

Parliamentary Joint Committee on Intelligence and Security

Review of the listing provisions of the Criminal Code Act

Supplementary submission

1 June 2007

Would you say that LTTE is broadly supported by most of the Tamil community in Australia?

The LTTE retains broad support among Australian Tamils generally for its objective of Tamil self-determination and the right of Tamils to be treated equally. Australian Tamils are supportive of a just and peaceful resolution to the conflict but one that addresses the historical and ongoing persecution of Tamils by the Sri Lankan government and one that addresses the dire development and humanitarian needs of those residing in the north and east of Sri Lanka. It is important to remember that this is not just the 'mantra' of Tamil grievances but it represents the critical structural flaws in the Sri Lankan Constitution and political system, structural flaws that have consistently failed to provide protection for minority communities and deliver avenues of redress through the political process. Under the 2002 ceasefire agreement brokered by Norway, the LTTE's *de facto* state was implicitly recognised as it was allowed to continue administering the areas demarcated by it – being over two-thirds of the north and east – and enter peace negotiations as the sole representative of the Tamil people. Support for the LTTE grew in the post-ceasefire period as it continued to consolidate on its state building aspirations and demonstrated its capacity to administer territory and a *de facto* government.

What are some of the positive features of the community's engagement with the LTTE?

Given the *de facto* state of the LTTE, all engagement by the Diaspora community with that region (being their homeland) and the people of that region requires engagement with the LTTE and recognition of the LTTE as the government. Engagement with the LTTE is vital for a number of reasons as:

- It is impossible to enter LTTE-administered area without paying a fee for a “passport” (visa) at the LTTE-controlled checkpoint.
- When supplying humanitarian aid, it is in practice difficult to direct it to relevant organisations and communities without engaging with the LTTE and the LTTE also engage in providing development and humanitarian services.
- It is difficult to provide assistance to relatives, friends, and social institutions (for example, schools and orphanages) in the LTTE-administered area without engaging with the LTTE.

Engagement with the LTTE is also an important part of the Diaspora's ongoing efforts to shape the political climate in Sri Lanka to address the aspirations of the Tamil minority, and to build the capacity of the LTTE to engage in the protracted peace process and seek a final solution. The LTTE's political wing has on a number of occasions engaged in discussions with the Sri Lankan government to address the conflict and seek a final solution respecting the interim humanitarian and development needs of the Tamil population. Although there is a renewal of violence in Sri Lanka, the 5-year ceasefire agreement resulted in the most

'successful' peace talks. During this period, a number of Australians engaged the LTTE to build their capacity to engage in peace talks and continue with the development of the north and east.

How many people of Tamil background provide material support to the LTTE?

Many Australians are broadly supportive of the state building aspirations of the LTTE and its objective of Tamil self-determination, but it is difficult to determine how this support is expressed. It is often suggested or alleged that the LTTE receive funding from Tamil diaspora networks. If these funding networks exist then they are not overt and it is difficult, almost impossible, to determine who provides funding for military purposes.

It is a common view within the Tamil Diaspora that historically, culturally and politically Tamils and Sinhalese are two divided ethnic groups and history can verify this division. The movement towards Tamil self-determination grew because of a strong sense of injustice and persecution and a growing enlightenment that Sri Lankan Tamils can have neither justice nor a peaceful future under a Sinhalese government. Both communities are polarised, historically, culturally and politically. It is in this context, that the Tamil Diaspora have continued to support the right of self-determination. This support is expressed as outlined in page 9 of the original submission. The LTTE has a functioning administration in Sri Lanka that operates to meet the interim and long-term needs of its 'citizens' which has been possible from Diaspora support. This support is clearly distinct from any support of the LTTE's military operations.

Kristian Stokke of the University of Oslo examined the process of state-formation in LTTE-controlled areas and the emergence of governance in new state institutions and concluded that:

...the LTTE is currently engaged in a comprehensive process of state building within the areas they control. Within this emerging state apparatus there has been a strong focus on external and internal security issues, with an additional emphasis on social welfare and economic development. The dominant form of governance embedded in the LTTE state institutions is that of a strong and centralised state with few formal institutions for democratic representations, but there are also elements of partnership arrangements and institutional experiments that may serve as a basis for more democratic forms of representation and governance. This is contingent, however, on both a peaceful resolution of the current state of insecurity for Tamils and the LTTE, and on the facilitation and dynamics of pro-democracy forces with the LTTE and in Tamil society at large.¹

Is it plausible to proscribe only the military wing of the LTTE?

When an organisation is a *de facto* government of a *de facto* state of as many as two million people (a government equivalent to that of New Zealand), as the LTTE is, an attempt to divorce its defence activities from other activities is not practical, given that policy priorities, expenditure and so on are determined at a whole-of-government level. Although the LTTE has a clearly distinct civil administration and political role, criminalising the military activities of the LTTE also criminalises the legitimacy of the aspirations of the Tamil minority.

¹ *Building the Tamil Eelam State: Emerging State Institutions and Forms of Governance in LTTE-controlled Areas in Sri Lanka*, Kristian Stokke

Such a move would further encourage an irresponsible Sri Lankan army to launch ruthless and indiscriminate attacks on the Tamil civilian population, which has been occurring for over 25 years.

Is it not legitimate for Australia to say that we will criminalise the sending of money to assist either side in an armed conflict of this kind? What is the line or boundary for the engagement of Tamils in Sri Lanka?

Realistically, the Sri Lankan government or military will not be proscribed under Australian law, because of the diplomatic consequences that this would have; and for the same reasons it is extremely unlikely that Australians will be prosecuted for their engagement with the Sri Lankan government or military. Therefore, even if the rhetoric is even-handed at the abstract level, its practical consequences are likely to be felt only by Australian Tamils.

Financing of terrorism is already illegal under the existing provisions (even then it is important to ensure that the criminalisation does not interfere with cash-flow to humanitarian organisations and friends/family in urgent need of financial assistance).

There are sufficient powers in place to deal with the financing and support of "terrorist organisations", but the effect of proscription is purely political and has no real additional law enforcement advantages. As such proscription will criminalise the legitimate connections and aspirations of the Tamil Diaspora.

As international citizens do we have an obligation to look after others around the globe?

The LTTE poses no direct threat to Australia or to Australian interests. So if Australian law is to take a stand in respect of it, this already presupposes that Australia has a right (and, perhaps, a duty) to intervene in other parts of the world. In such a situation, we have to ensure we have a genuine understanding of the political situation in the country in which we choose to intervene. But this is often difficult. If a struggle for self-determination has persisted for a long time, this persistence is a strong indicator that both sides of the conflict enjoy significant support: many support the government, but many also support the non-state actor seeking self-determination. Therefore it is important that Australian law keep the interests of both in mind when publicly declaring a stance.

A legal intervention that criminalises the LTTE is likely to prevent the Tamil Diaspora from continuing to engage the LTTE in a direction of peace, development and democracy. Currently there are various private individuals and Diaspora think tanks that are considering the best possible ways of engaging the LTTE in a direction of peace, but criminalising them will outlaw this activity. The Tamil Diaspora have to be engaged in the peace process, not detached from it. Historically, it has been members of the Diaspora that have built the capacity of the LTTE to engage in peace talks and provided lines of communication with the Sri Lankan government and international community.

How do you delineate between forces of national liberation and terrorist groups?

Terrorism is not a status, it is a method. Thus, forces of national liberation and terrorist groups are not mutually exclusive, but not all national liberation movements need use terrorist techniques. Many non-state actors engage in politically motivated violence that adheres to the norms of legitimate warfare (targeting only soldiers and officials, but not civilians). Nor are

national armed forces and terrorist groups mutually exclusive. Many state actors engage in terrorist activities, such as the use of death squads, or the bombing of civilians. We need to move away from categorising all non-state actors engaged in political violence as terrorist groups purely because of their non-state status.

With this in mind, it would be a mistake to classify the LTTE as a terrorist group purely because it is a non-state actor. Equally, it would be a mistake to legitimise the Sri Lankan government's terrorist activities (ie aerial bombardment and indiscriminate killing of civilians) purely because it is recognised as a state at international law. Furthermore, such careless application or withholding of the label "terrorist" does very little to help achieve a peaceful resolution to the conflict – in fact, it makes it worse, by de-legitimising one of the necessary parties to the peace, while encouraging the other to continue to pursue ruthless and unjust tactics.

What needs to be given genuine consideration is the LTTE's long-term aims, and the level of support it enjoys from the community it represents. This is a strong indication that it enjoys popular support, and that many sympathise with its goal of self-determination. That the Sri Lankan government and the LTTE are in a military and political deadlock when it comes to finding a permanent solution is conclusive of the broad support both sides retain.