

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

23 January 2006

Dear Secretary,

**Submission in relation to the listing of the Kurdish Workers Party (PKK)
as a “terrorist organisation” under the *Criminal Code***

The RMIT Refugee and Asylum Seeker project works with refugees and asylum seekers accessing post-secondary education. We also undertake public education and advocacy on behalf of refugees and asylum seekers.

The RMIT Refugee and Asylum Seeker project opposes the proscription of the PKK under the *Criminal Code*. We are concerned about the potential effect of the proscription on the Kurdish refugee community in Australia and on the refugee determination process. We believe that the process for the listing of the PKK as a terrorist organisation has been flawed, and that the flaws in the process raise serious concerns about the way that the proscription will be enforced and policed. We are concerned about evidence from the United Kingdom of prosecution of non violent self determination activities of Kurdish people after the listing there of the PKK and other Turkish political groups. We note that the right to self determination of ethnic and religious minorities is protected by the International Covenant on Civil and Political Rights.

Exposure of Kurdish refugees to criminal prosecution

The Turkish state has been engaged in armed conflict with Kurdish groups, including the PKK since the 1980s. The actions of the Turkish state in this conflict have included the destruction of Kurdish villages,¹ extra judicial killings,² torture of Kurdish arrestees, the banning of political organisations and prohibition on publications calling for Kurdish self determination³, and the active prevention of the use of Kurdish language and other symbols⁴. These actions have been found by the Australian government to amount to persecution, and have led to many Turkish Kurds being granted permanent protection in Australia. As recently as July 2005 the Refugee Review Tribunal granted refugee status to a Turkish Kurd who had a well founded fear of persecution on the grounds of his imputed support for the PKK.⁵ The issue of

¹ Human Rights Watch, 2005 *Still Critical: Prospects for Internally Displaced Kurds in Turkey*, <http://www.hrw.org/reports/2005/turkey0305/>

² Kurdish Human Rights Project, March 2005, *Thirteen Bullets – Extra judicial killings in South East Turkey*.

³ See for example the US State Department Report on Human Rights in Turkey 2005, on the attempted banning of Kurdish parliamentary party HADEP in 2004:

<http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm>

⁴ Kurdish Human Rights Project, March 2005, *Thirteen Bullets – Extra judicial killings in South East Turkey*.

⁵ N05/50976 [2005] RRTA 214 (26 July 2005) <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/RRTA/2005/214.html>

imputed or actual support for pro-Kurdish groups, including the PKK, is central to many asylum claims of Turkish Kurds.⁶

Under the *Criminal Code*, people who associate with terrorist organisations are liable for criminal prosecution, regardless of the nature of that association or the intention of the individual to engage in terrorist acts. This is “guilt by association”, and as such violates one of the basic principles of criminal law, which holds that guilt should only be attributed to individuals on the basis of their own actions, not the actions of others.

If a refugee is found guilty of a terrorist offence they face potential visa cancellation, forced return to their country of origin and, therefore, return to the conditions of persecution that forced them to flee. Refugees associating with the PKK are at risk of *refoulement*, even though they may never have participated in or supported the commission of terrorist acts in any way. The imposition of criminal liability is particularly problematic in a context in which the PKK has many “fronts” or manifestations, and also a political wing which pursues the objectives of the organisation separate from armed struggle.

The impact on the refugee determination process

The Refugees Convention states that Convention countries need not grant protection to someone who is guilty of a serious non-political crime. This is even where the person has a well founded fear of persecution and faces the threat of death, imprisonment or torture if returned. Turkish Kurdish asylum seekers who are found to have “associated” with the PKK may be refused protection on these grounds, despite the risks to the individual and the nature of the association. Further Kurdish asylum seekers may be reluctant to disclose the full extent of their association with the PKK and the resultant risk of persecution from the Turkish state for fear of being prosecuted under Australian law with terrorist offences.

Flaws in the listing process

The process for the listing of the PKK has not included public community consultations or provided the Kurdish community with any information as to the effect of proscription. This is in spite of a recommendation from the Parliamentary Joint Committee on ASIO, ASIS and DSD (PJAAD) that before any listing such consultation should take place⁷. The listing process has also not taken into account the complex political context in which the PKK operates, including continued human rights violations by the Turkish State and the participation of the PKK in the peace process. Most notably none of the information made available by the Attorney General has demonstrated any threat to Australia or Australian citizens by the PKK.

The recommendation for proscription was made one week after a visit to Australia by the Turkish Prime Minister, and not in response to any evidence that the PKK was planning attacks in Australia. While in Australia, the Turkish Prime Minister highlighted the importance of the Turkish and Australian intelligence agencies working together and providing each other with information.⁸ We are concerned that this information would include details on the activities of Kurdish refugees in

⁶ See for example the following RRT decisions: V94/01674 (12 June 1996), V02/14408 (5 February 2004), RRT Reference: V94/01674 (12 June 1996)

⁷ PJAAD, 2005, *Review of the listing of six terrorist organisations*

⁸ *Sydney Morning Herald*, “Turkish PM defends trial for mention of genocide” (10 February 2005)

Australia, which would place them and their family members in Turkey at risk of persecution.

The risks to Kurdish refugees are heightened by the imputation to them of pro-PKK positions by the Turkish government. Many Kurdish refugees are people who have been imputed with support for the PKK due to the involvement of family members or their own pro-Kurdish positions. As the Australian Department of Foreign Affairs and Trade has noted:

Sometimes the [Turkish] state has difficulty in drawing the line between true PKK members or sympathisers and people who are Kurdish by ethnic origin and are not associated with any political violence. (CX32372, CIR 390/98, dated 21 October 1998).⁹

The effect of proscription of the PKK in the United Kingdom – criminalisation of pro-Kurdish political activity

The PKK and other political groups active in Turkey have been banned in the United Kingdom. These bans have seen prosecutions in the UK for activities such as campaigning for the right of Kurdish language to be taught in Turkish schools, organising a speaking tour in Europe on Kurdish rights¹⁰ and the distribution of Turkish political newspapers that are even legal in Turkey¹¹. These prosecutions have created a climate of fear amongst Kurds living the UK, and resulted in long terms of pre-trial detention for the accused. We are concerned that as a result of the listing of the PKK similar prosecutions could take place here in Australia.

We urge the committee to recommend against the listing of the PKK. We believe the responsibility of the Australian government to both give genuine consideration to the claims of asylum seekers and to grant full, meaningful and ongoing protection to refugees is compromised by this proscription. The listing exposes refugees to prosecution in Australia and persecution in Turkey. There is nothing in the evidence that has been made available that suggests that such a radical and potentially damaging action is necessary to protect the interests of Australia and Australians. Further it risks “taking sides” against the PKK in a civil conflict and thereby lending tacit support to the human rights violations that continue to be perpetrated by the Turkish State.

Yours faithfully,

Ellen Roberts
RMIT Refugee and Asylum
Seeker Project Officer

Trish van Lint
RMIT Refugee and Asylum
Seeker Project Manager

⁹ DFAT, 1998 report for the Refugee Review Tribunal quoted in V02/14408 (5 February 2004) and accessed at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/rrt/V0214408.html>

¹⁰ Campaign Against Criminalising Communities, 2003, *Terrorising Minority Communities: Anti-terrorism Powers, their use and abuse*, Submission to the Privy Council Review of the Anti-Terrorism Crime and Security Act 2001

¹¹ *The Guardian*, March 2 2004, “£1m terrorism case is thrown out by judge”