

GOVERNMENT DISCUSSION PAPER:

COUNTER-TERRORISM POWERS:
Reconciling Security and Liberty
in an Open Society

A RESPONSE FROM
THE MUSLIM COUNCIL OF BRITAIN

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Introduction

1. This response is submitted by The Muslim Council of Britain (MCB). The MCB is the leading umbrella organisation representing the interests of Muslims in Britain, whilst working for the common good of society as a whole. In its short history, the MCB has built a reputation for consultation, co-operation and co-ordination amongst British Muslims, and a step change in contact between them and the wider society. The MCB has over 400 active affiliate organisations, some of them being umbrella organisations themselves.
2. The MCB have been extremely concerned about the terrorist threat posed to the UK and have acted as far as its power and influence allow in trying to undermine that threat. We have sent letters to all our members and mosques, produced sermons and recently we have produced a booklet, all of these measures have emphasized the need for the Muslim community to be vigilant and cooperate fully with the authorities in identifying and defeating terrorism. This should not however be seen as an acceptance that a threat exists from the Muslim community.
3. In preparing this response paper the MCB have undertaken an extensive consultation process and survey with all of its affiliate members. The submissions cover the issues which Committee is specifically considering in light of the concerns and issues facing the Muslim community in Britain.

Executive Summary

4. The UK's response to the September 11 crises was to introduce the Anti-Terror, Crime and Security Act 2001. Its proactive counter-terror measures violate human rights. It has been stated by the Government that the threat is from members of the Islamic faith. Police practice of targeting Muslims for raids and arrests have also reflected this assumption. Large sections of mainstream media and extreme right elements have mirrored this campaign by also focusing their attention on the aforementioned phenomenon and concluding that there is a broader security threat posed by Muslims in the UK. **The result is an unprecedented boost to Islamophobia which members of the public now recognise as a legitimate and acceptable form of discrimination.**
5. Targeting Muslims and leaving a right wing media to explain and justify such official discrimination results in a circular argument giving the very justification required to maintain a state of emergency. However this can only prove counter-productive to meeting our security needs by diverting increased resources on policing an increasingly marginalised community and alienating the very community whose cooperation is the most vital.
6. The MCB are convinced that with a genuine and consultative process, such as that initiated by the Secretary of State, it is possible for a government to fulfil its short-term duty of protecting its subjects, its long-term duty of maintaining a healthy democracy while avoiding the unnecessary breaches of human rights that are beckoned by history. The MCB do not view these as mutually exclusive objectives, rather as integral components of good governance.
7. Section 2 of this paper examines ATCSA Part 4 in the context of the discussion parameter. **The MCB relies on and fully supports the conclusions and recommendations of the Newton Committee and the Joint Committee on Human Rights. The MCB consider Part 4 of ATCSA to be excessive, discriminatory and disproportionate to the alleged security**

needs met by it and the violation of human rights committed by it. As such it does not warrant derogation and the MCB urges the Government to follow the course of other European states that have used less intrusive measures to successfully meet the same or greater level of threat than that posed to the UK. **The MCB strongly objects to the use of evidence derived through torture as this descends the moral high ground of the government and gives a green light to Human Rights abuses.**

8. Ultimately the proportionality of derogation and intrusions into rights can only be properly assessed when they are weighed against the security threat upon which they are predicated. **Section 3 examines some of these issues and endorses the call of the JCHR to allow for independent democratic assessment of the threat posed to national security.**
9. Section 4 examines the most discriminatory law enforcement practice – stop and search - in the light of the ATCSA. The MCB endorse and adopt the findings and recommendations of the Metropolitan Police Authority in their report and considers there is an added urgency to take on board those conclusions given the unaccountable powers acceded by anti-terror legislation. **In particular the MCB strongly believes that recording faith together with ethnicity to be one of the foremost solutions addressing this problem.**
10. Section 5 looks at the issue of accountability in a broader perspective relevant to the challenges and experiences faced by the Muslim community. The MCB are specifically concerned that Muslims seem to be the most vulnerable to unaccountable actions yet there is no system in place to measure and therefore address that. **The MCB calls on the Secretary of the State to critically review the IPCC and its processes that it employs when dealing with the Muslim communities complaints.**
11. Section 6 discusses the process by which international political organisations that are considered to pose a threat to the UK are proscribed must be fair and transparent. It must follow strict criteria and should not involve political considerations. The government must focus on the threat posed to the UK and

not use its authority to ensure security in a way that is irrelevant or even counterproductive to National Security. **There must therefore be either equal treatment of all “terrorist” groups or clear distinction in the way the government deals with terrorist groups that threaten the state and political groups that use violence. Section 6 also recommends a more consultative and transparent approach to the decision making process in this area.**

12. The last Section examines the ways that the Government can preserve and maintain the boundaries of an open society and tackle one of the most damaging effects of the ATCSA which is to foster the growth of Islamophobia. Such initiatives may include taking measures to give public recognition to wrongful arrests; being more open about arrest, charge and conviction statistics and information; proactively assisting organisations to raise a true awareness of Islam and Muslims. **The MCB calls on the government to proactively launch an awareness campaign about Islam to all major policy making departments within government as well as to the general public. The MCB asks that this be done with full consultation of the Muslim community and its major representatives.**

13. In countering threats a state must consider measures that intrude on certain rights, the MCB feel the level of Islamophobia is such that it does warrant greater consideration of intrusions into the media’s ability to produce material that is erroneous and intended to incite hatred. **The MCB calls on the Secretary of the State to take a determined approach to prosecuting breaches under the Contempt of Court Act 1981. Lastly, the MCB consider it vital that the Muslim community be afforded the same protection that is afforded to all other groups in society. The MCB feel that the introduction of legislation outlawing all religious discrimination (as it does racial discrimination) and outlawing incitement to religious hatred is most urgently required.**

14. It is of the utmost importance that the challenges facing Muslim community in the UK are properly understood and considered before decisions affecting its

future are made. **We therefore specifically request the Secretary of State take on board the conclusions and recommendations of the Report on Islamophobia published by the Commission on British Muslims and Islamophobia (CBMI).**

Traditional Counter-Terrorism Measures and Dangers

15. The State has a duty to protect its citizens from crime, and the tragic events of September 11 have forced governments around the world to reassess the way they execute that duty. While public life has not changed, those events have led to changes in two sections of society, Governments have adopted a far more proactive approach in eliminating terrorism, and traditional right wing enemies of democracies that prey on vulnerable minorities have shifted the focus of aggression upon minorities whom they perceive to be targeted by the pro-active anti-terror measures.
16. Anti-terror measures always compete with and threaten the states obligations to respect the human rights of all within its jurisdiction. The very fact that anti-terror measures will be proactive means that there is an inevitable danger that they may be applied in a way discriminatory to those who are already vulnerable i.e. certain nationalities (or non-nationalities, races and religions).
17. Terrorism and anti-terror measures are not new, both are as old as the history of politics itself - almost every political act of repression, including those perpetrated under Nazi Germany, Stalin and Saddam Hussein, has been conducted in the name of security and the prevention of terrorism. More often than not legitimate measures taken by States to combat terrorism have served as a pretext for infringing the right to liberty and security, freedom of movement, the right to a fair trial, the right to privacy and family life, freedom of expression and the rights to freedom of religion, assembly and association.
18. But a more relevant lesson for our purposes is that in every genuine anti-terrorist campaign, where there had been genuine emergency circumstances, avoidable excesses in human rights abuses had been committed.
19. The MCB are convinced that with a genuine and consultative process, such as that initiated by the Secretary of State, it is possible for government to fulfil its short-term duty of protecting its subjects, its long-term duty of maintaining a healthy democracy and avoid unnecessary breaches of human rights. The MCB

do not view these as mutually exclusive objectives, rather as integral components of good governance. Indeed history tells us that terrorism is born out of and often justified in terms of failures in meeting these objectives.

ATCSA 2001

20. The Anti-Terrorism Crime and Security Act 2001 (hereinafter referred to as ATCSA) was introduced as a reaction to the tragic events of September 11, 2001. The legislation has created a twin-track criminal justice system, whereby suspects falling within the ambit of ‘special anti-terrorism legislation’ have fewer rights than other suspected criminals. It has given police almost unlimited powers for stop and search. The powers of stop and search as well as the process leading to and including detention under the Act are manifestly draconian and fall far short of the well known and greatly cherished values of British justice and the recognised civilised international norms.

ATCSA Part 4

21. Part 4 of the Anti-terrorism Crime and Security Act of 2001, provides for indefinite detention of non-nationals suspected of links to a terrorist organization, but against whom there are no criminal charges. The UK has found it necessary to derogate from Article 5 ECHR. This represents perhaps in Europe today the single most serious violation of human rights linked to the adoption of counter terrorism measures. The UK is the only country in the Council of Europe to have considered it necessary to derogate from Article 5 of the Convention and the only country in the world to have derogated from Article 9 ICCPR.

22. The MCB wish to bring the Secretary of State's attention to the following points addressed by the Newton Committee:¹

- The suspect faces no specific charge and is not presented with the evidence against them.
- The SIAC standard of proof is the low balance of probabilities
- SIAC rules don't oblige the Home Secretary to reveal material that could help the suspect.
- The UK is the only country to have felt it necessary to derogate from Article 5 in order to allow detention.
- Detention is potentially indefinite.
- The selective nature of detention and small number of detainees might avoid political retribution but this does not justify the principle.
- Part 4 has efficacy problems in that it can be used to counter threats from foreigners.
- If those are terrorists then seeking to deport them as an alternative will only export the problem and (given the international nature of terrorism) not offer protection to the UK. They should be tried in a British criminal court.
- There is a serious risk of disenfranchising the British Muslim population.
- There was a one and a half year gap between detention and the first appeal hearings.
- Each appeal requires a new security cleared special advocate who do not see closed material. The supply of such advocates is limited.

23. The Act allows the government to detain suspects for an indefinite period. Although the Act allows scrutiny of the Secretary of State's suspicion by an

¹ Newton Committee report paras 185-201

“independent” body, the body (The Special Immigration Services Commission) is, in our opinion, severely restricted in its power and procedure to carry out a meaningful and fair scrutiny of accusations for which no substantial proof needs to be provided. The system as well as the process inspires no confidence in the proclaimed concept of accountability of decisions made by the Secretary of State. Access of those detained to their legal representatives is extremely limited and we believe that the conditions of detention border on the disgraceful. In our view the procedures as well as the practices allowed by the Act are in clear contravention of Article 6 of the ECHR. These are the words of a former SIAC member Brian Barber²:

...the home secretary may deport an immigrant without having to show that any single one of his past activities contributes towards a case for deportation. He may act in this way merely on the grounds of his belief that future activities of the person concerned might threaten national security, however indirectly. SIAC now has only the most limited power to pass judgment on the reasonableness of that belief. It is difficult to see what functions are left for SIAC short of a decision by the home secretary so wildly irrational as manifestly to warrant judicial intervention. These rulings give him such wide discretion as to make his powers virtually unaccountable.

24. The concept of no appeal to verdicts which have been made in secret by people there to "defend" the state against "terrorists" and other enemies on the basis of charges and evidence, possibly extracted under torture, not made known to the Defendant bear uncomfortable similarities to dictatorial regimes from the past. Part 4 adds to the undermining of the foundation of legality in a way that can be used by unscrupulous men in pursuing their own agenda. It must be recognized that states of emergencies can procure pressures on intelligence and enforcement agencies that are not in the interests of national security and rooted in prejudice. These realities combined with unchecked powers had resulted in grave human rights violations in the not too distant past. The miscarriages of justice involving the Birmingham Six, Judith Ward, the Guildford Four and the Maguire's are examples of the results that flow from pressures being brought on the police, security services and the government.

² Brian Barber explains why he resigned from the Special Immigration Appeals Commission, London Review of Books - 18 March 2004

The MCB is concerned that the current environment is making the possibility of similar miscarriages more possible.

25. The fact that only non-British nationals may be interned indefinitely ensures that the legislation is intrinsically discriminatory. The Committee for the Elimination of Racial Discrimination has expressed deep concern about this provision and has recommended to the Government that it seek to balance the security concerns with the protection of human rights and its international obligations. This view is shared by most civil and human rights institutes and organizations.
26. Part 4 exemplifies the typical excesses of counter-terror legislation. Lord Justice Laws in the Court of Appeal accepted the Secretary of State's argument that the act is not discriminatory, as it could not justifiably apply such extreme measures to UK nationals and that to do so would only increase the aggregate human rights abuses committed. The absurdity of that argument is self-evident and brings not only the Government but also the Judiciary into disrepute. But the very point that detaining British citizens indefinitely on the same basis cannot be justified compromises the proposition that derogation from ECHR was necessary. It is the security threat alone that must justify derogation and not nationality; such arguments show that the security threat itself actually does not warrant derogation. The law requires the government to respect the human rights of all within its jurisdiction without discrimination. There is no justification for a law that targets only non-nationals if nationals are perfectly capable of carrying out the proscribed act.
27. It is conceivable that a genuine threat to national security may require the curtailment of traditional checks and balances that would normally temper unjust convictions, in part 4 this has meant the lowering of standard of proof, the offence is committed on the basis of "reasonable suspicion" only, a standard lower than the balance of probability. Thus the nature of Part 4 is not to find guilt in the accused but to confer on the state a wide margin of error justified on the premise that the state is trying to prevent a serious threat. It is a cautionary measure.

28. However, the experience of those detained under this power shows incarceration to be a punitive measure in itself and not a preventative one. 22 hours a day of virtual solitary confinement without knowing the charge against them and no hope of trial or release have caused some to be mentally impaired and others to attempt suicide. The problem is that they simply have not been charged or convicted of an offence. They are merely suspected. They must be accorded a degree of respect for their human rights commensurate with these factors and also with the point that in the light of the aforementioned those suspected are paying a price on behalf of the rest of society. As examples in Canada, France and Sweden show, electronic tagging, surveillance, open air confinement and holding centres all would meet the necessary requirements of ensuring the Nations security from the potential dangers emanating from the part 4 proscribed acts while avoiding the grave human rights abuses we find ourselves breaching.
29. The alternative offered by the Secretary of State that detainees are free to return to their country of origin is not a serious one in view of the fact that those countries are likely to subject the returnees to persecution. The two who have returned had dual nationalities and returned to France. Additionally, exporting “terrorists” is inconsistent with the international cooperation that is essential to combat terror and leads to the assumption that those detained do not pose a serious terrorist threat.
30. Another social effect of excessive legislation is to make acceptable what was once unacceptable. The recent judgement of the Court of Appeal making acceptable the use of evidence extracted by torture marks a retrogressive turning point in the British civil culture as repugnant as the reintroduction of slavery. None of the other 44 states that have incorporated the European convention on human rights has introduced detention without charge or trial, let alone allowed evidence generated by torture. Similarly, none of the 150 states of the UN convention have publicly taken such a position.

31. It is felt that the inherent unfairness in Part 4 opens floodgates to injustice. By accepting the results obtained from torture we accept responsibility for the whole process - and encourage its continuance. The customary international legal principle of reciprocity means that British citizens may be detained abroad and could have information obtained through torture against them - on the grounds that their country does similar things.
32. There is no doubt as to its illegality, let alone unreliability, but the greatest detriment is the far reaching impact on the conscience of this nation that has provided the moral and legal leadership that had made so many Commonwealth countries look to the English judiciary in deciding their own cases. The public conscience must be compromised and contorted to accept the precedent established by our state that acts of an exceptionally repugnant nature are acceptable if perpetrated against a community that is “different” from us.
33. The wider detriment of the apparent injustice and excessive nature of Part 4 has always been predictable. The effect of unjust laws directed at a distinguishable minority because of a threat they are purported to pose to the majority will mean that the majority will inevitably internalise that relationship and manifest that relationship in the form of prejudice. We draw attention to Peter Hillyard’s study (Suspect community- people’s experience of the prevention of Terrorism Acts in Britain), which noted that one of the results of the police treating the Irish as a suspect community is that the public are encouraged to do the same.³
34. All those detained under Part 4 are Muslim. In line with the observations of the Newton Committee, Lord Carlisle and the JCHR, the MCB, as a result of the Muslim Communities experience, express deep concern as to the way the ATCSA has been applied exclusively to members of the Muslim community. It is noteworthy that no consideration appears to have been given to the carrying out of Community/ Race or religious Impact assessments prior to the

³ ‘Suspect Community – People’s Experience of the Prevention of Terrorism Acts in Britain’, Paddy Hillyard, Pluto Press (1993).

passing of the legislation discussed in this submission. No qualitative surveys have been carried out as to the implantation of these new powers.

35. Traditionally racist entities over the past two years have pointed to the fact that all detained under Part 4 are Muslims as a major limb in their argument that all belonging to the Islamic faith should be removed from the UK. Recent research, such as that undertaken by the European Monitoring Centre on Racism and xenophobia,⁴ has revealed a huge increase in anti-Islamic feeling since 11th September 2001. The backlash has manifested itself in various forms. The number of reported verbal and physical assaults against Muslims has risen sharply and mosques across the country have been vandalised and Muslim cemeteries desecrated.

36. The recent report by the Commission on British Muslims and Islamophobia (CBMI), has warned that more and more Muslims feel excluded from society and simmering tensions, especially in northern English towns, are in danger of boiling over and that there is a real danger of Britain becoming 'institutionally Islamophobic'.

⁴ Summary Report on Islamophobia in the EU after 11 September 2001, European Monitoring Centre on Racism and Xenophobia, May 2002

Threat to National Security

37. The government has declared a state of national emergency which enables it to suspend the application of certain provisions of the European Convention of Human Rights. In this context, a 'state of emergency' is defined as 'an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the state is composed'. The Secretary of State has publicly defended his position on indefinite detention on the basis that those held represent a threat to national security. However some of the Belmarsh detainees are held because they support the Chechen cause for self-determination and from the publicly available information there is no evidence that they either planned or intended to bring harm to the UK. They are certified as non-UK nationals whom the Secretary of State reasonably believes as being 'suspected international terrorists'. Serious as those allegations are, on the facts of the cases, it still does not amount to 'a threat to national security'. Article 15 of the ECHR, permits derogation from Convention rights, "to the extent strictly required by the exigencies of the situation".
38. The MCB understand that the threat must be real and specifically directed against "the organised life of the community of which the state is composed". It is not right, and in the context of ECHR derogation not legitimate, to confuse this clear and direct concern with our international obligations to monitor and take measures to prevent overseas terrorist activities. Surveillance and a certain degree of containment may be warranted in the case of the current Part 4 detainees but certainly not derogation from the states obligation to respect human rights because on the face of it there is no legitimate basis for that derogation. The practice of derogation gives the perception that the Government is playing fast and loose with civil liberties and her international obligations and brings into question the sacredness of the values that we are supposed to be protecting from terrorists.
39. The Director-General of the Security Service, Eliza Manningham-Buller, has informed the public "*it is clear that the threat from Islamist terrorism will be*

with us for a long time. I see no prospect of a significant reduction in the threat posed to the UK and its interests from Islamist terrorism over the next five years, and I fear for a considerable number of years thereafter.'⁵ The Home Secretary has stated that the threat to National Security was self-evident from information already in the public domain.⁶ Despite these assertions we concur with and draw attention to the JCHR that we have "never been presented with the evidence which would enable us to be satisfied of the existence of a public emergency threatening the life of the nation".

40. The strict requirements for derogation do confer on the Secretary of State a margin of appreciation, and the level of that margin will diminish in proportion to the extent the measures in question are seen to trench upon Convention rights. The whole debate on the proportionality of the powers in Part 4 ATCSA 2001 can only be properly assessed in the light of a proper appraisal of the nature and level of the threat.

41. While there may be legitimate reasons for keeping the disclosure of intelligence material to the minimum necessary in a democratic society, we agree with the JCHR that the Secretary of State should seek to bring independent democratic scrutiny to assess the level of threat posed to national security and allow a proper appraisal of proportionality.

⁵ James Smart lecture, 16th October 2003

⁶ March 2004 (HC 417-i)

Stop and Search

42. The pervasive nature of xenophobia is not restricted to extreme elements in society. When xenophobia is not challenged effectively by the state it quickly takes root in the higher echelons of society. Recent history tells us that it takes its most repugnant and powerful form when it is adopted by officialdom. It is difficult to pass a day without an aggressive tabloid and broadsheet newspaper piece that seeks to persuade its enthralled readership that Islam and Muslims present a threat to the UK. It is inevitable that decision-makers and enforcement agents will internalise prejudice and manifest this in their practice. According to the Metropolitan Police Authority (MPA) scrutiny panel's report, the stop and search rates for Asian people in London increased by 41% between 2001 and 2002, while for white people it increased by only 8% over the same period. The MCB endorses the MPA scrutiny panel's report and all of its recommendations.
43. According to the Home Office's own press release of 2 July 2004, Stops and searches under s.44 of TACT for Asians has risen by 302 per cent from 744 to 2,989. Coupled with the above the MCB believes the Muslim community is vindicated in its view that they are being targeted and victimised by this Act.
44. From data released by the MPS, out of 23,441 stops and searches by the Metropolitan police using section 44 (1&2) only 199 arrests were made in 2002/3. This is only 0.85%, which is a staggering low success rate. The MCB endorses fully recommendation 5, 6, 16 to 19 of the MPA scrutiny panel's recommendation on this matter and asks the Secretary of the State to expedite the critical review of the use of stops and searches powers under s.44.
45. The community's distrust of the use of stops and searches is further fuelled by the lack of clarity as to why they are being stopped. This confusion is further compounded in the MPS itself as officers are under trained and not clear as to how, why and when they should be using these powers. There are many officers who believe the use of stops and searches is not, and should not be, based on intelligence; rather the power is there to be a 'disruptive' element

against terrorist cells. The MCB endorses the MPA scrutiny panel's recommendation 6, 16 to 19 and 29. The MCB asks the Secretary of the State to expedite these recommendations with full consultation of the most impacted community.

46. The fact that there is no accurate measurements of how many Muslims are being affected by this Act, in terms of Stop and Search, charge and the nature of those charges, is of great concern and adds to the alienation felt by the community. It is also of concern that there are no records kept of the religion of those stopped and searched. The marker of "Asian" is inadequate to identify and analysis properly the use of stop and search. Additionally, we are concerned that disproportionate use of stop and search is not only being exercised using the Terrorism powers but also the PACE 1984 powers. The respondents to MCB's survey have indicated that "the lack of official record keeping and publishing is adding to the suspicion that Muslims are being profiled and targeted by this Act." The MCB endorses the MPA scrutiny panel's recommendation 14, 20 and 27 and strongly believes that recording faith together with ethnicity will be one of the foremost solutions addressing this problem.

47. We concerned with the delay in the Stop and Search Action Team announced by Home Office Minister Hazel Blears beginning their important work in this vexed area.

48. In this regard the Secretary of State is directed to the written and oral evidence (8th July 2004) the MCB gave to the Home Affairs Select Committee on our concerns about the impact of Anti terrorist legislation (and stop and search in particular) on the Muslim community.

Accountability

49. Khurshid Ahmed, a Commissioner at the Commission for Racial Equality, recently highlighted the impact that the operation of anti-terrorism law has had:

“... there is tremendous disquiet within the community... it has given licence to racist and religious bigots employed within the security services to unleash a form of terror on innocent people up and down the country...the community has the responsibility to co-operate with security agencies to ensure our own safety- but the way to get that co-operation is not by terrorising people and by allowing, without accountability, some within agencies to peddle their race hate among the communities.”⁷

50. Of those surveyed by the MCB, 52% did not have a need to make a complaint to the police, 9% had complained and were satisfied with the response, but 39% felt that there would be no benefit in complaining to the police. Although recent statistics show a 300 per cent rise in stop-and-search of Asians, predominantly Muslims, there has been no corresponding rise in complaints, the Independent Police Complaints Commission say this indicates that many people have lost confidence in the authorities.⁸

51. For many the case of Babar Ahmed is symbolic of police attitudes towards complaints from a suspect community. Early in 2004 a police officer was immediately suspended pending investigation when a complaint was brought that he had beaten a black man in Manchester. It had taken the IPCC nine months to investigate the claim by Babar Ahmed that he had been beaten during a terror raid and forced to prostrate and told by a police officer “where is your God now!” It is alleged that Mr. Ahmed suffered over forty injuries including a black eye and severe bruising.⁹ During the latter investigation the

⁷ *UK Extremism Threat Growing*, BBC News Online, 23 April 2004

⁸ Victims of police are urged to speak out, Eastern Eye, http://www.easterneyeuk.co.uk/iframe_story.asp?NID=793

⁹ Taken from www.stoppoliceterror.com December 2003

police officer in question was free to continue policing. The difference in the two approaches speaks volumes to members of the public. **We are concerned how rare the use of “an apology” is when the police / authorities have clearly acted wrongly.**

52. When ten Manchester Muslims were arrested in dawn raids in April 2004 by over 400 officers the Sun stated ‘Intelligence chiefs believe al-Qaeda fanatics planned to blow themselves up amid 67,000 unsuspecting supporters. A source said: “The target was Old Trafford.”’¹⁰ The same paper also stated ‘a police source said: “The plot involved several individual bombers in separate parts of the stadium. If successful, any such attack would have caused absolute carnage. Thousands of people could have been killed.”’ The newspaper also had access to detailed information regarding the evidence collected by the police that day – specific football tickets. There can be little doubt that members of the Police force improperly disclosed confidential information contrary to existing police disciplinary code. It was also felt that the police source would have known the very serious and damning consequences of the leak and the fact that it’s only possible purpose could have been to feed anti Muslim hysteria.

53. The Muslim Safety Forum¹¹ requested the Chief Constable Greater Manchester Police to carry out an investigation into the improper disclosure of information.¹² The Chief Constable’s office acknowledged that the source of the newspaper article may well have been members of his force but concluded that it was “impractical” to investigate.

54. The blithe manner in which complaints from the Muslim community are dealt with give the strong impression that they are being discriminated against and that their rights can and will be breached with impunity.

¹⁰ The Sun, 20 April 2004

¹¹ The Muslim Safety Forum is an independent body made up of major Islamic organisations. It sits regularly with the MPS to help build better police and community relations

¹² Letter to Michael J. Todd, Chief Constable Greater Manchester Police, *Re Request for investigation into disclosure of confidential information*, 1st June 2004

55. We also believe there needs to better monitoring of how ATCSA powers have been used. **Questions that the Muslim Community have consistently asked over the last 3 years need to be answered openly and on a routine basis. Breakdowns need to be provided of how different police forces are using these powers so that abuses as well as best practice can be shared. This applies to powers such as Stop and searches; stops at ports; warrants for arrest and searches; arrests; charges; convictions; offence for which originally stopped against offence for which convicted. Analysis and scrutiny needs to be applied on the quality of intelligence used by different forces.**

Proscribing Legitimate Political Thought – Criminalising Communities

56. From the 25 proscribed international organizations under the Terrorism Act 2000, 20 are of Muslim background and most, barring the obvious few whose prime objective is violence, are associated with liberation movements that have never posed a threat to mainland national security.
57. There is a danger that struggles for the right to self-determination (Article 1 of the UN Charter) recognised by many as legitimate can be deemed as unlawful, under the Act. Bosnian attempts to resist Serbian ethnic cleansing in 1992 was deemed by many in the Ministry of Defence to be unjustified aggression and support for that could have been proscribed under the present act; however the Government today accepts that a campaign of crimes against humanity had been perpetrated against the Muslims then.
58. Domination, discrimination and denigration of groups and individuals are causes and sometime justifications for terrorism and its proponents. It also the case that certain groupings of people may be vulnerable to oppression because they are powerless and marginalised in international politics and therefore unable to exert political influence in any given state or to express themselves to a sophisticated media in a modern democracy. However there are categories of persons in a modern democracy that will support voiceless oppressed minorities, either those with specific interest in international events or those with a link to those people through geography or cultural and religious interest. Far more often than not a beleaguered and sometimes unfair response by leading international powers will result in international Terrorist groups filling in the void left by the lack of political will to ensure compliance with international law. This was touched upon by Mr. Sergei Ordzhonikidze the United Nations Under-Secretary-General at the 2003 ICJ conference:
- ...wherever human rights are compromised, wherever freedoms are denied, wherever political voices are silenced – that is where terrorist networks can be nurtured and where they may gain strength. Regardless of where they take place, human rights abuses contribute*

*to creating conditions of insecurity and instability with potential worldwide implications.*¹³

59. Muslims form the greatest proportion of the world's population, either as minority or majority populations, living under regimes that rule with austerity. A disproportionate number of the world's population that are oppressed are Muslims, either as minorities, as in Chechnya, or as majorities, as in Algeria. Regardless of nationality and ethnicity Muslims tend to have considerable sympathy with these causes and if "Terrorist" organisations also assist in these causes then there is a danger of criminalising specific communities. Even if the Government is restricted from positively influencing the affairs of another nation there is much that could be done to allow citizens to express support for causes without feeling they need to go underground. In this regard we adopt 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.*¹⁴

60. The divisive political culture that surrounds anti-terrorist legislation can all too easily be manipulated by countries that practice oppression and their supporters to silence genuine voices of peace and moderation. An example of this was the fiasco whereby Sir John Stevens was misled by a pro-Israeli

¹³ Welcome remarks by Mr. Sergei Ordzhonikidze, United Nations Under-Secretary-General, Director-General of the United Nations Office at *Human Rights and Counter-Terrorism: International Monitoring Systems* a conference of experts on human rights and counter-terrorism organized by the International Commission of Jurists, Palais des Nations, Room XVI, Thursday, 23 October 2003.

¹⁴ Ben MAJEKODUNMI, Assistant to the Special Representative of the Secretary General; ICJ *Human Rights and Counter-Terrorism: International Monitoring Systems*, October 23 (afternoon) Palais des Nations (Room XVI), Geneva

member of the MPA and the media to publicly state that he did not wish members of the police to share the same stage as Yusuf Al-Qardawi, a sentiment he later retracted. Mr Al-Qardawi is one of the world's most influential Islamic Scholar whose consistent condemnation of 9/11 and his practical efforts to assist its victims have earned him global praise as the leading Muslim figure for peace. Similarly in the US the Swiss Professor Tariq Ramadan, listed by Time magazine as one of the world's most influential figures who has also advised the British police and has been identified by Sir John Turnbull as a necessary figure in the fight against extremism, has had his visa revoked preventing him from taking up his teaching position at a University there on the basis that he poses a threat to National Security. The State Department acted on the basis of information given to it by pro-Israeli groups based in France.¹⁵

61. It is not difficult for powerful political interests to tar peacemakers with the brush of terrorism and there exists little or no institutional safeguards to prevent this. If political interests can influence the actual decision makers then the lack of due process in anti-terror legal regimes means that it is an instrument that can be easily manipulated for interests entirely irrelevant to the Nations security or interest. This represents an enormous abuse of authority and trust that can be used in a manner contrary to the National interest. A prime example of this is in the United States. Currently a Pentagon analyst from the office of Douglas J. Feith, Under Secretary of Defence for policy, is under investigation for spying for Israel. Feith oversaw the Pentagon's defunct Office of Special Plans, which critics said fed policy-makers uncorroborated pre war intelligence on President Saddam Hussein's Iraq, involving purported ties with the al-Qaeda terror network.¹⁶

62. Another factor that leads many to perceive that current anti-terrorist legislation is unfair is the fact that well-known terrorist organizations with anti-Muslim ideologies are not proscribed. Kach Kahane a Zionist organization proscribed both in the US and Israel, the VHP which is responsible for coordinating the

¹⁵ Muslim Scholar Loses U.S. Visa As Query is Raised, Stephen Kinzer, New York Times, 8/26/04

¹⁶ *FBI Probes if Official Spied for Israel*, Curt Anderson, AP 28/08/2004

massacre of over 2000 Gujarati Muslims; both are freely able to collect funds for overseas terrorist activities. A failure to fairly administer these overwhelming powers may lead to the perception that legislation is a political tool to suppress political dissent and this bites at its very public legitimacy and therefore efficacy.

63. It is in the interest of national security and justice that space which allows citizens to express support for legitimate human rights causes, even though they may coincide with causes pursued by “Terrorist” organisations, be jealously guarded and even supported by the state in order that its supporters be not driven underground as was the case with the Irish population in England over a decade ago.

64. As acknowledged by the Northern Ireland experience, while short-term anti-terrorist measures need to be taken, terrorism will only be defeated when the causes of terror are alleviated. A multifaceted strategy to tackle terrorism requires States to react to both the consequences and causes of the problem. Such a strategy needs to address the various causes or enabling factors of terrorism: discrimination, severe inequality, ethnic hatred, corruption, bad governance, lack of democratic institutions, and resentment felt by groups who are excluded and marginalised at home and abroad. A line that needs to be drawn is the one between support of terrorism and support for the cause which has produced terrorists among its supporters who may find it difficult if not impossible to support the authorities against the terrorists on their own side.

65. Former Chairman of the Security Council's Counter-Terrorism Committee, Ambassador Jeremy Greenstock, did consider it necessary to stress that counter-terrorism measures implementing Security Council Resolution 1373 must be taken in conformity with international law and may not target certain groups or be used for internal political motives. The need to differentiate between terrorism and political acts of violence has recently been touched upon in the representations made by the ICJ to the UN:

There is also a growing tendency to eliminate or restrict the concept of “political offence” in domestic legislation and to consider violent forms of political opposition as terrorist acts. Armed opposition groups may certainly commit terrorist acts forbidden by international law, for which they must be prosecuted and tried. This does not mean, however, that all violent acts carried out for political purposes amount to terrorist acts. Political offences and terrorism are two categories, governed by different legal regimes, especially with regard to extradition, amnesty and asylum.¹⁷

66. Paramount is the need for the decision maker to take counsel in regards to international affairs from objective experts whose credentials are properly tested and measured in their field. Decision makers must be wary of impartial sources of information which will always be readily and attractively available but in the long term will be detrimental to National security and interests. The process where by organisations are proscribed must be more transparent and according to strict criteria that are not subject to political influences or led by non-National Security concerns.
67. If the Secretary of State does have a wide definition of International Terrorism that possibly includes liberation movements it is essential that such terrorism be differentiated from a terrorist threat to National Security which may attract extraordinary measures such as ECHR derogation. A failure to treat the two differently may compromise National Security as the state may be acting unjustly in the international arena by preventing struggles against oppression, for example organisations that partake in terrorist violence because they have no alternative, such as was the case with the ANC.
68. But the need to differentiate and focus specifically on defeating terrorism posing a threat to the UK carries it’s own weight and logic, and surely to act otherwise while using the language of National Security is an abuse of authority.

¹⁷ ICJ representations to the United Nations Sub-Commission on the Promotion and Protection of Human Rights, 56th Session, 26 July to 13 August 2004, Agenda Item 2

69. The Secretary of State has indicated that he does intend to replace Part 4 with legislation that will criminalise UK citizens who associate with “Terrorist” organizations as well as to allow the use of intercept evidence. Greater attention needs to be paid to ensuring proscription is limited to defeating threats facing the UK and that it is administered impartially. The MCB have serious concerns as to the impartiality of the current proscription process and feel widening the net may entrench an already unfair position. There have been three years since 9/11, it is time a more comprehensive and considered anti-terrorist strategy was thought up rather than simply building on emergency provisions.

Counter-Terrorism and the Public Domain

70. In January 2003 the Secretary of State told the Today program that the police had 'actually picked up those who, actually were planning to set up a cell to threaten our country'. It has been reported that both lawyers and journalists believed that the Government had given the media the “green light” to disregard provisions of The 1981 Contempt of Court Act and provide sensationalist coverage of such arrests.¹⁸
71. The earlier practice of the Government to draw media attention to anti-terror campaigns mirrored US practice, as indeed did the decision to administer indefinite administrative detention without trial. Recently there has been widespread criticism that the US administration is using counter terror campaigns to foster a climate of fear for the purpose of political expedience, this has also coincided with the growing unacceptability expressed by American civil society and jurisprudence with their practice of indefinite detention. There is a perception that the UK government had not only followed the US in foreign policy but also in domestic policy re derogation and legislation. It is inevitable also that the public will view domestic anti-terror policy through the prism of international policy, and this does little to inspire confidence, especially in terms of the intelligence that leads the government to act.
72. More recently the Secretary of State has refused to elaborate on the terrorist threat facing the UK as to do so “would prejudice any trial” and also because the inevitable scrutiny that follows may “invite ridicule”. The first concern is a laudable one but the second can only raise more searching questions about whether a state of emergency justifying derogation actually exists.
73. Concerns from our affiliates varied according to race, age and background, but the one factor that each rated as primarily instrumental in stoking Islamophobia was the impact of how the practice of counter-terror measures were portrayed to the public. While many of those wrongfully targeted under

¹⁸ Nick Cohen, Sunday January 12, 2003, The Observer ‘How to stitch up a terror suspect’

the act are released or acquitted, they can never recover from the stigma attached to them and their community. High profile, extravagant and untruthful media attention on arrests under the Act coupled with relative silence on acquittals and releases have left a devastating impression of the Muslim UK community being a fifth column. Over 76% of our members felt that the attitude of the general public towards Muslims had changed for the worse over the past three years. Islamophobia is increasingly becoming acceptable and already is a legitimate form of discrimination.

74. As identified in the CBMI report the current wave of Islamophobia gains oxygen from the domestic and international counter terror measures taken by the Government and the way these are reported in the media. The government has been sensitive to Muslim concerns via institutionally defined media and public relations protocol. The MCB commend the sensitive language used in official press releases.
75. The Secretary of State has repeatedly informed the public that he is not against Muslims but he is against “Terrorists”. This makes little difference to the public who are fed a consistent stream of images of Muslims being dragged from their beds and arrested as suspected terrorists coupled with officialdom warning against Islamic terror.
76. Below is the text an email recently sent to the MCB, it is typical of the many regularly received by the MCB:

To: admin@mcb.org.uk

Sent: Thursday, August 26, 2004 10:42 AM

Subject: more

Do I need to say more?

'Dirty bomb' 8 at Bailey

EIGHT men accused of a "dirty bomb" plot appeared at the Old Bailey yesterday for the first time.

O! Look all Muslims!!

They are charged with conspiracy to murder and commit public nuisance with radioactive materials, gases, chemicals or explosives.

77. From our survey many members of the Muslim community feel that the high profile arrests of Muslim terror suspects and the relative silence that follows is part of a campaign to tarnish the community. The wide scale raids against members of the Muslim are in line with the infamous national anti-terrorist strategy of 'disruption' which had such counter-productive effects on the Irish community. The controversial policy is designed to unsettle terror cells working within immigrant communities in Britain by carrying out sweeps of arrests which are not necessarily designed to lead to charges. It follows that if as the Director-General of Security Services believes the threat is an "Islamic" one then the strategy needs to target that community. Many Muslim leaders now believe disruption is beginning to severely alienate communities from the police.

78. Official community impact measures pale in significance to the disaffection caused to the UK Muslim community. There is a wealth of information available bearing testimony to the way the anti-terror regime in the 80's forced the Irish community in England underground providing a fertile ground for the cultivation of terrorism. It is astonishing that there have been no measures in place to counter the discriminatory effects of current counter-terrorist legislation.

79. The earlier practice of the Secretary of State to draw spectacular attention to “Islamic terror” arrests has whetted the appetite of many of the right wing press who are now unable to present a picture other than that there is a threat from the Muslim community for fear of losing credibility. There are many measures that should be considered to buffer the negative public perception.
80. There must be a determined approach to prosecuting breaches under the Contempt of Court Act 1981. The serious way in which leaks to the press are considered when Government interests are at stake, such as in the David Kelly affair and the leaking of the Hutton report, stands in contrast to the unconcern expressed when it comes to rights to a fair trial of a suspect or the Muslims communities right to be free from discrimination. When the Attorney General was presented evidence that members of the Government, Intelligence services and media had colluded not only in contempt of court but also that the published information was simply not true, his reaction was merely to send notes to editors reminding them of the 1981 provisions. The Race Relations Act makes it obligatory for the government to legislate and carry out its affairs in a manner conducive to race relations.
81. **The long standing practice of the authorities to neither confirm nor deny media speculation into ongoing investigations warrant departure when fabricated stories could cause in the public unwarranted hysteria and distress not to mention fostering racial and religious discrimination.** The Attorney General, Lord Goldsmith, was aware that the Sun was planning to run a fabricated story claiming that Old Trafford was an “Islamic bomb target”, but decided against issuing an injunction against the paper as he decided it 'would not be appropriate'.¹⁹ If the Government can intrude into individual human rights because of exceptional circumstances surely the very real threat posed to the Muslim community and race relations would justify limited press interference to ensure that the public is not falsely misled to such an extent that it may threaten public security or race relations.

¹⁹ *Man U bomb plot probe ends in farce* The Observer 2004-05-02

82. **Members of the Muslim community feel the Government should take more steps to attempt to reverse the negative image that has resulted from its counter-terror campaign.** When critics point to the fact that of the over 500 arrests of Muslims most have been released it is common to hear the reply from Government sources that there have been 15 convictions and that this was worth it. Despite long standing calls by the MCB and the Muslim Safety Forum to give details of those arrests none were forthcoming from the Government. It has taken a report from the Institute of Race Relations (IRR) published in August 2004 to inform the public that only three of the 15 were Muslims and of these two have been given leave to appeal against their convictions; the other convictions were of racists and loyalists.²⁰ This type of information should be more readily produced and promoted by the Government to counter wide public misconceptions and prejudice.
83. An individual arrested under counter-terror measures suffers a public humiliation the stigma of which is long lasting. Steps can be taken to redress the grievances of those who are wrongfully arrested and the wider Muslim community who are disaffected by such measures. Such measures would reverse the negative impact of “disruption” and ensure that rightwing elements cannot manipulate anti-terror arrests to promote racial discord.
84. The level of disinformation about Islam that has dominated the media on the back of the anti-terror coverage is unprecedented. Greater promotion of Islam Awareness Week, anti-discrimination posters that promote tolerance of both different religions and races, anti-terror posters that warn that most terror attacks have come from right wing elements - these are all practical steps that can and should be taken to reduce the fast growing phenomenon of Islamophobia.

²⁰ <http://www.muslimnews.co.uk/paper/index.php?article=1640>

85. **The MCB are extremely concerned with lack of protection that is afforded to the Muslim community per se. The lack of legislation protecting followers of multi ethnic faiths such as Islam and the failure to outlaw incitement to religious hatred exposes one of the most vulnerable and marginalized minorities in the UK to further harm and contributes to the ensemble of factors that lead many to conclude that Muslims are discriminated and victimized by the current spate of Anti-Terror measures.** Our democracy is deficient for its want of protection for a minority actively discriminated against and mainstream legislation is clearly its proper place. But in the short term absence of parliamentary will to pass such legislation the MCB would welcome its legislative introduction via counter-terror measures. The arguments for such a provision are strong, because minorities are the most affected by such legislation it is important that all minorities are equally protected, not least the one that is most disaffected.²¹

86. The MCB firmly believes that instead of fulfilling its declared objective of improving and enhancing security, the Act has in reality, by its strong focus on the Muslim community, caused it further alienation and disillusionment. As Lord Carlile in his February 2003 report on the review of sections 21-23 acknowledged that the Act had “a significant impact upon a particular group of the resident community. ... Some police have expressed misgivings about a law that in practice has only applied to Muslims (because all those currently detained are Muslim): there is a sense that it causes real resentment among parts of the Muslim community who are both “residents and nationals of the United Kingdom, and possibly makes some aspects of policing more difficult”.

87. **The ways in which anti-terror powers are being used has led to feelings of isolation amongst the 1.6 million Muslims in the UK. In the Muslim**

²¹ See Response from MCB to government white paper - *Fairness for all - a new Commission for equality and Human Rights*

Community there is disillusionment with the Government which, rather than protecting them from the evil of Islamophobia, is effectively criminalising them as a community by discriminate and disproportionate use of the Act. Muslims feel as if they are under siege. The MCB relies on and fully supports the conclusions and recommendations of the Newton Committee and the Joint Committee on Human Rights. We also request the Secretary of State specifically take on board the conclusions and recommendations of the Report on Islamophobia so as to give its relevant recommendations the official authority that they currently lack.