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**The impact of 'terrorist organization' laws on diaspora claims for
self-determination**

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It has become evident that the war on terror has undermined claims for self determination. Since the war on terror, the EU, US and Australia have banned numerous non-state actors engaged in armed struggles who represent self-determination struggles – those in relation to Palestine, the Baluch, Kurds and Tamil peoples, for example. Indeed, these processes of criminalization began well before the war on terror.

I want to discuss the specific ways in which proscription laws specifically undermine the concept and practice of self determination, not only for application in the disputed territories in question, but for the diaspora who are citizens or residents in countries of settlement in Europe and elsewhere that proscribe self determination struggles.

I will focus on a case study of the proscription of the Kurdistan Workers' Party (PKK) in order to discuss its broader political implications for self-determination for other struggles. I want to introduce a way of thinking about the role of proscription in order to bring it to the centre as the most insidious threat to the right to self-determination as an international principle, that is the right of a people to politically decide on their future.

My argument is that there is a clear line of implication between the criminalisation brought about in the diaspora– that is, in the structure of the legal offences and the nature of policing–with the genocidal character of repression of Kurdish identity in Turkey.

I want to suggest that attention to these specificities has value for how we go about campaigning for rights to self determination and against racist criminalization.

Firstly I will examine the situation of the Kurds in Turkey to show how proscription in the diaspora has exacerbated genocidal practices in Turkey, *and* how proscription in particular exacerbates armed conflict and removes opportunity for peaceful resolution. Secondly, I want to look at the impact of proscription on Kurds in the diaspora and its implications for how we understand the role of the west in perpetuating structural violence towards minorities and state terror. Thirdly, I want to conclude

by opening up discussion about how we can develop a praxis against proscription in a way in which we can make self-determination a viable principle in campaigns against terrorism laws.

I am here representing the Campaign Against Criminalising Communities (CAMPACC). CAMPACC has been active in challenging the development of anti-terror legislation in Britain. CAMPACC was formed in early 2001 in reaction to the UK's Terrorism Act 2000 specifically to address concerns about proscription. Most significantly CAMPACC is comprised of those communities most directly affected by the provisions of the Terrorism Act 2000. We seek to document experiences of criminalisation and work with affected peoples to reform the laws.

I want to begin by giving a short background to proscription regimes and how it has eroded the right to self determination and briefly introduce some well rehearsed criticisms of proscription.

Background to proscription

The definition of terrorist act which triggers a states decision to proscribe an organisation is overly broad, and makes no distinction between acts of violence to military or civil targets. It also makes no distinction between acts of violence or threats of violence. The motivation of armed struggle in resisting oppression is totally irrelevant in the definition of terrorist act.

Indeed as has been noted, any use of political violence for any reason, in any part of the world can be proscribed under the law – but in practice the discretion is particular. Use of domestic terrorism law to further foreign policy agendas has been extensively critiqued as has the complete lack of legal grounds for decisions to list particular organisations. But the literature which critiques the effects of proscription on self-determination is more thin on the ground.

In the UK, the proscription regime began before september 11 in march 2001 when 21 organisations were proscribed under the Terrorism Act 2000 - hence before the time when the discourse of preventing direct threats to the UK became instituted. Instead, the laws had nothing to do with preventing political violence against civilians but represented the consensus between states to foreclose any possibility for changing state boundaries post the decolonisation period.

The EU made its first list in november 2001 but the PKK was listed by the EU only 6 months later due to extensive lobbying by Turkey. The

PKK were listed in spite of observing a 6 year ceasefire where no violence was conducted and when it created a successor organization (Kadek) whose purpose was not a separate state but recognition of ethnic identity in the constitution and a democratic settlement. The listing of Kongra-gel (a civil society arm of the PKK) in 2004 by the EU has been argued to have precipitated the PKK's return to violence in that year, as avenues for dialogue were closed off.

A range of offences flow from proscription make virtually any connection with a listed organisation criminal. This is a vast departure from basic principals of criminal law as the offences criminalize a persons relationship to an organization, rather than acts of violence by an individual.

How has proscription effected the right to self determination and law of armed conflict?

Mark Muller QC has argued that the failure of the UN in its security council resolution 1373 to define terrorism resulted in outsourcing the definition of terrorism to the national law of individual states, Muller notes this has effectively outsourced the principles of self-determination to the foreign policy dictates of alliances of states.¹

Moreover, Muller argues that what proscription has done in this outsourcing from international law to states, is to suppress the key principles in international law for responding to a states denial of self-determination and creating new norms:

1. Proscription has completely undermined the principle which prohibits the use of military force by oppressive states to suppress lawful self determination;
2. Proscription has delegitimated the license to use military force as a last resort as defences against oppressive regimes by peoples seeking self determination;
3. Proscription has fundamentally reversed the principle that prohibits third states from supporting oppressive states in denying right to self determination. What Cessare termed, institutionalised violence –

¹ Muller M (2008) 'Terrorism, Proscription and the Right to Resist in the Age of Conflict' *KHRP Legal Review* vol 14 pp 47–64.

mechanisms and measures designed to prevent people from exercising their right to self determination.

The erosion of these principles is evident in the case of the proscription of the PKK.

Brief Background to Kurdish Question

The Kurds, numbering some 30 million people, are the world's largest homeless nation, struggling with a history and present reality of continuing persecution and oppression. Today Kurdistan falls within the borders of five countries, Turkey, Armenia, Iran, Iraq and Syria. It is arguably in Turkey where the Kurdish Question is at its most critical and most politically contested.

The roots of today's Kurdish uprising in Turkey can be traced to the formation in 1978 of the PKK, and the subsequent armed struggle begun in 1984 for a separate Kurdish state in response to Turkish genocidal policies against the Kurds. The PKK's present objectives are no longer secession but for regional autonomy and primarily that cultural and political rights to be granted to the Kurds; constitutional amendments to recognize Kurdish identity; political amnesty for PKK militants, and allowing the PKK to participate in political activities.

Proscription has facilitated repression of self-determination movements through the denial and suppression of Kurdish identity

Intensified repression of democratic political spaces and parties over the last few months have jeopardized fragile moves towards democratic resolutions for peace, and has been a major contributing factor in recently escalating the armed conflict.

In 2006 Turkey amended its terrorism laws with draconian provisions that have resulted in mass deterioration in relation to freedoms of expression and association, used to collectively punish Kurds in particular. Among those frequently prosecuted are writers, journalists, Kurdish political activists, parliamentarians and human rights defenders. The aim is to disrupt civil activities and prevent political work.

There is a mass use of charges under offence of membership or support for a terror organisation. Amendments to anti terror laws mean that carrying emblems or signs belonging to a terror organisation, carrying banners or leaflets and shouting or broadcasting slogans are offences that indicate support or membership of a terrorist organisation.

Official government statistics reveal in the last 3 years, 33 000 people have gone to trial for being member of an illegal organisation or offences in relation to demonstrations and propaganda. 11 000 convictions have been made in the last 3 years in relation to terrorism related offences.

The banning of the PKK has criminalized all mass-based and popular Kurdish political parties by association, and removed any legal platforms for political engagement for the Kurds. The popular pro-Kurdish Democratic Society Party (DTP) was banned on 11 December by Turkey's Constitutional Court for collusion with a terrorist organization. The mass arrest of some 1 468 members of the DTP and then, members of the new Peace and Democracy Party (BDP) over the course of 2009, has had grave consequences for the country's future peace and stability.

Severe prison sentences to children who throw stones or who are in the vicinity of demonstrations are justified by the Justice Ministry as a pre-emptive response against the perception that the PKK recruits young people. Under Turkish anti-terror legislation, children between the ages of 15 and 18 can be tried as adults. Most Kurdish children are imprisoned in adult jails because of allegations that they are the PKK, and abuses such as beatings are reported to be common.

In opting for increased repression Turkey has closed off democratic options to the Kurds and telling them in no uncertain terms that their concerns will not be resolved through dialogue. The listing of the PKK by the international community grants Turkey legitimacy in its justification for repressing the Kurdish people in the name of annihilating the PKK. Proscription exacerbates state terror, and at same time, contributes to a closure of any possibility for recognising and addressing state terror.

Proscription escalates military conflicts and undermines peaceful settlement

There is a wealth of evidence that proscription forecloses negotiations for peace by emboldening nation-states to escalate military offensives with the implicit approval of the international community. For instance, in 2008 the Berghof Institute found that proscription of the LTTE encouraged Sri Lanka to entrench its "racially motivated and institutional

repression” against Tamils. This resulted in a “self-fulfilling prophecy” when the LTTE responded to this repression militarily.²

This report was issued just before the horrific events in Sri Lanka where tens of thousands of Tamil civilians were killed by Sri Lankan troops in the annihilation of the LTTE. Evidence given by the head of the Norwegian Monitoring Mission to the Permanent People’s Tribunal on Sri Lanka was found to be compelling by the Tribunal. The Tribunal found that in listing the LTTE as a terrorist organization, the EU engaged in conduct which undermined the 2002 ceasefire agreement, “in spite of being aware of the detrimental consequences to a peace process in the making...”³

The UK however has flatly denied that proscription escalates military conflict. The Home Secretary of the previous labour government responded to the UK Kurdish Federation in writing that the listing of the PKK by the UK has absolutely no impact on its inclusion in negotiations for peace. And yet, today escalation of the military conflict is precisely the effect in Turkey.

Several days ago on 1 June, the PKK announced its formal withdrawal of its unilateral ceasefire, citing intensified bombardments from the Turkish military and the intensification of repression by the Turkish govt and no indication from govt to enter into a political dialogue. The failure of the Governments so called Kurdish initiative for democratisation announced last year, is seen by even conservative analysts in Turkey as major reason for increased PKK attacks on the Turkish army.

Banning the PKK makes it possible for Turkey to deny it as a party to political dialogue. In this way proscription completely undermines the principle of international law which prohibits the use of military force by oppressive state to suppress lawful self determination as well as delegitimizing the license to use force in self defence.

Proscription criminalises diaspora claims to self-determination

I mentioned earlier that one of the key principles of self determination which proscription reverses is that third parties are prohibited from giving

² Suthakaran Nadarajah and Luxshi Vimalarajah, *The Politics of Transformation: The LTTE and the 2002–2006 Peace Process in Sri Lanka*, Berghof Transitions Series No. 4 (Berlin: Berghof Research Center for Constructive Conflict Management 2008), 40, 44.

³ Permanent People’s Tribunal, *Tribunal on Sri Lanka* 14-16 January 2010 at p12.

support to repressive states. I argue that the offences which flow from proscription do precisely this.

In the UK for example the offences are designed to cut off any material support, such as funding, but also emotional and affective support for the PKK and other banned organisations. Practically any connection with banned organisations are criminalised. For example, it is an offence to *belong* to the PKK, to invite support for it, to arrange a meeting which is addressed by a member of the PKK, or to address a meeting to encourage support for it. Offences are punishable by up to 10 years in prison. It is also an offence to wear clothing or display insignia which might arouse reasonable suspicion that the wearer is a member or support of the organisation. The penalty is up to 6 months imprisonment and a fine of £5 000.

A key object of proscription is to remove the sources of legitimacy of non-state actors for their political claims and actions. The explicit aim of proscription is to cut off all ties which legitimate armed resistance movements. For most self-determination struggles, diasporas are the single most important source of legitimacy. Diaspora communities are critically important, politically and ontologically, in formulating claims for self-determination in homelands.

But it is the legitimacy diaspora affords to armed struggle, by virtue of being a people with a shared historical and political culture, which is the target of these laws. Terrorist organisation laws transform diaspora's political claims into a problem for domestic criminal law. In doing so proscription attempts to deterritorialise migrant loyalties and contain political identifications with and within the nation-state.

Terrorist organisation offences makes transnational support for self-determination in homelands illegitimate. But, more than this, the laws also seeks to disrupt formations of ethno-political identity in the UK, as though the mobilisation of these identities constitutes a symbolic violence to Europe. In this sense, the criminalisation which proscription brings about interacts with the varied policies of integration or assimilation in different member states which puts pressure on migrant diasporas in diverse ways. By labelling diasporas who make claims for self-determination as terrorist, proscription fuels nationalistic, anti-immigrant sentiment in Europe

Effects on Kurdish diaspora in Europe

In the UK since the start of 2009 Kurdish communities have reported a massive rise in the harassment, intimidation and detention without charge of community members who are active in diaspora politics. Examples include people being stopped and searched under terror legislation for distributing legal newspapers, and putting up bill posters for Kurdish events. At demonstrations Kurds are repeatedly told that waving the Kurdish flag is an offence under the terror laws.

While these experiences are not new, and Kurds have been targeted well before the war on terror, the level of harassment currently being coordinated across Europe has escalated, and represents a consensus amongst the international community that the PKK is to be annihilated militarily and through criminalisation.

In March this year, dozens of Kurdish activists were arrested in coordinated raids across France Italy Germany and Belgium. Most have been now released. In Belgium the Kurdish broadcaster Roj TV and EU Representative office of newly founded legal Kurdish political party in Turkey, the Peace and Democracy Party (BDP) were raided as well as the Kurdistan National Congress (KNK) head quarters. This is despite the fact that Roj TV was found by a German Court to be allowed to continue broadcasting pending a final decision by the European Court of Justice in relation to a 2008 attempt by Germany to ban Roj TV. The US state department has acknowledged that it encouraged EU cooperation over the arrests.

Proscription intensifies civil conflict and human rights abuses in both Europe and in Turkey

While the rights to freedom of association, freedom of political expression and freedom of movement are undoubtedly breached, more fundamentally proscription generates a form of disciplining which seeks to depoliticise ethnic identity and remarkably supports the eradication of minority ethnic identities. In this way proscription extends the logic of cultural genocide by seeking to disavow a peoples collective connections to self determination.

Proscribing states often argue they seek to eradicate the PKK and not Kurdish rights. But this view denies the intimate relationship Kurds have with the PKK, where even where they disagree with the PKK's tactics, the survival of the Kurds as a people is attributed to the emergence of the PKK's armed struggle against genocidal practices. This conceptual erosion of the right to self defence in furtherance of self-determination is

apparent in attempts in both Turkey and UK amongst moderates to argue for a separation between the Kurdish question and the terrorist status of the PKK.

I will end this talk with a question for discussion. How do we get self-determination onto the political agenda in a way which might have traction? What legal/political strategies can bring self-determination to bare on dominant geo-political interests? What can we learn from the criminalisation of the Northern Ireland conflict and the criminalisation of the Irish community in Britain and elsewhere?