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

PURPOSE

1. This paper sets out the case demonstrating Al-Shabaab, also known as Al-Islamiya, Harakat al-Shabaab, al-Mujahideen, Mujahidin Youth Movement, shabaab al-Mujahideen Movement, or Young Mujahideen Movement in Somalia, meets the statutory criteria for the renewal of its designation as a terrorist entity with New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).

STRUCTURE OF THIS PAPER

2. This paper sets out updated information about Al-Shabaab's continued involvement in terrorist activity and covers any changes or development to the organisation since its original designation in February 2010[1], and renewals in February 2013, February 2016, and January 2019,[2] including Al-Shabaab's objectives, structure, weapons and tactics and includes recent attacks which meet the definition of a terrorist act under the TSA.

3. This updated information, together with information contained in the original designation paper and previous renewal papers, provide the basis for the conclusion that Al-Shabaab meets the legal criteria for renewal of its designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR DESIGNATION RENEWAL UNDER THE TSA

4. 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 5A(1)(a) and (b)) and also includes attempts to carry out the act (s 5A(1)(c)).

5. 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.

6. 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

7. This paper has been prepared using open or unclassified sources which have a reputation for careful and unbiased reporting. These include The Guardian, BBC News, Al Jazeera, Reuters,

The New York Times, CNN, The Washington Post, CBS News, The Christian Post and The Telegraph.

8. A range of think tanks were referred to including Council on Foreign Relations, The Jamestown Foundation, Office of International Religious Freedoms and Human Rights Watch.

9. A range of regional news sources were also referred to including Africa News, Garowe Online, All Africa, Shabelle Media Network, The Standard, News24 and The Star.

10. Other sources utilised include VOA News, COREPlus, Asharq Al-Awsat, France24, Xinhuanet, and Al-Shabaab's Radio Analdus.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

11. On 15 January 2019, a Nairobi hotel complex was attacked, and occupants held hostage for nineteen hours. The coordinated assault began in the afternoon with an explosion that targeted three vehicles outside a bank and a suicide bombing in the hotel lobby. This was followed by gunmen entering the complex. Two attackers were shot dead the following morning by special forces sent into the complex. More than 700 civilians were evacuated from the complex and at least twenty-one were killed. According to Police, 16 victims were Kenyan, one was British, one was from the US and three were of African descent but unknown nationality. Al-Shabaab claimed the attack and reported it was in response to "US President Donald Trump's decision to recognise Jerusalem as the capital of Israel".[3]

12. On 4 February 2019, two gunmen killed the Bosaso Port Manager as he travelled to work in the semi-autonomous region in Puntland. Three security guards were also injured in the attack. Al-Shabaab claimed the attack, stating that the victim, who was a Maltese citizen, had been operating in Somalia illegally. Al-Shabaab spokesperson Abdiasis Abu Musab stated that the attack was a part of border operations targeting the mercenary companies that loot Somali resources.[4]

13. On 15 September 2019, Al-Shabaab launched a series of attacks that killed at least seventeen people. The militants used rocket propelled grenades and heavy machine guns to attack the town of Qoryoley. In addition, two civilians were killed after Al-Shabaab militants fired mortars on the town of Marka during a visit by the Prime Minister of Somalia, Hassan Ai Khaire. Al-Shabaab claimed the attacks, stating that they were targeting the Prime Minister.[5] Further that day, a roadside improvised explosive device (IED) killed five government officials when an explosion hit the vehicle they were travelling in. The Deputy Governor of Somalia's Middle Shabelle Region was among the five killed. Al-Shabaab claimed responsibility for the attack on Radio Andalus, a Somali based broadcaster that supports the militants.[6]

14. On 30 October 2019, Al-Shabaab militants raided a Police camp in Wajir County near the Somali border and killed two of their accomplices who had been detained by Kenyan Security Officers. The militants used rocket-propelled grenades and gunfire to access police cells and kill the two men who were being detained over terror-related issues. Three Police Officers and one civilian were injured during the attack.[7]

15. On 13 November 2019, Al-Shabaab militants shot and killed two Government officials during an ambush in the outskirts of Bal'ad town in the Southern Middle Shabelle Region. The militants launched the attack in Adayga village where there was an exchange of fire between the Somali Army and the militants. The militants withdrew from the town after killing the District Chief and his Deputy.[8]

16. On 6 December 2019, Al-Shabaab gunmen attacked a bus in Northeast Kenya killing at least ten people including several Police Officers. The bus was attacked as it travelled between the towns of Wajir and Mandera, close to the Somali border. The militants targeted non-Somalis and shot them at close range outside of the bus. Al-Shabaab claimed responsibility, reporting that its attacks were revenge for Kenyan troops stationed inside Somalia.[9]

17. On 10 December 2019, Somali security forces shot and killed five Al-Shabaab gunmen who had launched an attack on a hotel near the Presidential Residence in Mogadishu. The attack began when five heavily armed gunmen overpowered security guards and stormed the hotel. Three civilians and two soldiers were killed. Al-Shabaab claimed the attack on the hotel, which is close to the main entrance of the Villa Somalia Government Complex. This hotel has been attacked by Al-Shabaab on three previous occasions.[10]

18. On 7 January 2020, Al-Shabaab attacked a telecommunications mast which instigated a gunfight between Kenyan Police and the militants. Four school children were killed in the altercation and a further three were injured. The militants fired at the mast which belonged to Kenya's leading operator Safaricom as well as at Police guarding the facility. Officers killed the two attackers and recovered two assault rifles and bomb making materials.[11]

19. On 8 January 2020, a vehicle-borne IED (VBIED) was detonated in Mogadishu close to a checkpoint near Somalia's Parliament. Four people were killed and ten were wounded. Explosives were packed in a vehicle and detonated by a suicide bomber when he was denied entry through the checkpoint. Al-Shabaab claimed the attack.[12]

20. On 13 February 2020, Al-Shabaab militants burnt eight homes and several shops belonging to Kenyan National Police Reserves in Garissa County near the Somalia border. The militants abducted a father and son whom they later released after gaining information from them. The militants also killed three non-local Christian teachers in the village of Kamuthe, Garissa.[13]

21. On 9 September 2020, a suicide bomber detonated an explosive vest in a Mogadishu restaurant that is popular with government troops and situated next to an army checkpoint leading to the Presidential Palace. At least three civilians were killed, and several others wounded. Al-Shabaab claimed responsibility for the attack.[14]

22. On 13 January 2021, Al-Shabaab militants armed with AK-47 rifles stopped a bus heading to Nairobi and ordered passengers to exit the bus. The militants then interrogated passengers by asking whether they were non-locals or Christians. After robbing the bus conductor of cash, they allowed the bus to continue its journey but threatened the conductor to not carry non-locals on their bus.[15]

23. On 1 February 2021, Al-Shabaab attacked a hotel in Mogadishu, which is frequently used by Somali officials, members of security forces and community leaders. Nine people were killed, including four Al-Shabaab personnel, and a further ten civilians were injured. Al-Shabaab began the attack with a VBIED followed by gunmen entering the hotel and exchanging fire with security personnel.[16]

24. On 2 March 2021, Al-Shabaab executed five civilians in Middle Juba region. The group accused the five civilians of spying for US and Somali intelligence agencies. They were executed publicly by a firing squad, with an estimated audience of over a hundred people. Al-Shabaab claimed the executions via Al-Shabaab affiliated media.[17]

25. On 2 July 2021, a suicide bomber wearing a vest detonated the explosive near the Juba Hotel, killing at least ten civilians and injuring dozens. The attack took place just a few hundred metres from the Somali Intelligence agency headquarters. Al-Shabaab claimed responsibility for the attack.[18]

26. On 25 September 2021, a suicide VBIED was detonated at a security checkpoint near the Presidential Palace in Mogadishu. The checkpoint falls on the route to the airport which is used by Somalia's President and Prime Minister. Eight people were killed including Hibaq Abukar, an advisor of women and human rights affairs in Prime Minister Mohammed Hussein Roble's office. Al-Shabaab claimed the attack.[19]

Ideologies and objectives

27. Al-Shabaab's overall objective continues to be the creation of an Islamic State in Somalia, governed by its interpretation of Sharia law. Al-Shabaab also remains committed to expelling the Federal Government of Somalia (FGS), and foreign forces stationed in Somalia and in neighboring Kenya.[20] Al-Shabaab is a formal affiliate of Al-Qaida's transnational militant Islamic ideology. Operation goals remain primarily focused on Somalia and are heavily tied to clan politics.[21]

    a. On 30 March 2021, Al-Shabaab released a video on its official website which called for attacks against US and French interests in Djibouti. The video reiterated that Al-Shabaab members had the responsibility to attack all foreigners in Djibouti and Somalia. In a video posted on 28 January 2021 which celebrated the January 2020 attack on the joint US-Kenya airbase, Al-Shabaab reiterated the duty of its members to attack US forces in Africa, and elsewhere, to protect Islam. In January 2020, Al-Shabaab released a statement calling on its Jihadists to make US interests in Kenya their primary targets as well as tourists. The statement also said Kenya 'should never be safe again'.[22]

    b. A May 2020 report noted Al-Shabaab's continued threats to execute anyone suspected of converting to Christianity. In Al-Shabaab controlled areas, the group continue to ban cinemas, television, music, the internet, and other activities that were deemed un-Islamic. The group continue to mandate that schools teach a militant form of Jihad emphasizing that students wage war on those it deemed infidels, including in nearby countries and against the federal government and the African Union Mission to Somalia (AMISOM).[23]

c. On November 2019, Al-Shabaab released a fifty-two-minute video narrated by the group's leader, Abu Ubaida. The video called for attacks against Americans wherever they are, saying the American public is a legitimate target.[24]

Organization and structure

28. Al-Shabaab has continued to endure deaths of numerous leadership figures. For example:

a. On 25 February 2020, an Al-Shabaab leader who was suspected of having a role in planning and directing terrorist operations, including a January 2020 attack on the Manda Bay military base was killed by a US airstrike.[25]

b. On 2 April 2020, long standing senior leader of Al-Shabaab Yusuf Jiis also known as Yusuf Nur Sheikh Hassan, was killed by a US airstrike. Counterintelligence operative, Yonis Sheikh Dahir was also killed in the attack.[26]

c. On 3 July, 2020, senior Al-Shabaab member Mohamed Abukar, surrendered to the Somali National Army (SNA). Abukar contacted Somali forces informing that he was willing to leave Al-Shabaab cells to join the SNA.[27]

d. On 25 August 2020, Al-Shabaab leader, Abdulqadir Commandos was killed by an airstrike. He held numerous positions within the organization, including recently serving as a senior Al-Shabaab commander.[28]

29. In August 2020, it was reported that Al-Shabaab was forced to make leadership changes after long-serving leader Ahmed Diriye Abu Ubaidah fell ill. The militant group gave temporary supreme power to Abukar Adan, Ubaidah's deputy. This reportedly created a power struggle between a section led by Mahad Karate and supporters of Ubaidah. The group have also become divided on which global Jihadist movement to plead allegiance to, current association Al-Qaida or ISIS.[29]

a. On August 29, 2020, The Somali National Intelligence and Security Agency (NISA) reported that Al-Shabaab leader Ahmad Umar had fallen ill. Although the nature of his illness is unclear, NISA has reported infighting within Al-Shabaab regarding his possible succession.[30]

b. Some Al-Shabaab splinter groups have pledged allegiance to Islamic State in Iraq and Levant (ISIL), while others remain loyal to Al-Qaida. The emergence of pro-ISIL cells in Somalia's northern regions in mid-October 2015 has not significantly changed Al-Shabaab's authority in the centre and south of Somalia, largely due to ISIL Somalia's inferior capabilities in terms of capacity for violence, governance, and propaganda.[31] Al-Shabaab has engaged in internal counter-messaging campaigns and violent acts against ISIL Somalia sympathisers both within and outside of Al-Shabaab's membership.[32]

c. The main pro-ISIL faction in Somalia is estimated to number around 200 members, while Al-Shabaab membership is estimated between 5,000 and 10,000. Most Al-Shabaab fighters are ethnic Somalis from Somalia and Kenya. However, a small number of members are from other countries, including Western nations (primarily ethnic Somalis, Al Shabaab has not to date attracted ethnically European fighters).[33]

Weapons, tactics, and capability

30. Al-Shabaab was forced out of the capital, Mogadishu, in 2011 and has since lost many of its strongholds. However, the group continues to control parts of the southern countryside and continues to launch attacks in Mogadishu and in neighbouring Kenya.[34] In areas where Al-Shabaab is in firm control, they operate a parallel government. It has its own courts, tolls, and tax collection. Al-Shabaab has a growing ability to extract "taxes" from Somalia's most lucrative businesses which it uses to fund its attacks on government and military targets.[35]

31. Operations outside of Somalia remain concentrated in East African nations, particularly Kenya. Raids, ambushes, and attacks conducted in Kenya are in retaliation to the deployment of Kenyan troops into Somalia to support Somali forces.[36]

32. Al-Shabaab includes attacks on soft targets such as hotels and restaurants as a part of its strategy, but has focused the majority of its attacks against Federal Government of Somalia (FGS), SNA, AMISOM and opposing militia bases using a range of coordinated attacks, small unit attacks and hit-and-run attacks.[37] Tactics also include the frequent use of IEDs, especially VBIEDS, mortar shelling, ambushes, and targeted assassinations with firearms and grenades.[38] Between February 04 and 10 2021, Al-Shabaab's Shahada News Agency issued reports that claimed responsibility for forty-one attacks.[39] Between August 2020 and August 2021, Al-Shabaab carried out an estimated 1,630 attacks, and at least 3,630 attacks in the past three years.[40]

33. In May 2019 it was reported that Al-Shabaab uses northern Kenya's marginalisation by Nairobi, widespread poverty and unemployment to recruit new members by offering cash, promises of work and access to the internet. Al-Shabaab's recruitment was reported to target mainly ethnic Somali youth and minority clans.[41] A July 2020 report revealed that Al-Shabaab frequently requests locals to join or give up younger family members to the organization. Those who refuse to join are threatened and labelled as infidels who reject Islam and Sharia law. In some cases, the person who rejects the offer is executed to set an example for the rest of the community.[42]

34. Al-Shabaab's media department remains strong and multi-faceted. The group uses social media to share propaganda, recruit followers, coordinate activities and secure access to funding. They are particularly active on Twitter, YouTube and its al-Kata'ib news channel. Video communications predominantly focus on recruiting foreign fighters and demonstrating military strength. In areas with limited internet access, the group uses radio programming to engage with local communities such as Radio Andalus.[43]

LAW OF ARMED CONFLICT (LOAC)

35. There have been no significant changes in the status of the conflict or in the conduct of Al-Shabaab to invalidate previous legal analysis. The conflict in Somalia does constitute a non-international armed conflict, however the acts carried out by Al-Shabaab have not been conducted in accordance with applicable international law. Their acts involve the direct targeting of civilians and civilian infrastructure, which is prohibited by international humanitarian law. Accordingly, the exemption in s 5(4) does not apply. The actions of Al-Shabaab's can properly be characterised as terrorist acts.

CONCLUSION

36. 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.

37. Since its designation in February 2010, and renewal in February 2013, February 2016, and January 2019, Al-Shabaab has continued to carry out activities which meet the definition of terrorist acts as found in ss 5 and 25 of the TSA (paragraphs 11-26). Accordingly, given there are still reasonable grounds to believe 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.

38. The designation must be renewed by 30 January 2022 to be effective.

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https://www.police.govt.nz/sites/default/files/publications/renew-al-shabaab-as-terrorist-11-feb-2013.pdf
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