Why International Criminal Court's work is so significant for Africa

OTTILIA ANNA MAUNGANIDZE

ON FRIDAY, September 30, the judges of the International Criminal Court's (ICC) Pre-Trial Chamber III authorised the court's prosecutor to launch formal investigations in Côte d'Ivoire.

The investigations will focus on the violence that occurred in Côte d'Ivoire from November 28, 2010 following the release of the results of the second round of elections in which the opposition movement, led by Alassane Ouattara, was declared victorious.

The post-election violence in Côte d'Ivoire lasted over five months. During this period, reports of widespread murder, rape and forced disappearances abounded. As a result of the protracted violence, 3 000 people died and about one million were internally displaced. While relative stability has returned to the west African country, according to the UN Mission in Côte d'Ivoire, over 30 000 people remain displaced.

As per ICC procedure in matters such as these, the recent authorisation by the court's judges followed a request on June 23, 2011 from the ICC prosecutor, Luis Moreno-Ocampo, to begin the investigations. Ocampo's request stemmed from an invitation by the Ivorian government to investigate crimes committed in the country. The judges' decision is a welcome development in ensuring that justice is served for crimes committed in Côte d'Ivoire. However, the decision comes at a time when the African Union's relationship with the ICC remains sour.

Since 2009 when the ICC issued an arrest warrant for Sudanese President Omar Hassan al-Bashir, the AU has called on African states not to co-operate with the ICC. Ironically, several African countries, notably Botswana, Burkina Faso, Nigeria, Sierra Leone and South Africa, have consistently voiced their support for the ICC and remain committed to co-operating with it. Several African states – Côte d'Ivoire included – have shown support for the ICC by calling on the court to investigate and prosecute crimes committed in their countries.

The first situations before the ICC came about after states that are signatories to the ICC's Rome Statute asked the court to investigate crimes committed in their respective countries. These states are Uganda, the Democratic Republic of the Congo and the Central African Republic.

The ICC can also claim jurisdiction over a matter in a state party if the prosecutor, of his own accord, requests authorisation from the ICC's pre-trial chamber judges to initiate investigations. To date, the prosecutor has only exercised this *proprio motu* power once, in the case of Kenya's post-election violence. The UN Security Council may refer situations to the ICC in countries which are not state parties to the Rome Statute. The Security Council has exercised this power in respect of two situations before the court: those of Sudan's western province Darfur and Libya.

With the recent authorisation of investigations in Côte d'Ivoire, four of the seven cases before the ICC are the result of choices made by African states themselves. This is a clear sign of acceptance by Africans of the importance of the ICC in assisting them to meet their obligations to end impunity and promote international criminal justice.

While Côte d'Ivoire has not ratified the Rome Statute, it has formally accepted the jurisdiction of the ICC. The first declaration accepting the ICC's jurisdiction was made in April 2003 by then president Laurent Gbagbo. In December 2010 and again in May 2011, incumbent Alassane Ouattara made similar declarations and invited the ICC prosecutor to investigate crimes committed since November 2010.

The peculiar situation in which Côte d'Ivoire has accepted the ICC's jurisdiction, without taking the broader step of ratifying the Rome Statute, creates an interesting precedent for the authorities of the Occupied Palestinian Territories. The Palestinian authorities are currently bidding for statehood and in January 2009 made a similar declaration granting the ICC jurisdiction over the crimes allegedly committed by Israel during Operation Cast Lead in Gaza. If the Occupied Palestinian Territories are granted statehood, the Palestinian authorities may also wish to refer the situation in their territories to the ICC.

However, pending the outcome of the Palestinians' bid for statehood, to date all the cases before the ICC are from African countries. This African focus has led to some criticism of the ICC as targeting Africa. This criticism, however, ignores important considerations.

Firstly, 32 African countries have voluntarily ratified the Rome Statute and Côte d'Ivoire has voluntarily accepted the ICC's jurisdiction. Secondly, the criticism fails to acknowledge the fact that the majority of the situations before the ICC areas are a result of self-referral by the government of the country concerned. Furthermore, the criticism overlooks that the ICC serves as a court of last resort, which only intervenes when a state is either unwilling or unable to prosecute alleged perpetrators of international crimes. Lastly, the criticism does not acknowledge the pervasive culture of impunity and weak criminal justice systems in Africa – factors that contribute significantly to the continued commission of international crimes on the continent.

The ICC exists to fill the impunity gap and to ensure justice for persons responsible for the most serious crimes of international concern. The ICC is furthermore complementary to national criminal jurisdictions. The Preamble of the Rome Statute stresses that the first commitment by states is to themselves "end impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes."

Côte d'Ivoire's recent invitation to the ICC, alongside the ratification of the Rome Statute by 32 African states are examples of African countries fulfilling their obligations to promote international criminal justice and end impunity. The fact that at present all the situations before the ICC are from African countries indicates not only that unacceptable levels of violence bedevil our continent, but it also presents an opportunity for Africa to be at the centre of developments in international criminal justice.

Even as certain African leaders criticise the ICC's involvement on the continent, for Ivorian victims of mass atrocities, that involvement sends out a symbolically important message that their suffering has not been forgotten and that those responsible may meet justice, through the work of a faraway court in The Hague.

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Another skirmish in SA-Aussie battle

South Africa's sporting rivalry with Australia has always been keen, to say the least, and it has a long history, writes **Dean Allen**

EMPIRE UNITED: The captains of the 1912 Triangular Tournament, from left, Frank Mitchell, of South Africa, CB Fry, of England, and Syd Gregory, of Australia.

CHARISMATIC: Joe Darling captained the first Australian side in South Africa in 1902.

ONE OF sport's keenest rivalries will be reignited this week with the arrival of the Australian cricket team on our shores. Cape Town will host the opening contest tomorrow when the first of two Twenty20 matches will be played under the floodlights at Newlands. Three one-day internationals and two Test matches will follow during an intense six-week tour that will see Michael Clarke's Australian side battle it out against the Proteas in an effort to gain bragging rights once more in a hotly contested fixture that first began over a century ago.

South Africa's sporting rivalry with Australia has always been keen to say the least. With the Springboks still smarting from defeat at the Wallabies' hands in the Rugby World Cup at the weekend, the cricket tour is being heralded on a certain local television channel with the instruction to "welcome the Aussies… with a bloody good hiding".

In cricketing terms, though, this rivalry started in a somewhat friendlier manner in October 1902. It was during this month that the first Australian cricket side arrived in South Africa on their way back from touring England that summer. Captained by the charismatic Joe Darling, a powerful left-handed batsman from South Australia, the tourists played South Africa in three Tests, winning two and drawing one against the hosts.

South Africa's leading cricketer, Charles Llewellyn, commented dolefully at the time: "We have little chance of defeating what I consider to be the most powerful combination Australia has yet sent to the old country." And true to form the visitors went undefeated on the tour.

Like many Australian captains to come, Darling was said to have inspired his team by his own dogged determination and prowess. His team had proved more than a match for the English and while the tour of South Africa was viewed by many at the time as a mismatch, the visit of the first Australian side undoubtedly helped the development of the game across this country.

The tour was significant too in matters off the pitch. The relationship between cricket and politics in the British Empire was already well established when Darling's team landed in Cape Town in 1902. This year had seen an end to the South African War – a bitter three-year conflict in which many Australians had been called to arms in South Africa on behalf of the Empire.

The tour began amid shibboleths about sport's capacity to heal the divisions of war throughout South Africa. "Who shall say," asked the Cape Times, "that the spectacle of Dutch and English youths 'together joined in cricket's manly toil' against a common rival will not have its own wholesome effect in allaying racial difference?"

Cricket was also being used at this time as a means to cement cordial relations throughout Britain's Empire. Despite Australia's victory over England "on the field" in 1902, it was important to the British press that its assistance "on the veld" during the war should be acknowledged. As a means of cementing South Africa's place too within the Empire, it was thus seen as vital that Darling and his team stop off and compete in South Africa on their voyage home.

A decade later, South African politician and cricket financier Sir Abe Bailey reaffirmed South Africa's place in international cricket by instigating the Triangular Tournament of 1912 – a competition between South Africa, England and Australia, designed to cement South Africa's standing, alongside Australia, within cricket's "imperial club" of nations.

Prior to the tournament, Bailey proclaimed that "the cricket result should be a secondary consideration to all lovers of Empire. That a spirit of true national comradeship will be produced must be the desire of every cricketer throughout the King's Dominions." He added that he hoped that "the strengthening of the bonds of Union within the Empire will be one of the many outcomes of the great Tournament".

This was part of a rhetoric that had begun decades earlier, but from now on it would involve regular contests between South Africa and Australia. The eagerness to prove themselves as successful cricketing nations in their own right, independent of the control and influence of the English game, has created an intense rivalry between South Africa and Australia. Over the years, they have fought many cricketing battles in all forms of the game.

In recent years, who can forget the heartbreak of 1999 when Australia tied with South Africa in that infamous World Cup semi-final, or the thriller in 2006 at the Wanderers when the Proteas smashed 438 runs to overturn Australia's seemingly unbeatable total in what is regarded as arguably the greatest one-day international match of all time.

South Africa (second) sit above Australia (fourth) in the ICC's Test rankings, but the Australians hold sway as the top-ranked ODI team. Both teams will be looking to assert their superiority during this tour.

So the age-old rivalry will be reignited in Cape Town tomorrow evening. Fresh from a victory in Sri Lanka, Clarke, the Australian captain, has laid down the gauntlet by declaring that despite South Africa's home advantage, he remains confident that his team "can beat any team anywhere in the world". One suspects that if he goes just halfway to emulating the achievements of Joe Darling and the first Australian team to tour here, then he will be more than happy on the flight back Down Under.

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HOWZAT: South African bowler Shaun Pollock appeals for LBW against Australia's Mark Waugh during the tied 1999 Cricket World Cup semi-final at Edgbaston in Birmingham on June 17, 1999. PICTURE: REUTERS

DAVID BIGGS

Tavern of the Seas

I ENJOY words. Well, of course I do. They are the raw materials of my trade, just as bricks are the raw materials of builders and promises are the raw materials of politicians.

I was delighted to learn our new Consumer Protection Act makes it illegal for sellers or contractors to use legal jargon. It is now compulsory for all contracts to be written in "plain language". This means they must be easily understood by anybody with an average education and intelligence.

No more "Hereinunder and theretofore as stipulated by the aforesaid party of the third part in alteram partem".

Which should be a great relief to us all (apart from the lawyers, who will have to say what they mean in language we can understand.)

And the advertisers, of course. Advertisers often squirt words around as freely as dogs peeing on lamp-posts. I have, for example, a book of sudoku puzzles that claims to contain "250 hand-graded puzzles". I suppose this means they are of a better quality than those nasty old foot-graded puzzles all the other publishers sell.

A bottle of carpet shampoo contains "unique ingredients". Not ordinary old ingredients you find everywhere else. These are unique.

My toothpaste claims to "strengthen teeth from the inside out". The package doesn't explain how the toothpaste gets inside my teeth. I apply it only to the outside.

No vegetable is ever simply picked. Vegetables are always "carefully picked", and only when they are "tender". I wouldn't be surprised to find they were "hand-picked" too. Nobody wants to buy a bag of foot-picked peas.

They're gently frozen. Or tenderly boiled after being lovingly hand-removed from their environmentally friendly pods.

All appliances are built to "international standards", which means their plugs don't match the wall sockets in your house. You have to buy a "universally approved adaptor plug, lovingly hand-crafted to the highest internationally approved standards by dedicated craftsmen using only the most modern assembly techniques".

The danger is somebody will one day produce something that really is bigger and better than anything we've seen so far and there would be no words left to describe it.

A world-first, you say? Ho hum. We have world-firsts every Tuesday and Friday.

A revolutionary design? We had revolutionary designs last week. They were the same as the revolutionary designs we had in 2004.

I'm thinking of having a T-shirt printed with "Conserve Our Adjectives". Of course, it will be lovingly hand-crafted with environmentally friendly stitching, carefully printed in biodegradable ink in a Fair Trade factory.

Last Laugh

Jimmy was notorious for borrowing things and not returning them. Eventually his neighbour decided he'd had enough.

That Saturday Jimmy called across the garden fence: "Charlie, will you be using your lawnmower this afternoon?"

"Yes, I'm afraid I will," said Charlie firmly. "I'm spending the whole afternoon getting my front and back lawns in shape for summer."

"Oh, that's wonderful," said Jimmy. "Then you won't be using your tennis racquet. May I borrow it, please? I broke a string on mine."

The Wanderer

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To whose tune must our schools dance?

MIKE WILLS

Open Mike

IS THE matric dance a basic human right now?

A Grade 12 pupil at Bergrivier Secondary School, ironically situated on Champagne Street in Wellington, has become something of a cause célèbre after she was excluded from her end-of-year jol because her separated parents had not paid her R700 in outstanding school fees.

A local ID politician, Rodney Lentit, took up the girl's case with a passion and shook the branches of the Western Cape Education Department (WCED) tree about this alleged outrage. He said the school principal was "terrorising and intimidating" the pupil and undermining her chances of passing matric by banning her from the dance.

The language was way over the top and the issue was scarcely one demanding too much attention given the other far more substantive problems facing kids in schools across the province but the WCED responded swiftly.

The department initially expressed concern about the incident but an investigation established that this "no fees/no dance" policy had been put in place well in advance by the governing body, which was within its rights to do so.

No governing body may withhold any educational activity on financial grounds but it can use the "extras" as a bargaining chip.

Yes, ideally, there would be no fees at all for a school like Bergrivier Secondary but that's not the way it is and the school needs that income to function for its community and is entitled, within reason, to make sure it gets it. The department concluded that while it did not condone the governing body's stance, it will not criticise it.

Thank goodness for that. The WCED does not have a strong history in backing governing bodies and principals in their conflicts with pupils and parents – ask Brian Isaacs at South Peninsula High about his woes in this regard. The department tends to wield the fine print and fine theories in favour of the disgruntled individuals without fully appreciating that every time they do that, they undermine the already tenuous hold the authorities have on the particular school.

I've said it often enough in these pages that we will only achieve real progress in our education system on a school-by-school basis rather than in some broad systemic way. Effective schools are run decisively by their principals and governing bodies who must determine what is right for their own context.

They must be empowered to deliver that effective governance and that means no cheap appeals over their heads to the department, however worthy the cause might appear.

Of course the Bergrivier girl's individual case demands sympathy. Every disciplinary action at a school always does. If you focus entirely on the child then no exclusion of any kind would ever take place within any education system on the grounds that it is some way – morally or practically – unfair on a young person not yet fully legally liable for their actions.

It seems even worse when it is the parents' neglect which is at the root of the problem.

Understandably, schooling systems around the world have increasingly travelled in that sensitive direction – instinctively protecting the rights of the individual child – but the law of unintended consequences has kicked in hard. Without authority, a school can quickly become ineffective. It doesn't just fray at the edges, it gets rotten throughout and the majority suffers. Great educators can make this sensitive environment work well but they are in very short supply. Even those who would be classified as solid principals are often struggling with it.

This is not a clarion call for corporal punishment, that's too dangerous a weapon to place in anyone's hands, but it is a reminder that there needs to be a clearly communicated system of consequences in each school which will be enforced, however difficult the circumstances.

Parents often forget that schooling is a collective experience which requires conformity and rules to function (Bergrivier Secondary, for example, has more than 1 500 pupils and over 200 matrics) and is one which cannot be shaped entirely for the needs, circumstances and fancies of our own child.

This is not an anachronistic practice, it is a key part of a world that demands adjustment to the norms and practices of society.

Maybe what would help most is if pupils (and parents) cared more about the matric itself than they do about the overblown, overpriced dance.