

Conflict Prevention and Risk Analysis (CPRA) –Pretoria



CPRA Daily Briefings

Week 23

Thursday, 21 June 2012

The **CPRA Daily Briefings** are held weekday mornings in the CPRA Pretoria's Situation Room and the Briefing Notes are the minutes of this meeting during which each regional expert of the Programme reports on the latest human security developments in his/her region, followed by general discussions around the table. An intern then compiles a summary of the meeting, which is reviewed by the respective researchers, and a senior researcher edits the report and provides quality control before returning it to the intern to prepare it for dispatch to the mailing list to which you have subscribed.

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**Today's Briefings
Compilation**
Ms Tarryn Warries

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Summary of Briefings

Kenya: Kenyatta and Ruto could still run

The two Kenyan presidential hopefuls indicted by the International Criminal Court (ICC), Uhuru Kenyatta and William Ruto could still run for President in the upcoming elections should the ICC judges concur with the Prosecutor and the defence teams' opinions on a date for the trial.

At a recent ICC status conference to determine the programme for disclosure of evidence to defence lawyers, the legal council of both Kenyatta and Ruto indicated that they would prefer the trial to start in March next year to which the Office of the ICC Prosecutor said it was not opposed. The Kenyan elections are set to be held on 4 March 2013.

While the defence teams argued that they needed the time to help them prepare for the trial, their March proposal is seen by some as designed to give them time to organise their campaigns for the presidency. Kenyatta and Ruto are charged, along with two others, with bearing the greatest responsibility for crimes against humanity that occurred during the 2007/08 post-election violence. The ICC will rule on a trial date before 13 July when the Court takes a summer break.

Kenyatta and Ruto have all along insisted that they will be on the ballot but it would be a logistical nightmare for them to campaign and attend proceedings should the Court settle on an earlier date. It is noteworthy that the ICC has previously said that Kenya's elections have no bearing on its decisions and that it will also not interfere with Kenya's internal processes, including on determination of who should or should not run for political office. The question whether or not the duo will be on the ballot paper is critical because it could impact heavily on the fortunes of various other presidential contenders. Kenyatta and Ruto have previously been vocal in their claims that their competitors (read the Prime Minister Raila Odinga) were "using" the ICC to prevent them from running. While the validity of this argument is debatable, some of their supporters have actually come to believe that the ICC is a political tool being used by Odinga to get rid of those who threaten his political ambitions to occupy State House.

The decision by the Hague Prosecutor to accept the delay of the trial date came as a surprise to some Kenyans who have been speculating about the Office of the Prosecutor's "real" motives. Some say it had to do with the Prosecutor's desire to strengthen evidence against the accused and even bring alternative charges against them while others think it was intended to allow the new Prosecutor, Gambia's Fatou Bensouda, time to settle into office and acquaint herself with the cases. Another view is that the Prosecutor's office is not opposed to the delay because it does not want to be seen to be playing into the hands of partisan Kenyan politics.

In Kenya, the debate about whether or not the two should be on the ballot is still raging, with three voters and two civil society organisations having gone to court to bar the duo from contesting the presidency. The dilemma should they run, however, is how the ICC will handle the situation should one of them win the elections. It could easily turn into an Al-Bashir's like situation where the new president tries to circumvent the ICC by claiming sovereignty and seeking support from the African Union. On the other hand, should any other person win, including the current Prime Minister Odinga; there is a possibility that he/she would find it difficult to push for the prosecution of the duo by the ICC because of local political and ethnic sensitivities.

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