

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 Al-Shabaab 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 relevant changes and/or developments to the organisation since original designation in February 2010 and renewal in February 2013, including Al-Shabaab's 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 information contained in the original designation paper¹ and previous renewal paper², 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: Jane's Terrorism and Monitoring Series, Counter Terrorism Centre, Council on Foreign Relations, USAID, The Jamestown Foundation, Open Source Centre (OSC), Reuters, CNN, The Guardian, ABC News. Reporting on New Zealand-related material was sourced from The New Zealand Herald.

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 2010.³ The designation was renewed for a further three years on 11 February 2013.⁴
10. Al-Shabaab has waged a violent insurgency against the United Nations-backed Transitional Federal Government (TFG) in Somalia since 2006.⁵ Since the formation of the Federal Government of Somalia (FGS) in 2012, Al-Shabaab has remained committed to expelling all foreign forces from Somalia, overthrowing the FGS and establishing an Islamic state governed in accordance with its radical interpretation of sharia (Islamic law).⁶
11. On 14 April 2013 nine Al-Shabaab militants killed 28 people in an assault on Somalia's Supreme Court, the Benadir Regional Courthouse, in Mogadishu. Ten security officers were shot dead outside the court building before the militants entered the premises and killed several others, including two prominent lawyers and a court spokesman. Six of the militants subsequently detonated explosives while the other three were killed by security forces.⁷ Al-Shabaab claimed responsibility for the attack in a statement later that day, stating "the attack was another blow to the apostate regime and was another indication that there is no safe haven for apostates in Mogadishu."⁸ Later in the day, Al-Shabaab attacked a Turkish aid vehicle with a Vehicle-Borne Improvised Explosive Device (VBIED) in Mogadishu, killing two Turkish aid workers.
12. On 19 June 2013 Al-Shabaab killed 15 people - four foreign security personnel, four Somali security guards, and seven civilians - and wounded 20 others in a combined Suicide Vehicle-Borne Improvised Explosive Device (SVBIED) and small-arms assault on the base of the United Nations Development Programme in Mogadishu. Seven militants were killed in the subsequent armed clashes with African Union Mission in Somalia (AMISOM) peacekeepers and Somali government forces who arrived at the base shortly after the SVBIED detonated. During the attack, Al-Shabaab claimed responsibility and provided updates about the attack on Twitter. Later that day, senior Al-Shabaab officials stated it had targeted the UN as it wanted to attack "the infidel forces", claiming it was "enemy number one of the Somali people".⁹
13. On 21-24 September 2013 four Al-Shabaab militants carried out a sustained small-arms assault on the Westgate shopping mall in Nairobi, Kenya. 67 people were killed, including six security personnel and 18 foreigners.¹⁰ At least 175 others were wounded, including a New Zealand citizen.¹¹ During the initial stages of the assault, the militants threw grenades and fired indiscriminately at shoppers within the mall. The militants made rudimentary attempts to target only non-Muslims, with several survivors reporting they were asked questions to test their knowledge of Islam.¹² A formal claim of responsibility was issued by then Al-Shabaab leader Ahmad Abdi Aw Muhammad Godane on 25 September 2013.

Godane stated the attack was a legitimate response to an "invasion" of Somalia, and Kenyan people were targeted "because it's you who have chosen your politicians...it's you who have supported your government's decision to go to war."¹³

14. On 21 February 2014 Al-Shabaab militants killed at least five people during an assault on the Villa Somalia presidential compound in Mogadishu. Two Al-Shabaab militants breached the perimeter of the compound by detonating a SVBIED, allowing a further seven militants - reportedly dressed in military uniforms similar to the Presidential guards - to assault the compound with small-arms and explosives. Five people and all the Al-Shabaab militants were killed in the attack. Among those killed were two senior government officials - the Prime Minister's Chief of Staff and a former National Intelligence and Security Agency Chief General. Al-Shabaab claimed responsibility for the attack on 22 February 2014. Al-Shabaab spokesperson Sheikh Ali Mohammad Rage stated, "The main objective of attacking the palace on Friday was to assassinate the so-called Somali President or kidnap him." President Hassan Sheikh Mohamud was not harmed in the attack.
15. On 24 May 2014 two Al-Shabaab militants conducted a suicide attack in a restaurant in Djibouti City, Djibouti. The restaurant, which is popular with foreigners, was targeted with an Improvised Explosive Device (IED). A Turkish national was killed and a number of Western military personnel frequenting the restaurant were injured. Al-Shabaab claimed responsibility for the attack on 27 May 2014, stating "The attack was carried out against the French Crusaders for their complicity in the massacres and persecution of our Muslim brothers in the Central African Republic, and for their active role in training and equipping the apostate Djiboutian troops in Somalia."¹⁴ Djibouti, which hosts military bases for France and the United States, contributes troops to the AMISOM trying to stabilise neighbouring Somalia.
16. On 2 December 2014 Al-Shabaab militants killed at least 36 people in a small-arms attack on a stone quarry in Kormey, near Mandera, in north-east Kenya. The Al-Shabaab militants separated non-Muslim workers from their Muslim counterparts before executing the former.¹⁵ Al-Shabaab claimed responsibility for the attack in a statement released later that day. Spokesman Sheikh Ali Mohammad Rage stated it was "a response to Kenya's occupation of Muslim lands and their ongoing atrocities therein, such as the recent airstrikes on Muslims in Somalia."
17. On 28 March 2015, Al-Shabaab militants attacked a popular Mogadishu hotel, killing 28 people including Somalia's permanent representative to the UN. The attack began when a militant detonated a SVBIED at the gate of the hotel. A number of gun-wielding militants then entered the hotel, opening fire. They then overpowered the hotel's security guards, with the gun battle with the Somali security forces lasting at least 17 hours.
18. On 2 April 2015 four Al-Shabaab militants conducted a high-profile attack on Garissa University College in north-east Kenya, killing 148 people. The assault, which lasted for approximately 11 hours, began in the early morning when the militants shot dead two guards at the campus gates. Once inside the campus grounds, militants used small-arms to fire indiscriminately at students. After the initial rampage, the gunmen made their way to the campus's four dormitory buildings where Christian students were deliberately targeted. During the attack, several victims had been forced to phone their parents to communicate the militants' demand that Kenya withdraw its soldiers from Somalia.¹⁶

19. On 1 November 2015 Al-Shabaab gunmen detonated two bomb-rigged vehicles to gain entry to a hotel in Mogadishu before storming the building. Al-Shabaab claimed responsibility for the attack at the hotel, popular with members of parliament. At least 15 people were confirmed killed in the attack.¹⁷

Ideology and objectives of Al-Shabaab

20. Al-Shabaab's objectives are largely the same as they were when the group was first designated.¹⁸ The group seek to overthrow the FGS and create an Islamist form of government, based on their own Salafist-inspired ideology.
21. Although primarily active within Somalia, Al-Shabaab has more recently increased its area of operation within the wider region, and has carried out high-profile attacks in surrounding states including Ethiopia, Uganda, Kenya and Djibouti.¹⁹
22. Al-Shabaab is designated as terrorist organisation by Australia, the United States, Canada and the United Kingdom.

Organisation and structure of Al-Shabaab

23. Al-Shabaab suffered a series of significant blows to its leadership following several US counter-terrorism operations against the group in 2014 and early 2015. On 1 September 2014, leader Godane (alias Sheikh Mukhtar Abu Zubayr) was killed in a US airstrike.²⁰
24. After a small drop in operational tempo as Sheikh Ahmed Umar (alias Abu Ubaida) came to power, attacks by the group resumed as normal, with a continuation of deadly suicide attacks in Mogadishu as well as cross-border, high-casualty assaults into Kenya in March and April 2015.
25. Al-Shabaab has a number of foreign fighter recruits within its ranks. Recruits typically come from Somali diaspora communities, particularly the large ethnic Somali and Somali refugee communities in Kenya, but also from Western nations including Canada, Denmark, Sweden, the United States and United Kingdom.
26. Al-Shabaab actively recruits Western, English speaking Muslims through its English language propaganda films. Al-Shabaab's official media production organisation, Al-Kataib Media, has produced high-quality, feature-length videos purporting to show combat footage from Somalia. These videos include Al-Shabaab units carrying out successful operations against Somali government and African Union forces and calls for attacks in Western countries.^{21,22} These are distributed online in an attempt to reach potential supporters in the West.
27. In 2011, Al-Shabaab established an English language Twitter account to announce attacks as they happen and which allows them to send and receive messages of support worldwide.²³ This was evident during the Westgate mall siege in Nairobi, Kenya, on 21-24 September 2013. During this attack Al-Shabaab used multiple Twitter accounts to provide information on the attack, casting it as a justified response to Kenya's military involvement in Somalia.²⁴ Al-Shabaab's Twitter accounts are shut down by Twitter, however, new accounts are created to replace them²⁵.

Weapons, tactics and capability of Al-Shabaab

28. 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 allies²⁶ - aid groups²⁷, foreign military presence and African Union peacekeepers.
29. Al-Shabaab's manpower illustrates the group's continued survival and its enduring military potency. Estimates of Al-Shabaab's size vary, however, at the end of 2012 Al-Shabaab was estimated to comprise 3,000 hard-core fighters and 2,000 allied gunmen²⁸, and in 2014 Al-Shabaab's intelligence wing, Amniyat, and its military wing, Jabhad, was estimated to have a force strength of 5,000 fighters²⁹.
30. Al-Shabaab has developed an operational pattern of conducting periodic high-profile mass-casualty operations in northeast Kenya, interspersed by more regular low-level small-arms and grenade attacks. The seemingly specific targeting of Christians and non-Muslims in attacks underlines an ongoing attempt by Al-Shabaab to foment inter-communal violence between Christian/non-Muslim and Muslim communities.³⁰
31. Al-Shabaab carries out regular assassination attempts on government personnel, including heads of state. On 3 September 2013, Al-Shabaab attempted to kill President Hassan Sheikh Mohamud in a rocket-propelled grenade attack targeting his motorcade as he travelled to Marka, Somalia. No casualties were reported³¹. On 21 February 2014, Al-Shabaab militants killed two high level government officials during the assault on the Villa Somalia presidential compound in Mogadishu (see paragraph [14] above). More recently, Al-Shabaab has claimed responsibility for the 20 August 2015 killing of two government soldiers in Afgooye Town, Somalia³², and on 22 August 2015 claimed responsibility for a deadly suicide attack at a military training camp in Kismaayo³³.

Law of armed conflict (LOAC)

32. 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

33. 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.
34. Since the renewal of its designation in February 2013, Al-Shabaab has plainly continued to carry out terrorist acts as defined in ss 5 and 25 of the TSA (see paragraphs [11]-[18]). 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.
35. The designation must be renewed by 11 February 2016 to be effective.

-
- ¹ The statement of case, dated 10 February 2010 can be accessed at:
<http://www.police.govt.nz/sites/default/files/publications/statement-of-case-al-shabaab-terrorist-entity-10-feb-2010.pdf>
- ² The statement of case for renewal, dated 11 February 2013, can be accessed at:
<http://www.police.govt.nz/sites/default/files/publications/renew-al-shabaab-as-terrorist-11-feb-2013.pdf>
- ³ The statement of case, dated 10 February 2010 can be accessed at:
<http://www.police.govt.nz/sites/default/files/publications/statement-of-case-al-shabaab-terrorist-entity-10-feb-2010.pdf>
- ⁴ The statement of case for renewal, dated 11 February 2013, can be accessed at:
<http://www.police.govt.nz/sites/default/files/publications/renew-al-shabaab-as-terrorist-11-feb-2013.pdf>
- ⁵ *ibid* Pg.5
- ⁶ (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>.
- ⁷ (09/02/2015) “*Harakat al-Shabaab al-Mujahideen*”, accessed via IHS Jane’s World Insurgency and Terrorism on 13/05/2015. Available on subscription.
- ⁸ (14/04/2013) “*Somalia Supreme Court attack kills at least 20*”, The Guardian, accessed on 13/05/2015
<http://www.theguardian.com/world/2013/apr/14/somalia-supreme-court-attack-kills>
- ⁹ (09/02/2015) “*Harakat al-Shabaab al-Mujahideen*”, accessed via IHS Jane’s on 13/05/2015. Available on subscription.
- ¹⁰ (16/10/2013) “*Killing spree - Al-Shabaab's hybrid assault on a Kenyan mall*”, accessed via IHS Jane’s on 14/05/2015. Available on subscription.
- ¹¹ (24/09/2013) “*Kenya mall attack: Surgery for NZ man*”, The New Zealand Herald, accessed on 13/05/2015 via
http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11129001
- ¹² (16/10/2013) “*Killing spree - Al-Shabaab's hybrid assault on a Kenyan mall*”, accessed via IHS Jane’s on 14/05/2015. Available on subscription.
- ¹³ (16/10/2013) “*Killing spree - Al-Shabaab's hybrid assault on a Kenyan mall*”, accessed via IHS Jane’s on 14/05/2015. Available on subscription.
- ¹⁴ (27/03/2014) “*Al Shabaab claims responsibility for Djibouti suicide attack*”, accessed via Reuters on 13/05/2015
<http://www.reuters.com/article/2014/05/27/uk-djibouti-attacks-idUSKBN0E72AA20140527>
- ¹⁵ (2/12/2014) “*Al-Shabaab separates non-Muslims from Muslims, kills 36 in quarry attack*”, CNN, accessed on 14/05/2015 via
http://edition.cnn.com/2014/12/02/world/africa/kenya-attack/index.html?hpt=hp_t1
- ¹⁶ (4/10/2015) “*JTIC Brief: Harsh lesson - Garissa attack underlines continued Kenyan security failings*”, accessed via IHS Jane’s on 14/05/2015. Available on subscription.
- ¹⁷ (01/11/2015) “*Somalia: Al-Shabab attack kills 15 in Mogadishu hotel*”, BBC News, accessed on 03/11/2015 via
<http://www.bbc.com/news/world-asia-34691602>.
- ¹⁸ The statement of case, dated 10 February 2010 can be accessed at: <http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html>
- ¹⁹ (09/02/2015) “*Harakat al-Shabaab al-Mujahideen*”, accessed via IHS Jane’s on 13/05/2015. Available on subscription.
- ²⁰ (05/09/2014) “*Al-Shabaab leader Ahmed Abdi Godane killed by US air strike in Somalia*”, The Guardian, accessed on 13/05/2015 via
<http://www.theguardian.com/world/2014/sep/05/al-shabaab-leader-godane-killed-us-airstrike-somalia>
- ²¹ (11/03/2014) “*Hashtag Shabaab - Islamists develop sophisticated online strategy*”, accessed via IHS Jane’s on 13/05/2015. Available on subscription.
- ²² (23/02/2015) “*OSINT Summary: Al-Shabaab video calls for attacks on Western shopping centres*” accessed via IHS Jane’s on 13/05/2015. Available on subscription.
- On 21 February 2015, Al Shabaab released a video entitled *Westgate Siege: Retributive Justice*, calling for attacks targeting shopping centres in Canada, France, the United Kingdom and the United States.
- ²³ 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>
- ²⁴ (11/03/2014) “*Hashtag Shabaab - Islamists develop sophisticated online strategy*”, accessed via IHS Jane’s on 13/05/2015. Available on subscription.
- ²⁵ (04/02/2013) *Al Qaeda Group is Back on Twitter After Ban*. Retrieved 04/09/2015 from <http://abcnews.go.com/beta/Blotter/al-qaeda-group-back-twitter-ban/story?id=18400844>
- ²⁶ (10/08/2011) *Al-Shabaab: Background*. Retrieved 22/11/2012 from <http://www.cfr.org/somalia/al-shabaab/p18650>
- ²⁷ For example in February 2013, Al-Shabaab militants in Shabellaha Hoose banned the operations of polio vaccinators in the region and threatened to kill employees of the World Health Organisation (WHO) who were found to continue such vaccinations after 13 February.
- ²⁸ (22/02/2013) *Mid term evaluation of three countering violent extremism projects*. Retrieved 27/08/2015 from
http://pdf.usaid.gov/pdf_docs/PDAX479.pdf
- ²⁹ (07/11/2014) *Al-Shabaab to Face Different Direction after Appointment of New Leader*. Retrieved 27/08/2015 from
http://www.jamestown.org/uploads/media/TerrorismMonitorVol12Issue21_01.pdf
- ³⁰ (07/04/2015) “*OSINT Summary: Al-Shabaab attack targets university in Kenya's North Eastern Province – Updated*”, accessed via IHS Jane’s on 14/05/2015. Available on subscription.
- ³¹ (08/06/2015) “*Harakat al-Shabaab al-Mujahideen*”, accessed via IHS Jane’s World Insurgency and Terrorism on 27/08/2015. Available on subscription.
- ³² (20/08/2015) *Al-Shabaab Claims Killing Two Government Soldiers, Wounding Three Others in Afgooye Town*, translated from Calamada in Somali, accessed via Open Source Centre on 21/08/2015.
- ³³ (22/08/2015) *Kismaayo Suicide Attack Death Toll Rises To 'Over 20' as Al-Shabaab Claims Responsibility*, London BBC World Service, accessed via Open Source Centre on 23/08/2015.