

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-Shabaab 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 within 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 relevant changes or developments to the organisation since its original designation in February 2010¹, and renewals in February 2013 and February 2016², 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 the 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 25(1)(a) and (b)) and also includes an attempt to carry out the act (s 25(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 English, Reuters, Deutsche Welle, Associated Press News, The New York Times, CNN, IHS Jane's 360 and Jane's World Insurgency and Terrorism.
8. A range of think tanks were referred to including Stratfor, Combating Terrorism Center at West Point, Control Risks, International Crisis Group, The Jamestown Foundation, Council on Foreign Relations, Tony Blair Institute for Global Change and Human Rights Watch.

9. A range of regional news sources were also referred to including Africa News, Idale News Online, Daily Maverick, Daily Nation, Capital News, Shabelle Media Network, Radio Simba, The Star, Garowe Online, News24 and The Standard.
10. Other sources utilised include Al-Shabaab's Radio Andalus, Jihadology, VOA News, The New Arab, AMISOM Daily Media Monitoring, Anadolu Agency and Middle East Monitor.

EVIDENCE TO SUPPORT DESIGNATION RENEWAL UNDER THE TSA

Continued involvement in terrorist activity

11. On 2 February 2016, a suicide bomber detonated an improvised explosive device (IED) disguised as a laptop on a commercial Daallo Airlines flight from Mogadishu, Somalia to Djibouti. The IED was detonated 15 minutes into the flight killing the bomber, injuring two passengers, and tearing a hole in the plane's fuselage. The bomber was initially meant to board a Turkish Airlines flight, however it was cancelled and replaced with the Daallo Airlines flight. Al-Shabaab claimed responsibility for the attack and stated Western officials and Turkish NATO forces had been targeted. Al-Shabaab also note the attack had "struck terror into the hearts of the crusaders, demonstrating to the disbelievers that despite all their security measures and the strenuous efforts they make to conceal their presence, the Mujahideen can and will get to them".³
12. On 28 February 2016, a suicide vehicle-borne improvised explosive device (VBIED) was detonated at a busy traffic junction in Baidoa in Somalia's Bay region. Immediately after, another (possibly suicide) IED was detonated, targeting a restaurant. At least 30 civilians were killed and 40 others, including three security guards, were injured in the double attack. Al-Shabaab immediately claimed responsibility, with Al-Shabaab's military operations spokesperson, Sheikh Abdiasis Abu Musab, stating "we targeted government officials and forces". The attack occurred on the same day that countries contributing troops to the African Union Mission in Somalia (AMISOM) pledged to "reinforce military operations in Somalia, to effectively counter threats from Al-Shabaab".⁴
13. On 1 June 2016, at least 16 people, including two members of parliament, were killed and 55 wounded in an attack targeting the Hotel Ambassador in Mogadishu. The attack was initiated by the detonation of a suicide VBIED, followed by a small-arms assault involving at least two fighters. Al-Shabaab claimed responsibility for the attack, stating the government was the target.⁵ On 25 June Al-Shabaab undertook and claimed an almost identical attack involving four militants against the Naso-Hablod Hotel in Mogadishu. 20 people, including the Minister of Environment, three radio staff members, security guards and civilians, were killed in the attack. Militants were reportedly shooting at guests at random before being killed by security forces.⁶
14. On 26 July 2016, a double suicide VBIED attack at an AMISOM military base at Aden Adde airport, Mogadishu, killed nine United Nations security personnel and three civilians and wounded five others. The first device was detonated near the entrance of the base, and the second detonated at a military checkpoint nearby. The force of the explosions shattered windows at the airport and temporarily forced the suspension of flights. Al-Shabaab claimed responsibility for the attack, citing it had targeted the base of foreign forces "occupying our Muslim country".⁷
15. On 31 July 2016, two suicide VBIEDs were detonated and a small-arms assault was launched on the Criminal Investigation Department (CID) headquarters in Mogadishu. Al-Shabaab military operations spokesperson Abu Musab claimed one of the suicide bombers started the

attack by ramming the vehicle into the building's gate. Four militants, five civilians and one soldier were killed, and 20 others wounded, in the attack.⁸

16. On 6 August 2016, Al-Shabaab militants fired an unspecified number of mortars, hitting residential areas and a hospital in Baidoa, Bay region. The mortars killed one and wounded four civilians. Al-Shabaab claimed responsibility for the attack, stating they had shelled key areas under South-West State administration control.⁹
17. On 11 December 2016, a suicide VBIED was detonated at the entrance of Mogadishu's largest port, killing at least 29 civilians including labourers, port workers and police officers. Approximately 50 individuals were also injured in the attack. Al-Shabaab claimed responsibility for the incident on its radio station, Radio Andalus, stating the attack was aimed at police officers stationed close to the port because they had been trained to provide security at upcoming parliamentary elections.¹⁰
18. On 2 January 2017, two suicide VBIEDs detonated near Mogadishu international airport, killing at least seven and injuring 17 people. The first VBIED, targeting a checkpoint manned by Somali national security forces, was intended to cause panic. The second VBIED, driven at high speed through the checkpoint and detonated outside the Peace Hotel opposite the airport, was meant to cause maximum casualties. Al-Shabaab claimed responsibility for the attack, stating the Peace Hotel was targeted because it was frequented by foreigners.¹¹
19. On 11 January 2017, Al-Shabaab announced via Radio Andalus that they had shot dead two men and a teenager in Buale, Jubba region. Two men aged 20 and 15 were convicted by a court run by Al-Shabaab of homosexual acts and the third man of spying for the Ethiopian army. The executions were carried out in a public square and watched by hundreds of civilians.¹²
20. On 14 June 2017, a suicide VBIED rammed into the Posh Hotel in south Mogadishu before gunmen rushed into an adjacent restaurant and took 20 people hostage. The siege ended the following day with security forces killing all five attackers involved. 31 individuals, including children, were killed in the attack, with many victims killed at point-blank range. Al-Shabaab claimed responsibility for the attack, Abu Musab stating that "a mujahid with his suicide car bomb martyred himself" and "the operation goes on."¹³
21. On 20 June 2017, a suicide VBIED attack killed at least ten people and injured 18 at a local administration building in Wadajir district, Mogadishu, as a group of youth and women activists were meeting inside. The vehicle involved was posing as a milk delivery van, and the resulting explosion also destroyed the building and ten nearby cars. Al-Shabaab claimed responsibility for the attack, stating their target was government officials.¹⁴
22. On 5 July 2017, Al-Shabaab militants attacked Pandaguo police station in Lamu County, Kenya, battling Kenyan police and military for approximately seven hours. Two police officers were killed in the attack. Militants also reportedly destroyed communications equipment in the area, and the attack forced numerous schools in the area to close temporarily.¹⁵ Three days later, Al-Shabaab militants seized nine non-Muslim men from their houses in Jima, Lamu County, and beheaded them.¹⁶ On 13 July a top Kenyan official was kidnapped by Al-Shabaab when her convoy, which was travelling to visit families who had fled the recent Al-Shabaab attacks, was intercepted. At least two police officers and a civilian were killed in the initial attack, and the official was later rescued by Kenya's military but succumbed to her wounds two and a half months later. A further five individuals were killed during the official's rescue.¹⁷

23. On 14 October 2017, a truck concealing explosives under rice, sugar and other goods, passed through a government-controlled checkpoint outside of Mogadishu and detonated outside a hotel on a busy street near key ministries. The blast demolished nearby buildings and caused widespread damage in what was the largest and deadliest attack ever experienced in Somalia. The intense heat generated from the blast prevented all remains from being found; however, 512 people were confirmed as killed, 295 injured and 70 status unconfirmed as at December 2017. A second, smaller blast in the attack reportedly killed twelve individuals. Al-Shabaab did not officially claim responsibility for the attack; however, an individual driving another truck packed with explosives was detained and provided details of the plot to Somali security forces. Al-Shabaab were also assessed to be the only organisation with the capability, intent and experience to conduct an attack of this scale, and Somali authorities stated they had no doubt Al-Shabaab was responsible. Somalia's President, Mohamed Abdullahi Mohamed, declared three days of national mourning in the wake of the attack.¹⁸
24. On 14 December 2017, a suicide bomber detonated explosives strapped to his body inside a police training camp in Mogadishu. The bomber had been disguised as a police officer and infiltrated the academy during an early morning parade. The blast killed at least 18 police officers and injured 15. Al-Shabaab's Abu Musab claimed responsibility for the attack but stated 27 officers had been killed and more were injured.¹⁹
25. On 2 January 2018, Al-Shabaab militants shot dead the father of the chairman of Somalia's military court. Two assailants shot the man several times in the head and chest inside his home in Dharkenley district before departing the scene. Al-Shabaab claimed responsibility for the attack on their website.²⁰
26. On 23 February 2018, two VBIEDs were detonated in Mogadishu, killing at least 38 people and wounding at least 20 others. The first VBIED detonated outside the presidential palace, and the second outside a nearby hotel. A gun battle near the palace ensued, resulting in the deaths of five militants. Al-Shabaab claimed responsibility for the attacks, and stated it had targeted security forces.²¹
27. On 22 March 2018, a VBIED was detonated on a busy street near Weheliye Hotel in Mogadishu. At least 14 were killed and 10 wounded, including both civilians and soldiers. Al-Shabaab claimed responsibility for the attack.²²
28. On 7 July 2018, Al-Shabaab detonated two bombs and stormed the Interior Ministry building in central Mogadishu, killing at least nine and injuring 21. Shortly after the bombings, Abu Musab publicly stated Al-Shabaab had carried out both attacks, with fighters remaining inside the building. The first VBIED was detonated remotely outside a police station, and the second detonated at the gate of the Interior Ministry after militants had exited the vehicle to storm the building. Security forces killed all three attackers after a two hour long gun battle.²³
29. On 2 September 2018, a suicide VBIED detonated at a security checkpoint in central Mogadishu, destroying a local government office and Quranic school, and damaging a nearby mosque and houses. At least six people were killed, including two children, and at least 14 were injured in the attack. Al-Shabaab's Abu Musab claimed responsibility for the attack via Radio Andalus.²⁴

Ideology and objectives

30. Al-Shabaab's overall objective continues to be the creation of an Islamic State in Somalia, governed by its interpretation of Shar'ia law. Al-Shabaab also remains committed to expelling

all foreign forces from Somalia and overthrowing the Federal Government of Somalia (FGS).²⁵ While Al-Shabaab subscribes to and espouses Al-Qaeda's transnational militant Islamist ideology, operational goals remain focused on Somalia and are heavily tied to clan politics.²⁶

30.1. On 14 June 2017, Al-Shabaab official Sheikh Mahad Warsame (also known as Abu Abdirahman) called on mujahideen forces to make attacking the United States and United Kingdom their "number one priority" because they were the cause of the "direct and indirect invasion" of Somalia.²⁷ In July 2017, Al-Shabaab also released a video vowing retribution on Kenya for sending troops to Somalia to take part in AMISOM, stating, "your military's invasion of Somalia will continue to destabilise your country...when we do strike, your government will not be able to protect you".²⁸

30.2. On 21 July 2017, Al-Shabaab released the first edition of an English-language news magazine called Al-Hijrah Bulletin, urging followers to identify and reject plots to "water down" Al-Shabaab. The bulletin listed Al-Shabaab's local and global goals as establishing God's religion (Islam) and restoring a caliphate upon the prophet's methodology; countering global Crusaders attacks and Ethiopian Christian attacks; setting up a cohesive Muslim society and bringing back the people to their Lord through Shar'ia law; confronting the tyrants and the secularist governments; reviving abandoned religious duties such as the participation in Jihad, and being loyal to the believers and disavowing the unbelievers; uniting the Muslim Ummah under the banner of Shar'ia law; freeing Muslim prisoners, and; protecting the wealth of Muslims.²⁹

Organisation and structure

31. Al-Shabaab has continued to endure the deaths of numerous leadership figures. For example, seven Al-Shabaab commanders were killed in April 2016 and in June 2016, regional forces in Somalia reported Mohamed Kuno, the leader of an attack on Garissa University in Kenya in April 2015, was killed in an overnight raid on a convoy in Kismayo, Somalia.³⁰ In July 2017, senior Al-Shabaab commander Ali Mohamed Hussein, responsible for planning and executing several bombings and assassinations, was killed during a military raid near Torotoroow.³¹ On 4 January 2018, Al-Shabaab's deputy commander for Lower Shabelle region was killed by security forces.³²

32. In November 2017, Al-Shabaab's leadership was reported as facing a loss of support amongst Kenyan middle-level commanders following the indiscriminate killing of Muslims in Mandera and Garissa. Other infighting and the emergence of splinter groups has also been reported on, partly attributed to ongoing attempts by leaders to advance personal interests.³³ Strong interpersonal ties and a capable internal security network have however helped senior leadership maintain overall unity, and Al-Shabaab has remained resilient throughout ongoing territorial, military and economic setbacks.³⁴

32.1. On 13 August 2017, Muktar Robow, a former Al-Shabaab leader and spokesman, surrendered to Somali forces. Al-Shabaab had attempted to kill or capture Robow since he fell out with the group in 2013.³⁵

32.2. In April 2018, reports began to emerge that Al-Shabaab's leader since September 2014, Ahmed Umar, was critically ill. Although the nature and extent of his illness is not clear, deputies within Al-Shabaab's executive council (Shura) have reportedly discussed his possible succession but remain divided on an outcome.³⁶

32.3. Some Al-Shabaab splinter groups have pledged allegiance to Islamic State in Iraq and the Levant (ISIL), while others remain loyal to Al-Qaeda. The emergence of pro-ISIL cells in Somalia in mid-October 2015 has not significantly challenged Al-Shabaab's authority, largely due to ISIL Somalia's inferior capabilities in terms of capacity for violence, governance and propaganda.³⁷ 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.³⁸

32.4. The main pro-ISIL faction within Somalia is estimated to number around 200 members, while Al-Shabaab membership is estimated between 5,000 and 9,000.³⁹ Most Al-Shabaab fighters are native Somalis, with a significant portion also from Kenya, Uganda, Tanzania and other East African states. Foreign fighters also continue to be documented within Al-Shabaab's ranks.⁴⁰

Weapons, tactics and capability

33. Al-Shabaab is active in all 18 of Somalia's administrative divisions, with particularly significant presence or control on the outskirts of Mogadishu and rural areas in south and central Somalia.⁴¹ Al-Shabaab also maintains a significant presence in northern Somalia.⁴² Al-Shabaab controls supply routes between towns, and obtains funding through taxation and extortion of trade and business activities in controlled territories.⁴³ Operations outside of Somalia remain concentrated in East African nations, particularly Kenya.⁴⁴ Raids, ambushes and attacks conducted in Kenya attempt to pressure the Kenyan government into withdrawing troops from Somalia.⁴⁵

34. While large-scale attacks on soft targets such as hotels and restaurants are an important part of Al-Shabaab's strategy, Al-Shabaab has focused the majority of its attacks against AMISOM, the FGS and opposing militia bases using a range of hit-and-run attacks, small unit attacks, and planned co-ordinated attacks.⁴⁶ Tactics also include grenade and mortar shellings, ambushes, targeted assassinations with firearms and the use of IEDs and VBIEDs.⁴⁷ Al-Shabaab conducted a record 395 IED attacks in 2016, doubling the number of IED-related injuries and tripling IED-related deaths compared to 2015.⁴⁸ In 2017, Al-Shabaab launched 982 attacks, killing 2,420 people. 270 of these attacks were large-scale attacks against military forces and AMISOM.⁴⁹

35. In January 2018, Human Rights Watch reported Al-Shabaab had initiated an "aggressive" campaign to recruit children, threatening civilians to hand children over for "indoctrination and training". Hundreds of children reportedly fled their homes to avoid this fate, and communities refusing to comply received death threats or had elders abducted. Al-Shabaab is known to run religious schools in areas under their control, pressuring teachers to teach their curriculum.⁵⁰ On 20 January 2018, 32 children taken as recruits were rescued from a school run by Al-Shabaab.⁵¹

36. Al-Shabaab's media department remains strong and multi-faceted, and continues to focus on recruiting East African foreign fighters and establishing ties with local militant groups in Kenya and Tanzania. Al-Shabaab produces video, audio and written releases and maintains local media capabilities in Somalia including numerous radio broadcasts.⁵² Al-Shabaab also continues to maintain an active presence via online social media platforms such as Twitter and Telegram to spread propaganda in English, Arabic, Somali, Swahili and Oromo.⁵³

LAW OF ARMED CONFLICT (LOAC)

37. 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, police officers, military and infrastructure and so breach the LOAC principle of distinction. Accordingly, the exemption in s 5(4) cannot apply, and Al-Shabaab's attacks are properly characterised as terrorist acts.

CONCLUSION

38. 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.
39. Since its designation in February 2010, and renewals in February 2013 and February 2016, Al-Shabaab has continued to carry out activities which meet the definition of terrorist acts in ss 5 and 25 of the TSA (paragraphs 11-29). 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.
40. The designation must be renewed by 2 February 2019 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 statements of case, dated 11 February 2013 and 2 February 2016, can be accessed at:

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

<http://www.police.govt.nz/sites/default/files/publications/renew-al-shabaab-as-terrorist-9-feb-2016.pdf>.

³ 03/02/2016 “Explosion on flight from Somalia was caused by bomb, sources say”, The Guardian, accessed via <https://www.theguardian.com/world/2016/feb/03/explosion-daallo-airlines-flight-somalia-bomb> on 31/08/2018, and;

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⁴ 08/03/2016 “Double attack kills at least 38 people in Somalia’s Bay”, IHS Jane’s 360, accessed via <http://www.janes.com/article/58625/double-attack-kills-at-least-38-people-in-somalia-s-bay> on 02/09/2016, and;

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⁵ 03/06/2016 “Al-Shabaab militants kill at least 16 people in Somalia’s Mogadishu”, IHS Jane’s 360, <http://www.janes.com/article/60965/al-shabaab-militants-kill-at-least-16-people-in-somalia-s-mogadishu> on 02/09/2016, and;

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⁶ 25/06/2016 “Somalia: Deadly al-Shabab attack on Mogadishu hotel”, BBC News, accessed via

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