Work Package 5

Preliminary Report on case studies

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I. Introduction

The purpose of WP5 is to investigate specific interplays between international and domestic criminal proceedings, taking place in the context of specific country situations. The case studies are expected to offer a chance to contextualize and concretize the research undertaken in other WPs (particularly, WP2, WP3 and WP4) and to produce a nuanced perspective on the combined effect of different levels of cross-influence between the national and the international and the actual problems encountered in the process. Moreover, the case studies can provide important insights concerning the scope of DOMAC's recommendations – i.e., they illustrate to what degree the problems identified in this research projects and the solutions offered could be relevant across the board to different geo-political and cultural contexts.

This preliminary report is designed to explain the selection of case studies to be addressed in the context of WP5. It comprises segments explaining the criteria for case study selection, discussing the different possible case studies and explaining the final list of ten case studies to be pursued by WP5. One should emphasize, however, that cases which are a high priority for WP5 may be less of a priority for other WPs and *vice versa.*

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II. Criteria for Selection of Case Studies

The DOMAC project investigates the interplay between international and national criminal responses to mass atrocity cases, focusing in particular on normative influence (at both procedural and substantive law levels), operational effects (prosecutorial policies relating to initiation of proceedings and the pursuit of harsh sentences) and capacity building (transfer of knowhow and professional expertise and other facilities). Although some interaction between international courts and national courts can be identified in many contexts – since international courts and international norms often serve as a model or source of inspiration for local courts and legislatures – mass atrocity situations seem to present a particularly imperative need for encouraging such an interaction. Since a full criminal law response to mass atrocity situations often exceeds the independent capabilities of both the national and international legal systems (a state of affairs that may result from shortage of resources – a problem existing on both the national and international levels; in addition, at times, prosecutions at the domestic level may be materially feasible but politically undesirable), an effective and comprehensive strategy for a criminal law reaction to any mass atrocity situation may have to include both national and international components.

Hence, the DOMAC project is premised on the belief that even when the international community decides to establish a new international tribunal or employ an existing international court with relation to a mass atrocity situation, it may be advisable to consider the possible impact that this development may or should have on national proceedings. In particular, international proceedings should arguably be structured in ways which promote an effective legal process before national judicial institutions that could complement the international legal process. At the same time, the adverse effects on the local judicial system that international proceedings may entail (e.g., loss of ownership over the response to the situation) should be minimized as far as possible.

The DOMAC WP5 case studies need to be selected in light of these research objectives. First, the selected situations should be ones in which mass atrocities have actually occurred. Second, there has been an international legal response to the mass

atrocity situation. Third, a national response actually took place or could have taken place. Finally, situations where some interaction between international and national criminal processes has been identified would appear, as a rule, to make better case studies than situations of mutual disregard. This is because more concrete lessons could be drawn from incidents of inter-court interactions than from absence of any form of interaction.

Mass atrocities

For the purposes of WP5, we may define atrocities as crimes, committed on a large scale, that fall within the scope of jurisdiction of the existing international criminal courts, namely genocide, crimes against humanity and war crimes. While other international and national crimes (such as torture or rape not committed as part of genocide, crime against humanity or a war crime) may also be atrocious, there has not been until now a focused international criminal response to such crimes, which could serve the basis of study of its impact on national courts;[2] at the same time, the jurisdictions of the ICC, ICTY, ICTR and the different hybrid courts extend over the three aforementioned core crimes. Hence, for a research project interested in ascertaining the possible impact of the international criminal response on the national criminal response, it would make sense to initially focus on crimes which international courts can *prima facie* handle.

As indicated above, the hypothesis of the DOMAC project is that some situations require a combined effort by national and international institutions in order to address them effectively and comprehensively. This observation appears to be particularly relevant in *mass* atrocity cases - that is, in cases where the sheer number of victims and perpetrators would render any realistic international response limited in scope (focusing, for example, only on a few top level perpetrators). At the same time, violent crimes perpetrated on a very large scale may also exceed the capacities of local judicial institutions or may be indicative of a political, social and physical environment in which national courts find it difficult to function. Hence, in mass

[2] Still, one may note the statutes of internationalized criminal courts such as the Special Court of Sierra Leone and the Cambodia: Statute of the Special Court for Sierra Leone, art. 5 (covering abuse of girls and wanton destruction of property); Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, art. 3 (covering homicide, torture and religious persecution).

atrocity situations associated with war or other cases where ordinary government structures encounter difficulties in operating, there may be a particularly strong need to complement the work of national courts with international courts. Finally, one may observe that the likelihood of an international criminal response normally increases with the growth in the scale of atrocities.

Thus, for example, although one could allege that service members in the armed forces of a number of Western Democracies, such as the U.S., U.K. and Israel, have been recently involved in international crimes that fall under the jurisdiction of the ICC, the scale of atrocities they allegedly committed did not appear to exceed the capacity of their domestic courts (or of the national courts of other interested states – the courts of the territory in which crimes were perpetrated or of the nationality of the victims). In all events, since no meaningful international criminal response can be identified with relation to such international crimes,[3] they would not make suitable WP5 case studies.

In short, it is proposed that DOMAC WP5 focus on situations in which international crimes falling under the jurisdiction of the ICC and or the other international criminal courts were perpetrated on a large scale, in a manner that seriously destabilized the country in question and/or exceeded the normal capacity of its local courts.

International Response

The second feature which the case studies should display is the existence of an international criminal response. The heart of the DOMAC project is to identify the impact of an international criminal response on national court proceedings. While the lack of an international response is arguably also a kind of response, it is a less promising subject of detailed analysis than significant and protracted responses, such as ICC, ICTY or ICTR investigations or prosecutions. In addition, any decision by the international community or organs thereof (such as the ICC prosecutor) to respond to a mass atrocity situation by way of initiating criminal proceedings serves as an

[3] At least with relation to the UK, the ICC declined jurisdiction by reason of the apparent lack of gravity of the crimes allegedly committed. < http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf >. Of course, geopolitical reasons can also explain the lack of an international response to crimes committed be service members of permanent members of the Security Council and their close allies.

important indication of the high degree of importance that the international community attributes to tackling the mass atrocity situation in question. Under these circumstances, a strong argument could be developed that the international community is, or, at least, should be expected to be interested in encouraging national proceedings as method to increase the overall effectiveness of the response to the situation and to complement the international proceedings. Consequently, the case studies should be selected among the situations actually investigated or prosecuted by international or internationalized courts (the latter constituting also a form of an international response).

While one may argue that criminal prosecutions before foreign national courts (exercising universal jurisdiction) constitute a form of international response as well, which could interact with domestic criminal proceedings in directly involved countries, such an avenue appears to be less promising for the purposes of WP5. This is because universal jurisdiction prosecutions have been so far limited in number and haphazard in their application. Moreover, these cases were mostly initiated by the prosecuting states in reaction to the incidental presence in their territory of individuals accused of perpetrating international crimes. Hence, they do not, generally speaking, present a conscious attempt (and certainly not a structured or comprehensive effort) to introduce a criminal law response on behalf of the international community to a specific mass atrocity situation (although they were typically based on international treaties, such as the Geneva Conventions, which were designed to respond to mass atrocities); nor do such proceedings normally have the capacity or interest of interacting with local proceedings at the directly involved countries. At the same time, universal jurisdiction cases present very interesting case studies for exploring the normative interrelations between national and international courts. Hence, they will be addressed by other DOMAC WPs (especially WP2).

In the same vein, proceedings before non-criminal courts – inter-state courts such as the ICJ or civil domestic courts such as federal U.S. Courts applying the Alien Claims Statute – do not present good case studies under WP5 for exploring the interaction between *criminal* procedures. The different political context of such proceedings and the non-criminal law applicable in them renders them less amenable to normative and

procedural interaction with domestic criminal proceedings. For example, external non-criminal courts do not compete with local criminal courts over defendants, and they are less dependent on cooperation on the part of the local authorities. Hence, there is a reduced incentive to cooperate and coordinate their proceedings with those of local criminal courts. Still, interactions between non-criminal international courts and local courts applying criminal law do raise important normative aspects and will be addressed in the context of WP6.

In sum, it is advisable for WP5 to focus on cases where the mass atrocity in the country in question had been the subject of proceedings by an international criminal court. Since international investigation and prosecution represent a conscious choice by organs of the international community to respond to a mass atrocity situation, the need to coordinate between this response and any local response to the same mass atrocity situation becomes more apparent, as is, arguably, the international goal in maximizing the effectiveness of the overall response to the situation.

Domestic response

The final element to be gauged is whether the case studies feature a domestic criminal response which can be the subject of examination and analysis. Again, a decision not to bring local proceedings may be perceived as a form of response, but one which merits more limited study than decisions to investigate and/or prosecute at the local level. Still, it is advisable that the case studies selected present a range of local reactions – from good faith efforts to activate the local criminal process through overzealous or vindictive prosecutions to amnesties or other policy decisions not to prosecute. This is because, arguably, the initiation of international proceedings may encourage or facilitate each of these judicial policy decisions. A fuller understanding of the impact of international criminal proceedings thus militates in favor of exploring a wide range as possible of local reactions caused by the international legal response. At the same time, situations where activation of the local criminal process is simply impossible due to a total collapse of the local legal system ought to be of little interest to WP5 since no causation can be established under such conditions between the international response and the local lack thereof.

In sum, unlike the approach vis-à-vis international responses which tended to be narrow (actual investigation or prosecution), the proposed approach to be taken with relation to the national response should be broader and may include decisions not to prosecute (or different types of sham proceedings). Still, the majority of selected cases should include country situations where actual proceedings took place, as from a methodological point of view such cases invite more research and analysis.

III. Selection of case studies

Balkans

Applying the aforementioned considerations to the mass atrocity situations of recent decades, there are some obvious "candidates" in the Balkans for case study selection: As Annex II covering the situation in Croatia suggests, the war in the Balkans constituted a mass atrocity – a conclusion supported by the characterization of a large number of acts as international crimes by the ICJ,[4] ICTY and local courts; the large scale of the atrocities and the large number of suspected perpetrators (thousands of investigations, especially in Bosnia-Herzegovina and Croatia; 166 indictments by the ICTY). Of course, the ICTY presents a focused and protracted international response, instituted by a Security Council Resolution under Chapter 7 to the Charter.[5] Hence, the situation in the Balkans meets the first two requirements identified above.

The selection of specific country situations should depend on an assessment of the role played by the different national courts of the countries that emerged after the dissolution of the Socialist Federal Republic of Yugoslavia. Of the seven new countries, four appear to make very good case studies – Serbia, Croatia, Bosnia-Herzegovina (BiH) and Kosovo.[6] This is because they have been directly involved in the mass atrocities perpetrated during the war in the Balkans either as the territory in which the crimes were committed or as the state of nationality of the perpetrators.[7] Moreover, in all four countries a judicial system capable of prosecuting international

[4] Application of the Genocide Convention (Bosnia and Herzegovina **v** Serbia) Judgment of 26 Feb. 2007.

[5] S.C. Res. 827, U.N. Doc. S/RES/827 (1993).

[6] While the formal status of Kosovo is controversial, its judicial system operates in complete independence from that of the other countries of the region. Hence, we will refer to it in this report as a country.

[7] In the case of Serbia, the link to the crimes committed in the Balkans may also include some non-nationals of Serbian ethnic origin apparently took refuge in Serbia after the war.

criminals now exists (although in BiH and Kosovo this system heavily depends on international support).

In practice, the ICTY has investigated and prosecuted a significant number of cases relating to all four jurisdictions: 21 indictments were brought against Serbian defendants; 126 indictments were brought with relation to events taking place in BiH; 26 indictments were brought against Croatian defendants; and 4 cases involved the situation in Kosovo. These numbers, as well as other indicators (such an international administrations in BiH & Kosovo which run the local courts and present another form of international response, EU pressures on Croatia and Serbia to cooperate with the ICTY) are indicative of the strong interest of the international community in effectively responding to the mass atrocities in the Balkans by way of encouraging criminal prosecutions. They also provide a basis for significant interaction between national and international courts.

The reaction of the local courts in the Balkans to the ICTY proceedings has been uneven: Relatively large numbers of atrocity related cases have been brought before the local courts in the Croatia: more than 1,600 cases were opened in Croatia during the 1990s (although, most cases appear to be, vindictive proceedings against Serb defendants – involving in many cases trials *in absentia*) and several hundred trials were conducted there in the 2000s. In BiH, few cases were opened (less than 100), but thousands of investigations are now pending. At the same time, only 20 courts cases were brought in Serbia and some 17 indictments were filed in Kosovo (between 1999-2002). These different national responses to the atrocities committed during the war in the Balkans, and their different interactions with essentially the same international criminal response – the operation of the ICTY – invite further study of the contextual factors and specific conditions which encourage or discourage different domestic proceedings.

The other three countries that emerged from the SFRY – Slovenia, Macedonia and Montenegro - have been less effected by the war and the interest of the ICTY in acts committed by their citizens or in their territory has been very limited (indictments were brought only against 2 Macedonians – in one case relating to the 2001 conflict in

Macedonia; no indictments were brought in relation to Slovenia and Montenegro). In the same vein, the role of local courts in those countries in addressing the consequences of the war had been minimal. Hence, they do not appear to make adequate cases studies for the purposes of WP5.

Africa

Rwanda

In Africa there is one "obvious" candidate for selection – a mass atrocity situation generating a strong international and national response, with ample room for study of the interaction between the two responses. This is the Rwanda case, where the 1994 genocide has been met with an international criminal response in the form of the establishment of the ICTR (putting on trial 60 individuals), and a strong domestic response, as reflected in the hundreds of thousands of criminal investigations and thousands of trials (including Gacaca trials) that took place in Rwanda. Moreover, it appears that serious political tensions have existed between the international and national procedures (as a result of competition over resources, sovereignty interests, insufficient cooperation, etc.).[8] The magnitude of the domestic response, the difficult capacity issues it raises and the uneasy relations between the national and international responses all merit further study. Hence, all three criteria for selection have been clearly met in the case of Rwanda.

Sierra Leone

Unfortunately, there is no difficulty in regarding the tragic events which took place in Sierra Leone between 1991-2002 as a mass atrocity. (The more difficult challenge is how to characterize the main judicial response to the atrocities – the establishment of the Special Court for Sierra Leone by an agreement between the local government and the UN: is it essentially a national, international or mixed response? The conduct of the Court itself suggests a strong international element (e.g., independence from SL law; refusal to grant immunity to foreign heads of states); it is less clear to what degree one may view the SCSL as constituting, at the same time, also a national response (although the government initiated the establishment of the Court). Still, other national responses can and should be looked at: the amnesties, the TRC and,

[8] See e.g., Daniel Wallis, Rwanda genocide court poses questions on justice, Africa Reuters, 7 Aug. 2008, http://africa.reuters.com/wire/news/usnL7688892.html.

more recently, some renewed interest in domestic prosecutions of individuals not covered by the 1999 Amnesty, which blocked prosecutions for crimes under national law committed before 1999...

In all events, the uniqueness of hybrid courts as a possible model for a combined national and international response should be explored. And, Sierra Leone, where such high profile hybrid institution has been set up within a relatively short time after the end of the atrocities by way of an agreement between the local government and the UN, appears to serve a good case study to explore the potential and actual synergy between national and international criminal responses generated by hybrid courts.

The "ICC referral countries": Sudan, Congo, Uganda, Central African Republic

The next category of cases involves four African countries whose territory had been ravaged by civil wars generating, no doubt, crimes that qualify as mass atrocities (e.g., the genocide/other international crimes in Darfur, widespread massacres in Ituri and other DRC regions, the hundreds of rapes and other crime committed during the conflict in the Central African Republic - especially in 2002-2003, and the notorious atrocities committed by the LRA in Uganda) Moreover, ICC investigations were opened in all four cases on the basis of Security Council or country referrals.

In two out of the four cases a domestic response and, consequently, some interplay between the international and the national criminal responses can be identified: a) in **Sudan** the government established the Darfur Special Criminal Court and has detained a few individuals associated with the atrocities. While the Sudanese response had been met with broad skepticism, it presents an interesting study subject – the use of national proceedings to undermine or deflect international proceedings; b) in **DRC**, military tribunals and local courts have tried a few soldiers and militiamen for war-related crimes. Furthermore, UN (MONUC) and EU-sponsored capacity building efforts are in place in order to increase the quality and quantity of local criminal proceedings.[9] It would thus appear that these two situations illustrate how ICC proceedings may encourage domestic proceedings in both "unwilling" and "unable" states, and would therefore make interesting case studies.

[9] See http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZRSummary0809.aspx; http://www.cofed.cd/admin/media/documents/REJUSCO.pdf

At the same time, the suitability of investigating the situation in the **Central African Republic** is less certain since to date there has been no identifiable domestic criminal response. In fact, it appears as if the referral of the situation to the ICC by the Central African government impeded any investigations taking place at the domestic level. So, while the Central African Republic may be a good example of a situation in which the international response fully replaces the national response (or, put differently, a case of "dumping" criminal proceedings upon the international community), in the absence of domestic investigations and prosecutions, the actual interplay to be found between the national and international is expected to be minimal (it may also be noted that the investigations of the ICC into the situation in the Central African Republic appear to be less robust and comprehensive than with relation to the other three situations before it; to date, only one Congolese national has been indicted with relation to crimes committed in the Central African Republic). Hence, the value of a Central African Republic case study is expected to be relatively limited.

A decision on the **Uganda** case appears to be more difficult. An international response in the form of ICC proceedings surely exists. But the nature of the domestic reaction is less clear. Initially, it seemed as if the referral of the case to the ICC by the Ugandan government was designed to substitute national proceedings (which were ineffective anyway, because of the government's failure to capture the senior LRA leadership).[10] However, the re-launching of the peace process in 2006 between the government and the rebels has led to reexamination of national criminal proceedings and traditional courts as substitutes to ICC proceedings.[11] So, while in Uganda no domestic proceedings are currently in place, the country (and the international community) is confronting a dilemma between advancing on the ICC track, on the local track or on both tracks. It thus appears to offer a richer and more dynamic case study than the Central African Republic and raising more policy oriented issues than most of the other potential African case studies discussed so far.

[10] Arrest Warrant for Joseph Kony, 8 July 2005 (amended on 27 Sept. 2005), ICC Pre-Trial Chamber II, < http://www.ictj.org/static/Africa/Uganda/icc.kony.eng.pdf>.
[11] Indeed, the 2008 Juba Agreement provide for domestic trials; but the agreement as not been signed. Annexure to the Agreement on Accountability and Reconciliation, 19 Feb. 2008, http://www.usip.org/pubs/usipeace_briefings/2008/accountability_reconciliation_annex.pdf

Burundi

The final African state to be considered is **Burundi**, where the civil war in the 1990s and early 2000s has resulted in ethnic-based crimes on a massive scale. While the international community has been working with the Burundian government in order to develop criminal accountability mechanisms (most probably, a special chamber in the local courts, built along the lines of the Bosnian War Crime Chamber), no international or local criminal mechanism is actively reviewing the mass atrocities in Burundi (most of which predate the ICC).

So, while Burundi may be an interesting case for studying the process leading to the establishment of international, national or internationalized criminal procedures and the dependency of the international response upon national cooperation, it is unclear whether the criminal proceedings will start during the life of the DOMAC project, and, consequently, whether any interaction between national and international proceedings would eventually take place. As a result, Burundi appears, at present, to represent a less suitable case study than those countries in which domestic proceedings are actually taking place (or appear to be closer to their start date).

Other Regions

Cambodia

With the exception of post-World War Two prosecutions, the international response to mass atrocity situations in regions of the world other than Africa and the Balkans has been limited. As already noted, the ECCC – a mixed criminal tribunal – operates in **Cambodia** (with a very limited case load). But, given the long time that had passed since the commission of the Khmer Rouge crimes, and the apparent lack of political will on the part of the Cambodian authorities to vigorously address these crimes, the prospects of parallel proceedings before local courts and any meaningful interaction between them and the ECCC appear very low. Hence, Cambodia does not appear to offer a good DOMAC case study (especially, when compared to the more dynamic situations in Sierra Leone and East Timor).

East Timor and Indonesia

A stronger and timelier international response can be indentified with relation to the massive crimes committed in **East Timor** during and after the 1999 referendum (mass

deportations and killings of civilians). The international administration for East Timor (UNTAET) established in 2000 the internationalized Serious Crimes Panels, which indicted almost 400 individuals for crimes;[12] moreover, after completion of its work in 2005, the investigation materials gathered by the internationalized procedure were passed to the ordinary judicial system. Hence, the East Timor case may present an interesting case study of continuity (or, as we may discover - discontinuity) from an internationalized response to a purely domestic response in which the interplay between the two responses can be assessed.

It may also be noted that the Special Panel proceedings have also given rise to proceedings in **Indonesia** before an *ad hoc* human rights court, whose main purpose appears to be an attempt to shield Indonesian service members from trial in East Timor. Nonetheless, the impact of international response focused on one country on recalcitrant neighboring states involved in the atrocities (which are otherwise removed from international accountability), may be another reason supporting the selection of the East Timor case study.

Colombia

The final candidate for selection is Columba – a country ravaged by a civil war since the 1960s (the war considerably deteriorated in the 1990s) and the scene of numerous international crimes committed by FARC and the other fighting forces. Colombia, being an ICC member state, has already been the subject of a number of complaints submitted to the ICC, however, they have not to date led to an investigation (an outcome that may be partly related to the Colombian reservation under article 124 of the ICC Statue, which excludes from the Court's jurisdiction war crimes committed during the first seven years of Colombia's membership of the Statute).[13] There have been some reports that the threat of ICC proceedings has led the Colombian authorities to adopt a more assertive policy vis-à-vis prosecutions, although it may be hard to establish a clear link between these reports and developments on the ground.

[12] See http://www.ictj.org/static/Prosecutions/Timor.study.pdf.
[13] See e.g., http://colombiareports.com/2008/07/01/icc-asked-to-investigate-colombian-child-soldiers. See also Simon Romero, International court may investigate Colombian rebels' backers, International Herald Tribune, 16 Aug. 2008, < http://www.iht.com/articles/2008/08/15/america/colombia.php >.

The absence of an international criminal response and the relatively timid nature of the local response to the conflict related atrocities (including a leniency program for demobilized militia members) would perhaps make Colombia an interesting example of the relations between a weak international response and a weak national response. Still, the difficulties of establishing causal links and actual interplays between these negative links should not be downplayed. In short, Colombia is an interesting yet problematic candidate for selection

Conclusion

This report surveys in brief in this preliminary report the situation in seventeen potential target states, where mass atrocities had occurred in recent decades: Seven Balkan countries: Serbia, Croatia, BiH, Kosovo, Macedonia, Slovenia and Montenegro; Seven African countries: Rwanda, Sierra Leone, Congo (DRC), Sudan, Central African Republic, Uganda and Burundi; and three other context: Cambodia, East Timor (and Indonesia) and Colombia. These countries present a wide array of factual contexts and illustrate different international and national responses, and interactions.

When coming to choose the ten case studies to be addressed by WP5, one has to consider the relative "quality" of the potential case studies as a basis for research work on all levels of the DOMAC project (normative interplay, "operative" interplay, capacity building) and the need for variety in legal, political, cultural, geo-political contexts and methodological convenience.

All things considered, it appears that the strongest form of interaction between international and national criminal proceedings have been encountered in the context of the ICTY and ICTR – an interaction which has lasted for some 15 years and has undergone a radical transformation as a result of political changes in many of the relevant countries and the SC imposed competition strategy. Hence, the five countries, which have strongly interacted with the ICTY and ICTR – Serbia, Croatia, BiH, Kosovo and Rwanda should, *prima facie* be selected. Note that each Balkan country features unique characteristics: Whereas BiH and Kosovo were the scenes of mass atrocities, Serbia is the state of nationality of many crime perpetrators; while

Croatia and Serbia have functioning judicial systems, BiH and Kosovo were in need of massive capacity building and are subject to an international administration of varying intensity; also, from a political perspective, there are differences between Croatia that is a candidate for EU accession and Serbia that is less susceptible to outside pressures. Of course, the situation of Rwanda is vastly different, given its difficult cultural and political background, its limited capacity and the huge number of perpetrators implicated in the genocide.

The only two countries who are more or less in the same situation among the aforementioned five countries are BiH and Kosovo - both subject to international administration and featuring internationalized response. Hence, it may suffice, for methodological reasons to focus on the more complicated case study of BiH (which has a more robust record of trials on both federal and entity level) and omit the Kosovo case from the list of case studies.

The next group of countries which ought to be considered is those cases having a strong interaction with the ICC as a result of situation referrals and the existence of actual or planned domestic proceedings. The three countries which appear to meet these conditions and would make interesting case studies are Sudan, Congo and Uganda; at the same time, the Central African Republic – where no domestic proceedings have been initiated – does not seem to present a good case study. Of course, Sudan, Congo and Uganda present vastly different legal and political conditions – e.g., opposition to the ICC in the case of Sudan, attempts to complement the ICC in the case of Congo and an ambivalent attitude towards the ICC in the case of Uganda.

The next group of potential case studies includes those country situations where mixed criminal tribunals have been established. Two situations make particularly interesting case studies – Sierra Leone and East Timor. This is because the mixed tribunals present both an international and national response and are expected to make a long lasting impact on the national criminal system and its handling of the mass atrocity situation. The same cannot be said of Cambodia – where the domestic

embrace of the mixed tribunal appears to have been lukewarm and the prospects of long term interaction between the national and the international appear dim.

The final category of cases involves mass atrocity situations occurring in the territory of ICC member states that have not so far resulted in investigations; and have not been characterized by a strong national response. These are Burundi and Colombia. In both cases, the country situation is still very fluid – it is unclear what if any criminal accountability measures would be put in place, on both the national and international level. In the interest of regional diversity and in reviewing one example of negative interaction, the Colombia situation should be examined more in depth.

In sum, WP5 will focus on the following list of high priority case studies: Serbia, Croatia, BiH, Rwanda, Congo, Uganda, Sierra Leone, Sudan, East Timor and Colombia.