



AUSTRALIAN-TAMIL  
RIGHTS ADVOCACY  
COUNCIL

**BY EMAIL**

5 May 2008

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

Dear Committee Secretary,

**Re: Review of the re-listing of the Kurdistan Workers' Party as a terrorist organisation under the *Criminal Code Act 1995*.**

We appreciate the opportunity to participate in the review and enclose our submission.

If you have any queries, please contact me on 0406 831 113 or [atrac.melbourne@gmail.com](mailto:atrac.melbourne@gmail.com).

Yours sincerely,

Mathavan Parameswaran

Australian-Tamil Rights Advocacy Council

encl.

PO BOX 13356  
LAW COURTS  
VIC 8010

## **Australian-Tamil Rights Advocacy Council<sup>1</sup>**

*Submission on the Review of the re-listing of the Kurdistan Workers' Party as a terrorist organisation under the Criminal Code Act 1995*

### **Introduction**

The Kurdish people make up approximately one-fifth of the population of Turkey. The *Treaty of Sevres* in the early 1920s provided for an autonomous Kurdistan but was never implemented.<sup>2</sup> In the subsequent decades, the Kurds have been repressed by successive Turkish governments.<sup>3</sup> The Kurdistan Workers' Party (PKK) was formed in response to this repression. The PKK was listed in Australia as a terrorist organisation in late 2005 and following the lapsing of the listing around the federal election in 2007 was re-listed in February 2008.

The listing of the PKK raises serious concerns as to whether adequate consideration (if any at all) is given to the Kurds' right of self-determination, as recognised by international law. Further, the listing process itself lacks transparency and natural justice and there is strong evidence to indicate that the listing of the PKK occurred at the explicit direction of the Turkish government. Finally, the effect of the listing of the PKK on the Australian Kurdish community unhappily erodes the Kurds' rights to freedom of speech and political association and their right to engage in activities that express Kurdish identity. Such erosion sits in serious tension with the Australian values of liberal democracy and multiculturalism.

It should be noted that if preventing political violence in localised foreign conflicts (that have no bearing on Australia) is to be pursued, it should be pursued through an appropriate international mechanism that genuinely considers all sides to a conflict.

### **Self-determination**

International law currently recognises that 'all peoples have the right of self-determination' which includes the right to full independence, and should therefore accommodate claims of secession.<sup>4</sup> In the subsequent decades after the establishment of the Turkish State in the 1920s,

---

<sup>1</sup> ATRAC was formed in 2006 to address the impact of the anti-terrorism legislation on the civil rights of Australian Tamils. ATRAC participated in the 2007 inquiry into the terrorist organisation listing provisions.

<sup>2</sup> For more information, refer to the Kurdistan National Network website <http://www.knn.u-net.com/severt~1.htm>

<sup>3</sup> Refer to Appendix A of submission by the Federation of Community Legal Centres (Vic.) Inc on the Review of the listing of the PKK as a terrorist organisation.

<sup>4</sup> Refer to Article 1 of the International Covenant on Civil and Political Rights and Article 1 of the International Covenant on Economic, Social and Cultural Rights.

the Kurdish people were systematically repressed by the Turkish government and a large number of Kurds have been made refugees as a result of the conflict.<sup>5</sup> As a means of resistance to the ongoing repression of the Kurds, the PKK formed as a 'political party committed to the recognition and establishment of Kurdish identity and the rights of Kurdish people'.<sup>6</sup> The PKK has endured support from the Kurdish people in its armed struggle with the Turkish government. Many argue that it is a legitimate struggle and therefore perhaps a legitimate exercise of the Kurdish community's right of self-determination. The persistence of the armed conflict for many decades is a strong indicator that both sides of the conflict maintain significant public support: whilst many people support the Turkish government, many also support the PKK, the non-state political actor. Because of this, it is important that Australian law avoids taking a political stance by keeping the interests and rights of both parties to the conflict in mind. Listing the PKK as a 'terrorist organisation' results in the casting of an unhappy blanket illegitimacy over all of the PKK's aims, objectives and activities. Within the context of a protracted civil conflict, this listing unfairly intervenes in a foreign conflict on the side of the Turkish government.

### **Defining "terrorism"**

The listing laws identify 'terrorist activity' with a broad category of activity, such as any violence and any threat of violence that is motivated by politics and/or religion. Many political actors, including state governments, engage in this type of activity. One does not envisage, however, that the United States army will ever be listed as a result of engaging in such activity. This is due to the narrow, discretionary and arguably politicised fashion in which the actual listing occurs. It is apparent that only non-state political actors are targeted and that they are targeted simply for their non-statehood status, without any real consideration given to their motives, methods or the intricacies of the conflict of which they are a participant. In the case of the PKK, it is a political actor that seeks to represent the Kurdish people and arguably has legitimate grounds to engage in self-determination.

The official material from the Parliament of Australia alleges that the PKK has engaged in 'terrorist activities'. If this is correct under the listing laws, then it clearly follows that the Turkish government has performed similar acts of terrorism over a longer period of time culminating in the deaths of a large number of Kurdish people and the repression of their rights.<sup>7</sup> Neither the Turkish government, nor any government that engages in brutal policies and

---

<sup>5</sup> For various materials regarding human rights repression, refer the Kurdish Human Rights Project at <<http://www.khrp.org/>>, Human Rights Watch at <<http://hrw.org/doc/?t=europe&c=turkey>> and Amnesty International at <<http://www.amnesty.org/en/region/europe-and-central-asia/balkans/turkey?page=4#report>>.

<sup>6</sup> See *Kurdistan Workers' Party & Ors, R (on the application of) v Secretary of State for the Home Department* [2002] EWHC 644 (Admin) (17th April, 2002) United Kingdom at para 40.

<sup>7</sup> For various materials regarding human rights repression, refer the Kurdish Human Rights Project at <<http://www.khrp.org/>>, Human Rights Watch at <<http://hrw.org/doc/?t=europe&c=turkey>> and Amnesty International at <<http://www.amnesty.org/en/region/europe-and-central-asia/balkans/turkey?page=4#report>>.

methods of repression, is considered a candidate for proscription and it does not seem likely for this to ever be the case (although, as mentioned earlier, some of the activities engaged in by state governments clearly fall within the definition of “terrorism”). This clearly demonstrates that the decision to list is narrowly focused on non-state political actors.

In the interests of avoiding the statist bias that currently exists (as mentioned earlier, this bias is evident when one considers which organisations are targeted), it is critical to re-visit the definition of “terrorism” and “terrorist organisation” and recognise that in some instances, political violence that is instigated by non-state political actors can in fact be legitimate and that in some instances, political violence instigated by state political actors in fact can be illegitimate.

### **Influence from the Turkish government**

In considering the influence of the Turkish government, it is significant to note that the listing of the PKK occurred one week after the visit of the Turkish Prime Minister Erdogan on 7 December 2005.<sup>8</sup> As noted in several submissions, this strengthens the implication that Australia listed the PKK as part of an understanding with the government of Turkey.<sup>9</sup> If this is so, it would be a damning example of the Australian government using the listing provisions as a foreign policy tool.

The majority in the Committee reported that they found no evidence that the Turkish government’s approach had affected the ‘proscription timetable’.<sup>10</sup> They did not conclusively reject, however, the view that the listing of the PKK was influenced by the Turkish government given the available evidence pointing to the possibility of improper influence. As Dr Joo-Cheong Tham notes,

the majority of the parliamentary committee found no evidence that the Turkish Prime Minister’s visit had influenced the timing of the proscription. What it did not reject, however, was the possibility that the banning was influenced by the Turkish government. In fact, DFAT admitted that it received a request from the Turkish government to ban the PKK, which it claimed was forwarded to ASIO and the Attorney-General’s Department seven months before the banning – a claim denied by ASIO.<sup>11</sup>

---

<sup>8</sup> Refer to the Submission of the Federation of Community Legal Centres (Vic.) Inc on the Review of the listing of the PKK as a terrorist organisation, pg 21.

<sup>9</sup> See, for example, the submission by Patrick Emerton on 3 February 2006 to the Parliamentary Joint Committee on Intelligence and Security. See in particular p12 at <http://www.aph.gov.au/House/committee/pjicis/pkk/subs/sub18.pdf>

<sup>10</sup> PJCIS Report on the Review of the listing of the Kurdistan Workers’ Party, paragraph 1.28.

<sup>11</sup> Why the Kurdistan Workers should not be banned, Joo-Cheong Tham, Australian Policy Online ([http://www.apo.org.au/webboard/results.chtml?filename\\_num=76266](http://www.apo.org.au/webboard/results.chtml?filename_num=76266))

## **Lack of transparency and natural justice**

There is an apparent arbitrariness and lack of transparency of the proscription process and a lack of natural justice afforded to those affected. The significant issues to note are:

- There is no avenue to present or hear evidence prior to a decision to proscribe; and
- There is no avenue to present or hear views on the impact of any decision at the community level.

The Sheller Committee report agreed that the process of proscription must be reformed so that

in all but exceptional circumstances, a proposal to proscribe an organisation should be made public and an opportunity given for interested parties to make comment. If practicable the organisation and its members, or persons affected, or interested persons, should be notified and have the opportunity to be heard before an organisation is proscribed. It is probable that this obligation is implicit in the statutory scheme under the common law doctrine of natural justice. It would be better if it were spelled out in the legislation.<sup>12</sup>

Even the decision to re-list the PKK, to which this submission responds, was made with no publically initiated dialogue (with the relevant groups and people affected by the re-listing) prior to the re-listing. When the listing concerns organisations, like the PKK, that do not pose a threat to Australia or Australian interests, there is very little to be gained from a somewhat secretive and in some ways unexpected listing. In these cases, it is much more important to allow for the wider public, especially those Australians affected by the decision, be given an opportunity to express their concerns before the decision is made.

Further, ASIO has commented that the listing criteria are a guide only and that they are to be applied flexibly, and that not all elements of the criteria are necessary before a decision might be taken to list an organisation. The decision to list an organisation and the inevitable community impact is based on an apparent 'judgement' by the Attorney-General on vaguely defined factors with little or no consistency in their application. There is no evidence in past listings of a systematic or unambiguous application of the criteria or any clear definition of what some of the criteria even mean.

Transparency in the proscription process is essential for confidence building at the community level. Without such transparency, the affected community is in effect unfairly "ambushed".

---

<sup>12</sup> Review of Security and Counter Terrorism Legislation, pg 85.

## **The practical impact of the listing on Australian Kurds**

The re-listing of the PKK as a ‘terrorist organisation’ not only shows that Australia does not give serious consideration to the Kurds’ right to self-determination, but will also prevent the Australian Kurdish community from directly or indirectly showing their own personal support for the Kurds’ engagement in self-determination. Some unhappy consequences of this include:

1. Eroding free speech to speak out against rights violations committed by the Turkish government and security forces and supporting the self-determination rights of Kurds;
2. Creating uncertainty over Kurdish activities that are simply an expression of their identity;
3. Eroding freedom of association by creating a wedge between Kurds and the various organisations that support or are sympathetic to the PKK; and
4. Perpetuating the racial profiling of the Kurdish community and isolating them from mainstream Australian society.

## **Recommendation**

For the reasons we outline in this submission, we urge the Committee to recommend for the PKK to be de-listed.