

STATEMENT OF CASE TO RENEW THE DESIGNATION OF AL-SHABAAB AS A TERRORIST ENTITY

PURPOSE

1. The purpose of this paper is to set out the case demonstrating Al-Shabaab, also known as Al Shabaab al-Islamiya, Shabaab al-Mujahideen Movement, Harakat al-Shabaab al-Mujahideen et al meets the statutory criteria to renew its designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).
2. The paper concludes that the group meets the criteria for renewal as a designated terrorist entity under the TSA.

STRUCTURE OF THIS PAPER

3. This paper sets out updated information about Al-Shabaab's continued involvement in terrorist activity and covers any changes and/or developments to the organisation since its original designation including to its objectives, structure, weapons and tactics and includes recent attacks which meet the definition of a terrorist act under the TSA.
4. This updated information, together with the information contained in the original designation paper,¹ provide the basis for the paper's conclusion that Al-Shabaab meets the legal criteria for renewal of its designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR THIS DESIGNATION RENEWAL UNDER THE TSA

5. Section 35(1) of the TSA provides that a designation of a terrorist entity expires three years after the date of designation unless it is earlier renewed by the Prime Minister. The original designation is made pursuant to s 22 of the TSA, which provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts. Carrying out a terrorist act includes the planning, preparation or credible threat to carry out the act, whether it is actually carried out or not (s 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(1)(c)).
6. The Prime Minister may renew that designation for a further three years under s 35(2) if satisfied that there are still reasonable grounds as set out in s 22 for the entity to be designated under that section.
7. Before the expiry of an order made under s 35(2), the Prime Minister may make another order under s 35(3) renewing the designation concerned for a further three years. The Prime Minister may make any number of orders under s 35(3) in respect of the same designation (s 35(5)).

CREDIBILITY OF SOURCES

8. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These are: Institute of Strategic Studies (ISS), Counter Terrorism Centre, United Nations General Assembly and Security Council (UNSC), Open Source Centre (OSC), Strategic Intelligence News, Human Rights Watch, Federal Bureau of Investigation (FBI), Associated Press, Reuters, CNN, New York Times and the BBC.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

9. Al-Shabaab was designated as a terrorist entity on 10 February 2010.²
10. Al-Shabaab has waged a violent insurgency against the United Nations-backed Transitional Federal Government (TFG) in Somalia since 2006.³ In 2007 the United Nations Security Council commenced the African Union Mission in Somalia (AMISOM), launched in a bid to provide support for the internationally recognised TFG.
11. On 11 July 2010, Al-Shabaab carried out two near simultaneous suicide bombings at an Ethiopian restaurant and a rugby clubroom in Kampala, Uganda. These were the first suicide attacks committed by the group outside Somalia. Both attacks targeted crowds who had gathered to watch the World Cup final on television. Seventy-six people of four nationalities were killed and at least 80 others wounded.⁴ Al-Shabaab claimed responsibility and said the attacks would continue as long as AMISOM forces remained in Somalia. This attack followed repeated threats by the group that they would target Uganda unless it withdrew its AMISOM forces from Somalia.⁵
12. On Tuesday 4 October 2011, a truck carrying a Suicide Vehicle Borne Improvised Explosive Device (SVBIED) stopped at a security checkpoint at the entrance to a compound housing four government ministries in Mogadishu. Crowds of students and their parents were queued outside the Education Ministry awaiting their scholarship results. The truck exploded, killing more than 80 people and wounding approximately 150 more, many of whom later died of their injuries.⁶ Most of those killed were civilians. An Al-Shabaab spokesman spoke to the BBC claiming responsibility for the attack, a claim repeated on Al-Shabaab's website.⁷ Another spokesman for Al-Shabaab later warned civilians to stay away from government buildings and military bases because Al-Shabaab planned more attacks.⁸
13. On Sunday 18 March 2012, Al-Shabaab insurgents launched a mortar attack on the Presidential Palace in Mogadishu. The first mortars fired missed their target and landed next door in a displaced persons camp, killing five civilians. An Al-Shabaab leader claimed responsibility for the attack during a radio broadcast, adding that "guerrilla tactics are the only way to defeat AMISOM", and calling on other Somalis to join the jihad or holy war.⁹
14. On 4 April 2012, a female suicide bomber entered the Somalia National Theatre in Mogadishu, during a concert. The resultant explosion killed 10 civilians and wounded dozens more. The Somali Prime Minister, who was speaking at the time of the attack, was unharmed. Seven journalists and the President of the Somali Olympic committee were amongst those killed. Al-Shabaab quickly claimed responsibility for the attack on Twitter, although they refuted the reports that it was carried out by a female suicide bomber, saying that the bombs had been planted prior to the concert.¹⁰

Ideology and objectives of Al-Shabaab

15. Al-Shabaab's objective has remained the same since inception.¹¹ The group seek to overthrow the TFG and create an Islamist form of government, based on their own Salafist-inspired ideology. Al-Shabaab shares this ideology with Al-Qaida and in February 2010 formally declared their allegiance to Al-Qaida, linking Somalia to Al-Qaida's global operations.¹² In February 2012, Al-Qaida leader Ayman al-Zawahri formalised the relationship by advising that Al-Shabaab had joined Al-Qaida.¹³

16. Al-Shabaab is designated as terrorist organisation by Australia, the United States, Canada and the United Kingdom.

Organisation and structure of Al-Shabaab

17. Al-Shabaab retains a flat non-hierarchical leadership structure. It is divided into clan-based factions in geographic areas under the autonomous command of locals operating as independent cells, each with their own political, administrative and military commanders.¹⁴
18. Foreign fighters are prominent in other roles. Among the leadership are individuals from Saudi Arabia (financier and manager), Pakistan (chief of security and training), Sudan (suicide bomber recruitment) and the United States (military commander and propaganda).¹⁵
19. Al-Shabaab aggressively recruits new members. Since 2007, the group has actively pursued the recruitment of western, English-speaking Muslims. In that year, a British-Somalian died when he detonated a suicide vest at an army checkpoint, killing 20 Ethiopian soldiers.¹⁶ In January 2012, a former US soldier was arrested and charged with trying to join Al-Shabaab.¹⁷ More than 100 Britons are thought to have travelled to Somalia to fight, some of whom have no direct family links to the country.¹⁸ During 2012 the US government has charged 14 US nationals with helping recruit 20 young Americans to Al-Shabaab.¹⁹ The group is also known to have fighters recruited from Afghanistan, Yemen and Sweden.²⁰
20. Since 2010, Al-Shabaab has produced a number of lengthy English language propaganda films which are distributed via its media wing and the internet in an attempt to reach potential supporters in the west. In 2011, Al-Shabaab established an English language Twitter account, which they use to announce attacks as they happen and which allows them to send and receive messages of support worldwide.²¹
21. A recent Human Rights Watch report states, "Forced recruitment of children (by Al-Shabaab) became common practice in 2009". While exact numbers of children recruited by Al-Shabaab is unknown, in April 2011 a report from the UN Secretary-General cited military sources stating that "Al-Shabaab abducted approximately 2,000 children and teenagers for the purposes of military training during 2010." Girls and boys were taken, with the females reputedly forced to clean, cook for and marry Al-Shabaab militants.²²
22. Al-Shabaab lost ground militarily to African Union forces in 2012, abandoning its presence in major urban centres.²³

Weapons, tactics and capability of Al-Shabaab

23. Within Somalia, Al-Shabaab uses classic guerrilla tactics, including suicide bombings, shootings and targeted assassinations (mainly centred around Mogadishu) to oppose the Somali government and those it perceives as the government's allies²⁴ - aid groups, the Ethiopian military and African Union peacekeepers. In 2010, it carried out its first bombings outside Somalia (paragraph 11 refers).
24. Estimates of Al-Shabaab's size vary, but analysts generally agree that the group contains several thousand fighters. These numbers however could prove to be less important than the number of hardcore ideological believers, which could range between 300 and 800 individuals.²⁵

Law of armed conflict (LOAC)

25. There have been no significant changes in the status of the conflict or in the conduct of Al-Shabaab to invalidate the legal analysis contained in the original designation. The conflict in Somalia still constitutes a non-international armed conflict and the attacks carried out by Al-Shabaab directly target civilians and so breach the LOAC principle of distinction.

CONCLUSION

26. On the evidence set out above, this paper concludes that there are still reasonable grounds, as set out in s 22 of the TSA, for Al-Shabaab to be designated under that section.
27. Since its designation in February 2010, Al-Shabaab has continued to carry out terrorist acts as defined in ss 5 and 25 of the TSA (paragraphs 11-14). Accordingly, given there are still reasonable grounds to believe that Al-Shabaab has knowingly carried out terrorist acts as set out in s 22 of the TSA, Al-Shabaab meets the legal criteria for renewal of its designation as a terrorist entity under s 35.
28. The designation must be renewed by 11 February 2013 to be effective.

¹ The statement of case, dated 10 February 2012 can be accessed at:

<http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html>

² The statement of case, dated 10 February 2012 can be accessed at:

<http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html>

³ *ibid* Pg.5

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⁵ (14/07/2010) *Al-Shabaab's first international strike: Analysis of the July 11 Uganda bombings*. Retrieved 27/08/2012 from <http://www.criticalthreats.org/somalia/al-shabaab-first-international>.

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⁷ (04/10/2011) *Massive al-shabaab suicide bomb kills over 80 in Somali capital Mogadishu*. Retrieved 27/08/2012 from <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/somalia/8806699>.

⁸ *ibid*

⁹ (20/03/2012) *Al-Shabaab launches new attacks on Somalia's Presidential Palace*. Retrieved 22/03/2012 from www.voanews.com/english/news/Al-Shabaab-attacks-Somalias-Presidential-Palace.

¹³ (04/04/2012) *Somali theatre bombing kills 10*. Retrieved 05/04/2012 from www.hosted.ap.org/dynamic/A/AF_SOMALIA?site=AP§ion=home.
ⁱ (4/04/2012) *Somali Theatre bombing kills top sports officials*. Retrieved 22/11/2012 from <http://www.bbc.co.uk/news/world-africa-17609047>

¹¹ The statement of case, dated 10 February 2012 can be accessed at:

<http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html>

¹² (03/11/2011) *Fertile territory for Al-Shabaab in chaos of Somalia*. Retrieved 10/11/2012 from <http://www.edition.cnn.com/2011/11/01/world/africa/al-shabaab>.

ⁱ The statement of case, dated 10 February 2012 can be accessed at:

<http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html> Pg 7

¹³ *ibid*

¹⁴ *ibid*. Pg.4

¹⁵ (Dec 2012) Institute of Strategic Studies: *Comparing Somalia's Al-Shabaab and Uganda's Lords Resistance Army*-ISS paper 229. Retrieved 27/08/2012 from <http://www.iss.co.za/uploads/paper229.PDF>

¹⁶ (2012) Counter Terrorism Centre: *Al Shabaab's western recruitment strategy*. Retrieved 19/12/2012 from <http://www.ctc.usma.edu/posts/al-shababs-western-recruitment-strategy> PDF

¹⁷ *ibid* Pg.18

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¹⁹ (02/12/2009) Counter Terrorism Centre: *Assessing Somalia's terror threat*. Retrieved 03/08/2012 from www.CTC.usma.edu/posts/assessing-somalia%e2%80%99s-terror-threat.

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²⁵ (10/08/2011) *Al-Shabaab Backgrounder*. Retrieved 22/11/2012 from <http://www.cfr.org/somalia/al-shabaab/p18650>