

Insider witnesses and international criminal justice: Empirical analysis

FACTSHEET 14 APRIL 2021

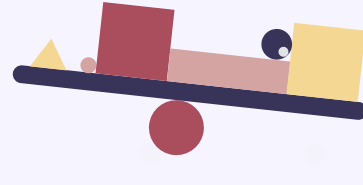
1 Insider witnesses remain crucial for international criminal justice

Investigating and prosecuting individuals responsible for war crimes, crimes against humanity or genocide relies heavily upon witness testimony.

Insider witnesses – individuals with a personal link to the crime itself, or the criminal organisation – are key. They bring the critical evidence linking high(er) level perpetrators to the crimes committed on the ground.

The reliance upon or dismissal of insider witness testimony can make or break the case.

2 Insider testimonies are often dismissed



Insider witnesses often have particular credibility (objectivity) or reliability (quality of information) issues. On top of general witness-evidence related concerns about e.g. corroboration, coherence, consistency, the judges may find insiders to be biased, have strong self-interests, avoid self-incrimination. If such concerns are multiple, or serious, the judges may dismiss (parts of) the testimony.

3 The question is ... how large is the problem?

To find out, we conducted the first systematic analysis and cross-institutional comparison of insider witness assessment practices at an international level.

By analysing and coding all 93 ICTY, ICTR, and ICC trial judgments of 1996-2019, we set out to uncover precisely what factors the judges of three major criminal courts and tribunals mention in determining the reliability and trustworthiness of insider witnesses, and how the factors relate to the outcomes of judicial assessments.

This is what we found:

Out of 1,359 publicly assessed ICC, ICTY, ICTR insider witnesses

25% were dismissed or used for very limited purposes.



50% were dismissed at the ICC, effectively meaning 1 in 2.



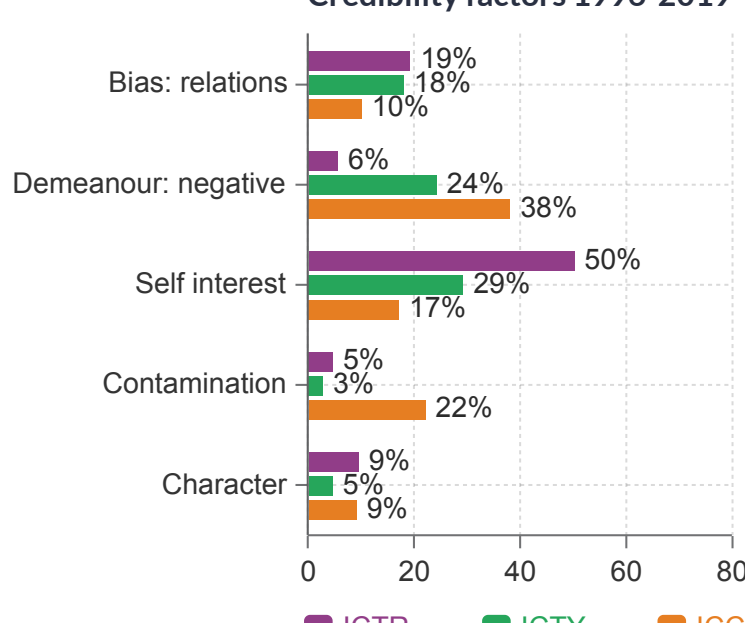
4 Why does it happen?

We rely on two types of analyses:

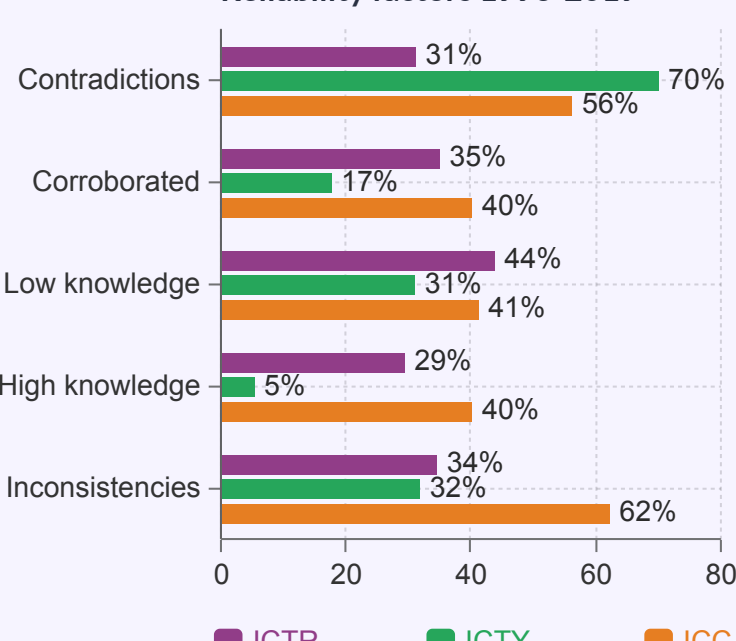
1. the frequency of judicial mentions of certain assessment factors;
2. the co-occurrences or correlations between assessment factors and outcomes.

4.1: Frequencies

- The most common credibility factors across the three ICCTs are demeanour and self-interest.
- Demeanour is the most common concern at the ICC, much less so at the ICTR.
- All five most frequently mentioned credibility factors are negative, in contrast to reliability factors (see below).

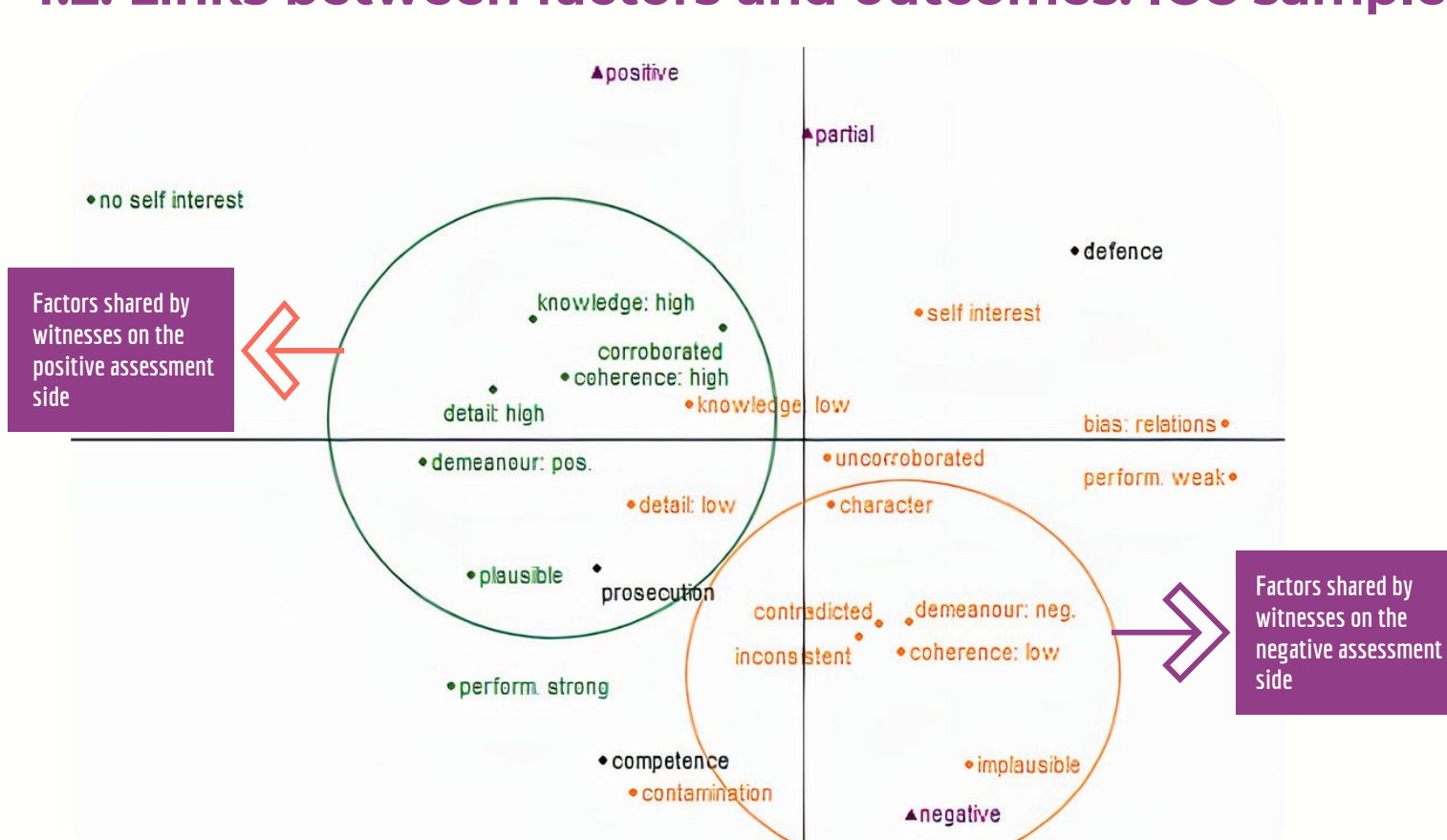


Reliability factors 1996-2019



- Reliability factors are mentioned more frequently than credibility factors, which indicates judicial focus on the quality of testimony.
- Knowledge, contradiction or corroboration by other evidence, and internal consistency dominate.
- Both positive and negative factors mentioned frequently.

4.2: Links between factors and outcomes: ICC sample



5 Summing up and implications

I. Credibility vs Reliability

Comparatively more attention seems to be paid to the reliability of testimonies than to the credibility of witnesses. Content of the message outweighs the credibility of the source?

II. Focus of decision-makers

Judicial decision-makers value external validation over the internal quality of the testimony and focus on verifiable aspects, such as (lack of) corroboration, contradiction by other evidence, or inconsistencies with prior statements.

III. What we *didn't* find

Importantly, we barely found any mentions of witness competence indicators (memory, trauma, time-lapse, language, etc.). While common for crime-base witnesses, they are not mentioned for insiders. A better understanding of the role witness competence plays in recall and communications could be a step in improving the assessment of insider witnesses.

IV. Recommendations

Our findings underline:

- 1) The need for more rigorous external validation, through examination of the confirmatory, but even more so, contradictory evidence. Training in debiasing techniques could be of use in order to avoid tunnel vision and confirmation bias.
- 2) Utmost prudence in re-interviewing witnesses, as inconsistencies are still a major impediment to testimonial reliability. Where possible, transcript instead of summary statements should be introduced.
- 3) The need to pay attention to witness competence factors.
- 4) Caution in considering witness courtroom demeanour as one of the most important factors in credibility assessments.