

Submission No:.....3.....

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Secretary:.....Margaret Engel.....

16 January 2006

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Committee Secretary
Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Secretary,

Submission in relation to the proscription of the *Kurdistan Workers Party (PKK)*

I appreciate the opportunity to participate in the above review. I am in my final year of an Arts/Law degree at the University of Melbourne. I was the convener of the inaugural Law Students for a Just Community Conference in 2005 and am a co-founder of the Law Students for a Just Community.

I wish to express the following concerns regarding the listing of the PKK under the *Criminal Code*.

General concerns relating to the proscription of organisations under the *Criminal Code*

I am concerned that the proscription power breaches a fundamental principle of criminal law, whereby guilt is attributed to individuals on the basis of their own individual actions in causing harm or damage. Instead, the proscription power relies on guilt by association, by imposing criminal liability on whole groups and on those who associate with them. It therefore imposes criminal liability on individuals who may have no proven or provable connection to violent acts which threaten the safety of the public.

Whilst I do not support the violent activities of the PKK, banning organisations that do not pose a direct threat to Australia's domestic national security reflects a highly politicised and undemocratic process. That the listing of the PKK was made one week after the visit of the Turkish Prime Minister may imply that this proscription serves mainly to criminalise domestic support for the political opponents of an Australia ally.

I am also concerned that this proscription is inconsistent with Australia's international obligations under the *International Covenant on Civil and Political Rights*, most notably those obligations relating to freedom of association (Article 22). The listing power places a greater restriction on the right to freedom of association than is necessary in a democratic society to maintain national security.

17/01/2006

Furthermore, I believe that listing of this organisation is not necessary in order to protect the public from any politically and religiously motivated violence within Australia. Were any threats to Australia verified, acts such as bombings, murder, kidnapping and the planning of such crimes are already illegal under existing criminal law. It is unnecessarily pre-emptive and founded on a high degree of speculation rather than substantial evidence.

Broad Listing Criteria

The criteria for listing organisations are overly broad, which in turn creates issues of inconsistent application and excessive Ministerial discretion. The determinative criterion for listing hinges on the definition of a 'terrorist act', which covers a broad range of acts and threats of acts.

Given this wide ministerial discretion, this power must be exercised in an open and transparent manner to ensure due process, and executive accountability, which should involve public disclosure of all criteria, evidence and processes involved in its exercise. In this case the Attorney General has not made public sufficient verifiable and credible grounds for proscription of the PKK.

Terrorist organisation offences

The *Criminal Code* provides for a number of offences, which arise where an organisation has been listed or where an organisation fits the definition of a terrorist organisation. The terms involved in defining these offences are overly broad and vague and therefore have the potential to apply to an excessively large category of people.

In my view the penalties specified for these offences are overwhelmingly excessive and disproportionate given the breadth of offences and the absence of any requirement that there be a nexus between the offences and actual terrorist violence.

Political context of the proscription of the PKK

It is widely acknowledged that Turkish-Kurds have been and continue to be persecuted, dispossessed and have their human rights violated by the Turkish government.

Turkey imputes a range of human rights organisations and democratic parliamentary parties as PKK 'sympathisers'. There is extensive evidence from human rights organisations that individuals associated with the PKK and organisations imputed as supporters of the PKK are subject to state surveillance, harassment, torture, disappearance, and extra judicial killings. In such a context of severe political repression, with a plethora of state security forces and armed actors it is extremely difficult to assess the veracity of reports of any 'terrorist' incidents with certainty. ASIO's unreferenced and unverified 3-page security assessment needs to be read in this context.

Lack of justification for proscription of the PKK

The government's case for proscribing the PKK makes no claims and presents no evidence of any threat of violence in Australia by the PKK. Organisations with no links to Australia should not be listed.

No consideration is given to contemporary politics in Turkey and the pressure from international human rights organisations and the European Union for Turkey to engage with the PKK for a peaceful solution, and the critical role of the PKK in current and future negotiations for peace.

Effect of Proscription of the PKK

The PKK is a complex organisation with both non-violent objectives to pursue Kurdish rights through parliamentary means as well as a military arm. The objective of advancing Kurdish rights is likely to be shared by a large number of Australians. Remembering that no link to any terrorist act is required, and the broad range of associated offences, virtually any support in relation to these objectives leaves Australians open to prosecution. The security assessment provides no analysis of the nature of the relationship of Kurdish people or Kurdish organisations in Australia to the political objectives of the PKK, and fails to address the potentially devastating impact of proscription on communities in Australia.

Criminalisation of the PKK will also affect the status of refugees fleeing from persecution in Turkey, to whom Australia owes an obligation under the UN Convention on Refugees. Claims of persecution due to real or alleged association with the PKK or related organisations will expose refugees and asylum-seekers to criminal prosecution for membership or a number of other serious offences related to a proscribed organisation.

Further concerns relating to the process of proscription of the PKK

I note that there is no information program for community groups who may be potentially affected by the listings despite Recommendation One of the Committee's March 2005 Report.

I am concerned about the lack of adequate notice and time given for public submissions, with the timing over the holiday break particularly counter-productive to an open and accountable process.

In the absence of publicly available, verifiable and credible grounds for proscription beyond discretionary foreign policy motivations, I oppose the listing of the PKK.

Yours faithfully,

Dalit Kaplan

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