

The Effect of Prosecutions on Mass Atrocities and Closely-Related Outcomes

Tools for Atrocity Prevention: Evidence Brief

The 1979 Report of the President’s Commission on the Holocaust, which led to the creation of the US Holocaust Memorial Museum, stated, “Only a conscious, concerted attempt to learn from past errors can prevent recurrence to any racial, religious, ethnic, or national group.”

The “lessons learned” project of the Museum’s Simon-Skjodt Center for the Prevention of Genocide is one way the institution seeks to carry out the charge to identify lessons from history that can potentially contribute to saving lives by preventing future genocides and related crimes against humanity.

To identify these insights, we reviewed academic articles and think tank reports, and interviewed experts. We then distilled this body of policy-relevant knowledge into an accessible, practical resource.

Read more about our approach at: www.ushmm.org/genocide-prevention/simon-skjodt-center/work/research/lessons-learned

Definition

Prosecutions of atrocity crimes are attempts to hold individuals criminally accountable for mass atrocities through national courts, the International Criminal Court, international tribunals, hybrid courts, or universal jurisdiction. This review is limited to analyses of the effects of actions to advance cases through courts, such as the referral of a case to a court, the opening of an investigation, indictments, arrest warrants, trials, and sentencing.

Connection between prosecutions and atrocity prevention strategies

If prosecutions increase the expected costs to individuals of committing atrocities, they would reduce the likelihood or severity of mass atrocities. In addition, if prosecutions satisfy the desire for justice for past atrocities, they would reduce the likelihood or severity of mass atrocities that might be committed to exact revenge on perpetrator groups. If prosecutions help remove individual perpetrators from positions of power or influence, they would reduce the likelihood or severity of mass atrocities by facilitating a transition to a less atrocity-prone political leadership.

This tool supports the following strategies:

- Dissuading potential perpetrators from committing mass atrocities
- Facilitating leadership or political transition

Overview

Our research review includes 63 reports: 38 that address the effects of prosecutions on mass atrocities and 48 that address the effects of prosecutions on closely related outcomes, such as civilian killings, human rights violations, and conflict recurrence. It found the following:

- A mix of findings as to whether prosecutions were effective in helping prevent mass atrocities or closely-related outcomes, and
- Relatively strong evidence on the association between several factors and greater effectiveness of prosecutions in helping prevent mass atrocities.
 - Contextual factors that were associated with prosecution success include *the national government cooperating with the prosecutions; local support for the prosecutions; and the absence of ongoing armed conflict.*
 - Design factors that were associated with prosecution success include *having a high level of commitment; international support or coordination; engaging in local outreach; and pursuing prosecutions concurrently with other atrocity prevention tools.*

Success factors

We list below only those factors on which we found relatively strong or moderate evidence that the factor is associated with prosecutions being more effective at decreasing mass atrocities or closely-related outcomes. These include contextual factors, which describe the circumstances in which the tool

is used but which are beyond the control of policymakers, and design factors, which describe the manner in which policymakers use the tool.

Contextual factors

CONTEXTUAL FACTOR	DESCRIPTION	STRENGTH OF RESEARCH EVIDENCE	OUTCOMES STUDIED
Domestic cooperation with the tool	The country under study cooperates with the tool.	Stronger	Conflict, Mass atrocities
Local support for tool	Most of the local population and/or local civil society supports the use of the tool and perceives its use as legitimate.	Stronger	Conflict, Mass atrocities
No ongoing armed conflict	There is no ongoing armed conflict in the country under study.	Stronger	Adverse consequences, Conflict, Human rights violations, Mass atrocities
Target prioritizes reputation	The target cares about their reputation among domestic and international audiences.	Moderate	Mass atrocities

Design factors

DESIGN FACTOR	DESCRIPTION	STRENGTH OF RESEARCH EVIDENCE	OUTCOMES STUDIED
Committed implementer	The tool implementer has a high level of commitment, resolve, or credibility, or has committed a great deal of resources toward use of the tool.	Stronger	Conflict, Human rights violations, Mass atrocities, Violence against civilians
International support or coordination	There is a high degree of international support for the use of the tool, or the tool implementer coordinates with other international actors on the use of the tool.	Stronger	Conflict, Mass atrocities, Violence against civilians
Local outreach	The tool implementer makes efforts to reach out to local communities or the host government to build better relationships.	Stronger	Mass atrocities
Concurrent use of multiple tools	The tool implementer or other actors are simultaneously implementing other tools that are consistent with the goals of the tool.	Stronger	Conflict, Mass atrocities
Tool targets foot soldiers and leaders	The tool targets foot soldiers as well as leaders.	Stronger	Mass atrocities, Violence against civilians
Conviction or severe punishment	The prosecution resulted in conviction or severe punishment.	Stronger	Human rights violations, Mass atrocities
Unbiased implementer or intervention	The tool implementer or intervention is not biased toward either party. Bias refers to the posture of the intervener, not necessarily prejudices that the intervener might hold about parties.	Stronger	Conflict, Mass atrocities, Violence against civilians
Domestic prosecution	The prosecution is domestic.	Moderate	Conflict, Human rights violations, Mass atrocities

DESIGN FACTOR	DESCRIPTION	STRENGTH OF RESEARCH EVIDENCE	OUTCOMES STUDIED
Witness protection	The prosecution effectively protects witnesses and victims.	Moderate	Conflict, Mass atrocities
Early implementation	The tool is implemented early in the conflict or rapidly after the appearance of early warning signs or occurrence of mass atrocities.	Moderate	Mass atrocities
Consistent implementation	The tool is implemented consistently over time and across parties/perpetrator groups.	Moderate	Human rights violations, Mass atrocities
Broad scope	The tool targets a broad set of issues within the conflict.	Moderate	Mass atrocities
Initiating investigation	An investigation has been initiated.	Moderate	Mass atrocities, Violence against civilians
High status target	The target is a top leader or has high status.	Moderate	Conflict, Human rights violations, Mass atrocities

Case Illustrations

Prosecutions were used in both Rwanda and Sudan to help prevent or respond to mass atrocities. Read the brief illustrations below to learn how this tool was used in these cases.

Rwanda (1994–2015)

In April 1994, security forces and paramilitaries associated with Rwanda’s Hutu Power movement killed approximately 800,000 Rwandans, most of whom were Tutsi. In response to the genocide, in November 1994, the UN Security Council (UNSC), with strong support from the Rwandan government, established the International Criminal Tribunal for Rwanda (ICTR). The US government played a leading role in lobbying the international community, drafting the UNSC resolution, and providing financial support for the tribunal’s creation (Kaufman 2009). The court was intended to contribute to the maintenance of peace, ensure that crimes of genocide were halted, deter revenge killings, and lead to a process of national reconciliation (Kaufman 2009; Barria and Roper 2006). Between July 1995 and December 2015, the ICTR prosecuted 93 people for acts of genocide, war crimes, and crimes against humanity and secured 62 convictions (UNIRMCT; Leithead 2015; International Justice Resource Center). Despite the notable improvement in the security situation in Rwanda since 1994, tens of thousands of people have been killed in clashes between Hutu insurgents and Tutsis seeking revenge for the genocide (Barria and Roper 2006), within Rwanda and in the broader region. Efforts by the court to halt revenge killings and contribute to the maintenance of peace appear to have been stymied by its lack of law-enforcement personnel in Rwanda, diminishing its deterrent effect (Barria and Roper 2006).

Sudan (2002–present)

Between July 2002 and 2019, government-sponsored militias known as the Janjaweed killed more than 480,000 Darfuris in the Darfur region of Sudan (ICC; World Without Genocide; Burke 2020). The violence led to the displacement of at least 1.65 million people (ICC; World Without Genocide). In

2005, the UNSC referred the Darfur case to the International Criminal Court (ICC). The United States abstained on the referral and offered to assist the court’s investigation ([Felter 2022](#)). The ICC investigation, which opened in June 2005, brought six cases against suspects including Sudanese government officials, President Omar al-Bashir, and Janjaweed leaders ([Felter 2022](#); [ICC](#)). It has issued five warrants of arrest for perpetrators, one of whom is in custody, while the other four remain at large, including President al-Bashir ([ICC](#)). Despite the ICC investigation, which was coupled with the use of US economic sanctions against key individuals and businesses in Sudan, and the deployment of a hybrid UN-AU peacekeeping force, violence against civilians persisted in the Darfur region for the duration of al-Bashir’s presidency ([Rice 2008](#); [Burke 2020](#)). Factors that might have reduced the deterrent effect of these ICC prosecutions include the lack of enforcement mechanisms available to the ICC and the limited state cooperation with the ICC: e.g., al-Bashir was allowed to travel to South Africa to attend an AU summit in spite of the ICC warrant against him ([BBC 2015](#)).

Selected informational resources on US government use of prosecutions

International Criminal Court (ICC):

- Congressional Research Service [report](#) (2010) on the ICC’s jurisdiction and US policy
- [American Service-Members’ Protection Act](#), which restricts US cooperation with the ICC
- Examples of UN Security Council referrals to the ICC:
 - [Resolution 1593](#) (2005): Security Council refers the situation in Darfur, Sudan to the prosecutor of the ICC
 - [Resolution 1970](#) (2011): Security Council referral of Libya to the ICC

Prosecution of atrocity perpetrators in US courts if victims or perpetrators were US persons:

- See the website for the [Human Rights and Special Prosecutions Section in the US Department of Justice](#)

Additional information:

- See the website for the [Office of Global Criminal Justice](#) at the US Department of State
- See the US Department of State’s [policy paper](#) (2016) on criminal prosecutions as a transitional justice tool

The Simon-Skjodt Center for the Prevention of Genocide

of the United States Holocaust Memorial Museum works to prevent genocide and related crimes against humanity. The Simon-Skjodt Center is dedicated to stimulating timely global action to prevent genocide and to catalyze an international response when it occurs. Our goal is to make the prevention of genocide a core foreign policy priority for leaders around the world through a multi-pronged program of research, education, and public outreach. We work to equip decision makers, starting with officials in the United States but also extending to other governments, with the knowledge, tools, and institutional support required to prevent—or, if necessary, halt—genocide and related crimes against humanity.



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