Humanity

Deconstructing the Epistemic Challenges to Mass Atrocity Prosecutions

Nancy Amoury Combs

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This post briefly summarizes a full-length law review article that will appear in volume 75 of the Washington & Lee Law Review.

International criminal law faces unprecedented challenges. Some of these challenges generate widespread publicity whereas others are less well-publicized but just as concerning. The not-very-well-publicized challenge that forms the focus of this post concerns fact-finding in mass atrocity trials. My 2010 book, *Factfinding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions*, identified pervasive and invidious obstacles to accurate fact-finding in international criminal proceedings. However, what neither I nor any other scholar has adequately explored are the factors that give rise to these severe fact-finding obstacles. My full-length article comprehensively considers these factors, and this post will briefly summarize them (largely without citations).

As a general matter, fact-finding challenges in mass atrocity prosecutions are complex and highly dependent on a variety of facts and circumstances relating to the crimes and prosecutions themselves. For instance, although most people associate mass atrocity trials with international courts or hybrid courts, domestic courts also prosecute mass atrocities. Moreover, some mass atrocities are prosecuted as domestic crimes, whereas others are prosecuted as international crimes. Finally, mixing and matching takes place between the categories. A mass atrocity characterized as a domestic crime may be prosecuted in an international court, whereas a mass atrocity characterized as an international crime may be prosecuted in domestic court. Each of these variations has fact-finding implications.

Variations between different sorts of mass atrocities also have fact-finding consequences. Certainly, large-scale killings qualify as mass atrocities, but so do widespread rapes, tortures, detentions, and other inhumane acts. Mass atrocities also vary in size and scope. An isolated set of war crimes qualifies as a mass atrocity as does a genocide that kills hundreds of thousands. Some mass atrocities are committed by state-sponsored armies, whereas others are committed by rebel forces. Some mass atrocities are committed during brief internal armed conflicts; others are committed during protracted wars involving numerous nations, and still others occur during ostensible peace-time. Finally, mass atrocities can take place in dramatically different locations—from the richest, most industrialized nations on the planet to the most desperately poor.

Mass atrocities and their prosecutions, therefore, are characterized by a pluralism that has only just begun to be systematically examined. I believe that that same pluralism characterizes the fact-finding challenges that confront the prosecutions of mass atrocities. In particular, the fact-finding challenges bedeviling a mass atrocity prosecution are a product of a host of factors relevant to the facts and circumstances of the atrocity and its prosecution. As these factors combine and coalesce in different ways, the fact-finding challenges likewise shift and transform.

My article explores these many permutations, but it also argues that, despite the pluralism, three factors stand out as having particularly significant fact-finding consequences. They are: the location of the atrocity, the nature of the atrocity, and the body prosecuting the atrocity.

The Evidentiary Implications of the Location of the Atrocity

The most influential evidentiary aspect regarding the location of the atrocity is its level of development because that development level will influence the kinds of evidence that are available to prove the crimes. Trials of crimes that occur in developed nations typically feature a variety of different kinds of evidence. Certainly, they feature eyewitness testimony, but that testimony is also frequently supplemented by an array of non-testimonial evidence. Witnesses in developed nations sometimes videotape or audiotape key actions, and surveillance cameras often passively document important events. Communications, such as letters, emails, phone calls, voicemail messages, and texts, also frequently help to prove the elements of crimes, as do other forms of documentary evidence, such as records, advertisements, and diaries. Even when cases turn on the veracity and accuracy of witness testimony, non-testimonial evidence can serve to reduce the number of contested issues and to corroborate or refute the witnesses' testimony.

Those prosecuting crimes in developing nations, by contrast, tend to possess far less non-testimonial evidence of the crimes they seek to prove. Certainly, surveillance cameras are less prevalent in developing nations, and computers and other forms of technology are also rarer. So, trials of crimes in developing locations are less likely to feature audio, video, or cellular evidence. Moreover, literacy rates are lower in developing nations, so documentary evidence, such as letters and records are likely to be less prevalent.

For these reasons, the evidence used to prove mass atrocities perpetrated in developing nations can look very different from the evidence used to prove mass atrocities perpetrated in developed nations. A comparison of the evidentiary bases for convictions at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—provides a striking display of these differences, which are all the more notable because the tribunals themselves were similar in so many important respects. Admittedly, witness testimony formed a key component in both tribunals' trials, but for the ICTR, it formed virtually the exclusive basis for the tribunal's convictions. In addition, I have carefully examined the evidentiary bases of trials not only at the ICTR, but also the Special Court for Sierra Leone (SCSL), and the Special Panels for Serious Crimes in East Timor, and I found that very little non-testimonial evidence was submitted and almost none of it was central to any factual finding.[1] By contrast, the ICTY, which prosecuted crimes committed in the more developed former Yugoslavia, collected massive quantities of documents and other non-testimonial evidence.

Virtually all ICTY cases featured some highly-probative non-testimonial evidence, and cases that involved high-level political and military leaders featured a great deal of it.

Prosecutions that rely almost exclusively on witness testimony feature greater factual uncertainty for the simple reason that the accuracy of witness testimony is frequently uncertain. Although eyewitness testimony historically was considered among the most reliable forms of evidence, experts now believe that it is particularly susceptible to error.

The Nature of the Crime

A second significant factor driving international criminal law's fact-finding challenges is the nature of the crimes being prosecuted. Although my article discusses various aspects of that nature, I will here focus only on the large size and scope of mass atrocity crimes.

Mass atrocity prosecutions, by definition, involve large-scale criminality. It is more difficult to find accurate facts about crimes that are embedded in large-scale criminality than it is to find accurate facts about discrete, isolated crimes. On the one hand, it may seem obvious that a crime involving 100 victims presents a more complex (and probably more uncertain) evidentiary picture than a crime involving one victim. But the enhanced fact-finding challenges involved in prosecuting mass atrocities extend far beyond that self-evident fact. In particular, most mass atrocities occur within certain contexts and display certain features, and it is these contexts and features that create many fact-finding challenges. First, mass atrocities usually take place either during an armed conflict or, if in peacetime, then at the hands of a repressive government. Second, mass atrocities usually are perpetrated by large numbers of offenders. These contextual features give rise to their own evidentiary difficulties and sometimes combine with the location-based obstacles already identified to create unique, additional impediments to accurate fact-finding.

Armed Conflicts, Obstructionist Governments, and Evidentiary Implications

The fact that mass atrocities typically occur during armed conflicts or as components of large-scale human-rights violations means that those who investigate mass atrocities frequently confront three obstacles that subsequently cause fact-finding uncertainty at trial: governmental interference with investigations, inadequate security in the region, and delay-induced destruction and degradation of evidence. The impact of the latter two factors depends largely on the timing of the prosecutions. In particular, when prosecutors or defense counsel seek to investigate the crimes before the region has stabilized, they typically find it difficult to obtain high-quality evidence. Investigators may not be able to travel to crime sites at all, and even when the instability does not entirely prevent investigations, it can impede forensic activities and deter potential witnesses from talking to investigators.

Constrained investigations frequently generate sub-par evidence that subsequently creates fact-finding uncertainty during trials. Such difficulties were on full display in the ICC's *Lubanga* case. Prosecutors determined that prospective Congolese witnesses would be endangered if interviewed by ICC employees, so they instead enlisted local persons—denominated

intermediaries—to act as liaisons between potential witnesses and the ICC. Although the prosecution's use of intermediaries may have been well-intentioned, it backfired spectacularly, as the Trial Chamber rejected most of the testimony generated by the intermediaries.

Because on-going conflicts render investigations so difficult to conduct, mass atrocity investigations are commonly delayed until the conflict ends. Such delays reduce the kinds of evidentiary difficulties just described, but they give rise to other evidentiary difficulties. For instance, time lags give perpetrators an opportunity to destroy evidence or conceal it. In addition, in the ordinary course of time, witnesses die, documents are lost, and various forms of forensic evidence can lose their probative value. Delaying prosecutions can also undermine the quality of the evidence that is discovered. Memories fade over time, so testimony about long-ago events is less likely to be accurate than testimony about recent events. As this discussion shows, then, the context of conflict and instability that surrounds mass atrocities creates unique and often severe fact-finding challenges for those later seeking to prosecute or defend their alleged perpetrators.

In addition, because most mass atrocities are embedded in large-scale conflicts involving governmental officials, the prosecutions of mass atrocities frequently confront governmental interference. Some governments refuse to allow investigations on their territory. Others do not bar investigators entirely but nonetheless prevent probative evidence from reaching the courtroom. ICC investigators, for instance, acquired sufficient evidence to convince the court's Pre-Trial Chamber to confirm charges against Kenyan President Kenyatta and Vice President Ruto, but thereafter the defendants or their associates allegedly intimidated prospective witnesses so that a substantial proportion of them recanted their inculpatory statements. Consequently, an ICC Trial Chamber acquitted Ruto, and the prosecution withdrew its case against Kenyatta for lack of evidence. These examples, and others provided in the article show that governmental authorities have the power to dramatically reduce the quantity and quality of evidence available in a mass atrocity prosecution, and they commonly make use of that power.

Fact-finding Challenges Caused by Group Criminality

Mass atrocity fact-finding is also impacted by the fact that most mass atrocities are perpetrated by massive numbers of individuals, but typically, only a small proportion of those individuals can be prosecuted. That fact alone does not create evidentiary difficulties; indeed, few fact-finding challenges would arise if prosecutors targeted their limited number of prosecutions against those for whom there was the greatest evidence of criminality. But usually—and understandably—they do not. Rather, prosecutors typically target the high-level officials who orchestrated the atrocities, and they leave unprosecuted the individuals who actually carried out the offenses. This sort of targeting makes good sense both from a political standpoint as well as a penological standpoint, but it can create a great deal of uncertainty at trial.

Domestic prosecutors often find it difficult to obtain good quality evidence against leaders of large criminal networks, such as organized crime syndicates or drug cartels, and that same difficulty arises and creates uncertainty in trials of mass atrocity leaders. Some of the uncertainty stems from the fact that the evidence available to prove the criminal liability of high-level offenders is generally weaker and less certain than the evidence available to prove the criminal liability of direct perpetrators. For instance, although forensic evidence might be available to

inculpate direct offenders, it typically has far less probative value in cases involving indirect offenders who were not present at crime scenes.

Eyewitness testimony also may be more problematic in prosecutions of mass atrocities in general and prosecutions of high-level offenders in particular. For one thing, whereas isolated crimes are often perpetrated by individuals who are known to victims, mass atrocities are more frequently perpetrated by those who have no pre-existing relationships with their victims. Thus, to the extent that the identity of perpetrators is relevant in a mass-atrocity case, then fact-finders must rely on the most questionable evidence of all—stranger eyewitness identifications. In addition, when high-level offenders are prosecuted, then the most probative witnesses are usually insiders. Insider witnesses have no difficulty identifying the defendant, but they often do have incentives to falsely inculpate or exculpate him. Not surprisingly, the international tribunals have recognized the increased uncertainty inherent in insider witness testimony and have typically treated it "with caution."[2]

Finally, because most defendants in mass atrocity trials are not direct perpetrators, prosecutors frequently must employ complex theories of liability to link the defendant to the crimes on the ground. In some cases, prosecutors seek to hold high-ranking defendants liable for the acts of their subordinates, but to do so, they must establish a chain of command from the direct perpetrator to the defendant along with the defendant's authority over the perpetrators. Although evidence of these elements might be relatively easy to establish in cases where well-defined military forces unquestionably carried out the crimes, armed conflicts in many states feature combatants who hail both from regular military forces and irregular paramilitary groups, so it is often unclear which set of combatants is responsible for a given massacre. Even when it is easy to identify the group that perpetrated the atrocities, it may be difficult to know whether the defendant exercised authority over that group. *De jure* authority may not reflect actual authority, and *de facto* authority may be the subject of unclear, conflicting evidence.[3]

The Coalescence of Location and Large-Scale Criminality

As discussed, large-scale criminality creates its own unique fact-finding challenges that are independent of the challenges that stem from the location of the crime. That said, many of the fact-finding challenges that arise during the prosecution of large-scale crimes are exacerbated when those crimes take place in developing nations. Similarly, many of the fact-finding challenges that arise when a crime occurs in a developing nation are exacerbated when the crime is part of a mass atrocity. A few examples will show how the size of the crime interacts with the location of the crime to produce additional fact-finding obstacles.

As just noted, to hold a defendant liable on a command responsibility theory, prosecutors must prove that the defendant was in a superior/subordinate relationship with the direct perpetrators of the crime. That element can be difficult to prove no matter where the crime is located; the ICTY acquitted a number of Yugoslav defendants of command responsibility charges because prosecutors could not prove that the defendants had authority over the direct perpetrators.[4] However, as difficult as it is to obtain convincing evidence of command responsibility in developed nations, it is often harder in developing nations. For instance, after civilians were attacked in South Sudan, the spokesman for the South Sudanese Army highlighted the difficulty

of knowing which group was responsible. He observed: "Everyone is armed, and everyone has access to uniforms and we have people from other organized forces."[5] In addition, chains of authority may be more fluid and transitory during conflicts in developing nations. Shifting, temporary allegiances were notorious features of the conflict in the DRC,[6] for example, and in various SCSL trials, judges heard wildly conflicting testimony regarding the structure, hierarchy, and leadership of the various fighting forces in Sierra Leone.[7] Finally, the chains of authority that do exist in developing nations are less likely to be committed to writing. SCSL trials featured considerable, if conflicting, testimony about chains of authority,[8] but little documentary evidence corroborating that testimony.

Second, the problematic features of the evidence available in developing nations are apt to be magnified when the crime under prosecution is a mass atrocity. For instance, I have already noted that eyewitness testimony is frequently unreliable, so the predominance of eyewitness testimony in trials in developing nations renders their judgments less certain than judgments that are based on both testimonial and non-testimonial evidence. But the likelihood that the eyewitness testimony is inaccurate varies with the trial, and I maintain that trials of mass atrocity are more likely to feature inaccurate witness testimony than trials of isolated crimes. For one thing, whereas isolated crimes are prosecuted soon after they occur, mass atrocities frequently are not prosecuted for years and sometimes decades after their perpetration. Memories of events fade over time, so for that reason alone, we can expect a greater proportion of witnesses in mass atrocity prosecutions to testify inaccurately than witnesses in prosecutions of isolated crimes. The long duration of many mass atrocities also negatively impacts victims' ability to accurately recall their details. Research shows that individuals who are victims of repeated, similar crimes blend their memories of the individual traumatic events that they suffered into a generalized recollection called a "script memory." Such victims typically can recall the script with reasonable accuracy but are unable to recall the isolated events that gave rise to the script.[9] Accurately recalling the script may be sufficient for some mass atrocity prosecutions, but not for those that require witnesses to testify about specific events.

The Fact-finding Implications of the Body Prosecuting the Crime

The final, highly relevant factor impacting the likelihood of fact-finding accuracy in mass atrocity trials is the body prosecuting the mass atrocities. Mass atrocities typically are prosecuted in one of four distinct kinds of fora: a domestic court in the state where the crimes occurred (territorial court); a domestic court in a non-territorial state, usually pursuant universal jurisdiction (foreign court); a court that has both domestic and international components (hybrid court); and a fully international court. Territorial courts are likely to confront the fewest impediments to accurate fact-finding whereas wholly international courts are likely to confront the most.

For one thing, territorial court personnel usually can communicate directly with defendants and witnesses, whereas international, hybrid, and foreign courts must employ language interpretation to do so. The need for language interpretation in court proceedings is well-established to cause considerable factual uncertainty. Consequently, all things being equal, the factual findings generated by a trial featuring language interpretation are apt to be less accurate than the factual findings generated by a trial where no interpretation is needed.

Familiarity and knowledge about the atrocities and their participants also impacts fact-finding accuracy at trial and also suggests an advantage for territorial courts. It is safe to assume that the personnel of international, hybrid, and foreign courts are, in general, less familiar with the cultural practices of the defendants, witnesses, and victims of the mass atrocities they prosecute and also less knowledgeable about relevant political, social, and historical features of the atrocities.

Territorial courts are also likely to have a comparative advantage when it comes to conducting investigations. International court investigations are comparatively disadvantaged by their distance from the crime sites and the unfamiliarity that that distance begets. Some of that unfamiliarity relates to the linguistic and cultural issues just described. International investigators in the field, like the international lawyers in the courtroom, must rely on interpreters to communicate with potential witnesses, and this interpretation at the investigative stage is at least as likely to create factual uncertainty as it does at trial simply because interpretation increases the likelihood that factual errors will be introduced. International investigators' cultural unfamiliarity has also been cited as negatively impacting investigations.

International investigations are also hampered by the literal distance between the international courtrooms and mass atrocity crime sites. Because domestic investigators are located in country, they are able to conduct more thorough, less time-pressured investigations. International investigators, by contrast, frequently must travel long distances to reach crimes sites and must conduct their operations within specific, delineated time frames. Additionally, because most international investigators hail from far-off locations, they are easily identified as outsiders, so locals may not trust them or may fear retaliation if it becomes known that they provided information to them. Local investigators, by contrast, are less likely to stand out, so they can more easily gain access to witnesses and earn the trust of local communities. Local investigators, finally, are apt to be more familiar with the nuances of the conflict, the parties to the conflict, and the impacted local communities; thus, they have a better sense of where to start, whom to interview, and what to ask.

All of these factors suggest that territorial courts have a greater capacity to find accurate facts than fully international courts, but what about foreign courts and hybrid domestic/international courts? As for foreign courts, reports of practitioners suggest that they experience many of the same fact-finding challenges that fully international courts confront. Martin Witteveen, a Magistrate in the District Court of The Hague described witnesses' cultural practices that were unfamiliar to Dutch judges, witnesses' patterns of speech that were unfamiliar to Dutch judges, and interpretation difficulties that were even more challenging than those that arise in international courts due to the difficulty of finding competent interpreters who can translate the witnesses' testimony into uncommon languages such as Dutch.[10] Other commentators involved in foreign court prosecutions of mass atrocities identify similar evidentiary challenges.[11]

To be sure, important differences in the fact-finding competencies of international courts and foreign courts may also exist. Domestic criminal justice systems may have more or fewer resources than *ad hoc* international courts, and their investigators may have more or less training. In addition, fact-finding at international courts may be uniquely impeded by the fact that they

must synthesize the work of staff who are recruited from around the world and whose work habits and pre-dispositions are necessarily informed by a variety of cultural and legal backgrounds. Thus, if we view accurate fact-finding capacity as a continuum with territorial courts having the greatest capacity, then these differences might, in a particular case, move international courts or foreign courts closer to or farther from the ideal. However, it is the literal and figurative "distance"—in miles, knowledge, culture, and language—between crime site and court room that primarily distinguishes international and foreign courts on the one hand and territorial courts on the other, and on these measures international and foreign courts are largely indistinguishable.

Conceptualizing accurate fact-finding capacity as a continuum is also helpful in assessing the relative capacity of hybrid tribunals. Admittedly, hybrid tribunals vary tremendously. Although they all have both international and domestic elements, each tribunal features a different amalgam of components, and each amalgam will impact the tribunals' ability to engage in accurate fact-finding. In general, however, we can assume that hybrid tribunals with more domestic features will enjoy greater fact-finding capacity than hybrid tribunals with fewer domestic features.

Conclusion

Mass atrocity prosecutions are credited with advancing a host of praiseworthy objectives, but none of these will be attained unless those prosecutions are capable of finding accurate facts. We have known for some years that finding those accurate facts can prove a challenging enterprise. This article explores why that is so and what conditions make it more or less challenging. Just as medical researchers identify particularly significant risk factors for cancer, heart disease, and other ailments, this article has identified particularly significant risk factors for inaccurate factual findings in mass atrocity trials.

This article reveals that the proceedings most at risk for factually inaccurate findings are international tribunal prosecutions of international crimes in developing nations that oppose the prosecutions. The fact-finding impact of governmental opposition should come as no surprise, but it is a surprise that the proceedings most at risk for factually inaccurate findings are *international* tribunal prosecutions of *international* crimes in developing nations. This conclusion is not only startling but troubling because international criminal tribunals have been considered the gold standard institutions for the prosecution of mass atrocities. Proponents view them as more neutral than domestic courts, more legitimate than domestic courts, and more appropriate for the prosecution of crimes that have global—and not just domestic—impact. To be sure, some scholars have contested this vision, but most scholars have continued to consider international criminal tribunals to be most capable of providing the kind of state-of-the art justice that the international community seeks to deliver. That their prosecutions face an enhanced risk of factual inaccuracy is thus a highly unwelcome conclusion.

Unwelcome or not, it is a conclusion that must be faced. Finding accurate facts is not one among a host of equally important values: it is arguably the most important, foundational function at the core of mass atrocity prosecutions, in whatever form they take. Consequently, the risk factors identified in this article should inform prosecutorial charging decisions as well as institutional

design. Although it might be abstractly preferable to charge mass atrocities as international crimes rather than domestic crimes, perhaps that preference should be reconsidered if it will be harder to find the facts of international crimes. Although one situation may feature arguably graver crimes than another, the less grave situation should be seriously considered if the facts thereof can be found to a higher level of certainty. Finally, the selection and design of prosecutorial bodies should be informed by their relative fact-finding competence. It is unquestionably relevant that a criminal justice system has impartial judges or greater resources for criminal defense, but that criminal justice system's capacity to find accurate facts is at least an equally important metric on which it should be assessed.

Fact-finding competence is so foundational that it is often taken for granted by scholars and commentators. Scholars theorize about the capacity of mass atrocity prosecutions to effect deterrence or impose retribution, but they blithely assume their capacity to find accurate facts, a capacity that necessarily underlies the higher-order goals that these commentators seek to advance. This article reveals that fact-finding competence, like most important values, is not evenly distributed across different kinds of crimes or prosecutions. The careful unpacking of that unequal distribution that emerges from this article should guide policymakers henceforth.

Nancy Amoury Combs is the Ernest W. Goodrich Professor of Law and the Kelly Professor of Teaching Excellence at William and Mary Law School. She also directs the Law School's Human Security Law Center. Professor Combs has written extensively on topics in international law and international criminal justice, publishing two books and approximately 30 articles, book chapters and essays appearing in the *University of Pennsylvania Law Review*, the *Vanderbilt Law Review*, the *Hastings Law Journal*, the *American Journal of International Law,* the *Harvard International Law Journal*, the *Yale Journal of International Law,* and the *Chicago Journal of International Law*, among many others. Professor Combs earned her Ph.D. from Leiden University and her J.D. from the University of California at Berkeley School of Law, where she graduated first in her class. She served as a law clerk to Justice Anthony Kennedy on the United States Supreme Court and to Judge Diarmuid O'Scannlain on the Ninth Circuit Court of Appeals. Directly before joining the faculty at William and Mary Law School, Professor Combs served as legal advisor at the Iran-United States Claims Tribunal in The Hague.

Notes

[1] Prosecutions at the Extraordinary Chambers in the Courts of Cambodia, by contrast, have featured non-trivial quantities of documentary evidence.

[2] See, for example, Prosecutor v. Renzaho, Case No. ICTR-97-31-T, Judgment, ¶¶ 166, 240, 312, 321, 410, 487, 557, 569, 594, 652, 734 (July 14, 2009); Prosecutor v. Gatete, Case No. ICTR-2000-61-T, Judgment, ¶ 405 (March 31, 2011); Prosecutor v. Hategekimana, Case No. ICTR-00-55B-T, Judgment, ¶¶ 278, 449, 547, 552 (December 6, 2010).

[3] See Prosecutor v. Brima et al., Case No. SCSL-04-16-T, Judgment, ¶¶ 539-44, 551, 564, 569, 581-84, 616, 626 (June 20, 2007) [hereinafter AFRC Judgment].

[4] See, for example, Prosecutor v. Hadžihasanović & Kubura, Case No. IT-01-47-T, Judgement, ¶¶ 605, 612, 1101 (March 15, 2006); Prosecutor v. Kordić & Čerkez, Case No. IT-95-14/2-T, Judgement, ¶ 841 (February 26, 2001); Prosecutor v. Halilović, Case No. IT-01-48-T, Judgement, ¶ 752 (November 16, 2005).

[5] Jason Patinkin, "Rampaging South Sudan Troops Raped Foreigners, Killed Local," A.P., August 15, 2015, http://abcnews.go.com/International/wireStory/rampaging-south-sudan-troops-raped-foreigners-killed-local-41390274

[6] See *Council on Foreign Relations, The Eastern Congo*, available at http://www.cfr.org/congo-democratic-republic-of/eastern-congo/p37236#!/; South African Institute of International Affairs, "Guerrillas in their Midst: Shifting Alliances in the DRC," *Intelligence Update* (July 13, 1999). See also Prosecutor v. Katanga, Case No. ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶ 601 (March 7, 2014).

[7] See, for example, Prosecutor v. Sesay et al., Case No. SCSL-04-15-T, Judgment, ¶¶ 1205, 1213-19, 1222-22 (March 2, 2009) [hereinafter RUF Judgment].

[8] AFRC Judgment, ¶¶ 553, 561, 564, 576; Prosecutor v. Sesay et al., Case No. SCSL-04-15-T, Transcript, January 21, 2005, at 5; *Id.*, January 27, 2005, at 77; *Id.*, May 4, 2007, at 112; *Id.*, May 22, 2007, at 29; *Id.*, May 23, 2007, at 20; *Id.*, October 22, 2007, at 71-72, 101-102; *Id.*, Noember. 23, 2007, at 44; *Id.*, June 9, 2008, at 3-6; 30-33.

[9] Hugues F. Herve, et al., "Biophysical Perspectives on Memory Variability in Eyewitnesses," in *Applied Issues in Investigative Interviewing, Eyewitness Memory, and Credibility Assessment*, ed. Barry S. Cooper et al. (2013), 99, 107.

[10] Martin Witteveen, "Closing the Gap in Truth Finding: From the Facts of the Field to the Judge's Chambers," in *Collective Violence and International Criminal Justice: An Interdisciplinary Approach*, ed. Alette Smeulers (2010), 383, 400-6.

[11] Menno Kamminga, "Lessons Learned from the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offenses," *Human Rights Quarterly* 23 (2001): 959.