

## **Written evidence from Maslaha (PCS0194)**

### **About Maslaha**

1. At Maslaha we work to change and challenge the conditions that create inequalities for Muslim and Black and brown communities in education, criminal justice, health and on the basis of gender, in a continued climate of Islamophobia, racism and negative media coverage. Our work is practical and rooted in local communities but with a reach that is national and international, and that influences both policy and the public imagination.
2. We have an active programme of criminal justice work in which we advocate for a more sophisticated approach to understanding the needs of Muslim people in the system in order to ensure better designed and delivered public services and ultimately a justice system that does not discriminate on the basis of religion or ethnicity. We also believe that central to this journey is ensuring that the voices of those that have been through the criminal justice system (CJS) are heard and their expertise is recognised.

### **About our submission**

3. There are clauses in the Bill aimed at holding people in prison for longer or subjecting them to more intensive supervision on release. But these decisions would be based on perceptions of risk rather than proven convictions and actions. The way that risk is assessed in the CJS is highly racialised i.e., due to the way that Black, brown and Muslim people are stereotyped by their ethnicity and religion, they are more likely to be seen (whether unconsciously or not) as posing a greater potential risk or threat of violence, aggressiveness or particular actions/offending. Our response focuses on the impact of these clauses in the Bill and the substantial risk they could pose to the human rights of Muslims in the CJS if implemented.

### **Context: treatment of Muslims in the criminal justice system**

4. There has been a dramatic rise in the number of Muslims in prison. They now make up 17% of the prison population compared to being 5% of the general population. A figure that has doubled over the last 15 years. Numerous reviews<sup>1</sup> and year on year, the annual reports by the Chief Inspectorate of Prisons<sup>2</sup> show that Muslims consistently report more negatively about their experience, treatment and outcomes in prison compared to non-Muslims.<sup>3</sup>
5. Our own research, *Time to End the Silence*<sup>4</sup>, on the experience of Muslims in prison highlights the lack of understanding in the system of even the basic tenets of Islam and the religious and cultural needs of Muslim communities.
6. This lack of understanding enables negative and crude stereotypes about Muslim people and their actions to flourish. The combination of terrorist attacks, war, political decisions about how to tackle radicalisation have all shaped, with an intense pace, how Muslims are portrayed and regarded in the CJS as well as wider society. In particular the concern over radicalisation in prisons has created a culture of suspicion in prisons surrounding Islam and by extension Muslim people who are seen to pose a greater potential risk of

being radicalised or radicalising others. This leads to heightened scrutiny of Muslims in prison, misunderstandings of their actions, and anything that appears ‘too Islamic’. This is despite only 1% of Muslim prisoners being convicted of terrorism-related offences.<sup>5</sup>

7. The Prevent Programme in particular has increased suspicion that Muslims are more likely to be extremists or easily radicalised. Within the prison estate, there is a lack of transparency around Prevent. However, we know that in other sectors Muslims have been consistently since its implementation, vastly overrepresented. In 2019/20<sup>6</sup>, 1,487 referrals were made under the suspicion of Islamist extremism – an increase of 6% from the previous year - but only 179 individuals were deemed as needing support (though it is not clear from the published data what threat these individuals posed).<sup>7</sup> Muslim children were found to be 44 times more likely to be referred compared to those belonging to any other religion.<sup>8</sup>

### **The impact of the Bill on Muslims in the criminal justice system**

8. Below outlines our concerns of implementing wide-ranging powers that prevent individuals from being released and increases scrutiny of them on release in a justice system where the perception of a link between Islam and terrorism has become institutionalised and where it has been shown that there is clear hostility and discrimination towards Muslims.

#### ***Clause 108***

9. Clause 108 would introduce a new power that would enable the Secretary of State to prevent the automatic early release of prisoners serving a standard determinate sentence and refer their case to the Parole Board if they are identified as a significant public protection risk.
10. This is in effect a ‘re-sentencing’ provision for people who are determined to be ‘dangerous offenders’ in prison but post their conviction, without access to a fair trial and legal defence. This would enable people convicted of non-terrorism offences to be prevented from release at the end of their sentence if there is thought to be concern that they have become radicalised in prison and now present a terror threat. This power could also be used against “a small number of offenders” who are deemed to present “a significant danger to the public for other reasons” but whose offence at the point of sentencing was not serious enough to meet the threshold for a sentence with Parole Board oversight.
11. Muslim people in prison feel that they are stereotyped as risky and their behaviour more likely to be perceived as extreme and through a lens of terrorism. For example, in our research Muslims often reported practising their religion more in prison because it provided a source of comfort, stability and motivation through their sentence. However, their behaviour was continually policed and it was felt that turning to their religion was perceived negatively by the prison system, drawing concern that activities like praying out loud, praying in congregation or changes in the way they dressed were signifiers of radicalisation. We have received multiple accounts of Muslims being split up when

together on a prison wing and other accounts of bullying and abuse related to accusations of terrorism.

12. By creating de facto retrospective sentencing by the government, clause 108 would bypass the judicial process and all the protections that should provide a person. In doing so denying individuals the right to a fair trial and lowering the burden of proof that would be required by a trial and the process of tried and tested evidence. Instead leading to people being kept in imprisonment on the basis of vague, undefined or intangible concepts of risk and ultimately resulting in unfair imprisonment that is disproportional to the offence that they were convicted for.

### ***Clause 109***

13. Clause 109 would introduce provision for the reconsideration and setting aside of Parole Board decisions. It would enable the Secretary of State to have the power to apply for the Parole Board to set aside its own release decisions administratively without the need for a judicial review of the decision by the High Court.
14. Under clause 109 by cutting out the requirement for High Court involvement, it also removes important due process and accountability measures that protect people from having their release summarily blocked, again lowering the evidence requirements that a court would have.
15. This clause removes the independence of the Parole Board, enables the government to put pressure on the Board and undermines their decision-making. This would allow knee-jerk responses from the government and political motivations based on what it is presumed the public would want to impact release decisions. It is also likely to make the Parole Board more risk-averse in their decision-making in the first instance and could consequently make it harder for those who must go through the Parole Board to achieve release.
16. There is a clear risk that by implementing clauses 108 and 109, people who appear Muslim or are practising Islam will be unfairly assessed as presenting a significant danger to the public, and therefore be at risk of having their release denied. Black people are also more likely to be perceived as posing a risk, stereotyped as threatening, aggressive or violent. They receive harsher sentencing for many offences and worse treatment in prison than White people. They also stand to have this power used disproportionately against them.

### ***Clause 162***

17. Clause 162 ensures MAPPA<sup>9</sup> management of people convicted of certain terrorist offences once released on licence. In addition to this however it is also designed to enable other people on release who are considered to pose a terrorist risk to be managed in this way.
18. This poses a similar threat of being disproportionately used against Muslim people who are more likely to be perceived as a terror risk. Therefore, subjecting them to

disproportionately onerous requirements and conditions in the community for their convicted offence and more intensive and intrusive scrutiny and supervision. Management of risk also becomes the dominant factor of their engagement with services rather than support with resettlement and desistance.

## Conclusion

19. The government is reacting to recent terrorist attacks in 2019 and 2020 by legislating with speed and without any public examination of the failings in the CJS and security systems that may have allowed those incidents to occur. These provisions are also proceeding without public consultation to enable the expertise of those working in the CJS to identify unintended consequences and abuses of these powers.
20. This Bill undermines long-standing legal principles of having to provide evidence and have it tested in open court and the opportunity for the accused to have access to legal professionals to provide a defence.
21. While the government says that the application of these powers will be rare, the criterion in the Bill is broad and there is no way of stopping the powers from being more widely applied. Precedent from the implementation of the now abolished Imprisonment for Public Protection (IPP) sentence - where over 8,000 IPP sentences were issued before its abolishment - shows that though the intention may be to for such powers to be a last resort, this cannot be assumed to be the case. When provided with such wide discretionary powers, in practice they can be overly used especially in such a risk-averse culture and without the mechanisms in place to control these powers and provide the necessary accountability and scrutiny.
22. In the absence of any evidence that these provisions will make the public any safer or reduce serious or terror-related crime, with the clear risk they pose to human rights, and the potential for these powers to be disproportionately used against Muslim and Black people in the justice system, **we recommend that the Committee seek the removal of clauses 108, 109 and 162 from the Police, Crime, Sentencing and Courts Bill.**

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<sup>1</sup> For example: the 2014 Young Review on Improving outcomes for young black and/or Muslim men in the Criminal Justice System (available [here](#)); and the 2017 Lammy Review (available [here](#)).

<sup>2</sup> For example: HM Inspectorate of Prisons (2020) HM Chief Inspector of Prisons annual report: 2019 to 2020. Available here: <https://www.gov.uk/government/publications/hm-chief-inspector-of-prisons-annual-report-2019-to-2020> [accessed 06 May 2021].

<sup>3</sup> Most recently assessment of the use of PAVA that during the pandemic was rolled out across the prison estate shows that it has been disproportionately used against Muslim and Black people.

<sup>4</sup> Maslaha (2020) *Time to End the Silence: the experience of Muslims in the prison system*. Available here: <https://www.maslaha.org/Project/Time-to-End-the-Silence> [accessed 06 May 2021].

<sup>5</sup> *ibid*

<sup>6</sup> Home Office (2020) *Individuals referred to and supported through the Prevent Programme, April 2019 to March 2020*. Available at:

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<https://www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2019-to-march-2020> [accessed 12<sup>th</sup> May 2021].

<sup>7</sup> Further research has shown that in higher education settings it has led to the disproportionate and discriminatory victimisation of Muslim students.

<sup>8</sup> Coventry University (2017) *What the Prevent duty means for schools and colleges in England: An analysis of educationalists' experiences*. Available at: [www.coventry.ac.uk/research/about-us/researchnews/2017/what-the-prevent-duty-means/](http://www.coventry.ac.uk/research/about-us/researchnews/2017/what-the-prevent-duty-means/) [accessed 12<sup>th</sup> May 2021].

<sup>9</sup> MAPPA refers to 'Multi-agency Public Protection Arrangements' between the prisons, probation and the police for the identification, risk assessment and management of people with convictions for violent or sexual offences in the community.

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