

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

By e-mail: pjcis@aph.gov.au

23 January 2006

Dear Secretary

Comments in relation to listing of the Kurdistan Workers Party (PKK) as a 'terrorist organisation' under the Criminal Code

Combined Community Legal Centres Group (NSW) Inc. (CCLCG) has 39 member community legal centres (CLCs) throughout New South Wales, we are also a member of the National Association of Community Legal Centres (NACLC), which is a national body. CCLCG works for the public interest, particularly for disadvantaged and marginalize people and communities. We promote human rights, social justice and a better environment by advocating for access to justice and equitable law and legal systems and through the provision of legal services including strategic case work, community legal education and law reform campaigns.

We support the review role of the Parliamentary Joint Committee on Intelligence and Security ('the Committee'), particularly its efforts in ensuring a merits review of each proscribed organisation listing under the Criminal Code, as essential to ensuring that the government's efforts to prevent politically/ideologically motivated violence, are undertaken in manner that is transparent, accountable and consistent with the rule of law.

As a contribution to the Committee's comprehensive merits review of the proposed proscription of the Kurdistan Workers Party (PKK) under the Criminal Code, we appreciate this opportunity provided to submit our comments on the proposed proscription.

In essence, we support the points made in the submission of the Federation of Community legal Centers Victoria's ('the Federation'). The Federation is a fellow member of NACLC, along with CCLCG, and with whom we have been working towards promoting the application of security measures in a manner consistent with the rule of law and the protection of people's human rights.

The practice of listing organisations unduly impinges on the freedom of association, a fundamental freedom that has been widely recognised as an important characteristic of a democratic society. Given the significant restriction on fundamental freedoms proscription places, it becomes even more necessary to ensure that the practice is not misapplied in an inconsistent, discriminatory or politically motivated manner.

In the interests of ensuring that the proscription power is not abused, we suggest that it should only be used against groups whose principal activities involve extreme acts of political/ideological violence; and after considering the impact of any proposed proscription on freedom of political speech and association. In light of this we have serious concerns that the proscribing the PKK would not meet such considerations.

We reaffirm the following points made by the Federation in arguing against the proscription of 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. Whilst we do not support the activities of the PKK, banning organisations who do not pose a direct threat to Australia's domestic national security reflects a highly politicised and undemocratic process. This is supported by the fact that the listing of the PKK was made one week after the visit of the Turkish Prime Minister. This could indicate that this proscription serves mainly to criminalise domestic support for the political opponents of an Australia ally.
- 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. 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 it is extremely difficult to assess the veracity of reports of any 'terrorist' incidents with certainty. Further, the findings of international human rights organisations and the European Union demonstrate that the PKK has a critical role in current and future negotiations for peace necessary to end such persecution.
- The objective of advancing Kurdish rights is likely to be shared by a large number of Australians. However, as no link to any terrorist act is required, and given the broad range of associated offences, virtually any support in relation to these objectives leaves Australians open to prosecution. Thus the proscription of PKK could have a potentially devastating impact on communities in Australia, and could have a disproportionately negative impact on Australians of Turkish or Kurdish origins.
- 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.

Promoting transparency and accountability within the process will lead to more public confidence in the process and ensure that the interests of security are balanced with the rights of marginalized groups and people in Australia.

In the absence of publicly available, verifiable and credible grounds for proscription beyond discretionary foreign policy motivations, we recommend that the PKK not be listed as a proscribed organisation under the Criminal Code.

Yours sincerely,

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Law Reform and Policy Committee
Combined Community Legal Centres Group (NSW) Inc.