

# Contents

<i>Acknowledgments</i>	<i>page xi</i>
Introduction	1
1 The Evidence Supporting International Criminal Convictions	11
1.A. The Prevalence of Eyewitness Testimony	11
1.B. The Limitations of Eyewitness Testimony	14
2 Questions Unanswered: International Witnesses and the Information Unconveyed	21
2.A. International Witnesses and Their Inability to Answer Who, What, Where, or When Questions	22
2.A.i. Dates	24
2.A.ii. Duration	27
2.A.iii. Distance	29
2.A.iv. Numerical Estimations	33
2.A.v. Two-Dimensional Representations	36
2.A.vi. Important Details	38
2.A.vii. Court Procedures	39
2.A.viii. Summary	43
2.B. Questions and Answers: A Different Sort of Communication Breakdown	44
3 The Educational, Linguistic, and Cultural Impediments to Accurate Fact-Finding at the International Tribunals	63
3.A. Education, Literacy, and Life Experiences	63
3.B. Interpretation Errors	66
3.C. Cultural Divergences	79



3.D. Education, Interpretation, and Culture: Innocent Explanations or Concealment Techniques?	100
3.E. Summary	105
4 Of Inconsistencies and Their Explanations	106
4.A. The Nature of the Inconsistencies	106
4.B. The Prevalence of the Inconsistencies	118
4.C. The Causes of the Inconsistencies	122
5 Perjury: The Counternarrative	130
5.A. A Cultural Component to Perjury?	131
5.B. Perjury Incentives	135
5.C. The Incidence of Perjury at the International Tribunals	149
6 Expectations Unfulfilled: The Consequences of the Fact-Finding Impediments	167
7 Casual Indifference: The Trial Chambers' Treatment of Testimonial Deficiencies	189
7.A. The Trial Chambers' Lackadaisical Attitude Toward Testimonial Deficiencies	190
7.B. Evidentiary Bases Exposed: The <i>CDF</i> Judgment	203
7.B.i. A Brief Summary of the Case	203
7.B.ii. Crimes Committed in the Towns of Tongo Field	204
7.B.iii. Crimes Committed in Koribondo	206
7.B.iv. Crimes Committed in the Bo District	212
7.B.v. Crimes Committed in the Bonthe District	212
7.B.vi. Crimes Committed at Talia	214
7.B.vii. Crimes Committed in the Moyamba District	215
7.B.viii. The Enlistment or Use of Child Soldiers	216
7.B.ix. The Underlying Crimes	219
7.B.x. Summary	220
7.C. Summary and Statistics: International Criminal Trials and the Culture of Conviction	220
8 Organizational Liability Revived: The Pro-Conviction Bias Explained	224
8.A. The Politics of Acquittals	225
8.B. Judicial Backgrounds	234
8.C. The Lure of Organizational Liability	235
8.C.i. Organizational Liability as an Evidentiary Proxy	236
8.C.ii. Explaining the Acquittals by Evidentiary Proxies	254
8.C.iii. Summary	271



9	Help Needed: Practical Suggestions and Procedural Reforms to Improve Fact-Finding Accuracy	273
9.A.	Improving That Which Already Exists: Small-Scale Adaptations to Existing Procedures	274
9.A.i.	Language Interpretation	276
9.A.ii.	Investigations	277
9.A.iii.	On-Site Visits	281
9.B.	Publicizing and Punishing Perjury	282
9.C.	Large-Scale Procedural Reforms	285
9.C.i.	The Case for Contextualization	286
9.C.ii.	International Criminal Procedures: Uniformity in the Face of Diversity	289
9.C.iii.	Considering Context through the Importation of Domestic Procedures	297
9.C.iv.	The Choice between Adversarial and Nonadversarial Methods of Evidence Presentation	302
9.D.	Reducing the Impact of Testimonial Deficiencies and Aligning Stated and Actual Conviction Justifications Through the Use of Associational Doctrines	321
10	Assessing the Status Quo: They Are Not Doing What They Say They Are Doing, but Is What They Are Doing Worth Doing?	334
10.A.	The Adequacy of Inferences	335
10.B.	The Close-Enough Approach to Fact-Finding	339
10.C.	Reconceptualizing the Standard of Proof	343
	Conclusion	365
	<i>Bibliography</i>	375
	<i>Index</i>	409