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Al Shabaab claims responsibility for attack on Garissa University College that kills 148 people. Critics accuse the government of failing to act on intelligence before the attack and confusing priorities. President Uhuru Kenyatta (2013-present) suspends five cabinet secretaries named in Ethics and Anti-Corruption Commission (EACC) report. Kenyatta uses the EACC report to impose his authority over the United Republican Party (URP) camp of the Jubilee Coalition. The Kenya Revenue Authority (KRA) proposes abolishing incentives for international investors, including tax breaks at Kenya's export processing zones.

Al Shabaab attack results in 148 deaths

Al Shabaab has claimed responsibility for the attack on **Garissa University College** in **Garissa** that killed 148 people on 2 April, the day before Good Friday.¹ The failure of the Kenyan security forces to act on intelligence about the attack signals how corruption and political patronage have hollowed out their ability to stop militants and weapons crossing the border from **Somalia**. The attack came after the **United Kingdom** and **Australia** issued updated travel advisories on 27 March warning against travel to areas near the Somalia border including Garissa.² This raises concerns about Kenya's capacity to act on intelligence. At least four gunmen stormed the university complex, seizing control of student accommodation. The gunmen released Muslim students and targeted Christians. The timing of the attack – shortly before the Easter holidays – and the targeting of Christian students suggest that al Shabaab is looking to ferment sectarian violence in Kenya.

*“Islamist militants have long tried to build an atmosphere of hatred between Christian and Muslim. Militants have sought to inflame religious and ethnic tensions to create the kind of violence seen in Nigeria. However, the Islamist militant terrorist attacks across Kenya have so far failed to generate the widespread anti-Muslim backlash militants had been hoping for. The **Nairobi** riots in November 2012, for instance, though serious, were localised and did not spread... Al Shabaab and its allies appear to have overestimated their ability to create Nigeria-type levels of internal strife.”³*

There is popular and political criticism of the government's response. The Garissa attack ended within a day following an assault after highly-trained **Rece Company**, part of the **General Service Unit (GSU)** police force, retook the dormitory. The Rece Company often leads counter terrorism operations in Kenya, and is also responsible for the protection of President **Uhuru Kenyatta** (2013-present) and other dignitaries. In response to the Garissa attack, some of the Rece Company deployed by helicopter from Nairobi, while others, however, drove the 350km by road.⁴ While there was insufficient air capacity to get the entire Rece Company to the siege site, inspector general of police **Joseph Boinnet** and interior cabinet secretary **Joseph Nkaijerry** secured a helicopter to rush them to Garissa.⁵ However, there was more effective coordination between Kenya's various security agencies than during the chaotic response to the September 2013 **Westgate Mall** attack. The **Kenya Defence Forces** contained the Garissa gunmen in a single dormitory building before the GSU launched a quick assault to end the attack successfully. The authorities were able to end the siege within a day rather than allowing it to continue over several days as in the case of Westgate.

¹ Daily Nation, 3 Apr 2015.

² Daily Nation, 27 Mar 2015.

³ East Africa security analyst

⁴ Sunday Nation, 5 Apr 2015.

⁵ Sunday Nation, 5 Apr 2015.

The government's response to the attack is unlikely to improve Kenya's security profile. Claiming responsibility for the Garissa attack, al Shabaab warned of "another bloodbath" and a "long, gruesome war" if Kenya does not withdraw its forces from Somalia.⁶ Kenyatta issued an executive decree ordering the immediate training of 10,000 new police recruits. A court ruling had previously suspended their commissioning due to allegations of irregularities during their July 2014 recruitment. The court described "corruption, irregularities and blatant violations of the constitution"⁷, raising questions about whether security services are appointing the most qualified candidates. The **Independent Policing Oversight Authority** said it would again challenge the appointments in court.⁸

Following the attack, deputy president **William Ruto** said the government had instructed the **UN High Commissioner for Refugees (UNHCR)** to close the **Dadaab** refugee complex within three months.⁹ The Dadaab complex is home to more than 400,000 mainly Somali refugees and lies in Garissa County, approximately 100km from the Somalia border. The government has publicly blamed Kenyan national **Mohamed Kuno** (aka **Sheikh Mahamed, Dulyadin** and **Gamadheere**) of being responsible for the Garissa attack and other incidents in the **Coast Region**.¹⁰ The government accused Kuno of maintaining a network of militants in the Dadaab complex. The Dadaab refugee complex is home

*"to a large shifting group of al Shabaab sympathisers... Some of this group are hard-core militants and others are just criminals or local bandits (shifta) whom al Shabaab seems able to use as a pool of mercenary operatives."*¹¹

However, it is unlikely that Dadaab will close before the government's three-month deadline.

*"The Kenyans bang the refugee drum after every outrage. It's indicative of the government's entirely reactive approach to the Somali issue. There is increasing – and in many ways, justified – Kenyan frustration at Somalia's failure to get its house in order. But, as a solution, imposing an arbitrary deadline for the closure of Dadaab is flawed. It would be a logistical nightmare for starters. But also legally, it would be difficult. Forced repatriation goes against the [2013] tripartite agreement between Kenya, Somalia and the UNHCR so the courts will have their say. Internationally, forced repatriation would only be legal if you could prove Somalia was safe and secure. It would take a brave lawyer to argue that. I'm not saying it won't happen but that it will take longer than three months and ultimatums don't help anyone."*¹²

The government on 7 April gazetted 85 companies and entities suspected of financing al Shabaab under the **Prevention of Terrorism Act 2012 (POTA)**. **Dubai-based Dahabshiil** was amongst the companies, raising further concerns about the flow of remittances to Somalia (see *ARC Somalia February 2015 Briefing*). The **Central Bank of Kenya** immediately froze the bank accounts of the individuals and entities. The POTA prohibits gazette organisations from receiving financing from any source.

Corruption investigation results in cabinet suspensions

As **Ethics and Anti-Corruption Commission (EACC)** investigations continue, President Kenyatta on 28 March suspended five cabinet secretaries named in an EACC report.¹³ Kenyatta gave the EACC, the office of the director of public prosecutions, and the directorate of criminal investigations 60 days in which to complete the investigations. While the suspensions may be detrimental in the short term to effective governance and management of state-owned enterprises, they signal an increased commitment to rooting out corruption, which remains a major hindrance to conducting business in Kenya. The EACC report details

6 Bar-kulan, 3 Apr 2015.

7 Standard, 6 Apr 2015.

8 Standard, 8 Apr 2015.

9 Daily Nation, 13 Apr 2015.

10 Government statement, 2 Apr 2015.

11 Source, NGO Security officer, Kenya

12 Source, INGO official, East Africa

13 Daily Nation, 28 Mar 2015.

allegations of “land grabbing, kick back-motivated mega deals, bias in favoring state tenders and licences...”¹⁴

Kenyatta used his 26 March state of the nation address to launch a purge of public sector corruption.¹⁵ He cautioned that the suspensions of cabinet secretaries are to allow investigations to continue and the public should not perceive them as a sign of guilt. On 31 March, the government tabled the EACC report in parliament detailing the accusations against senior officials.¹⁶ The report accuses the suspended cabinet secretaries of abusing procurement processes. The suspended cabinet secretaries include **Davis Chirchir** (energy and petroleum). The report accuses Chirchir and **Nairobi County** senator **Mike Sonko** of allegedly benefitting \$15m from the award a \$500m **Kenya Pipeline Co** tender to **China's** state-owned **China Petroleum & Chemical Corp (Sinopec Ltd)** over **Lebanon-based Zakhem International**.¹⁷ Chirchir is a close confidante of deputy president William Ruto and will look to him for political protection.¹⁸ The other suspended cabinet secretaries are **Charity Ngilu** (land), **Michael Kamau** (transport), **Felix Koskei** (agriculture), and **Kazungu Kambi** (labour).¹⁹ Other cabinet secretaries will replace their colleagues on an interim basis. National treasury secretary **Henry Rotich** will take over the energy portfolio.

Kenyatta suspended a number of other senior state officers and principal secretaries including cabinet secretary **Francis Kimemia**, defence principal secretary **Mutea Iringo** and treasury investment secretary **Esther Koimett**. He also suspended heads of state-owned enterprises including Kenya Pipeline Co managing director **Charles Tonui**, **Geothermal Development Co** managing director **Silas Simiyu** and **National Social Security Fund** managing trustee **Richard Langat**.²⁰

The allegations are unlikely to result in prosecutions. A Nairobi-based lawyer is doubtful that the EACC will do any significant work over the 60 days.

“If they have not made any headway for three years, how will the EACC complete investigations in 60 days?”²¹

The lawyer noted that the EACC is still investigating allegations from the **Mwai Kibaki** (2002-2013) administration.

“Kenyans remain sceptical and they see the move as a public relations stunt, a view that is justified since only a handful of public officials have ever been prosecuted in the country’s history despite numerous commissions of inquiry.”²²

There is also cynicism about Kenyatta’s motivations, with critics contrasting his alleged tough stance on corruption with his executive order employing security officers accused of benefiting from corrupt recruitment procedures (see above).

Scrutiny of the report shows that the majority of the accused are aligned to the **United Republican Party (URP)** camp of the **Jubilee Coalition** headed by deputy president Ruto. A veteran financial journalist who has sources close to **State House** says Kenyatta ordered the EACC to publish the report to increase his authority. The journalist says that senior URP government officials have gained notoriety for,

*“cutting deals... Kenyatta is beholden to URP since the **Kalenjin** vote gave him the numbers he needed to win the 2013 election, and ministers, senior officials in the URP camp know this, contributing to their impunity.”²³*

14 Source, journalist, Nairobi

15 Standard, 26 Mar 2015.

16 Standard, 31 Mar 2015.

17 Standard, 31 Mar 2015.

18 Source, editor Kenyan newspaper, Nairobi

19 Daily Nation, 28 Mar 2015.

20 Daily Nation, 28 Mar 2015.

21 Source, lawyer, Nairobi

22 Source, journalist, Nairobi

23 Source, senior financial journalist, Nairobi

Kenya Revenue Authority recommends withdrawing foreign investor incentives

The treasury is considering whether to abolish tax incentives and exemptions to foreign investors as the government looks to broaden its revenue base.²⁴ The proposal is indicative of an increasing protectionist sentiment in Kenya. The **National Treasury** estimates that incentives for international investors cost approximately \$1.1 billion annually, compared to \$1.4 billion in **Tanzania** and \$272m in **Uganda**.²⁵ According to treasury cabinet secretary **Henry Rotich**, the budget committee is reviewing a **Kenya Revenue Authority (KRA)** proposal to abolish incentives for international investors, including tax breaks in Kenya's export processing zones. There is increasing private sector criticism of the KRA, which is under growing government pressure to broaden its revenue base. The KRA has becoming increasingly aggressive towards the private sector.²⁶ This has resulted in the poor implementation of tax legislation, including the **Capital Gains Tax (CGT)**²⁷ and an antagonistic relationship with the private sector: "[the KRA] welcomes you in and sucks you dry".²⁸

Despite private sector complaints, Kenya's tax framework is becoming less burdensome. Kenya rose from 146 to 102 on the **World Bank's** doing business ranking between 2014 and 2015.

	Kenya	Sub-Saharan Africa avg
Payments (number per year) ²⁹	30.0	38.2
Time (hours per year) ³⁰	201.5	310.8
Profit tax (%)	30.8	17.6
Labour tax and contributions (%)	1.9	14.0
Other taxes (%)	5.4	14.7
Total tax rate (% profit)	38.1	46.2

Rotich pledged that any lifting of incentives would require public consultations with the **Kenya Private Sector Alliance**, and would not be introduced before the 2014- 2015 finance bill.³¹ The treasury is working to simplify the tax regime through the **Tax Procedures Bill**.

Implications

Popular and political pressure will increase on the government to address insecurity or withdraw from Somalia. This pressure will not encourage measured and appropriate security policies. Heavy-handed approaches to security will continue to perpetuate perceptions of marginalisation amongst Kenya's Muslim communities, which al Shabaab has proved adept at exploiting. A rush to appoint new security officers will not curtail al Shabaab activity unless the security forces are properly equipped and trained. If al Shabaab is

²⁴ East African, 4 Apr 2015.

²⁵ East African, 4 Apr 2015.

²⁶ Source, business consultant, Nairobi

²⁷ See ARC Kenya February 2015 Briefing

²⁸ Source, business consultant, Nairobi

²⁹ The indicator reflects the total number of taxes and contributions paid, the method of payment, the frequency of payment, the frequency of filing and the number of agencies involved for the standardized case study company during the second year of operation. (World Bank, Doing Business)

³⁰ The time it takes to prepare, file and pay (or withhold) the corporate income tax, value added or sales tax, and labor taxes, including payroll taxes and social contributions (in hours per year) (World Bank, Doing Business)

³¹ East African, 4 Apr 2015.

looking to increase sectarian tensions, there may be a lull in its activity in Kenya now that Easter has passed. Al Shabaab will continue to carry out attacks against soft targets in the northeast and Coast.

The EACC investigation increases the risk that the government will review or alter contracts that breached procurement laws. Precedent suggests that it is unlikely that the EACC investigation will result in prosecutions. There is a possibility that some cabinet secretaries will not come back or will be reshuffled to dockets that are less lucrative.

The KRA's recommendations will raise concerns that it will aggressively target international investors to meet the government's ambitious revenue collection and capital expenditure targets. The KRA's already antagonistic stance explains the discrepancy between private sector sentiment and the World Bank's doing business ranking. The imposition of the CGT will probably result in a decline in the 2016 rankings.

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