[The International Criminal Court: A Scandal Worse than FIFA](http://www.maravipost.com/national/opinions/general-scope/10092-the-international-criminal-court-a-scandal-worse-than-fifa.html)

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It would have been impossible not to notice that the international football association, Fédération Internationale de Football Association (FIFA), has recently been at the centre of a very public international scandal. Less obvious, but considerably more troubling, is the fact that the International Criminal Court has been at the heart of a similar international scandal. At the heart of both have been allegations of corrupt vote-trading and bribery.

The International Criminal Court was established in 2002 by the Rome Statute as a court of last resort claiming to pursue the perpetrators of genocide, crimes against humanity and war crimes without fear of favour. By any measure, however, the International Criminal Court has shown itself to be simply unfit for purpose. Less than eight years after its establishment the ICC-friendly Economist had already found it necessary to publish an article about the court entitled "International justice: Courting disaster?" The court had already shown the behaviour that would come to irretrievably undermine it. Things have got considerably worse since then. With hindsight, it can be seen that the Court clearly contained the seeds of its own destruction from the start. It is said that a camel is a horse designed by a committee. The ICC is a court designed by non-governmental organisations. Good law evolves over decades. The Rome Statute was driven and largely drafted by non-governmental organisations within a month on a take it or leave it basis.

The ICC has consumed more than a billion euros in its 13-year existence and has only secured two deeply questionable convictions. The ICC’s claims to international jurisdiction and judicial independence are institutionally flawed and the court’s reputation has been irretrievably damaged by its selectivity, racism, blatant double standards, hypocrisy, corruption and serious judicial irregularities.

Unease with the performance of the Hague-based ICC has led the African Union to resolve that its 54 member states, thirty-three of whom are signatories of the Rome Statute and members of the Court, the largest regional grouping, should not cooperate with or assist the Court. Many African states, including South Africa, have refused to assist the court.

At the heart of the ICC's inadequacy as a court have been incompetent judges. The Rome Statute provides that “judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.” The reality is very different. Most of the people appointed as ICC judges have simply not been up to the job. This is not surprising given that its judges – some of whom have never been lawyers, let alone judges – are the result of corrupt vote-trading among member states within the Assembly of State Parties, the Court's oversight body, consisting of one representative from each State Party. Far from securing the best legal minds in the world vote-trading produces mediocrity. The Shorter Oxford English Dictionary defines "corrupt" as "destroyed in purity, debased; vitiated by errors or alterations." The ICC is corrupt.

The relationship between appointments to the ICC and vote trading between states is an open secret. Selecting International Judges: Principle, Process, and Politics, a ground-breaking study of international judicial appointments, written by Professor Philippe Sands QC, and others as part of Oxford University Press’ International Courts and Tribunals Series, concluded that “the evidence leads unequivocally to the conclusion that merit is not the main driving factor in the election processes.” The study also revealed that “[m]any individuals who participate in the ICC process believe it to be even more politicized than other international judicial elections.”

The cancer of ICC vote-trading was obvious from the inception of the Court. There was an attempt to discourage vote trading before the first judges was elected. At the First Session of the Assembly of States Parties in 2002, the ASP President appealed to State Parties not to engage in trading votes. Selecting International Judges confirmed that “[n]onetheless, vote-trading took place from the outset”. Thirteen years on, it is very clear that the appeals made in 2002 continue to fall on deaf ears. At a press conference held during the ICC’s 2011 ASP meeting in New York, Women’s Initiatives for Gender Justice Board Member María Solís García said that the election process continued to be rife with vote trading, disregarding the candidates’ qualifications. García said that the practice in the Assembly had mirrored the same practices at the United Nations: “The great problem here is they are not respecting the Rome Statute. They are violating the Statute by trading votes.”

The quality of such appointments were soon the subject of abrasive criticism. The Economist explored the issue of selection processes to international courts leading to the appointment of “government hacks and lickspittles, with little or no judicial experience”. The ICC has had no shortage of either. The British Guardian newspaper noted that “[u]nqualified judges, in some cases with no expertise on international law and in one case no legal qualifications, have been appointed to key positions because of highly politicised voting systems and a lack of transparency.” The paper also stated that “[c]ritics say that the practices threaten the future of the international criminal court”.

With a few exceptions, the ICC judges have been a combination of former politicians, diplomats, academics and “human rights” activists. The study also revealed that that “more than 50% had no prior experience or knowledge of a judicial process”. One International Courts and Tribunals interviewee said that the ICC judges who did not have a judicial background were “completely at sixes and sevens. They didn’t know what a warrant was or what the originating procedure should be, or how you handle a trial...” Hans Corell, the former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations from 1994-2004, who also helped advise on the Rome Statute, has shown similar reservations about ICC judges: “To elect persons to the ICC who have no courtroom experience is in my view simply not appropriate...Hearing complex criminal cases is an extremely demanding charge that requires a thorough knowledge of criminal court administration and the methodology.”

Amnesty International has been very blunt with regard to the quality of ICC judges, publicly stating it is “concerned that states parties are failing to meet their responsibility to ensure the nomination of highly qualified candidates”. Human Rights Watch has also repeatedly voiced concern at the quality of judges being appointed to the ICC, noting in 2009: “[W]e have advocated in previous judicial elections [that] states parties should resist the practice of ‘vote-trading’…vote-trading over ICC positions could lead to the election of poorly qualified judges, and hence to a bench that will not be the most skilled and representative.” In November 2011 Human Rights Watch once again stated “[a]s we have advocated in previous judicial elections, states parties...should resist the practice of ‘vote-trading,’ where states agree to support one another’s candidates with minimal regard to the individual's qualifications.” The Economist confirmed that ICC judges were still being elected through a process of “diplomatic back-scratching”, “bargaining” and “canvassing”.

While satisfying politically-correct obsessions with gender balance and ASP members' voting obligations to each other, the resultant appointments have been disastrous. At least one elected “judge”, Japan's Fumiko Saiga, had neither law degree nor legal experience but was appointed as an ICC judge in late 2007 after Japan became the biggest single contributor to the ICC, paying 22 per cent of the Court's budget. Amazingly, Saiga’s lack of legal training or experience did not in any way hinder her election: in an example of carefully orchestrated vote trading she received the highest number of votes, winning her appointment in the first round. Saiga had served as the Japanese Ambassador to Norway and Iceland. She also had considerable experience in Japan’s relations with the United Nations. She had no legal training or judicial experience, but was able to speak English. Saiga died in April 2009. The Japanese government nominated Kuniko Ozaki as her replacement. Ozaki similarly has no experience as a judge or as a practicing lawyer. Ozaki is a career civil servant. Her ICC CV described her as a “highly competent career diplomat”. She had served as an ambassador to UN Convention on Biological Diversity. Ozaki has described her professional life as that of “a diplomat, a UN official or an academic”. No mention of law whatsoever. Ozaki’s total lack of courtroom experience, either as a judge or lawyer, did not prevent her being appointed within two years as the presiding judge in the trial of four Kenyan nationals for crimes against humanity. The trial in question has been a fiasco from the very start with the case against three of the four men collapsing. Witnesses were produced 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. Most recently the ICC prosecutor had to admit that one of its own star witnesses in its case against the last remaining Kenyan before the court was “a thoroughly unreliable and incredible” witness. Observers can judge for themselves whether politicians and non-governmental organisation activists are the best people to make judicial appointments.

Both the ICC and FIFA have engaged in vote trading scandals that were open secrets. Japan paid the ICC $20 million on joining in 2007 for which it received one judge on the bench, a judge replaced by another Japanese nominee when she died. The BBC reported in June 2015 that US prosecutors stated South Africa had paid FIFA a "bribe" of $10 million for votes to secure the 2010 World Cup. It is difficult to see the real difference between Japan's $20 million buying votes for its judges and FIFA members paying millions of dollars to buy the votes necessary to host football World Cups. Buying votes is buying votes, and vote trading is vote trading.

Vote trading has corrupted international football and international justice. The ICC's culpability, however, is far worse than FIFA. FIFA was merely putting holes in people's pockets. The ICC has indirectly resulted in holes being put in people. The Court's incompetence and inept blundering through Africa's complex conflicts has destroyed delicate peace processes and prolonged war across the continent, resulting in the deaths of thousands of civilians and displacement of many thousands more. This alone in large part explains Africa's rejection of this European-based court.

It is unlikely that things will change anytime soon. The same concerns voiced in 2002 continue to be raised thirteen years later. And the ICC has been just as unresponsive as FIFA to any outside oversight. In 2011 Ambassador Christian Wenaweser, the ASP president stated that any such oversight would be unwelcome.

In May 2006 British reporter Andrew Jennings' book Foul! The Secret World of FIFA: Bribes, Vote-Rigging and Ticket Scandals lifted the lid on the FIFA vote trading scandal. Lord Triesman, the former chairman of the English Football Association, has written about FIFA's "decades-long traditions of bribes, bungs and corruption."

The ICC is now into its second decade of bribes, bungs and corruption. In 2014, American journalist Dave Zirin said that greed, corruption, nonfeasance and malfeasance are endemic to FIFA leadership, and that FIFA should be abolished for the good of the game. Corruption, nonfeasance and malfeasance are similarly endemic to the International Criminal Court. It too should be abolished. For the sake of international justice and Africa.