweden faced from the international community often clubbed the two cases together, and the eventual revocation of their repatriation and subsequent compensation was handled together.[60] What is important to note, however, is that pressure from the international community alone would likely not have been sufficient in prompting Sweden's about-face. Critiques and reports from significant players in the human rights field, including Amnesty International[61] and Human Rights Watch,[62] as well as significant

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53 *"Serious human rights violations during anti-terror campaign must be corrected - and never repeated"*, Commissioner for Human Rights (Feb. 4, 2008), https://www.coe.int/en/web/commissioner/-/-serious-human-rights-violations-during-anti-terror-campaign-must-be-corrected-and-never-repeated-.

54 *Id.*

55 Alexandra Sandels, *Sweden Revokes Yet Another Decision of Extraditing Egyptian Terrorist Suspect*, Daily News Egypt (May 23, 2007), https://web.archive.org/web/20111125050914/http://www.dailystaregypt.com/article.aspx?ArticleID=7370.

56 *2008 Human Rights Report: Sweden*, U.S. Department of State (Feb. 25, 2009) https://web.archive.org/web/20090226175624/http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119107.htm

57 *EU-Bosnia and Herzegovina Relations*, European Commission, https://enlargement.ec.europa.eu/enlargement-policy/bosnia-and-herzegovina_en (last visited July 2, 2025).

58 *Alzery v. Sweden*, H.R. Comm., U.N. Doc. CCPR/C/88/D/1416/2005 (Nov. 10, 2006).

59 *Id.* at ¶¶ 12-13.

60 *2008 Human Rights Report*, *supra* note 53.

61 Sweden: The case of Mohammed El Zari and Ahmed Agiza: violations of fundamental human rights by Sweden confirmed, Amnesty Int'l (2006).

62 Still at Risk: Diplomatic Assurances No Safeguard Against Torture, H.R. Watch (2005).

coverage by Swedish media organisations[63], played a significant part in ensuring that cases like *Agiza* and *Alzery* were not forgotten, and that repeated reminders from the NGO and media space (alongside the aforementioned State actors) compelled Sweden to take accountability.

NGOs can also play a role in the UNCAT follow-up procedure detailed in Section 2.1. In the example of Lithuania receiving an A-grade after the follow-up, it is important to note that the information submitted by Lithuania to the Committee was also accompanied by a report jointly authored by the Human Rights Monitoring Institute and the Global Detention Project,[64] which took much the same systematic approach of the Lithuania country-report and tackled each of the key Committee recommendations and steps that had been taken in response. In another instance involving Magdalene laundries, religious-run carceral institutions in 20th century Ireland where teenagers were known to be arbitrarily detained and denied their liberties.[65] Following a general recommendation by the UNCAT (as opposed to a specific case) and a lack of subsequent action by Ireland, an NGO named Justice for Magdalenes (JFM) published a report detailing all the instances of failure to comply by Ireland, the resultant harms, and the need for renewed attempts at prompting compliance.[66] This eventually led to greater UNCAT scrutiny, and specific cases being tried, such as *Coppin v, Ireland* (2022).[67] While *Coppin* did not have a favourable outcome and the UNCAT (in a split decision) found that Ireland had not violated its post-2002 obligations under the Convention, the primary takeaway for this section is that NGO involvement can effect change in many ways, from exerting pressure on the country (as for Alzery and Agiza with Sweden), to contributing to the formal follow-up procedure (as in the case of Lithuania), and also prompting UNCAT attention and scrutiny through consistent reportage and investigations in the interest of accountability (as with JFM).

2.4. LEGAL STRATEGIES: DOMESTIC OR REGIONAL COURTS

The obligations recommended by UNCAT are non-binding because of the nature of the Committee. An indirect and somewhat roundabout way to enforce these obligations would be for a domestic or regional court with binding capacity to co-opt UNCAT recommendations so as to ensure that the State party is obligated to enact them. For instance, decisions by the European Court of Human Rights (ECtHR) are binding on all State parties. This would then prompt the question of why complainants against States party to the ECtHR might choose to go to the UNCAT instead (as in the cases of *Agiza*, *Alzery*, and *Ms. A*, among others). Five factors explain this trend:

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63 *Kalla Fakta*, "The Broken Promise" (Swedish TV4, May 17, 2004), available at https://www.therenditionproject.org.uk/pdf/PDF%20410%20%5BTranscript%20of%20TV4,%20Kalla%20Fakta,%20The%20Broken%20Promise,%2017%20May%202004%5D.pdf (last visited July 2, 2025).

64 Lithuania: Follow-Up Report to the UN Committee against Torture, Human Rights Monitoring Institute & Global Detention Project (2023).

65 Máiréad Enright, *Coppin v. Ireland: Depressing Conservatism from the UN Committee Against Torture*, Opinio Juris (Feb. 12, 2023), http://opiniojuris.org/2023/02/12/coppin-v-ireland-depressing-conservatism-from-the-un-committee-against-torture/.

66 Follow-Up Report to the UN Committee against Torture, Justice for Magdalenes (2012).

67 *Coppin v. Ireland*, Comm. against Torture, U.N. Doc. CAT/C/73/D/879/2018 (May 8, 2023).

(i) Throughout it's case history, the ECtHR has been criticised for its strict application of statutes of limitations (SOLs) from the relevant national systems, which has often resulted in claims being found inadmissible and claimants being denied justice.[68] Moreover, Article 35 of the European Convention on Human Rights (ECHR), on which the ECtHR is based, has its own limitation period, giving applicants only four months (recently brought down from six)[69] from the date of the final decision in a national court to lodge an application with the Court.[70] While the Court is ostensibly free to interpret the four month limit as liberally as it pleases,[71] it rarely utilises this ability. In the few instances that it does, it has been under caveats that ensure it is specific to the case at bar and not generalisable in future applications. For instance, in *Cindrić and Bešlić v. Croatia*, the Court declined to enforce the (at-the-time) six month time-limit only because the investigation into the alleged death at the core of the complaint was still ongoing and had been poorly conducted.[72] This posture of the ECtHR is in tension with the UN Impunity Principles, which specific that SOLs can bar neither international criminal prosecution nor civil claims for reparations.[73] Article 14 of the Convention also addresses the need for prioritising access to justice and redressal above all else, making the UNCAT a more accessible and less restrictive body for claimants seeking reparations.[74]

(ii) While the ECHR does contain a provision for victims of torture, the UNCAT is a specialised treaty body specifically established to deal with instances of torture (on both a case-by-case basis and as a war crime). As such, the UNCAT tends to be more explicitly and inherently "trauma-sensitive" in its foundational principles and the tools developed to implement it (like the Istanbul Protocol).[75] The ECtHR, while increasingly incorporating trauma-informed considerations into its jurisprudence and practices, does so within the broader framework of the ECHR. Its sensitivity to trauma often emerges through the interpretation of Article 3[76] in specific cases and through the developing best practices in legal representation, rather than being as explicitly embedded in its founding text as in UNCAT.

(iii) In recognising rape and sexual violence as a form of torture in *Aydin v. Turkey* (1997),[77] the ECtHR certainly made a ground-breaking judgement. However, subsequent cases have found the Court's jurisprudence setting a high bar for this recognition (centring on the purposive element and showing of discriminatory intent), with critics highlighting the negative impacts of rape not satisfying the threshold for torture "per se".[78] This high ECtHR threshold often influences complainants, particularly those who are survivors of sexual violence, to appear before the UNCAT.

(iv) The ECtHR primarily focusses on monetary compensation for victims, as seen in it's Practice Direction on Just Satisfaction Claims,[79] which interprets Article 41 of the ECHR that deals with 'just satisfaction'.[80] By contrast, complainants to the UNCAT often receive decisions with

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68 Advisory Opinion Requested by the Armenian Court of Cassation (Request no. P16-2021-001), Advisory Opinion, [2022] Eur. Ct. H.R. ¶ 46 (Apr. 26).

69 *Time limit for ECHR applications reduced to four months*, Council of Europe (Feb. 01, 2022), https://www.coe.int/en/web/portal/-/time-limit-for-echr-applications-reduced-to-4-months.

70 Practical Guide on Admissibility Criteria, Eur. Ct. H.R. ¶ 197 (2025).

71 *Id*. at ¶¶ 198, 200.

72 *Case of Cindrić and Bešlić v. Croatia*, App. No. 72152/13, ¶ 59, Eur. Ct. H.R. (Nov. 05, 1981).

73 Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher, Addendum: Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, ¶ 23, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 08, 2005).

74 Convention against Torture, *supra* note 1, art. 14.

75 U.N. Office of the High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2004).

76 *European Convention on Human Rights,* art. 4, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR].

77 *Aydin v. Turkey,* App. No. 57/1996/676/866, Eur. Ct. H.R. (Sep. 25, 1997).

78 Clare McGlynn, *Rape, Torture and the European Convention on Human Rights*, 58 Eur. Ct. H. R. 565, 565 (2009).

79 Practice Note 12: Compensation for Victims of Torture, Redress 11 (2024).

80 ECHR, *supra* note 66, art. 41.

commentary on broader systemic change (grounded in the Convention against Torture's broader Article 14[81] mandate to ensure rehabilitation), such as recommendations for the State party to provide special training for its medical practitioners to deal with sexual violence victims[82] as well as comments on investigative standards and judicial accessibility and accountability.[83] UNCAT therefore directly mandates rehabilitation and has a clear focus on understanding the full spectrum of suffering (physical and mental) inflicted by torture, and is more likely to affect broader legal reform.

(v) While quasi-judicial, the UNCAT's procedure for individual communications[84] can sometimes be perceived as less formal and more accessible than a full court proceeding, and the Committee often engages in dialogue with the State Party. The ECtHR is a court, with rigorous admissibility criteria, strict procedural rules, and a judicial process. While this ensures legal rigour, it can be intimidating and potentially re-traumatising for survivors due to cross-examination or the adversarial nature of proceedings.

As a case involving a survivor of conflict-related sexual violence (CRSV), it is entirely reasonable, therefore, that Ms. A's case was taken directly before the UNCAT. However, despite these factors, the fact that UNCAT recommendations are non-binding still present a significant obstacle. If the case, or the recommendations of the Committee, were to be co-opted by the ECtHR or even the domestic system of BiH via application to the Council of Ministers (a key organ of the Bosnian government), the recommendations would become binding obligations on the country and would require State action. In 2024, the CoM did consider the issue of paying reparations to warcrime survivors, which is the first of the four recommendations in the *Ms. A* decision,[85] and voted against formally undertaking a responsibility to ensure such payment. Furthermore, if new information were to come to light, such as in the form of TRIAL (as Ms. A's legal representatives) presenting new medical records showing a deterioration in Ms. A's health owing to the reparatory obligations being neglected, it could persuade the CoM to (re)consider coopting the UNCAT decision and trigger a new (favourable) vote, thus making it binding for BiH. In this roundabout manner, the procedural difficulties of the ECtHR need not present a hinderance for CRSV survivors, while also ensuring guarantees that the obligations are enacted.

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81 Convention against Torture, *supra* note 1, art. 14.

82 Conclusions and Recommendations on Colombia, Comm. against Torture, ¶ 10(f), U.N. Doc. CAT/C/CR/31/1 (Feb. 4, 2004).

83 International Commission of Jurists, The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide 100, 111 (2018).

84 Convention against Torture, *supra* note 1, art. 22.

85 *Ms. A.*, *supra* note 12, at ¶ 9.

2.5. MULTI-MECHANISM SCRUTINY

The final mechanism for attempting compliance with the UNCAT obligations is in the form of multi-mechanism coordination among UN treaty bodies, resulting in increasing scrutiny and pressure. In recent times, Belarus has received multiple communications from the UNCAT based on findings of torture and a subsequent lack of investigations.[86] The Human Rights Committee (HRC) and Committee on Enforced Disappearances (CED) have also issued findings on related violations.[87] These bodies often reference each other's findings in concluding observations. Moreover, the Universal Periodic Review (UPR) regularly raises Belarus's non-compliance with UNCAT decisions.[88] While Belarus unfortunately remains non-compliant, the cumulative international scrutiny has increased pressure and documentation for future accountability.

There is a key difference between the Bosnian and Belarusian contexts that allows multi-mechanism scrutiny to continue to be a viable option. The UNCAT obligations on BiH were the result of one primary landmark case (*Ms. A*), as opposed to the multiple findings of violations against Belarus over many years. The fact that the Belarusian violations went unchecked for many years can be hypothesised as being a significant factor resulting in continued non-compliance and the ostensible ineffectiveness of increased scrutiny. If anything, this further highlights the urgency for increased multi-mechanism pressure and scrutiny on Bosnia, to avoid an entrenchment of non-compliance similar to the Belarusian context. The coordination of multiple UN treaty bodies can be powerful, increasing visibility of the problem and tackling the issues from multiple angles and in various sessions.

It is unclear which of these five avenues for encouraging compliance with non-binding obligations can prove most effective — however, there is nothing to suggest that they are mutually exclusive. Indeed, evidence suggests that avenues such as diplomatic pressure work best in conjunction with pressure from NGOs and media advocacy. When dealing with a case with the potential to significantly reshape and reform the Bosnian legal system's treatment of war crime survivors, a multi-faceted approach is therefore practical, and, indeed, desirable.

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86 Report of the Committee against Torture, Comm. against Torture, ¶¶ 34-48, U.N. Doc. A/79/44 (June 21, 2024).

87 Press Release, U.N. Human Rights Off. of the High Comm'r., Belarus: Inmate ill-treatment and possible enforced disappearances ongoing concerns, say UN experts (Oct. 31, 2024), available at https://www.ohchr.org/en/press-releases/2024/10/belarus-inmate-ill-treatment-and-possible-enforced-disappearances-ongoing (last visited July 2, 2025); Press Release, U.N. Human Rights Off. of the High Comm'r., Enforced disappearances: Working Group concludes its 136th session (May 02, 2025), available at https://www.ohchr.org/en/statements-and-speeches/2025/05/enforced-disappearances-working-group-concludes-its-136th-session (last visited July 2, 2025).

88 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Belarus, H.R.C., U.N. Doc. A/HRC/WG.6/36/BLR/1 (Feb. 25, 2020); Compilation on Belarus: Report of the Office of the United Nations High Commissioner for Human Rights, H.R.C., U.N. Doc. A/HRC/WG.6/36/BLR/2 (Feb. 27, 2020).

3. REPARATIONS AND COMPENSATION CLAIMS IN BOSNIA

The Bosnian War is a key and often-cited example of a conflict in recent history. As such, the elements of justice and the resolution of claims that emerge from the aftermath of the war have legal ramifications beyond just the geographic scope of the conflict. However, many problems can be identified with the existing domestic legal framework which result in ineffective access to justice for survivors.

3.1. LIMITED COMPENSATION IN CRIMINAL PROCEEDINGS

While Bosnian law permits victims to seek compensation through criminal proceedings, this avenue remains underutilised — in practice, compensation is not always awarded within criminal trials. This is largely due to the prevailing perception in European judicial systems that adding civil claims to criminal proceedings would make the whole process slower and more inefficient. This is a line of reasoning used by defence attorneys (but also the court itself) in the interest of separating the claims against their client and stretching out the process. As a result, survivors often face the additional burden of initiating separate civil lawsuits, which can be financially prohibitive and emotionally taxing.

Furthermore, while identify protection measures are provisioned for in the criminal code, the Bosnian Civil Code has very limited measures in place for effective identity protection. The governing law first came into force in 2006, and was amended in 2011.[89] However, it has been found deficient and non-aligned when compared to the General Data Protection Regulation (GDPR), the gold standard of data protection laws in the European Union.[90] A new Draft Data Protection Law that is more in line with the GDPR has been making the rounds in BiH since 2018, but it is yet to be adopted.[91] The impact of the currently underdeveloped DP law is that survivors and witnesses are often reluctant to come forward with separate civil claims because of the inadequate measures in place for identity protection, significantly hindering legal proceedings, and, in many instances, resulting in cases not even being brought before the courts and justice being denied and forgotten. This fragmented approach leads to inconsistent access to justice and reparation for victims.[92]

In addition to this, significant challenges are often presented in the form of lack of distinct avenues for monetary recovery. More specifically, there has been a trend of convicted perpetrators claiming bankruptcy and therefore proving unable to pay compensation to the survivor, despite the court finding the latter deserving of reparation, as in the case of *Ms. A*. The reality is that perpetrators often transfer their funds and property to the names of others in their family, but this is often difficult to track and prove. More importantly, this leaves the survivor with no

89 Law on Protection of Personal Data ('Official Gazette of BIH', nos. 49/06, 76/11 and 89/11) (DP Law); *Data protection laws in Bosnia and Herzegovina*, DLA Piper (Jan. 20, 2025), https://www.dlapiperdataprotection.com/?t=law&c=BA (last visited July 02, 2025).

90 *Data protection laws in Bosnia and Herzegovina*, DLA Piper (Jan. 20, 2025), https://www.dlapiperdataprotection.com/?t=law&c=BA (last visited July 02, 2025).

91 *Id.*

92 Selma Ucanbarlic, *No Compensation For War Crime Victims*, Balkan Insight (Nov. 28, 2011), https://balkaninsight.com/2011/11/28/no-compensation-for-war-crime-victims/.

means of receiving compensation, through no fault of their own. A national reparations program is the ideal solution in this instance — a centrally controlled fund dedicated to compensating survivors in the instance that the perpetrator is unable to immediately provide for the same. More on this concept and its importance is covered in Section 3.3.

3.2. FINANCIAL BARRIERS AND COURT FEES

Victims whose compensation claims are rejected in Bosnia may be subjected to high court fees, particularly in the Republika Srpska entity. This practice has been described as "double jeopardy", since the victims are penalised financially after already enduring the trauma of war crimes.[93] In some cases, this has led to property seizures and severe psychological distress among survivors.[94] In addition to the central trauma in the aftermath of the unfavourable complaint, such a system is also highly likely to discourage survivors from bringing complaints in the first place. Further differences between standards of access and practice between the Federation, Republika Srpska, and the Brčko District exacerbate the legal difficulties. Additionally, barriers including a strict statute of limitations on all non-pecuniary civil claims against the State means that civil lawsuits are frequently dismissed and survivors often bear additional financial burdens.[95]

Thirty years after the conclusion of the Bosnian War, the fact that there continue to be victims coming forward is telling in itself about the obstacles to accessing justice that have been prevalent in the Bosnian legal system over the last few years. Practices like "double jeopardy" pile on to those obstacles, and highlight the need for legal reforms as recommended by the UNCAT.

3.3. ABSENCE OF A NATIONAL REPARATIONS PROGRAM

Despite the adoption of laws recognising certain categories of victims, such as children born of wartime sexual violence,[96] BiH lacks a comprehensive national reparations program. The absence of a unified approach leads to disparities in the recognition and support of victims across different regions. International bodies have repeatedly called for the establishment of a state-level reparations framework to ensure equal access to justice for all victims.[97] The UNCAT decision in *Ms. A* is the most impactful of these, particularly as it is a direct recommendation to set up a reparations scheme that the Committee identifies as being necessary for proper and effective access to justice among survivors of conflict-related atrocities.[98]

The idea to establish a reparations program is not new in the Bosnian context, and it is certainly not globally unprecedented. Such programs have been established at various levels:

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93 *Double Jeopardy for Wartime Torture Victims of Bosnia and Herzegovina: After Having Their Compensation Claims Rejected, They are Forced to Pay High Court Fees*, TRIAL Int'l (Sep. 26, 2022), https://trialinternational.org/latest-post/double-jeopardy-for-wartime-torture-victims-of-bosnia-and-herzegovina-after-having-their-compensation-claims-rejected-they-are-forced-to-pay-high-court-fees/.

94 *Id.*

95 Reparations for Survivors of Country-Related Sexual Violence – Country Briefing: BiH, TRIAL Int'l 3 (2021).

96 Urumova et al., *Nearly 30 years following the end of the war in Bosnia and Herzegovina, war victims remain neglected*, Organisation for Security and Co-operation in Europe (Jan. 18, 2024) https://www.osce.org/mission-to-bosnia-and-herzegovina/561697.

97 *Consultation on Reparations for Civilian Victims of the War in Bosnia and Herzegovina*, European External Action Service (Nov. 29, 2024), https://www.eeas.europa.eu/delegations/bosnia-and-herzegovina/consultation-reparations-civilian-victims-war-bosnia-and-herzegovina_en; Concept and Framework for the Development of a Gender-Sensitive Reparations Program for Civilian Victims of War in Bosnia and Herzegovina, Women's International League for Peace & Freedom 16-28 (n.d.).

98 *Ms. A.*, *supra* note 12, at ¶ 9.

(vi) National level: in the U.S. for the internment of Japanese Americans during the Second World War[99]; in South Africa for victims of apartheid crimes[100]; in Chile for survivors of crimes committed during Pinochet's dictatorship[101]; and more.

(vii) Regional level: this is relatively rarer, but an example is the effort by the African Union, through the Extraordinary African Chambers in Dakar (though significant questions about its effectiveness and legitimacy remain)[102].

(viii) Intergovernmental/International Level: by the Permanent Court of Arbitration, which served as a registry to the joint Eritrea-Ethiopia Claims Commission[103]; by the International Criminal Court's Victims Trust Fund[104]; by the UN Security Council, through the United Nations Compensation Commission[105]; and more.

There is therefore no dearth of inspiration on which BiH could model their own reparations program. This is, admittedly, the most significant undertaking mentioned alongside the UNCAT recommendations in *Ms. A* — however, it is clear that it is a purposeful objective, with the end goal of establishing a long-term system of effective compensation and access to justice for survivors who may continue to come forward.

3.4. CHALLENGES IN CRIMINAL JUSTICE AND INSTITUTIONAL COORDINATION

The prosecution of war crimes remains slow and inconsistent in BiH. Over 500 cases involving more than 4,000 suspects remain unresolved, hindered by political interference, lack of institutional coordination, and inadequate witness protection mechanisms.[106] These delays undermine the prospects of justice for victims and perpetuate a climate of impunity.

Political factions and different standards among the legal systems of the Federation, Republika Srpska, and the Brčko District mean that attempts for any substantial progress towards long-term and systemic change to improve access to justice often hit stumbling blocks along arbitrary partisan lines. The impacts of limited institutional coordination are far-reaching and entrenched, with a primary example being how Republika Srpska continues not to recognise CRSV survivors as a separate category of civilian victims within its Law on Protection of Civilian Victims of War.[107] Such differing standards within the same country can have immensely discouraging effects on survivors who may wish to come forward, but find themselves intimidated by the lack of coordination and arbitrarily distinctions of the national legal framework.

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99 Isabella Rosario, *The Unlikely Story behind Japanese Americans' Campaign for Reparations*, NPR (Mar. 24, 2020), www.npr.org/sections/codeswitch/2020/03/24/820181127/the-unlikely-story-behind-japanese-americans-campaign-for-reparations.

100 Princeton N. Lyman, *Paying the Price for Apartheid*, The New York Times (Jan. 5, 2010), www.nytimes.com/2010/01/06/opinion/06iht-edlyman.html.

101 The Series of Reparations Programs in Chile, International Center for Transitional Justice (2008).

102 Nader Iskandar Diab, *Too Soon until It Got Too Late: Making Reparations a Reality for Hissène Habré's Victims*, *in* Reparations for Victims of Genocide, War Crimes and Crimes against Humanity 505, 505 (Carla Ferstman & Mariana Goetz eds., 2020).

103 *Eritrea-Ethiopia Claims Commission*, U.N. High Commissioner for Refugees (n.d.), https://www.refworld.org/document-sources/eritrea-ethiopia-claims-commission (last visited July 02, 2025).

104 *Trust Fund for Victims*, International Criminal Court (n.d.), https://www.icc-cpi.int/tfv (last visited July 02, 2025).

105 *United Nations Compensation Commission (UNCC)*, International Organization for Migration (n.d.), https://micicinitiative.iom.int/united-nations-compensation-commission-uncc-0 (last visited July 02, 2025).

106 *OSCE report: Achieving justice in BiH war crimes is a race against time*, N1 Televizija (June 28, 2022), https://n1info.ba/english/news/osce-report-achieving-justice-in-bih-war-crimes-is-a-race-against-time/ (last visited July 02, 2025).

107 Law on Protection of Civilian Victims of War of RS (*Zakon o zaštiti civilnih žrtava rata RS-a*), Official Gazette of Republika Srpska, nos. 25/93, 32/94, 37/07, 60/07; Submission to the United Nations Committee against Torture, Amnesty Int'l 10 (2017).

4. RECOMMENDATIONS AND NEXT STEPS

Bosnia and Herzegovina's failure to adequately address the needs of war crimes victims reflects a broader pattern of neglect and institutional inertia. While some progress has been made at the entity level, the lack of a cohesive national strategy continues to impede justice and reconciliation efforts.[108] The international community, alongside NGOs and civil society organizations (CSOs), must persist in advocating for comprehensive reforms to ensure that victims receive the recognition, support, and reparations they rightfully deserve.

In the event that the framework for such reforms can be developed through recommendations by the UNCAT, the non-binding nature of the Committee's decisions limits direct enforcement options. Bosnia and Herzegovina's treatment of non-binding international obligations, such as those from UNCAT, demonstrates a pattern of partial compliance influenced by domestic political dynamics. While there is some alignment with international standards, significant gaps remain in areas like victim compensation and the establishment of preventive mechanisms against torture. Continued international engagement and internal reforms are essential to enhance the country's adherence to its human rights commitments, particularly in the face of political fragmentation and institutional weaknesses, which continue to impede full implementation.

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108 63rd Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations, Office of the High Representative (2023).

4.1. ENSURING CONTINUED ENGAGEMENT WITH NON-BINDING OBLIGATIONS

There is no one panacean solution to improving a country's commitment to engaging with and following non-binding obligations and recommendations. It is dependent on the country, the context and situation, and various other factors. In the case of Bosnia and Ms. A, a mixed approach incorporating elements of all the major avenues identified for encouraging such engagement is likely to be most effective.

1. **NGOs and CSOs must publish reports and encourage media advocacy highlighting the relative inaction of the Bosnian government and legal system in implementing the UNCAT recommendations. Sustained and coherent messaging is essential to preserving the significance of the landmark Ms. A case, ensuring its potential is not overlooked while fostering secondary effects that may culminate in incremental but long-lasting progress.**

2. **The publicity and discourse generated by independent organisations can result in greater international scrutiny on Bosnian efforts in this context. Dynamics including the current EU accession talks mean that regional bodies like the European Union and the Council of Europe can exert diplomatic and reputational pressure on BiH to comply with human rights obligations.**

3. **The UNCAT must deploy it's follow-up procedure under Rule 72 of its operational rules, allowing it to formally request additional information from a State party to elucidate what (if any) measures have been taken to comply with the Committee's recommendations from its earlier concluding observations.[109] Continued and persistent pressure from the international community as well as other independent actors, as explored above, is most probable to have a positive effect in prompting the UNCAT to engage in this formal procedure.**

4. **In conjunction with the UNCAT follow-up, the role of other UN bodies must not be neglected. Including the conduct of Bosnia in this context, as well as the Ms. A recommendations, on a regular basis in relevant Human Rights Committee reports, UPR updates, and other pertinent public UN mechanisms will expand the scope of the pressure for compliance beyond just the UNCAT and make it a cross-UN issue.**

5. **Efforts must also be made to encourage the national BiH government to co-opt the UNCAT recommendations and transform them into binding obligations. NGOs and CSOs have the ability to engage with the Council of Ministers through reports and other forms of raising awareness of the issue, while attempting to prompt the CoM to discuss, debate, and vote on whether to take on the recommendations as a national objective.[110] Such engagement can be further strengthened if it comes against the backdrop of a new, formal follow-up enacted by the UNCAT. Indeed, in it's follow-up, the UNCAT also has the ability to specifically reference the need for direct action from the CoM and the Bosnian government at large. A favourable vote by the CoM would be a radical step that would lock the country into a course of action that will require significant transformations of the legal system but will also greatly improve overall standards of access to justice for survivors.**

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109 *Follow-Up Procedure*, *supra* note 29.

110 *NGOs in Bosnia and Herzegovina Have a Voice in the Council of Ministers!*, Balkan Civil Society Development Network (Dec. 02, 2020), https://balkancsd.net/ngos-in-bosnia-and-herzegovina-have-a-voice-in-the-council-of-ministers/; Eur. Comm'n, Bosnia and Herzegovina Report 2024 37 (2024), available at https://enlargement.ec.europa.eu/document/download/451db011-6779-40ea-b34b-a0eeda451746_en?filename=Bosnia%20and%20Herzegovina%20Report%202024.pdf.

4.2. ADVANCING NATIONAL-LEVEL AND SYSTEMIC CHANGE

International experts, including the UN Special Rapporteur on transitional justice, have emphasised the urgency of implementing a comprehensive reparations program.[111] Recommendations for such a large-scale effort are varied and likely to be slower to implement that the steps suggested in the previous section, simply because of the scope of the undertaking.

1. **A national fund must be established to compensate victims when perpetrators are unable to do so, as seen in Ms. A.**

2. **Systematic efforts must be taken to counter the current trends in prosecution, and ensure that compensation is awarded within criminal proceedings to streamline access to justice.[112]**

3. **Better systems must be implemented for the protection of the identities of victims in both criminal and civil proceedings, in order to prevent re-traumatisation.**

4. **A national transitional justice strategy can be developed so as to address the legacies of war crimes comprehensively. This would be in accordance with the UNCAT recommendation in the Ms. A case for Bosnia to develop and undertake a framework law that clearly defines the status of war crime survivors and the rights, benefits, and compensation to which they are entitled.[113]**

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111 Emina Dizdarević Tahmiščija, *Bosnia Spent Millions on War Monuments in Bosnia During Decade Lost for Reparations*, Detektor (2024), https://tranzicijskapravda.detektor.ba/en/reparations/ (last visited July 02, 2025).

112 *Who Needs Redress Anyway!*, Women's International League for Peace & Freedom (n.d.), https://bosnia-peace.wilpf.org/bosnia-peace/who-needs-redress-anyway/ (last visited July 02, 2025).

113 *Ms. A.*, *supra* note 12, at ¶ 9.

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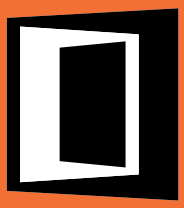

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