

CONSULTATION PAPER
ON
EXCLUSION OR DEPORTATION FROM THE UK ON NON- CONDUCTIVE GROUNDS

IN THE NAME OF ALLAH, THE MOST BENEFICENT AND THE MOST MERCIFUL

Response from the Muslim Council of Britain

Introduction

1. The MCB welcomes this opportunity to respond to the Home Office consultation document, Exclusion or Deportation from the UK on Non-Conductive Grounds.
2. A Government not only has a right but a duty to exercise its powers for the welfare and security of its citizens. That duty entails an accurate assessment of any threat to security and the use of necessary powers to combat that threat.
3. The MCB consider that a meaningful consultation process must be based on clear and accurate disclosure of the objectives. Whilst “National Security and Public Order in the UK” are clear, “good relations with a third country” is too broad an aim and has little bearing on the legitimate objective of safeguarding the security of our State and the safety of our citizens.
4. In a democratic and forward looking society respect for international law and civilised values must underpin all actions. The Secretary of State must therefore exercise his powers of exclusion and deportation within the boundaries of International Law - The Refugee Convention, and the ECHR with particular regard to the absolute rights guaranteed under Articles 2 and 3.
5. By its definition, the very act of providing an individual international surrogate protection is an act that has the potential to threaten good relations with the country from which protection is sought. However international treaties have legitimised surrogate protection to protect and enhance human rights. Therefore the proposed use of such powers for ensuring “good relations” with third countries appears illogical and illegitimate. Hence as it cannot stand on it’s own as a reason for deportation it should be removed from the objectives.

List of unacceptable behaviours

6. It is our firm and considered view that the list of “unacceptable behaviours” is too wide and lacks clarity. The language used in the consultative document is loose, imprecise and vague. The behaviours that the Government appears to consider as “unacceptable” have the serious potential of stifling legitimate expression of views with such draconian consequences as to cause deep alienation and anguish.

7. At this stage the MCB would like to bring attention to the observations and recommendations of Ben Majekodunmi, Assistant to the Special Representative of the U.N. Secretary General:

Many terrorist groups seek legitimacy by claiming to be defending human rights and to have resorted to terrorism as a last resort to address human rights concerns. If there were genuine human rights defenders actively, visibly and effectively addressing those same human rights concerns, this would help to reduce any claim to legitimacy that these terrorist groups are making. In many instances there are human rights defenders addressing many issues that terrorist groups are also claiming to support but the problem is the perception that those human rights defenders are not being successful in their efforts. My second recommendation would be that supporting human rights defenders and seeking implementation of the Declaration on human rights defenders could be included as a key strategy in counter-terrorism and human rights efforts.¹

8. It is a reality that “terrorists”, legitimate resistance movements and legitimate human rights defenders may seek to address the same human rights concerns. Thus the acts which are illegitimate are sometimes wrongfully extended to include legitimate causes. Whilst there is a shared and universal consensus in the elimination of “terrorism”, there is also universal consensus on the legitimacy of resisting oppression and defending human rights. It would be irresponsible to criminalise legitimate resistance or those who speak in defence or promotion of human rights. Such a measure is likely to undermine the moral authority of the state which could increase the risk of terrorism.

Views which the Government considers foment terrorism or seek to provoke others to terrorist acts –

9. If “terrorism” is to have an international scope then the clause will include those who seek to bring attention to the human rights abuses that cause terrorism. We consider that as expressed in the document it undermines the moral authority of the State. More importantly, it is our view that by censoring legitimate and necessary democratic expression the effect would be to subvert those concerned with legitimate causes and force them to take up illegitimate methods of expression. The sole focus of laws to exclude or deport must be the safety of our citizens and the security of our nation.

Views which the Government considers justify or glorify terrorism

10. Politicians and officials have repeatedly denied any linkage of the July terrorist attacks to foreign policy. They proclaim that to do so is to justify terrorism. However, many people do believe that there is a causal link between terrorism and foreign policy. It will be counterproductive to censor legitimate expression. If discussion of causes of “terrorism” here or abroad is circumscribed, our society will soon resemble a totalitarian state where dissent with official view is treated as crime.

¹ Ben MAJEKODUNMI, Assistant to the Special Representative of the Secretary General; ICJ *Human Rights and Counter-Terrorism: International Monitoring Systems*, October 23 (afternoon) 2003 Palais des Nations (Room XVI), Geneva

11. It is worth pointing out that many democracies were established as a result of acts that could be defined as terrorism. To exclude legitimate resistance is unjustified. To prohibit the expression of views that endanger the peace and security of citizens is of course legitimate provided the danger to peace and security is real and imminent such as when use of violence is espoused or incited.

Views which the Government considers foment other serious criminal activity or seek to provoke other serious criminal acts

12. Both this clause and “fomenting or provoking terrorist acts” must be about “intention” rather than the holding of certain views, otherwise it would lead to very serious difficulties. Studies show direct linkage between alcohol and serious crimes and even certain types of music and serious crime – it would be unfair to criminalise those that promote views intended to further the phenomenon of alcohol or certain music. If this is an attempt to bring in secondary incitement it must be rejected.

Views which the Government considers foster hatred which may lead to intra community violence in the UK

13. The Secretary of State has in the past refused entry to Louis Farrah Khan, the leader of the Nation of Islam, on the grounds of exclusion being conducive to public good for threat to racial harmony. However experience has shown that the exercise of this power has been driven by political rather than legal considerations and this does not bode well for members of minority communities. Vulnerable and powerless communities, who need the most protection, are the most likely to have their views demonised by the influence of more powerful communities.
14. “Foster hatred” can be any view that is disliked by a powerful community. The low threshold entailed in the word “may” means that this provision can be used to prevent anyone who is disliked by a more powerful community. Examples of this include the refusal of entry of human rights defenders such as Yusuf Al-Qaradawi and Tariq Ramadan.

Views which the Government considers advocate violence in furtherance of particular beliefs

15. The struggle for self-determination in accordance with Article 1 of the UN Charter or resistance against oppression are views which may “advocate violence in furtherance of particular beliefs”, and our obligations under international law require us to support such views. It would be wrong to censor such beliefs in liberty and human rights.

Views which the Government considers to be extreme views that are in conflict with the UK’s culture of tolerance

16. The term “extremism” has no legal meaning or definition. Recently the Prime Minister appears to have equated ‘extremism’ with the aspirations of Muslims for Shariah laws in the Muslim world or the desire to see unification of Muslim Countries towards a Caliphate. The aspiration to be governed by Shariah Law is by no means such as to justify it being labelled as “extremism”. In the same vein, the desire to be subjected to

Ecclesiastical Courts for determination of personal rights cannot and would not be termed as “extremism”. Furthermore, history of International politics demonstrates that there is nothing malevolent in federalism.

Conclusion

17. To ensure our safety and security it is imperative to address and eliminate certain specifically and clearly defined actions. The real challenge is to define these actions so that a proper balance is struck between the freedom of expression and the security of the state. However by focusing on other objectives, such as pleasing powerful countries or communities, we will be failing to concentrate our resources on the real threat and will lose sight of the real issues.
 18. The MCB strongly suggest that in this particular context the Secretary of State should hone in on the threat facing the UK and craft policies that deal singularly with that. In any proposed action, the likelihood or danger of targeting individuals or communities should at all costs be avoided. It should be the actions or conduct of an individual that should trigger the power to deport or exclude, rather than association or affiliation with a particular community.
 19. It appears obvious that the proposed new powers are likely to be used much more extensively than before. It also seems clear that the proposed new powers have the serious potential to have a hugely adverse impact on the Muslim community and are likely to be perceived as targeting that community.
 20. In the circumstances it is of fundamental importance that the exercise of these proposed new powers is subjected to the most anxious judicial scrutiny. Each decision must carry with it a full and unrestricted right of appeal and the hearing of such appeals must be public except in the most exceptional circumstances proved to the satisfaction of a Judge. In deciding each case the decision maker must be required to carry out a balancing exercise between public interest and compassionate circumstances particular to the case. The current distinction on judicial oversight of decisions made personally by the Secretary of State should be removed and all such decisions must be reviewable by a time bound statutory right of appeal.
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