



AFRICA RESEARCH CENTRE

"Ex Africa semper aliquid novi"

africaresearchcentre@gmail.com

JUSTICE DENIED: THE REALITY OF THE INTERNATIONAL CRIMINAL COURT

The Africa Research Centre published *Justice Denied: The Reality of the International Criminal Court*, a 610-page study of the International Criminal Court by Dr David Hoile in 2014. The study has 27 chapters: The International Criminal Court; A European Court; The Court and the Security Council; The United States and the Court; The Court and Non-Governmental Organisations; A Glaring Democratic Deficit; Judges elected by vote-trading; The Office of the Prosecutor; Avoiding the Crime of Aggression; Granting immunity, entrenching impunity; The European Guantánamo Bay?; Inaction over Iraq; An Afghan case-study; The International Criminal Court and Africa; The fiction of "self-referral"; The fiction of deterrence; The fiction of a victims' court; The Court and Uganda; The Democratic Republic of the Congo; The Court and the Central African Republic; The Court and Sudan; The Court and Kenya; The Court and the Ivory Coast; The Court and Libya; The Court and Mali; European Double Standards; A Way Forward; as well as a videography, bibliography and 2,075 footnotes.

Justice Denied: The Reality of the International Criminal Court finds the ICC, established in 2002 by the Rome Statute, to be unfit for purpose. The ICC's claims to international jurisdiction and judicial independence are institutionally flawed and the Court's reputation has been irretrievably damaged by its racism, blatant double-standards, hypocrisy, corruption and serious judicial irregularities. The study demonstrates that while the ICC presents itself as the world's court this is not the case. Its members represent just over one quarter of the world's population: China, Russia, the United States, India, Pakistan and Indonesia are just some of the many countries that have remained outside of the Court's jurisdiction. The author points out that a court is only as credible as its independence. Far from being an independent and impartial court, the ICC's own statute grants special "prosecutorial" rights of referral and deferral to the Security Council – by default its five permanent members (three of which are not even ICC members). Political interference in the legal process was thus made part of the Court's founding terms of reference. The Court is also inextricably tied to the European Union which provides over 60 percent of its funding. The EU is additionally guilty of blatant political and economic blackmail in tying aid for developing countries to ICC membership. The expression, "He who pays the piper calls the tune", could not be more appropriate.

Justice Denied: The Reality of the International Criminal Court shows how the ICC has ignored all European or Western human rights abuses in conflicts such as those in Afghanistan and Iraq or human rights abuses by Western client states. As one example, in Afghanistan, an ICC member state, alleged war crimes by ICC member states such as the slaughter of 120 civilians in Kunduz in September 2009, directed by a German army colonel in flagrant violation of NATO standing orders, have been ignored by the ICC and the German state. Rather than prosecuting the colonel, Berlin promoted him to general. Instead of impartially enforcing the Rome Statute, the Europeans have chosen to focus the Court exclusively on Africa. The ICC is self-

evidently a racist court, in that it treats one race of people differently to all others. Despite having received almost 9,000 formal complaints about alleged crimes in at least 139 countries, the ICC has chosen to indict 36 black Africans in eight African countries. Given Africa's previous traumatic experience with the very same colonial powers that now in effect direct the ICC, this is an alarming *déjà vu* for those who live on the continent. The ICC has emerged very much as an instrument of European foreign policy and its actions are increasingly being seen as recolonisation by spurious legal *diktat*. The book also documents how the United States, on the other hand, has forcefully pointed out that the ICC is a kangaroo court, a travesty of justice open to political influence and that no American citizen will ever come before it while at the same time demanding that black Africans appear before the ICC when it suits American foreign policy.

Justice Denied: The Reality of the International Criminal Court shows how the Court's proceedings thus far have often been questionable where not simply farcical. Its judges – some of whom have never been lawyers, let alone judges – are the result of grubbily corrupt vote-trading amongst member states. Far from securing the best legal minds in the world this produces mediocrity. At least one elected “judge” had neither law degree nor legal experience but her country had contributed handsomely to the ICC budget. The Court has produced witnesses who recanted their testimony the moment they got into the witness box, admitting that they were coached by non-governmental organisations as to what false statements to make. Dozens of other “witnesses” have similarly disavowed their “evidence”. And then there has also been the ICC chief prosecutor who was not only seemingly unaware of the legal concept of presumption of innocence but also threatened to criminalise third-parties who might argue a presumption of innocence on the part of those indicted – and as yet unconvicted – by the Court. A clearer case of *Alice in Wonderland* justice, along the lines of “sentence first, verdict afterwards”, is difficult to find. There have been numerous prosecutorial decisions which should have ended any fair trial because they would have compromised the integrity of any legal process. The ICC's first trial proceeded erratically because of crass prosecutorial misconduct and judicial decisions to add new charges half-way through proceedings, a move that was subsequently overturned. Simply put, the Court and the prosecutor have been making things up as they go along. The ICC claims to be “economical” and to bring “swift justice”, yet it has consumed more than a billion Euros and still has not even fully completed its first case, the deeply flawed trial of Thomas Lubanga. Despite being held in ICC custody since 2006, as of May 2014 the appeal stage of Lubanga's case had not yet been concluded. The ICC claims to be victim-centred yet Human Rights Watch has publicly criticised the ICC's ambivalence towards victim communities. The ICC claims to be fighting impunity, yet it has granted *de jure* immunity to the United States and afforded *de facto* immunity and impunity to NATO member states and several serial abusers of human rights who happen to be friends of the European Union and United States.

Justice Denied: The Reality of the International Criminal Court also shows that far from deterring conflict, as it claims, the ICC's double-standards and autistic legal blundering in Africa has derailed delicate peace processes across the continent – thereby prolonging devastating civil wars. The court is responsible for the death, injury and displacement of many thousands of Africans. The ICC's involvement in Uganda, for example, destroyed peace talks in that country, intensifying the conflict which then spread into three neighbouring countries. The study concludes that the ICC is an inept, corrupt, political court that does not have Africa's welfare at heart, only the furtherance of Western, and especially European, foreign policy and its own bureaucratic imperative – to exist, to employ more Europeans and North Americans and where possible to continue to increase its budget – all at the expense of African lives.

About the Author Dr David Hoile is an African scholar and public affairs consultant specialising in African affairs. He is the author of *The International Criminal Court: Europe's Guantánamo Bay?* (2010), *Darfur: The Road to Peace* (2008), *Images of Sudan: Case Studies in Propaganda and Misinformation* (2003), *Farce Majeure: The Clinton Administration's Sudan Policy 1993-2000* (2000), *Mozambique, Resistance and Freedom: A Case for Reassessment* (1994), and *Mozambique: A Nation in Crisis* (1989). He is also the editor of *Mozambique: 1962-1993 - A Political Chronology* (1994) and *The Search for Peace in the Sudan: A Chronology of the Sudanese Peace Process 1989-2001* (2002). He has commented on public policy issues on CNN, BBC News 24 and TV News, BBC radio, France 24, Al-Jazeera English and Arabic, Chinese Central TV, Press TV, Al-Arabiya and the Islam Channel. The author can be contacted by email at justicedenied2014@gmail.com.