



**Joint Submission for the Second Cycle  
of  
Universal Periodic Review  
Bosnia and Herzegovina**

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Submitted by

**TRIAL (Track Impunity Always)**

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**Association of Families of Killed and Missing Defenders of the Homeland War from Bugojno Municipality**

**Association of Families of Missing Persons in Ilijaš**

**Association of Families of Missing Persons in Kalinovik (“Istina-Kalinovik ‘92”)**

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## I. The Focus of this Written Submission

1. The associations that present this submission work with victims of gross human rights violations and crimes under international law (e.g. torture, sexual violence, arbitrary executions and enforced disappearance) perpetrated during the 1992-1995 war in Bosnia and Herzegovina (BiH). This submission is therefore centered on the violations suffered by this group of people and the problems they currently face. The omission of other subjects does not imply by any means that the subscribing associations believe that BiH fully complies with all its international obligations, ensuing from the human rights treaties to which it is party.

## II. Follow-up Information on the Recommendations from the 1<sup>st</sup> UPR Cycle

2. After the 1<sup>st</sup> UPR cycle BiH partially accepted recommendations concerning **witness protection** and the implementation of the **National War Crimes Processing Strategy** (recommendations No. 20, 77, 82, 83 and 84).
3. With regard to **witness protection and support**, despite the commitments undertaken by BiH in 2010, the associations subscribing this document, and especially those working with women victims of rape or other forms of sexual violence during the war, highlight the **insufficiency of the psychological support provided to witnesses and victims before, during and after trials**. The situation is particularly critical in Republika Srpska and before district prosecutors' offices. In **Republika Srpska, the government suspended the budget line concerning support of victims and witnesses during war crimes trials, thus worsening an already precarious situation where local Centres for Social Work were in charge of this task without having the necessary training to do so**. To face this situation the Association of Women-Victims of War had to engage a psychotherapist to support its members. Recently the **United Nations Development Programme (UNDP) provided some funding to cover this gap, but it is not clear how sustainability on a medium/long term will be ensured**.
4. In September 2013 new departments to offer support to witnesses during war crimes trials have been set up at the Cantonal Court in Novi Travnik and at the Cantonal Prosecutor's Office in Travnik, as well as at the Cantonal Court and the Cantonal Prosecutor's Office in Bihać. These departments have been established with the support of the United Nations Development Programme (UNDP). In this sense, if BiH authorities do not provide for adequate and sufficient financial and human resources to ensure future activities, the sustainability of these new departments may be at risk.

5. Overall, **the relevant legal framework for victims and witnesses protection and support remains inadequate.** While few attempts to amend the existing legal framework on witnesses' protection already failed, in July 2011 a working group composed of different authorities was established with the aim of putting forward another draft law. The Council of Ministers of BiH prepared a draft law on Witness Protection Programme in BiH, which was adopted by both the House of Representatives and the House of Peoples of the BiH Parliamentary Assembly in December 2013. However, due to the fact that the texts adopted by the two Chambers were not identical, the establishment of a Joint Commission with the task of adjusting the text has been announced on 16 December 2013. At the time of writing it is unknown when the Commission will start its work.

**BiH has not implemented its commitment with regard to witness protection and psychological support and the relevant legal framework remains uneven.** BiH must ensure that **a comprehensive programme of victims and witness protection and psychological accompaniment is granted at all levels** prior, during and after the trial takes place. **Instances of threats or harassment against witnesses, victims, their families, their counsels and representative associations must be promptly and thoroughly investigated and those responsible shall be judged and sanctioned.** Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State. **The draft law on witness protection and support must be discussed and enacted without further delay.**

6. With regard to the **National War Crimes Prosecution Strategy**, although over the past months moderate progress has been made in the implementation of the strategy, in its latest report the High Judicial and Prosecutorial Council (HJPC) affirmed that "prosecutor's offices around the country are *currently unable to process all the cases from the 1990s conflict that remain open*". **More than 1,000 war crimes related investigations would still be ongoing across the country.** During 2012, the Court of BiH rendered 32 verdicts on war crimes cases, the courts in Republika Srpska rendered 17, the courts in the Federation of BiH rendered 16, and those in Brčko District rendered 4 verdicts. According to the HJPC the implementation of the strategy has been enhanced by forwarding a significant number of cases from the State to Entity levels. Nevertheless, **in order to be effective and sustainable, this requires additional human resources (esteemed by the HJPC in the number of 28 new prosecutors).** In November 2013, the Prosecutor's Office of BiH appointed 13 new prosecutors to work on war crimes cases. Associations of victims of gross human rights violations during the war remain **generally dissatisfied with the implementation of the strategy.** Some of their members are dying without seeing justice done and this is fostering an overall sense of

frustration among people who have been waiting over the past 20 years to see those responsible for crimes under international law and gross human rights violations duly prosecuted and sanctioned. The general feeling of abandonment is further nourished by the fact that perpetrators are getting increasingly low sentences.

BiH has **not fulfilled its commitment with regard to the National War Crimes Prosecution Strategy**. It must ensure that the strategy is **duly implemented without any further delay and that adequate financial and human resources are allocated to guarantee that the pace of proceedings increases**. BiH must also guarantee that victims of gross human rights violations during the war and their representatives are **given information on a regular basis on the process of investigation carried out by the prosecutor's offices, the results of those investigations, and whether trials might be forthcoming**.

7. In its commitments in 2010 BiH also referred that the development of a **Transitional Justice Strategy** was "under way". In this regard, it must be stressed that a working document containing the draft Transitional Justice Strategy was expected to be presented for adoption to the Parliamentary Assembly during the summer of 2012. However, at March 2014 **the draft has not yet been presented for adoption to the Parliamentary Assembly**. The Ministry of Justice of BiH is coordinating new efforts into organizing further consultations at the local and other levels with a variety of actors to gather their comments to the draft document, enter amendments and advocate for its adoption. While BiH indulges into lulls on the adoption of the draft, victims of the war that have been waiting for justice and redress over the past 20 years, consider this piece of legislation a top priority that cannot be eluded any further.

**The commitment undertaken in 2010 with regard to the adoption of the Transitional Justice Strategy has not been respected. BiH shall ensure that the Transitional Justice Strategy is adopted and implemented without any further delay and the necessary funding is secured.**

8. BiH accepted a number of recommendations (No. 67, 68 and 72) with regard to **women victims of rape or other forms of sexual violence during the war**.
9. However, with regard to **trials concerning people accused of rape or other forms of sexual violence** committed during the war, the **results are alarmingly poor, especially considering the scope of the phenomenon**. According to official data released in April 2013 by the Outreach Office of the Court of BiH from 2005 until the end of March 2013 the BiH Court prosecuted **42 cases** that had elements of sexual violence. Five of those cases are currently active in the first instance and two are

in a second instance procedure. The mentioned number, compared with the figures of victims of rape or other forms of sexual violence during the war (between 20,000 and 50,000), suggests that **impunity remains rampant**. Further, also in those cases where tribunals convicted those accused for rape or other forms of sexual violence, two main problems have been reported. On the one hand, often **the crime is dealt with as “ordinary rape” instead of a crime against humanity or a war crime**, with the consequence that perpetrators get significantly lighter sentences and victims and witnesses do not enjoy the special measures of protection and accompaniment they would be entitled to. On the other hand, although criminal courts have the option to award total or part of a claim for compensation to the injured parties or to refer them to civil actions, in all cases known to the subscribing associations, victims are **referred to civil actions**. This practice **hampers the access to compensation of the majority of victims**, given that to launch a civil action they would need a lawyer to represent them, and, in almost the totality of cases, they cannot afford it, while **free legal aid is not granted by the State**.

10. At the end of 2010, the process of drafting and adoption of the **“Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence”**, coordinated by the United Nations Population Fund (UNPFA) and the BiH Ministry of Human Rights and Refugees, was launched. The finalization of the draft programme was initially expected by the end of 2011 and was then repeatedly postponed. At March 2014, **the draft programme has not yet been submitted to the Council of Ministers of BiH for approval and it remains at the Entities’ level**. The programme was submitted for feedback opinions to Entity governments, but the government of Republika Srpska failed to formulate its opinion so far, thus paralyzing the whole process. This situation casts serious doubts on the level of priority attributed by BiH authorities to this legislative initiative and discloses a discrepancy between the expectations of women victims of rape or other forms of sexual violence during the war and the attitude demonstrated towards them by the State. It would now seem that BiH is planning a “modular implementation” of the Programme, but this would largely depend on the financial support of external donors and it is not clear how it could be put in place without the support of one of the Entity governments and without formal approval.

BiH has **not fulfilled its commitments with regard to women victims of rape or other forms of sexual violence during the war**. It must **prioritize the trial of persons accused of these crimes**, ensuring adequate support and protection to victims and witnesses. BiH must ensure that crimes of sexual nature committed during the war are not prosecuted as “ordinary” offences, but are dealt with as crimes against humanity or war crimes, and sanctioned in accordance with the gravity. BiH must guarantee that **criminal**

**courts avail themselves of their power to award compensation to victims of sexual violence, instead of systematically referring them to civil actions.**

BiH must ensure that the **Programme for Improvement of the Status of Survivors of Conflict related Sexual Violence is referred for approval to the Council of Ministers of BiH without further delay.**

Representatives of the Entities must express their opinions on the programme and show their genuine support. Measures envisaged by the programme shall have a transformative aim, in the sense that they must allow women to ameliorate or at least consolidate their position in society. Women victims of rape or other forms of sexual violence during the war shall be guaranteed full participation in the drafting of the programme, and in the subsequent implementation, evaluation and decision-making.

11. In its 2010 commitments, BiH affirmed that freedom of expression is promoted through the work of organizations of civil society and partially accepted recommendations No. 86 and 87 to intensify its efforts to ensure the full and unhindered exercise of the freedom of expression. On the other hand, BiH did not accept recommendation No. 8, holding that the Republika Srpska police “have not recorded any cases of violence against human rights defenders”. Nevertheless, BiH partially accepted a number of recommendations concerning the protection of human rights defenders in general (No. 89 and 90-97).
12. During 2012, in Prijedor (Republika Srpska) restrictions on freedom of expression and assembly, as well as prohibitions to hold public commemorations were reported. In particular, **public commemorations for the 20<sup>th</sup> anniversary of mass atrocities organized by local NGOs (9 May 2012), were formally prohibited and it was announced that any transgression of such prohibition and the use of the term “genocide” when referring to the crimes committed at Omarska would be prosecuted and sanctioned.** Former camp-detainees or their relatives willing to visit the former detention camp of Omarska often cannot do so, because Arcelor Mittal, the corporation currently owning the site where the detention camp was set up during the war, imposes severe restrictions to those willing to visit the site. For instance, on 9 May 2013, **representatives of former camp-detainees were not allowed to commemorate the Day of Camp-Detainees and to visit the site.**
13. Between 2011 and 2012 **civil society organizations headquartered in Prijedor, namely *Izvor* and *Prijedor 92*, were subjected to attacks on their premises.** Those events were promptly denounced to the local police. At the time of writing, investigations are allegedly ongoing and **no one has been prosecuted and sanctioned for those events.**
14. On 31 May 2013 around 400 people, mainly young persons, gathered in Prijedor on the occasion of

the “White Arm Band Campaign”, designated to draw attention to the continued denial of crimes and discrimination of the non-Serb victims by the local government in Prijedor. The mayor of Prijedor **publicly and disdainfully referred to the manifestation as an “ordinary Gay Parade”, accusing NGOs and civil society organizations to be responsible for the unemployment of young people**, because with their manifestations they would cast a bad reputation on Prijedor and frighten potential investors. These discriminatory and insulting affirmations issued by a State authority foster the feeling of marginalization of victims of gross human rights violations from the war. Associations working in the area report that these incidents are also nourishing a **sense of fear, in particular among returnees**.

BiH has **not fulfilled its commitments with regard to freedom of expression and protection of human rights defenders** and the **situation in Republika Srpska has further degenerated**. BiH must ensure that **restrictions on freedoms of expression and peaceful assembly comply with the strict requirements of Arts. 19 and 21 of the International Covenant on Civil and Political Rights**. BiH must investigate on the legality of prohibitions to conduct commemorations in Prijedor since May 2012 and, where appropriate, prosecute and sanction those responsible. BiH must guarantee that **episodes of harassment and defamation of those participating to peaceful assemblies and commemorations of war crimes are duly investigated** and, where appropriate, prosecuted and sanctioned, as well as those responsible for the attacks committed in 2011 and 2012 against the premises of the associations *Izvor* and Prijedor 92.

### III. Other Issues of Concern and Recommendations

#### A) The Non-Implementation of the Law on Missing Persons

15. On 17 November 2004 the Law on Missing Persons (LMP, Official Gazette of BiH No. 50/04) entered into force. This piece of legislation aims at establishing a comprehensive regime to deal with the 30,000 persons registered as missing at the end of the war and it is of pivotal importance for thousands of relatives who are trying to establish the fate and whereabouts of their loved ones and to obtain redress. Nevertheless, **almost 10 years after the entry into force of the LMP and despite reiterated recommendations by international human rights mechanisms, several provisions of the law remain dead letter**. In particular, the institution that should be responsible of dealing with the issue of missing persons (i.e. **Missing Persons Institute**) **is experiencing troubles with regard to the appointment of the members of its different managing bodies** and this is undermining the trust of associations of relatives of missing persons towards it. Moreover, the **LMP provided for the creation of a Central Record of Missing Persons (CEN)**, intended to include all records that were or are kept at local or Entity levels, by associations of families of missing persons and other associations of citizens, Tracing Offices of the organizations of the Red Cross in BiH, as well as international organizations. According to the law, **the CEN should have been completed by 1 January 2009, but at March 2014 (i.e. five years later)** the CEN has not been completed yet and this is a source of

deep distress for relatives of missing persons. Finally, **the LMP prescribes the creation of a Fund for the Support of Relatives of Missing Persons (“the Fund”)**. According to the law, a decision on the establishment of the Fund should have been issued by the Council of Ministers of BiH by 17 December 2004. **More than 10 years have passed and the Fund does not exist yet**, while **BiH authorities do not show any willingness to address this matter**. It must be further noted that the non-establishment of the Fund amounts also to **non-implementation of a significant number of decisions delivered by the Constitutional Court of BiH on the subject of missing people**, whereby the payment of compensation to relatives recognized as victims of grave human rights violations was associated to the establishment of the Fund, which was expressly ordered by the Constitutional Court of BiH.

BiH must ensure that the **LMP is fully enforced without any further delay**. In particular, the **CEN must be completed and the Fund must be established**. Moreover, **all the posts of the management of the Missing Persons Institute (MPI) must be filled through a regular and transparent election process**. The MPI must be secured regular budget and adequate and properly trained staff.

#### **B) The Status of Draft Legislation Relevant for Victims of Gross Human Rights Violations during the War**

16. Over the past years a number of legislative initiatives were launched in order to bring BiH legal framework in line with international standards. Some of these initiatives have now been ongoing for more than seven years, fostering first the illusions of victims of gross human rights violations during the war and then their frustration. Despite pledges and assurances given by BiH in this sense, to the great disappointment of the associations subscribing the present document, none of those initiatives has seen the light of the day. **Time passes, BiH authorities fail to take any positive measure, while in the meantime victims of gross human rights violations continue claiming for their rights**. Reference will be here made to two major and long due initiatives, namely the **draft Law on the Rights of Victims of Torture, and the draft Law on Free Legal Aid**.
17. Since 2006 BiH has been affirming before international mechanisms that the adoption of a Law on the Rights of Victims of Torture was “imminent”, without undertaking concrete measures to fulfil this commitment. In 2012 the BiH Ministry of Human Rights and Refugees re-launched the initiative to draft a law on the rights of victims of torture and submitted a draft for comments to Entities. In December 2013 both the Constitutional-Legal Commission of the House of Representatives of the Parliamentary Assembly of BiH and the Constitutional-Legal Commission of the House of Peoples accepted the draft, deeming it in compliance with the Constitutional and legal system of BiH. The Joint Commission for Human Rights, the Rights of the Child, Young People, Immigration, Refugees, Asylum Seekers and Ethics of the BiH Parliamentary Assembly rejected the draft twice, giving a negative opinion on its



principles. During its 63<sup>rd</sup> session held on 25 February 2014, the House of Representatives did not accept the negative opinion of the mentioned Commission and the law was not approved, nor was a proposal from a member of Parliament to assign to the BiH Council of Ministers the task to prepare and send to parliamentary procedure within 90 days a new version of the law. **The adoption and enforcement of the Law on the Victims of Torture unfortunately seems all but imminent.**

18. The above-described situation is a mockery in the face of the acute suffering of thousands of victims of torture from the war across the country who have not obtained redress for the harm endured. **Since August 2012, the situation deteriorated for victims residing in Brčko District, who are experiencing significant troubles also in accessing measures of social support.** The applicable legislation contains a discriminatory provision for the realization of rights for persons who have suffered “*subsequent bodily damage because of occurred or aggravated illness, a long period of incubation, loss of both extremities and eyesight, mental harm and other damage of at least 60% caused during the war, and who have not, until the entering into force of the decision (decision adopted on 8 August 2012 entered into force eight days after it was published in the Official Gazette) had established the status of civilian victims of war*”. Accordingly, **in order to access disability pension victims need to, among other documents, prove that there is a final criminal judgment against a perpetrator in their cases.** This requirement is clearly not in line with international human rights law.
19. In April 2012 a draft law on free legal aid was submitted to the BiH Council of Ministers, adopted by the latter as a proposal, and forwarded to undergo the parliamentary procedure. The draft was introduced into the BiH Parliamentary Assembly on 23 July 2012, but was eventually not approved. The deadline for the drafting of a new law was December 2013. However, **no new draft has been presented. This is a source of concern because the great majority of victims of gross human rights violations during the war are in dire financial conditions and cannot pay for legal assistance and representation.** Thousands of victims of gross human rights violations during the war are left without access to free legal aid and see their right to access to justice daily hindered, while their trust towards institutions is seriously jeopardized. The adoption of a law on free legal aid is a priority that cannot be postponed anymore.

BiH must ensure that the **obstacles for the adoption of the Law on the Rights of Victims of Torture are swiftly removed and this crucial piece of legislation is adopted and enforced without further delay.**

Financial resources for its implementation must be secured.

BiH must guarantee that the new **draft law on free legal aid is finalized without delay and associations of victims of gross human rights violations during the war are thoroughly involved** in the drafting process and allowed to express their opinions, needs and expectations. The draft law on free legal aid shall be promptly approved and its funding secured.

#### C) The “Anonymization” of Documents Concerning Crimes Committed during the War

20. In March 2012 the State Court of BiH amended its rulebook on public access to information under the Court's Control and Community Outreach. Currently, documents issued by the Court are censored and the Prosecutor's Office of BiH does not provide complete information on the indictments of war crimes. Arts. 41 to 46 of the amended rulebook of the Court set forth the "*anonymization of Court decisions and other documents distributed to the public*", thereby disposing that certain data (including names and surnames of those accused, suspected of, or convicted for war crimes, their representatives, the places where the crime has happened, as well as the names of private companies, institutions and the like) are substituted or removed from Court's decisions and other forms of information (case summaries, audio-video materials and the like). This situation has been the subject of harsh criticism and is a source of further anguish for victims of crimes committed during the war, who fear that their access to investigations related to their cases or to ongoing proceedings, if any, as well as their right to know the truth may be further hampered. The anonymization policy does not seem to be in line with international standards and, in particular, with Art. 14, para. 1, of the International Covenant on Civil and Political Rights which establishes that "any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children". Notably, on 18 July 2013, the HJPC issued a recommendation to all tribunals and prosecutors' offices across the country, declaring that they are not under an obligation to anonymize their legal acts, but they have to balance between private and public interests. Moreover, the HJPC called for the establishment of a working group to elaborate guidelines on which tribunals and prosecutors' offices across the country should base their policy on access to information. The Court of BiH should afterwards adapt its rules of procedure. It remains to be seen whether and how the HJPC recommendations will be implemented.

BiH must ensure that the **anonymization policy adopted by the Court of BiH is amended so that the judicial determination of the facts in trials concerning war crimes, crimes against humanity and, in general, gross violations committed during the war are disclosed to the general public without restriction**, allowing victims of the crimes concerned, their families and society as a whole to realize their right to know the truth

D) **The Application of the Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) instead of the 2003 Criminal Code and the Initiative to Amend the Legislation on Pardon**

21. Over the past years, in particular district and Entity courts across the country used to **apply the SFRY Criminal Code instead of the 2003 Criminal Code**. In practice this means that persons convicted of war crimes before different courts may receive widely divergent sentences, taking into account that the **SFRY Criminal Code prescribes lower mandatory maximum and minimum penalties in war crimes cases than the 2003 Criminal Code**. The minimum sentences prescribed by the 2003 BiH Criminal Code for genocide, crimes against humanity, and war crimes is 10 years'

imprisonment, while the maximum sentence is 45 years' imprisonment. The SFRY Criminal Code prescribes a minimum sentence of 5 years' imprisonment and a maximum sentence of 15 years' imprisonment or death, which could be commuted to 20 years' imprisonment. The SFRY Criminal Code does not codify crimes against humanity.

22. While in 2007 the Constitutional Court of BiH issued a decision – in line with the recommendations issued by a number of international institutions – on the leading case *Maktouf* (AP/1785/06 of 30 March 2007) affirming that the 2003 BiH Criminal Code must be applied, on 18 July 2013 the Grand Chamber of the European Court of Human Rights rendered a judgment on the case *Maktouf and Damjanović* finding a violation of Art. 7 of the European Convention on Human Rights (no punishment without law). The European Court upheld the complaints by the two men, previously convicted by the Court of BiH of war crimes pursuant to the 2003 BiH Criminal Code. The European Court found that, given the type of offences of which the applicants had been convicted (war crimes as opposed to crimes against humanity) and the degree of seriousness (neither of the applicants had been held criminally liable for any loss of life), Mr. Maktouf and Mr. Damjanović could have received lower sentences had the SFRY been applied. The Court found that since there was a real possibility that the retroactive application of the 2003 Criminal Code operated to the applicants' disadvantage, in the special circumstances of this case, they had not been afforded effective safeguards against the imposition of a heavier penalty.
23. On 27 September 2013 the Constitutional Court of BiH changed its jurisprudence on the matter, with a view to aligning it with the European Court's judgment. Mr. Damjanović obtained the reopening of the proceedings and in December 2013 the Court of BiH reduced his sentence. Mr. Maktouf is still to be retried. Between September and December 2013 **appeals have been filed in over 50 war crimes cases already decided by the Court of BiH since 2003**. Notably, **the appeals concern also convictions for genocide**. This wave of appeals may actually paralyze the Court of BiH that is already coping with a considerable backlog of cases and is the **source of great concern for victims of crimes under international law during the war, who fear that their physical integrity may be at risk due to the release of convicted criminals and corresponding reprisals, and are deeply frustrated by a jurisprudence which seems to foster impunity and convey a dangerous message to society as a whole**.
24. Notably, the Committee of Ministers of the Council of Europe highlighted that in its judgment the European Court had made it clear it was not reviewing *in abstracto* whether the retroactive application of the 2003 Criminal Code in war crimes cases is, per se, incompatible with Art. 7 of the Convention.

Indeed, this matter must be assessed on a case-by-case basis, taking into consideration the specific circumstances of each case, duly taking into account the gravity of the crimes committed. Accordingly, **the findings of the European Court of Human Rights are not indiscriminately applicable to all persons convicted for war crimes in BiH and the recent wave of decisions issued by BiH tribunals and releases of convicted persons cannot be considered in line with international human rights law.**

25. The above-mentioned climate is further exacerbated by the fact that at the end of November 2013 the BiH Ministry of Justice **proposed legislative changes that would allow pardon for convicted of war crimes after serving of three-fifths of their punishment.** The current Law on Pardon of BiH **does not allow pardon for persons accused of genocide, crimes against humanity and other war crimes.** However, the new proposed law in its Art. 3 would set forth "the crimes of genocide, war crimes and crimes against humanity, pardon may be granted after serving three-fifths of the sentence". Associations of victims of gross human rights violations during the war are persuaded that the adoption of these amendments would have a disruptive effect on the BiH society and they would perceive it as a form of perverse revictimization.

BiH must ensure that those accused of crimes committed during the war, and in particular of genocide and the most serious war crimes, **are investigated and prosecuted pursuant to the provisions of the 2003 Criminal Code instead** of those of the Criminal Code of the SFRY. BiH must ensure that the judgment issued by the European Court of Human Rights on the case *Maktouf and Damjanović* is not interpreted as meaning that all those convicted for war crimes pursuant the provisions of 2003 Criminal Code must be judged anew, taking in due account the gravity of the crimes. The implementation of the judgment must be carefully studied and assessed and it must not be used as a justification to reopening all where the 2003 Criminal Code was applied. Moreover, **authorities must take all necessary measures, to ensure, wherever required, the continued detention of those convicted awaiting a new examination to be conducted by the Court of BiH.** Moreover, BiH must guarantee that those convicted for these crimes under international law **do not enjoy pardon that amounts to an exemption of sanction.**

#### E) The Inadequacy of Criminal Legislation on Rape, Torture and Enforced Disappearance

26. Currently, the BiH criminal legal framework on sexual violence, torture and enforced disappearance both at the national and the Entity level is inadequate. **Torture, enforced disappearance, rape or other forms of sexual violence are either not codified at all or, when they are, domestic provisions do not meet international standards.** On the one hand, this situation fosters impunity over past crimes and, on the other, it jeopardizes the prevention of future violations.

On 22 October 2013 a draft law on changes of the Criminal Code of BiH was submitted to the approval procedure. This draft includes amendments that introduce a definition of torture in accordance with Art. 1 of the Convention on Torture; codify enforced disappearance also when not committed as part of a widespread or systematic attack against civilian population; and modify the definition of sexual violence as a crime against humanity and as a war crime bringing it in line with international standards. However, **in November 2013 the proposed amendments to the Criminal Code of BiH were not approved by the House of Representatives of the BiH Parliamentary Assembly. This makes it impossible to forecast when and if such amendments will eventually be approved.**

**BiH must adopt without further delay the proposed amendments to the Criminal Code of BiH to bring its domestic legislation on torture, enforced disappearance and sexual violence in line with international standards. BiH must ensure that Criminal Codes at Entity level are amended accordingly.**