



## The Listing

### **The criteria for listing an organisation**

#### The legal criteria

2.1 To be specified as a terrorist organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1 of the Criminal Code, the Minister:

Must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur); or

Advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).<sup>1</sup>

2.2 To provide further clarification of this definition, Section 102.1 (1A) of the Criminal Code states that an organisation advocates the doing of a terrorist act if:

The organisation directly or indirectly counsels or urges the doing of a terrorist act; or

The organisation directly or indirectly provides instruction on the doing of a terrorist act; or

The organisation directly praises the doing of a terrorist act in circumstances where there is risk that such praise might have the effect of leading a person (regardless of his or her age or mental

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<sup>1</sup> Paragraphs 102.1(2) (a) and (b) of the *Criminal Code Act 1995*.

impairment (within the meaning of section 7.3) that the person might suffer) to engage in a terrorist act.<sup>2</sup>

## ASIO's guidelines

2.3 At its hearing on 1 February 2005 for the *Review of the listing of six terrorist organisations*, the Director-General of ASIO advised the Committee of ASIO's evaluation process in selecting entities for proscription under the Criminal Code. Some of the factors included:

- Engagement in terrorism;
- Ideology and links to other terrorist groups or networks;
- Links to Australia;
- Threat to Australian interests;
- Proscription by the UN or like-minded countries; and
- Engagement in peace and mediation processes.<sup>3</sup>

2.4 The Committee notes that these guidelines are indicators only and are not formally set out in the Act however the Committee has found these to be a useful tool in reviewing the listing of terrorist organisations.

2.5 The Committee has decided to continue to use these guidelines to assist its review of Al-Shabaab. The Committee has previously accepted, and again reiterates that, the absence of information in relation to these guidelines is not determinative of the listing of an organisation.

## Recent criminal charges and this listing

2.6 On 4 August 2009 a total of 5 persons were arrested in Melbourne and were charged with offences arising out of the Australian Federal Police investigation known as operation Neath.

2.7 The main charges were:

- Conspiring to do acts in preparation for a terrorist act contrary to sections 11.5 and 101.6(1) of the *Criminal Code 1995*, namely an armed attack on the Australian Army base at Holsworthy in New South Wales;
- Aiding and abetting the commission of an offence against section 6(1) of the *Crimes (Foreign Incursions and Recruitment) Act 1978* by another person to undertake armed hostilities in Somalia; and,

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2 Paragraphs 102.1 (1A) (a) (b) and (c) of the *Criminal Code Act 1995*.

3 *Confidential exhibit*, ASIO, tabled 1 February 2005.

- Undertaking preparations for incursions into a foreign State, namely Somalia, contrary to section 791) of the *Crimes (Foreign Incursions and Recruitment) Act 1978*.
- 2.8 The Committee raised concerns with the Attorney-General's Department that this listing might be seen to interfere with or be prejudicial to the court proceedings in relation to the above charges.
- 2.9 The Attorney-General's Department pointed out that none of the charges related to membership of a terrorist organisation and that this listing would not affect the proceedings or make it easier for the Commonwealth to prove its case against the accused:
- . . . this listing has nothing to do with assisting us to prove the charges with which we have charged these people. Where the listing is important is the potential for the need for the legislation in relation to other people in the future.<sup>4</sup>

## Overview

- 2.10 This report is a consideration of the initial listing of Al-Shabaab under the Criminal Code.
- 2.11 The Attorney-General's statement of reasons is as follows:

### **Al-Shabaab**

**(Also known as: Al-Shabaab al-Islamiya, Harakat al-Shabaab al-Mujahideen, Mujahidin Youth Movement, Shabaab al-Mujahideen Movement, Young Mujahideen Movement, Young Mujahideen Movement in Somalia)**

The following information is based on publicly available details about the al-Shabaab. These details are accurate and reliable and have been corroborated by classified information.

### **Basis for listing a terrorist organisation**

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

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4 Private Hearing Transcript.

- is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
- advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

### **Details of the organisation**

Al-Shabaab, or 'the youth', is the name often applied to the Somali militant group which was formerly the most prominent of the militia groups comprising the militant wing of the Council of Islamic Courts (CIC). Al-Shabaab encompasses a range of elements, ranging from those focused solely on the domestic insurgency in Somalia to elements that support al-Qa'ida's global ideology of violent extremism. Elements of al-Shabaab are linked to al-Qa'ida through leadership contacts and training, both recent and historical, and by al-Qa'ida senior leadership endorsement of its activities.

The CIC held power in much of southern Somalia during the second half of 2006, before being ousted in December 2006 by Somali Transitional Federal Government (TFG) and Ethiopian forces. From that time al-Shabaab has conducted a violent insurgency against TFG and Ethiopian forces. It has also carried out attacks against peacekeeping forces from Uganda and Burundi, who are in Somalia as part of an African Union (AU) peacekeeping mission.

During the last few months of 2008, al-Shabaab militants spread their control over large areas of southern and central Somalia, including the significant cities of Kismaayo and Merca. Ethiopian troops withdrew from Somalia during January 2009, in line with a UN-brokered peace agreement reached in Djibouti in August 2008. Following the Ethiopian withdrawal al-Shabaab took control of areas of Mogadishu.

On 31 January 2009 Sheikh Sharif Sheikh Ahmed, leader of the moderate wing of the Alliance for the Re-Liberation of Somalia (ARS), was elected President of Somalia by an expanded session of the appointed Somali Parliament in Djibouti. He succeeded Abdullahi Yusuf, who resigned the Presidency on 29 December 2008. Al-Shabaab is opposed to the Djibouti peace agreement, and continues its opposition to the Somali government. An al-Shabaab

spokesman has said it will continue to fight foreign forces in Somalia, and the TFG.

The security environment in Somalia deteriorated during May 2009. Al-Shabaab and other Islamic militant groups engaged in an intensive violent campaign, centred in Mogadishu, against the Somali government and AU peacekeeping forces.

In a February 2009 video statement senior al-Qa'ida figure Sheikh Abu Yahya al-Libi congratulated al-Shabaab on its victory in causing the withdrawal of Ethiopian troops from Somalia. He also urged them to continue jihad against the Somali government and President, and their supporters.

Also in February, al-Qa'ida second-in-command Ayman al-Zawahiri issued a video statement which included a call to the mujahideen of Somalia to reject the government of President Sheikh Sharif Sheikh Ahmed. In mid-March al-Qa'ida leader Usama bin Laden issued a statement warning the Somali mujahideen about the new President, and calling for Muslims everywhere to help the Somali mujahideen fight until Somalia is an Islamic state.

Al-Shabaab has a loose leadership structure with a number of regional factions and commanders. It is not clear whether there is an individual overall leader, however the individual often named as having that role is Ahmed Abdi aw-Mohamed aka Ahmed Abdi Godane aka Abu Zubayr. The most publicly visible leader is spokesman Sheikh Mukhtar Robow aka Abu Mansur.

In August 2008, al-Shabaab released a video statement by al-Qa'ida in East Africa network operative Saleh Nabhan, in which al-Shabaab spokesman Sheikh Mukhtar Robow and Nabhan appeared together. In the video Nabhan pledged allegiance to Usama bin Laden, encouraged Muslim youth everywhere to go to Somalia to wage jihad, and was shown instructing recruits at an al-Shabaab training camp in Somalia

A September 2008 statement issued at the end of Ramadan by the al-Qa'ida-linked Dawn Media Centre, issuing seasonal greetings to jihadist leaders, grouped Mukhtar Robow with other jihadist leaders including Usama bin Laden and Ayman al-Zawahiri as one of "our leaders, sheikhs and emirs".

A former prominent al-Shabaab leader, Aden Hashi Ayrow, was killed in a missile strike in the town of Dusamareb on 1 May 2008.

Al-Shabaab spokesmen including Mukhtar Robow vowed revenge for his death - including against Western interests.

Estimates of the numbers of al-Shabaab fighters vary from 3000 to as high as 7000.

### **Terrorist activity of the organisation**

Al-Shabaab's objective is the establishment of an Islamic state in Somalia, based on Islamic law and the elimination of foreign 'infidel' influence. In pursuit of this objective it has been carrying on a violent insurgency against the TFG, Ethiopian forces in Somalia in support of the TFG, and AU peacekeeping forces in Somalia supplied by Uganda and Burundi.

Al-Shabaab seeks the creation of an 'Islamic Emirate of Somalia', to include Somalia, Somaliland, Puntland, north-eastern Kenya, the Ogaden region of Ethiopia, and Djibouti. In December 2008 Mukhtar Robow told al-Jazeera television that after defeating the enemy [Ethiopia] in Somalia, al-Shabaab would "continue fighting and secure the freedom of many other places in the world from the colonialists".

Al-Shabaab has prepared, planned and carried out frequent attacks as part of its violent insurgency since the beginning of 2007. Its tactics have included mortar attacks, and use of rocket-propelled grenades and firearms. During 2007, elements of al-Shabaab appear to have drawn inspiration from violent extremists in Afghanistan and Iraq, and adopted their tactics of Vehicle Borne Improvised Explosive Devices (VBIEDs), roadside bombs and suicide attacks. Suicide-vehicle bombings in Hargeysa and Boosaaso, northern Somalia, in October 2008 have been widely attributed to al-Shabaab.

Al-Shabaab attack claims sometimes appear in internet statements in the name of the Young Mujahideen Movement in Somalia (YMMS), an al-Shabaab alias. There have been numerous statements claiming attacks including attempted assassinations of TFG officials, and against TFG security forces and Ethiopian forces in Mogadishu and surrounding areas. Some more significant terrorist attacks for which responsibility has been claimed by, or reliably attributed to, al-Shabaab include:

- 18 June 2009: A suicide-vehicle bombing attack against the Hotel Medina in Beledweyne killed approximately 20 people

including the Somali security minister and Somalia's former ambassador to Ethiopia. The Mujahidin Youth Movement claimed responsibility and promised more bombings to target those it believes are traitors and invading forces.

- 13 April 2009: Al-Shabaab claimed responsibility for an attack in which an aircraft carrying US Congressman Donald Payne came under mortar fire when departing Mogadishu airport; the aircraft departed safely and there were no casualties. Congressman Payne had been visiting Mogadishu for talks on piracy with the Somali president.
- 22 February 2009: A suicide-vehicle bombing attack against an African Union military base in Mogadishu killed 11 Burundian peacekeeping troops and seriously injured 15 others.
- 29 October 2008: Three suicide-vehicle bombs exploded in Hargeysa, the capital of Somaliland, at the United Nations Development Program (UNDP) Office, the Ethiopian Consulate Office and the President's palace. Two similar attacks in Boosaaso, the Puntland capital, targeted the premises of the Puntland Intelligence Service. Approximately 30 people were killed, the majority in Hargeysa.
- 9 September 2008: Al-Shabaab claims responsibility for murdering Somali MP, Usman Maye, and mounting a large scale offensive against Ethiopian and Somali forces.
- 20-25 August 2008: In late August 2008, YMMS posted seven messages on extremist forums claiming responsibility for a range of attacks between 20-25 August:- the killing of at least 35 militia of a local warlord in Kismaayo; the killing of seven Ugandan peacekeeping soldiers in Mogadishu; the killing of five Ethiopian soldiers in the town of Beledweyne near the Ethiopian border; the killing of three Somali police; an attack on Somali soldiers in two separate incidents in Mogadishu; and an artillery and mortar attack on the Presidential Palace in Mogadishu.
- 21 and 22 May 2008: Al-Shabaab claims Mogadishu attacks, killing or injuring 57 Ethiopian soldiers.
- 13 April 2008: Insurgents loyal to al-Shabaab shot dead two Somali-born Britons and two Kenyans at a school in the central Somali town of Beledweyne. Sheikh Mukhtar Robow confirmed the killings but denied any responsibility.
- 13 March 2008: Three Somali soldiers were killed by al-Shabaab militants on a major road leading from Mogadishu to Baidoa, seat of the TFG.
- 5 February 2008: Bombings killed at least 20 Ethiopian immigrants in the Puntland (northern Somalia) port of Boosaaso. Close to 100 people were wounded. Al-Shabaab said

the attack had targeted Ethiopian soldiers and some of their wives and children had been killed.

- 23 March 2007: A missile attack brought down a Belarusian-owned Il-76 cargo aircraft supporting the AU peacekeeping force. The attack took place shortly after takeoff from Mogadishu Airport, killing the eleven person crew.

Al-Shabaab spokesmen publicly advocated, on a number of occasions, terrorist attacks in revenge for the death of Aden Hashi Ayrow in a US missile strike on 1 May 2008:

- Sheikh Mukhtar Robow called on governments that support Ethiopia and America to keep their citizens out of Somalia. Robow also vowed that al-Shabaab would avenge Ayrow's death and would "redouble the holy war against the infidels."
- Another al-Shabaab leader, Ma'allim Hashi Muhammad Farah, said the mujahideen were ready to take revenge against US troops, and Muslims everywhere would "hunt the US Government."
- Shaykh Muqtar Robow also said al-Shabaab would kill American citizens in Somalia even if they are journalists and aid workers

Statements by al-Shabaab commanders in late 2007 confirmed the militants' intention to continue the insurgency against the TFG and foreign forces in Somalia. According to a December 2007 media report, senior al-Shabaab commander Sheikh Mukhtar Robow announced al-Shabaab planned to intensify its offensive against government troops and their Ethiopian allies. Robow said al-Shabaab had killed nearly 500 Ethiopian soldiers and would fight until foreign troops left Somalia.

As demonstrated, al-Shabaab is directly preparing, planning, assisting in or fostering the doing of terrorist acts. It is submitted the acts attributable to al-Shabaab are terrorist acts as they:

- are done with the intention of advancing a political cause, namely, removing the Somali Government and the elimination of foreign influences from Somalia;
- are intended to coerce or influence by intimidation the governments of foreign countries, namely the US, Uganda, Ethiopia and Burundi, and/or intimidate a section of the US, Ugandan, Ethiopian, Burundi public; and
- constitute acts which cause serious physical harm to persons, including death, as well as serious damage to property.

### Other relevant information

The United States listed al-Shabaab as a terrorist organisation in March 2008.

Al-Shabaab has not been involved in any peace or mediation process in Somalia.

## Engagement in Terrorism

2.12 The statement of reasons lists numerous attacks by Al-Shabaab most of which are confirmed in the research documents<sup>5</sup> the Committee has consulted. In particular the Committee notes the following:

Two months after Médecins sans Frontières lost three staff for the first time in a bomb attack in January 2008, Al-Shabaab leaders threatened that NGOs might be attacked. Care and International Medical Corps were obliged to withdraw entirely because of such threats.<sup>6</sup>

2.13 To threaten the lives of those who only seek to help their fellow human beings is clearly an act of terrorism.

2.14 Al-Shabaab are:

... trying to emulate the Taliban's success in Afghanistan during the 1990s. Formally known as the Mujahideen Youth Movement, the Shabab can recruit from the large numbers of Somalis who have been displaced and impoverished by the relentless fighting. Like the Taliban, the movement promises the end of warlord rule and the re-establishment of law and order by imposing sharia. In return, it demands that its followers pledge loyalty to the group and Islam rather than to their clans.<sup>7</sup>

2.15 The Committee also heard about the age of Al-Shabaab recruits:

It (Al-Shabaab) started about 12 or 15 years ago as a movement, and they were recruiting from the late teenage years for the most part. Some of those teenagers are now older and commanders. But there was a point at which, certainly in about 2000 and 2001, there

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5 The documents consulted do not purport to list all attacks carried out by Al-Shabaab

6 'Somalia: To Move Beyond the Failed State' *Crisis Group Africa Report N°147*, 23 December 2008, p. 19.

7 Chris Jasparo, *Generation Kill – Jihadist Youth Movements*, *Jane's Intelligence Review*, 16 July 2009

was a lot of focus on Al-Shabaab because they were actually forcibly recruiting younger children.<sup>8</sup>

2.16 The Committee is satisfied that Al-Shabaab is engaged in terrorist activity.

## Ideology and links to other terrorist groups/networks

### Ideology

2.17 Al-Shabaab 'espouses a strict form of Islam, Salafi/Wahhabism, and websites for the group claim to be waging jihad against infidels'<sup>9</sup>. The International Crisis Group comment that:

Al-Shabaab sees the struggle with its adversaries as essentially ideological. Various Somali jihadi websites have sprung up in the last two years, mainly hosted in Europe and North America. These promote a new militant ideology, which sees "pure" Muslims as being in a permanent state of war with "infidels". Ethiopia is portrayed as the arch-infidel and a bridgehead for Christianity in the Horn of Africa. The Ethiopian "occupation" of Somalia is cast as part of an age-old imperial quest to annex the country and gain an outlet to the Indian Ocean.<sup>10</sup>

### Links to other terrorist groups/networks

2.18 The statement of reasons indicates that Al-Shabaab's main link is to Al Qa'ida although the Council on Foreign Relations states that:

... links between individual Shabaab leaders and individual members of al-Qaeda, but any organizational linkage between the two groups is weak, if it exists at all (many experts note that al-Qaeda operates in a disaggregated manner--so linking self-proclaimed members of Shabaab to self-proclaimed members of al-Qaeda would not necessarily indicate that the two groups are coordinating with one another in a systemic way).<sup>11</sup>

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8 Private Hearing Transcript.

9 Stephanie Hanson, *Al-Shabaab*, Council on Foreign Relations <<http://www.cfr.org/publication/18650/>>

10 'Somalia: To Move Beyond the Failed State' *Crisis Group Africa Report N°147*, 23 December 2008, p. 11.

11 Stephanie Hanson, *Al-Shabaab*, Council on Foreign Relations <<http://www.cfr.org/publication/18650/>>

2.19 In addition the International Crisis Group state that:

Though al-Qaeda never adopted Somalia as a major base for operations, Al-Shabaab militants do not hide their admiration. They revere bin Laden, identify with his dream of a Pax-Islamica, and there have been claims, mainly by Western governments and especially the U.S., of an al-Qaeda link. It is difficult, nevertheless, to prove more than ideological sympathy or that either the militia, or the wider Islamist movement in Somalia, is under the tutelage of that organisation. It is a self-radicalising movement, whose aims are local and national.<sup>12</sup>

## Links to Australia

2.20 The statement of reasons does not refer to any links between Al-Shabaab and Australia. It is well known that recent terrorist suspects have been reported as being linked with Al-Shabaab. The organisation itself has denied this. Sheik Ali Mohamoud Rage stated:

We have heard that Australia has arrested Somali men and suspect them of connections with our group, but I can tell you that the Shabab doesn't have nobody (sic) in Australia and that the arrested men are not in any way connected with us.<sup>13</sup>

2.21 As these matters will come before Australian courts the Committee will not comment further.

## Threat to Australian interests

2.22 The statement of reasons contains no information on this matter.

## Proscription by the UN or like-minded countries

2.23 As detailed in the statement of reasons Al-Shabaab has been listed by the United States. Al-Shabaab's reaction to this was to state that:

. . . it was happy to be on the terrorism list, because it would help recruiting and further internationalise its cause.<sup>14</sup>

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12 'Somalia: To Move Beyond the Failed State' *Crisis Group Africa Report N°147*, 23 December 2008, p. 15.

13 Jane's Terrorism and Insurgency Centre, *Somalia's Shabab deny links with men arrested in Australia*, 6 August 2009.

14 'Somalia: To Move Beyond the Failed State' *Crisis Group Africa Report No. 147*, 23 December 2008, p. 26.

## Engagement in Peace and Mediation processes

- 2.24 As noted in the statement of reasons Al-Shabaab is not involved in any peace or mediation processes in Somalia. Al-Shabaab has previously rejected the 'Djibouti Peace Process.'<sup>15</sup>

## Conclusion

- 2.25 The Committee found that Al-Shabaab engages in activities that satisfy section 102.1 of the Criminal Code. The Committee does not recommend disallowance of the regulation.

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### Recommendation 1

**The Committee does not recommend the disallowance of the regulations, made under the Criminal Code section 102.1, to list the organisation**

- **Al-Shabaab**

**as a terrorist organisation.**

**The Hon Arch Bevis MP**

Chairman

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15 'Somalia: To Move Beyond the Failed State' *Crisis Group Africa Report No. 147*, 23 December 2008, p. i.