

Limitations of Using Fact-Finding Reports in Criminal Proceedings: The Case of Myanmar

By Dov Jacobs

Policy Brief Series No. 118 (2020)

1. Criminal Justice Reliance on Human Rights Fact-Finding

This policy brief addresses some of the challenges of using third-party fact-finding reports in international criminal proceedings. This issue is particularly relevant in the context of ongoing international litigation concerning Myanmar.

In the context of the procedure initiated by The Gambia at the International Court of Justice ('ICJ'), it is noteworthy that, during the December 2019 oral pleadings, The Gambia relied extensively on fact-finding reports, both by the United Nations ('UN') Special Rapporteur on the situation of Human Rights in Myanmar and by the Commission set up by the Human Rights Council.¹ At the International Criminal Court ('ICC'), an analysis of the Prosecutor's request to open an investigation of 4 July 2019² and the Pre-Trial Chamber's ('PTC') decision of 14 November 2019 show an overwhelming reliance on such reports.³ For example, in the Prosecutor's request, nearly 500 (out of 775) footnotes refer to various fact-finding or civil society reports. For the PTC decision, nearly half of the footnotes refer to such reports.

Neither the Prosecutor's request nor the PTC decision shed meaningful insight as to how the reliability and credibility of such reports were assessed. The Prosecutor provides a cursory methodological clarification,⁴ while the PTC does not give any indication of its understanding of the standard of proof during a preliminary examination, or any methodological explanation of how it independently assessed available information, seemingly taking any 'finding' in a human rights report at face value.⁵

This approach raises a number of concerns, not only in terms of methodology, but also in terms of how it leads to the wholesale adoption of a one-sided narrative about the complex events that took place in Myanmar that underpins the rhetoric in fact-finding reports. This could further contribute to what Morten Bergsmo has described as a "global moral narrative on Rakhine", which "is a part of the unusually blunt polarisation between the demand for international accountability

by members of the international community, and the authorities of Myanmar", noting that an "excessively polarised climate may also weaken recognition of the importance of turning every stone in making national investigations and prosecutions in Myanmar work".⁶

The risks of overly simplistic narratives have been highlighted regularly in ICC case law. In her dissenting opinion to the 2014 *Katanga* Judgment, Judge van den Wyngaert noted the "oversimplification" of the role of ethnic tensions adopted by the majority.⁷ More recently, on the acquittal of Laurent Gbagbo, Judge Henderson noted with concern that "the Prosecutor seems to have presented a rather one-sided version of the situation in Côte d'Ivoire. [...] This has resulted in a somewhat skewed version of events that may be inspired by reality but does not fully reflect it",⁸ "built around a unidimensional conception of the role of nationality, ethnicity, and religion (in the broadest sense)".⁹

The *Gbagbo* case is particularly relevant, given that the Defense had raised from the beginning of the proceedings the concern that the Prosecutor's narrative was in part drawn directly from human rights reports produced during the post-electoral crisis, and given that the Pre-Trial Chamber, when adjourning the confirmation of charges, noted with concern that

the Prosecutor relied heavily on NGO reports and press articles with regard to key elements of the case, including the contextual elements of crimes against humanity. Such pieces of evidence cannot in any way be presented as the fruits of a full and proper investigation by the Prosecutor [...] they do not usually constitute a valid substitute for the type of evidence that is required to meet the evidentiary threshold for the confirmation of charges.¹⁰

¹ ICJ, *The Gambia v. Myanmar*, Verbatim Records, CR 2019/18, 2019/19, 2019/20, 10-12 December 2019 (10 December 2019: <https://www.legal-tools.org/doc/39si5p/>; 11 December 2019: <https://www.legal-tools.org/doc/yfx6vt/>; and 12 December 2019: <https://www.legal-tools.org/doc/cbfgq2/>; <https://www.legal-tools.org/doc/biink/>).

² ICC, Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar ('ICC, Myanmar'), Request for Authorisation of an Investigation pursuant to Article 15, 4 July 2019, ICC-01/19-7 (<https://www.legal-tools.org/doc/8a47a5/>).

³ ICC, Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation, 14 November 2019, ICC-01/19-27 (<https://www.legal-tools.org/doc/kbo3hy/>).

⁴ See *infra*, Section 2.

⁵ On the decision, see generally Dov Jacobs, "ICC PTC Authorises Investigation in Bangladesh/Myanmar: Some Thoughts", *Spreading the Jam*, 15 November 2019.

⁶ Morten Bergsmo, "Myanmar, Colonial Aftermath, and Access to International Law", Occasional Paper Series No. 9 (2019), Torkel Opsahl Academic EPublisher, Brussels, 2019, p. 3 (<http://www.toaep.org/ops-pdf/9-bergsmo>).

⁷ ICC, Situation in the Democratic Republic of the Congo ('ICC, DRC'), *The Prosecutor v. Germain Katanga*, Trial Chamber, Minority Opinion of Judge Christine van den Wyngaert, 7 March 2014, ICC-01/04-01/07-3436-AnxI, para. 318 (<https://www.legal-tools.org/doc/9b0c61/>): "Such oversimplification may fit nicely within a particular conception of how certain groups of people behave in certain parts of the world, but I fear it grossly misrepresents reality, which is far more complex".

⁸ ICC, Situation in the Republic of Côte d'Ivoire, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Trial Chamber, Reasons of Judge Geoffrey Henderson, 16 July 2019, ICC-02/11-01/15-1263-Conf-AnxB-Red, para. 66 (<https://www.legal-tools.org/doc/j0v5qx/>). In his separate opinion, Judge Tarfusser also noted that the Prosecution case was "inspired by a Manichean and simplistic narrative", see Opinion of Judge Cuno Tarfusser, 16 July 2019, ICC-02/11-01/15-1263-AnxA, para. 12 (<https://www.legal-tools.org/doc/f6c6f3/>).

⁹ Reasons of Judge Geoffrey Henderson, *ibid.*, para. 73.

¹⁰ ICC, Situation in the Republic of Côte d'Ivoire, *The Prosecutor v. Laurent Gbagbo* ('*Gbagbo* case'), PTC I, Decision Adjourning the Hearing on the Confirmation of Charges pursuant to Article 61(7)(c)(i) of the Rome Statute, 3 June

2. Differences between Human Rights Fact-Finding and Criminal Courts

As regularly noted in the literature, there are inherent differences between human rights fact-finders and criminal courts. It is often argued that fact-finding bodies pursue goals that overlap only partially with international criminal tribunals (such as deterrence and dispute resolution), with different methods, and that they are rooted in different professional cultures.¹¹

This explains the recurring suspicion towards the use of fact-finding materials in international criminal tribunals. For example, the Trial Chamber in *Katanga* found that “conducting an investigation into human rights violations is not subject to the same rules as those for a criminal investigation. Reports are prepared in a non-adversarial manner; they are essentially based on oral testimony, sometimes derived from hearsay, and the identity of sources is always redacted”.¹² In the *Lubanga* Judgment, the Chamber recalls the testimony of a member of the Prosecution investigation team who noted “differences between the reports from the NGOs and the situation that confronted the investigation team during its work”,¹³ and that “investigations carried out by humanitarian groups, in his opinion, are more akin to general journalism than a legal investigation”.¹⁴ The Chamber even quoted William Pace, the former Coalition for the ICC Convenor, for whom “human rights and humanitarian organizations are lousy criminal investigators”.¹⁵

This suggests that the ICC should be cautious in relying on third party fact-finding, or should at least distinguish the use that is made of such material depending on the stage of the proceedings being considered and the issues being discussed.¹⁶

3. The Prosecutor’s Independent Obligation to Assess the Reliability of Fact-Finding Reports

The ICC Office of the Prosecutor (‘OTP’) itself claims to assess open source material, thus including human rights reports, following a certain methodology, particularly during a preliminary examination. This methodology is reflected both in the OTP Policy Paper on Preliminary Examinations¹⁷ and in requests submitted to PTCs in order to be authorised to open investigations. For example, the request to open an investigation in the Afghanistan situation elaborated on the source evaluation criteria used by the OTP:

relevance (usefulness of the information to determine the commission of crimes within the jurisdiction of the Court), reliability (trustworthiness of the provider of the information as such), credibility (quality of the information in itself, to be evaluated by criteria of immediacy, internal consistency and external verification), and completeness (the extent of the source’s knowledge or

coverage vis-à-vis the whole scope of relevant facts). [The OTP] has endeavoured to corroborate the information provided with information available from reliable open and other sources.¹⁸

The position of the Prosecutor was set out in even clearer terms in her request to open an investigation in the Situation in Georgia:

Notwithstanding the low threshold that is applicable at this stage, neither the Prosecution nor the Chamber should rely on information that is not credible or reliable. This is clear from the statutory requirement of determining whether the information available establishes a reasonable basis to believe that one or more crimes within the jurisdiction of the Court have been committed. Similarly, the Prosecutor, and the Chamber, must analyse and evaluate the seriousness of the information and the reliability of the source. To hold otherwise would require the Court to take any allegation made by any source at face value.¹⁹

Yet, surprisingly, in the Myanmar request, such detailed methodological clarification is absent; the Prosecutor simply affirmed that the “sources relied upon in this Request are amongst those considered by the Prosecution to be sufficiently reliable and credible for the proposition for which they are relied on”.²⁰

It is not clear why the Prosecution changed its way of presenting its methodological approach in the Myanmar request. Of course, one might consider that this is just a cosmetic difference and that this does not mean that the OTP did not concretely and seriously assess available information. However, it is noteworthy that the terms “reliable”, “reliability”, “reliable”, “credible”, “credibility”, “authenticity”, “corroborate”, “corroboration” and “corroborated” appear only 13 times in total in a 146-page request.

Moreover, as noted in the introduction, the approach taken by the PTC itself seems to suggest that the judges did take “any allegation made by any source at face value”, contrary to its obligation to assess the information independently.

4. Methodological Challenges in Using Human Rights Fact-Finding Reports in Criminal Proceedings

The list of constraints that might limit the relevance of human rights reports in the context of a preliminary examination is extensive. This policy brief focuses on four constraints which present particular challenges that seem most relevant in the context of the Myanmar situation: lack of access to relevant information, risk of bias on the part of human rights fact-finders, the difficulty of assessing the reliability of sources, and the minimal utility of legal determinations made in human rights reports.

These methodological constraints need to be considered within the broader limitation of time in the production of human rights reports. Indeed, most human rights reports are produced within a short time-frame after the alleged incidents, sometimes even during such incidents. This has several structural consequences for the work of human rights organisations. First of all, serious investigations take time, especially in a conflict zone. It is often not possible for these organisations to gather all the relevant information between the events and the production of the report. This means that any findings are necessarily based on a fragmented and partial knowledge of how events unfolded. Secondly, a thorough assessment of evidence is a lengthy process, particularly in such complex factual circumstances, and it is unlikely that such an assessment can be conducted adequately in the days, weeks or months between the events and the production of a civil society or UN report.

2013, ICC-02/11-01/11-432, para. 35 (‘Decision Adjourning the Hearing’) (<https://www.legal-tools.org/doc/2682d8/>).

¹¹ See Morten Bergsmo and William H. Wiley, “Human Rights Professionals and the Criminal Investigation and Prosecution of Core International Crimes”, in Siri Skåre, Ingvild Burkey and Hege Mørk (eds.), *Manual on Human Rights Monitoring: An Introduction for Human Rights Field Officers*, Norwegian Centre for Human Rights, Oslo, 2008, p. 3 (<https://www.legal-tools.org/doc/8362d5/>). See generally Gerald Steinberg, Anne Herzberg and Jordan Berman, *Best Practices for Human Rights and Humanitarian Fact-Finding*, Martinus Nijhoff, 2012.

¹² See ICC, DRC, *The Prosecutor v. Mathieu Ngudjolo Chui*, Trial Chamber, Judgment Pursuant to Article 74 of the Statute, 18 December 2012, ICC-01/04-02/12-3-tENG, para. 294 (<https://www.legal-tools.org/doc/2c2cde/>).

¹³ ICC, DRC, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842, para. 129 (<https://www.legal-tools.org/doc/677866/>).

¹⁴ *Ibid.*, para. 131.

¹⁵ *Ibid.*, para. 130.

¹⁶ On this, see Carsten Stahn and Dov Jacobs, “The Interaction between Human Rights Fact-Finding and International Criminal Proceedings: Toward a (New) Typology”, in Philip Alston and Sarah Knuckey (eds.), *The Transformation of Human Rights Fact-Finding*, Oxford University Press, 2016, pp. 257–280.

¹⁷ ICC OTP, *Policy Paper on Preliminary Examinations*, November 2013, para. 31 (<https://www.legal-tools.org/en/doc/acb906/>).

¹⁸ ICC, Situation in the Islamic Republic of Afghanistan, Public Redacted Version of “Request for Authorisation of an Investigation pursuant to Article 15”, 20 November 2017, ICC-02/17-7-Conf-Exp, 20 November 2017, ICC-02/17-7-Red, para. 29 (<https://www.legal-tools.org/doc/db23eb/>).

¹⁹ ICC, Situation in Georgia, Corrected Version of “Request for authorisation of an investigation pursuant to article 15”, 13 October 2015, ICC-01/15-4, 16 October 2015, ICC-01/15-4-Corr, para. 48 (<https://www.legal-tools.org/doc/75able/>).

²⁰ ICC, Myanmar, Request for Authorisation of an Investigation pursuant to Article 15, par. 29, see *supra* note 2.

This time-constraint alone means that, as a matter of principle, the OTP should be cautious in using the information or findings contained in such reports in the context of a preliminary examination.

This time-constraint applies to fact-finding processes in the Myanmar situation. As noted by Eva Buzo, in the context of fact-finding missions to Cox's Bazar, Bangladesh:

groups came to the camps to investigate and document the alleged atrocities on short-term missions that invariably lasted between 7 and 14 days. A quick scan of the "Methodology" section of some of the reports show that groups were often conducting between three and five interviews each day. These short-term "parachute" missions which aim to obtain as much information as possible as quickly as possible, seem to have been the only model used by the teams.²¹

4.1. Lack of Access to Relevant Information

One of the major methodological challenges faced by human rights organisations and UN commissions of inquiry is access to information, which is central to the assessment of the report's reliability.

First, because these organisations have no formal investigative powers, they have no authority to compel relevant protagonists to provide evidence. The consequence of such lack of co-operation necessarily has an impact on the quality of the fact-finding process. This absence of co-operation is often noted in reports, as is the case for the various UN fact-finding reports on the Myanmar situation. However, in practice, it is often not clear whether this lack of relevant information concretely led the commissioners to decline to make findings about a particular incident. More crucially, the absence of field investigations can cast a more general doubt on the credibility of the findings. In such a context, the OTP should be careful with taking into account factual or legal findings when such findings were clearly made in circumstances where there is a deficiency of accessible information.

Second, there is the problem of being able to assess the information that is actually received. Often, human rights fact-finders will have limited or no possibility to work directly in the field.²² This is a major problem for the analysis of complex factual allegations over a long period of time. Indeed, nothing replaces on-site investigations in order to understand and autonomously analyse factual allegations.²³ In many instances, factual allegations made in international criminal tribunals did not survive an *in situ* visit by the judges, who would be able to witness first-hand that, for example, the physical layout of the land did not allow for events to have taken place as initially alleged.²⁴

Third, lack of access to the scene of the alleged facts constrains the assessment of the authenticity and credibility of documentary evidence. Indeed, a key principle for any documentary evidence is the reliability of its chain of custody, which is not possible without on-site investigations. One example of such evidence is video evidence, which, with the growing importance of social media in recent years, is increasingly presented as evidence in international criminal proceedings. But this practice is fraught with risks. Videos can today easily be manipulated, edited to omit certain key aspects, or simply presented as being of a different event.²⁵

The political context in which alleged international crimes are committed can be conducive for the parties to the conflict to fabricate evidence in order to obtain favourable media coverage, and to disqual-

ify the opponent morally and politically. In other words, because war crimes accusations can provide easy political gain, investigations must take extra care in verifying the source of any documentary evidence, which is particularly complicated when it comes to physical evidence without on-site investigations. Yet, human rights reports rarely, if ever, provide information on whether there exists available medical reports, how they were obtained, and, more importantly, whether they were critically assessed.

4.2. Risk of Bias on the Part of Human Rights Fact-Finders

Bias is not directly a problem from a methodological perspective. Indeed, political bias does not automatically invalidate findings by a human rights organisation. A human rights organisation can have a political agenda, but still follow a rigorous working methodology that allows for its conclusions to be relevant. As a consequence, such allegations cannot as a matter of principle lead to the rejection of their work.²⁶

This does not mean that the OTP should not be aware of the political leanings and biases of the authors of the sources it uses in order to assess, on a case-by-case basis, whether such bias might have affected the methodology, the factual and legal findings, and the way they are presented. For example, the political aims of an organisation might have confirmation bias as a consequence; for instance, only looking for information that might validate a pre-determined opinion about how events unfolded, or giving more credit to testimony to that effect. Bias can also affect the way findings are discussed and presented, and therefore how they are received by the reader.

4.3. The Problem of Assessing Reliability of Sources

4.3.1. Risks for Human Rights Organisations

Human rights reports are rarely clear on how they identify and locate witnesses. This is particularly important in highly charged political contexts, in which there is always an objective risk of manipulation.

One particular related issue, especially in circumstances where access to the conflict zone is difficult or impossible, is the use of intermediaries. Indeed, it seems inevitable that intermediaries will, by definition if they are to be of any utility, have some relationship with the situation under consideration and therefore bear the risk of having their own agenda. Human rights fact-finders should therefore take all necessary measures to assess the reliability not only of witnesses, but also of any intermediary used to find those witnesses.

This problem is real in the context of fact-finding on the situation in Myanmar. Eva Buzo notes that it "is a marked feature of the early reports on the Rohingya crisis that they discuss events in the same three to five areas. This is a result of the early groups using fixers drawn from the same small pool. Some of these fixers advertised their services on Twitter, others would wait at the airport at Cox's Bazar and approach foreigners arriving and offer their services. For a daily fee of between \$100-200, they would accompany the teams and take them to speak to victims".²⁷

The consequence of this is that the organisations will invariably be interviewing the same people, with obvious possible impact on the ways the testimony unfolds and its content, which might impede the truth-finding objective in subtle ways.²⁸

More generally, human rights fact-finders should, when conducting interviews, not only explore factual allegations made, but also how this person came to become a witness in the first place, by whom he or she

²¹ Eva Buzo, "Capturing a Crisis: What Lessons Can We Learn from the 'Over-documentation' of the Rohingya Crisis?", *Justice in Conflict*, 20 May 2020.

²² This may be less true when it comes to local non-governmental organisations.

²³ See Global Rights Compliance, "Basic Investigative Standards for Investigators of International Crimes", July 2016.

²⁴ ICC, DRC, *The Prosecutor v. Germain Katanga*, Trial Chamber II, Judgment pursuant to Article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436-tENG, paras. 224, 278 (<https://www.legal-tools.org/doc/f74b4f/>).

²⁵ See ICC, *Gbagbo* case, Version publique expurgée du second corrigendum concernant les observations écrites de la défense sur la preuve du Procureur, 4 April 2014, ICC-02/11-01/11-637-Anx2-Corr2-Red, para. 91 (<https://www.legal-tools.org/doc/34ecc3/>).

²⁶ A related but distinct problem is perceived bias in the mandate given to certain fact-finding mechanisms. For example, the (later amended) terms of reference of the Goldstone commission were considered to be one-sided, targeting only Israel, without mentioning Hamas (see Nigel S. Rodley, "Assessing the Goldstone Report", in *Global Governance*, 2010, vol. 16, no. 2, pp. 193-194). As a consequence, a biased mandate can be an indication that the mechanism will not assess facts impartially. However, it is not *per se* a methodological obstacle for the mechanism, nor does it automatically invalidate its findings.

²⁷ Buzo, 2020, see *supra* note 21.

²⁸ See, for example, Hannah Beech, "The Rohingya Suffer Real Horrors. So Why Are Some of Their Stories Untrue?", *New York Times*, 1 February 2018.

was contacted, in what circumstances, if he or she has been coached in any way, or been promised anything for their testimony.

4.3.2. Challenges for the Prosecutor

The key principle in the context of criminal proceedings is the possibility for the parties and the judges to test evidence. Evidence that cannot be tested or challenged by the Defence of the judges has limited to no value in criminal justice. This means that the information provided must have a determined source and be set in a determined context. This also means that evidence must have a reliable chain of custody which allows for the verification of its authenticity.

The problem faced by the OTP in using human rights reports is that the information contained therein is generally presented in a way that it is unverifiable, most often when human rights organisations withhold the names of their sources.

Technically, this means that human rights reports are to be considered as one of the weakest possible sources of criminal evidence, namely anonymous hearsay. Indeed, a human rights report is by definition hearsay, given that the fact-finder will most likely not have experienced the discussed events first-hand. In some cases, the Prosecutor might even face multiple layers of hearsay, if the human rights fact-finder himself did not speak to a direct witness of the alleged events.

What does this mean? First of all, it is extremely difficult to verify the reliability of the information if the source is unknown. Second, anonymous hearsay is fundamentally not possible to corroborate, given the fact that the OTP will never be sure that there are in fact two different sources. For example, the Prosecutor cannot claim that two human rights reports corroborate each other if she has not established beforehand that they are based on different sources. This is not a theoretical risk: Eva Buzo gives the example of the same individual interviewed 19 times in Cox's Bazar.²⁹

Along the same lines, should the Prosecutor manage to find witnesses herself, there cannot technically be any corroboration with human rights reports if it has not been established that the witness was not the source for the human rights reports. In short, anonymous hearsay, independently of the fact that it is inherently weak evidence, is also an investigative nightmare for the Prosecution, as regularly noted in ICC case law.³⁰

In most cases, human rights reports do not even allow the possibility of making a *prima facie* or superficial assessment of the reliability of the source, given the lack of information relating to it. For example, the UN fact-finding reports on Myanmar indicate that they rely on interviews, but only rarely provide any indication on whether the person was a direct witness to the events, and his or her link to the events – although this should usually be possible without revealing names. Furthermore, it is striking to note that the reports from the Special Rapporteur on Myanmar provide virtually no sources for the factual allegations contained therein.

4.4. Limited Use of Legal Determinations Contained in Human Rights Reports

As a matter of policy, the OTP should be extremely wary of relying on the legal determinations that can be found in human rights reports.

²⁹ Buzo, 2020, see *supra* note 21.

³⁰ ICC, *Gbagbo* case, Decision adjourning the hearing, paras. 29-30, see *supra* note 10.

There are two main reasons for this necessary caution.

First, from a factual perspective, human rights fact-finders will rarely be able to obtain information relevant to making an informed legal finding, as they are not in a position to determine the existence of international crimes. This is due to lack of access to key evidence relating to the contextual elements of the crimes, the existence of *mens rea*, and, in the context of war crimes, whether an incident does in fact meet the legal requirements (including necessity, proportionality, specificity and military objective). Indeed, such assessment requires knowledge from both the alleged victims and the perpetrators.

It is therefore important that the OTP acknowledges a number of problems with commissions attempting to legally characterise facts as international crimes that arise from taking international criminal law outside its natural environment, that is, the court. The most obvious one is that, technically, only a court can determine that a fact pattern constitutes a crime. It is not because commissions or human rights organisations use the language of international criminal law that they are imbued with legal authority.³¹

Second, it should be noted that human rights organisations might not have the relevant expertise to make such determinations. As a result, fact-finding reports often propose superficial assessments of the applicable legal framework, based on what might appear as an arbitrary selection of sources, often secondary academic sources, to which not much weight should be given in the judicial context.

In that respect, it is striking to note that the Special Rapporteur on the situation of human rights in Myanmar and the members of the UN Fact-Finding Mission on Myanmar have little to no experience in international criminal law or even international humanitarian law, their expertise being centred around specific human rights issues, which makes their 'findings' on the commission of 'international crimes' all the more subject to caution.

5. Conclusion

The inherent methodological limitations and flaws of fact-finding reports require a cautious approach when being used in international criminal proceedings. If international criminal justice is truly serious about the high ambitions it sets itself in terms of grasping the legal, political and historical complexities of the situations that it is called upon to address, it is only normal that it also holds itself to the highest standards in terms of grounding its work in solid factual and legal foundations, foundations that human rights reports often simply cannot provide.

Dr. Dov Jacobs is an expert in international law and Trial Lawyer at the ICC. He is the founder of SILC, an international consulting firm, and has published extensively in international law. This policy brief is authored in his personal capacity.

ISBN: 978-82-8348-156-3.

TOAEP-PURL: <http://www.toaep.org/pbs-pdf/118-jacobs/>.

LTD-PURL: <https://www.legal-tools.org/doc/2f6ezr/>.

³¹ Dov Jacobs and Catherine Harwood, "International Criminal Law Outside The Courtroom: The Impact of Focusing on International Crimes for the Quality of Fact-Finding by International Commissions of Inquiry", in Morten Bergsmo (ed.), *Quality Control in Fact-Finding*, Torkel Opsahl Academic EPublisher, Florence, 2013, pp. 325-357 (<https://www.toaep.org/ps-pdf/19-bergsmo>).