

ISLAMIST TERRORISM: FOREIGN-NATIONAL OFFENDERS AND UK DEPORTATIONS

BY DR RAKIB EHSAN



**CENTRE ON
RADICALISATION
& TERRORISM**

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Millbank Tower
21-24 Millbank
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Tel: +44 (0)20 7340 4520

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About the Author

Dr Rakib Ehsan is a research fellow at the Henry Jackson Society, sitting in both the Centre on Radicalisation & Terrorism and the Centre on Social & Political Risk. He holds a BA in Politics and International Relations (First-Class Honours), MSc in Democracy, Politics and Governance (Pass with Distinction), and a PhD in Political Science, all from Royal Holloway, University of London.

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Contents

| | |
|---|-----------|
| About the Author | 2 |
| Acknowledgements | 2 |
| About The Henry Jackson Society | 4 |
| About The Centre on Radicalisation and Terrorism..... | 4 |
| Executive Summary..... | 5 |
| 1. Introduction..... | 6 |
| 2. Deportation of FNOs: A Contemporary Dilemma | 8 |
| <i>2.1: Human Rights and Public Safety</i> | <i>8</i> |
| <i>2.2: British Public Attitudes Towards Deportations</i> | <i>9</i> |
| 3. Data Analysis: Links with Currently/Formerly Proscribed Organisations and Previous Criminal Convictions | 12 |
| 4. Data Analysis: Successful and Failed Deportations | 15 |
| <i>4.1: Geographical Origin and Overseas Torture Risk.....</i> | <i>15</i> |
| <i>4.2: Living Circumstances in the UK</i> | <i>17</i> |
| 5. Conclusion and Policy Recommendations | 15 |

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About The Henry Jackson Society

The Henry Jackson Society is a think-tank and policy-shaping force that fights for the principles and alliances which keep societies free, working across borders and party lines to combat extremism, advance democracy and real human rights, and make a stand in an increasingly uncertain world.

CENTRE ON RADICALISATION & TERRORISM

About The Centre on Radicalisation and Terrorism

The Centre on Radicalisation and Terrorism (CRT) at the Henry Jackson Society is unique in addressing violent and non-violent extremism. By coupling high-quality, in-depth research with targeted and impactful policy recommendations, we aim to combat the threat of radicalisation and terrorism in our society.

Executive Summary

Since 1998, approximately 100 individuals with a foreign nationality have been convicted of Islamist-related terrorism offences in the UK. A recent addition to this list is Libyan citizen Khairi Saadallah, who on 11 January 2021 was handed a whole-life prison sentence for the June 2020 terrorist attack in Reading, in which three victims were stabbed to death.¹

Based on extensive analysis of Home Office, Crown Prosecution Service (CPS), and local information resources, the Henry Jackson Society has identified **a total of 45 foreign nationals** who have served prison sentences for Islamist terrorism-related offences but have not been officially deported from the UK.

Among this set of 45 foreign-national Islamist-terror offenders:

- 18 are recorded as having known links with either currently or formerly proscribed organisations, such as Islamic State, Al-Qaeda, Al-Muhajiroun, Al-Shabaab, and the Libyan Islamic Fighting Group (which was de-proscribed by the UK Home Office in November 2019)
- seven were convicted of criminal offences prior to their main terrorism-related conviction
- two are known to have participated in terrorism-related training camps, including an Al-Qaeda training camp in Pakistan.

The socio-demographic breakdown of this set of 45 foreign-national Islamist-terror offenders is as follows:

- 84 per cent are male
- the most common nationality is Libyan
- the average age at time of terror-related conviction is 30.

This report makes a number of policy recommendations, including:

- the legislative modernisation of legal definitions to facilitate deportations which are being prevented on the grounds of European Convention on Human Rights (ECHR) provisions
- the creation of a new UK Asylum Reform Taskforce to help establish a reformed asylum system in the name of long-term national security.

¹ Dearden, L. 'Reading terror attacker Khairi Saadallah given whole-life prison sentence for murdering three victims', *The Independent*, 11 January 2021, available at: <https://www.independent.co.uk/news/uk/crime/reading-terror-attack-khairi-saadallah-sentence-b1785526.html>, last visited: 11 January 2021.

1. Introduction

The deportation of foreign-national offenders (FNOs) who are convicted of Islamist-related terrorism offences remains one of the leading domestic security concerns in the UK.

At the heart of this debate is the UK Government's Deportation with Assurances (DWA) policy. The DWA policy has been used by the UK Government to facilitate the deportation of those convicted of terrorism-related offences to their countries of origin. The policy was created to overcome the risks which may arise when deporting foreigners when torture could occur in the receiving state, contravening the provisions of various international human rights conventions of which the UK is a signatory.² However, the conundrum remains as to how to secure safety on return for those who could legitimately be denied their place in British society on grounds of their danger to national security. This includes individuals who have been granted asylum in the UK but have proceeded to commit acts of terrorism on British soil.

A prime example is the Forbury Gardens attack that took place in Reading on 20 June 2020. During the attack, three people were stabbed to death in the Berkshire town of Reading.³ The perpetrator (re-arrested under Section 41 of the 2000 Terrorism Act), 26-year-old Libyan citizen Khairi Saadallah, was offered asylum in the UK.⁴ It has been reported that Saadallah, who on 11 January 2021 was given a whole-life prison sentence for the June 2020 terrorist attack in Reading,⁵ was logged into a watch-list by the security services, and had also been referred to the UK Government's counter-extremism Prevent programme.⁶

Saadallah's defence team submitted the guilty pleas on the basis that their client had not entered into any substantial preparation or planning for the attacks and that he was not motivated by any ideological cause; the prosecution asserted that it was indeed an act of terrorism.⁷ It has also been reported that between June 2015 and January 2020, Saadallah was convicted on six separate occasions for a total of eleven crimes – including knife-related offences.⁸

In October 2019, Saadallah was imprisoned for a collection of non-terror offences (with this sentence being reduced at the Court of Appeal to a term of 17 months and 20 days).⁹ Even though this length of prison sentence meant Saadallah was eligible for deportation (in

² Anderson, D. and Walker, C., 'Deportation with Assurances', July, Home Office (2017), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630809/59541_Cm_9462_Accessible.pdf, last visited: 12 October 2020.

³ 'Reading stabbings: Three people dead after Forbury Gardens attack', *BBC News*, 21 June 2020, available at: <https://www.bbc.co.uk/news/uk-england-berkshire-53123975>, last visited: 12 October 2020.

⁴ 'Reading stabbings: Libyan refugee Khairi Saadallah named as suspect in Forbury Gardens attack', *Sky News*, 22 June 2020, available at: <https://news.sky.com/story/reading-stabbings-khairi-saadallah-named-as-suspect-in-forbury-gardens-attack-12011810>, last visited: 12 October 2020.

⁵ Dearden, L. 'Reading terror attacker Khairi Saadallah given whole-life prison sentence for murdering three victims', *The Independent*, 11 January 2021, available at: <https://www.independent.co.uk/news/uk/crime/reading-terror-attack-khairi-saadallah-sentence-b1785526.html>, last visited: 11 January 2021.

⁶ Dearden, L., 'Reading terror attack: Suspect Khairi Saadallah was referred to Prevent counter-extremism programme', *The Independent*, 23 June 2020, available at: <https://www.independent.co.uk/news/uk/crime/reading-terror-attack-khairi-saadallah-prevent-counter-extremism-a9581396.html>, last visited: 12 October 2020.

⁷ White, M., 'Reading knife attack: Khairi Saadallah pleads guilty to three murders', *Sky News*, 11 November 2020, available at: <https://news.sky.com/story/reading-knife-attack-khairi-saadallah-pleads-guilty-to-three-murders-12130097>, last visited: 17 November 2020.

⁸ Powell, L. and Thompson, F., 'Who is Reading suspect Khairi Saadallah?', *The Belfast Telegraph*, 22 June 2020, available at: <https://www.belfasttelegraph.co.uk/news/uk/who-is-reading-terror-suspect-khairi-saadallah-39304639.html>, last visited: 12 October 2020.

⁹ Dearden, L., 'Reading terror attack: Man arrested on suspicion of stabbing three people to death was under probation supervision', *The Independent*, 22 June 2020, available at: <https://www.independent.co.uk/news/uk/crime/reading-terror-attack-deaths-victims-khairi-saadallah-forbury-gardens-a9579126.html>, last visited: 11 November 2020.

accordance with Section 32[2] of the 2007 UK Borders Act),¹⁰ he was not deported from the UK to his country of nationality – Libya – due to human rights concerns.¹¹

The case of Khairi Saadallah, among others, strikes at the core of domestic security debates in contemporary civil discourse – the apparent trade-off between human rights protection for foreign-national criminals and the broader collective security of the British public. Building on the existing body of relevant scholarship in the field of terrorism studies, this report looks at the socio-demographic profile of foreign-national offenders (FNOs) convicted of terrorism-related offences (TROs), the background of those who have been subjected to deportation attempts by the UK Government, and the grounds on which successful appeals against such attempts were made.

The report is structured as follows. Following this introductory section, a review of the main contemporary viewpoints in regard to the deportation of FNOs and the protection of human rights will be provided. This includes a discussion of relevant Articles of the ECHR (namely Article 3 and Article 8), recent UK Government action in respect of deportations policy, as well as dissecting the findings of a February 2020 YouGov survey on British public attitudes towards the deportation of adult migrants convicted of serious crimes.

After this section, the data analysis and methodology for the report analysis is outlined. The report analysis provides a socio-demographic breakdown for convicted foreign-national terrorists who have served their prison sentences and not been officially deported by the UK Government. Socio-demographic characteristics of interest include nationality, age, and gender, with data on known links to formerly and currently proscribed organisations, history of terrorist training, and previous criminal records also being provided. This is followed by a discussion of the results.

As well as discussing the main trends which emerge from the analysis, it will also flesh out the legal grounds on which successful appeals against deportation were made on behalf of foreign criminals who have been convicted of TROs. This leads onto a final section of the report, which provides a set of policy recommendations which span areas such as the UK's relationship with existing international legal conventions, post-Brexit international development policy, asylum system reform, and social cohesion policy.

¹⁰ UK Borders Act 2007, Section 32, available at: <https://www.legislation.gov.uk/ukpga/2007/30/section/32>, last visited: 11 November 2020.

¹¹ 'The Times view on the deportation of foreign criminals and asylum seekers: Unwelcome Guests', *The Times*, 24 June 2020, available at: <https://www.thetimes.co.uk/article/the-times-view-on-the-deportation-of-foreign-criminals-and-asylum-seekers-unwelcome-guests-tjvd59592>, last visited: 12 October 2020.

2. Deportation of FNOs: A Contemporary Dilemma

The deportation of FNOs – including those convicted of TROs – remains one of the most politically-charged debates in British policy discourse. It is a moral conundrum with competing tensions of collective security and the right to individual liberty. Deportation proceedings pit the rights of the individual against the responsibilities of the state – the guardian of the public interest.

These debates ultimately rest on the all-important question: how does the state maximise collective domestic security while respecting its international legal obligations? Indeed, the UK being a signatory to international human rights conventions can be viewed as a serious constraint on national sovereignty – restricting the democratically elected Westminster Government's ability to deport foreign-national convicts who are considered to be a threat to British public security.

2.1: Human Rights and Public Safety

Section 32(5) of the 2007 UK Borders Act mandates that, in the absence of special circumstances, the Home Secretary “must make a deportation order in respect of a foreign criminal” on the condition that the person has been sentenced to a period of imprisonment of at least 12 months.¹² The exception which is most commonly relied upon is that contained in Section 33(2)(a): that the removal of the individual in question would breach his or her rights under the ECHR – in particular, the right to family and private life, which is enshrined in Article 8(1):

Everyone has the right to respect for his private and family life, his home and his correspondence.¹³

However, it is worth mentioning that a series of exceptions are stated in Article 8(2) of the ECHR:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.¹⁴

The weighing of individual private and family life rights against what is considered to be in the broader public interest in deporting foreign criminals has undergone a process of constant evolution. Over time, case law has evolved to include a wide range of factors which could weigh for – or against – an individual's family life and private rights.

In recent history, the general position of Conservative-led UK governments has been that when balancing the rights of the individual to his or her family or private life under Article 8 against the public interest in deportation, too little weight has been afforded to the public interest, with too much weight being given to the unwieldy and nebulous rights guaranteed under Article 8(1) of the ECHR. The deportation of FNOs became something of a *cause célèbre* for

¹² UK Borders Act 2007, Section 32, available at: <https://www.legislation.gov.uk/ukpga/2007/30/section/32>, last visited: 2 November 2020. Along with the condition that a foreign criminal has been sentenced to a period of imprisonment of at least 12 months (Condition 1), there is another condition (Condition 2): that the offence is specified by order of the Secretary of State under Section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c.41) (serious criminal), and that the person is sentenced to a period of imprisonment.

¹³ European Convention on Human Rights (ECHR), Article 8(1), European Court of Human Rights (2010), available at: https://www.echr.coe.int/documents/convention_eng.pdf, last visited: 22 November 2020, p.11.

¹⁴ Ibid.

former Conservative Prime Minister Theresa May during her period as Home Secretary, when she asserted that the meaning of Article 8 of the ECHR had been “perverted” and used to prevent the removal of foreign criminals from the UK.¹⁵

Current Home Secretary Priti Patel has made the deportation of foreign criminals a major priority – looking to address legal protections commonly used to prevent their removal from the UK. Much of the incumbent Home Secretary’s focus in this sub-realm of national security is Article 3 of the ECHR on the Prohibition of torture: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹⁶ It has been reported that the Home Secretary intends to address legal protections derived from Article 3 of the ECHR by modernising definitions in the hope of restricting forms of judicial intervention which contribute towards the prevention of deportations.¹⁷ The reality of foreign nationals, in a number of cases, being successful in their appeals against being deported from the UK continues to be a source of significant discontent among governing politicians, certain corners of the print media and, indeed, much of the British public.

2.2: British Public Attitudes Towards Deportations

In February 2020, the polling company YouGov reported that, when asked the question “If an adult migrant in the UK had committed a serious or violent crime, do you think they should or should not be deported?”, a significant majority of Britons answered “should be” *on the condition* that they had immigrated to the country as an adult (78 per cent). The figures, however, vary according to the age at which the individual immigrated to the UK: had the individual immigrated as a teenager, this figure falls to 47 per cent, and if the individual immigrated as a child (at or below the age of 12), the figure falls steeply to 27 per cent.¹⁸

However, it is only in this latter category – that an adult migrant migrated to the UK as a child – that there is a majority *against* deportations at all (58 per cent). If the individual in question immigrated as a teenager, only 36 per cent believe they should not be deported (with 17 per cent answering that they “don’t know”).¹⁹ What is also significant is that, when asked the same question on the condition that the individual had “children in the UK”, only 37 per cent of respondents answered that they *should* be deported, with 42 per cent answering that they *should not* (and 21 per cent saying they “don’t know”).²⁰ Conversely, on the condition that the individual had a “long-term partner in the UK”, the trend reverses: a majority answered that they *should* be deported (49 per cent), with only 29 per cent stating they *should not* be.²¹

Figure 1 presents an overview of attitudes towards the deportation of adult migrants who have committed a serious or violent crime (under two conditions of family separation and compartmentalised by vote choice in the December 2019 UK General Election). It shows that in the case of the deportee a) having children in the UK; and b) having a long-term partner in the UK, the majority of respondents who voted for the Conservative Party in the 2019 UK General Election are supportive of deportation in both cases (56 per cent and 69 per cent respectively).

¹⁵ ‘Theresa May under fire over deportation cat claim’, *BBC News*, 4 October 2011, available at: <https://www.bbc.co.uk/news/uk-politics-15160326>, last visited: 2 November 2020.

¹⁶ European Convention on Human Rights (ECHR), Article 3, p.7.

¹⁷ Malnick, E., ‘Judges reined in on using human rights laws to block deportations’, *The Telegraph*, 17 October 2020, available at: <https://www.telegraph.co.uk/news/2020/10/17/judges-reined-using-human-rights-laws-block-deportations/>, last visited: 5 November 2020.

¹⁸ Nolsoe, E. ‘Under which circumstances should foreign-born offenders be deported?’, *YouGov*, available at: <https://yougov.co.uk/topics/politics/articles-reports/2020/03/02/under-which-circumstances-should-foreign-born-offe>, last visited: 28 October 2020.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

Figure 1: Support for deportation / 2019 UK General Election vote choice (family and relationship separation)

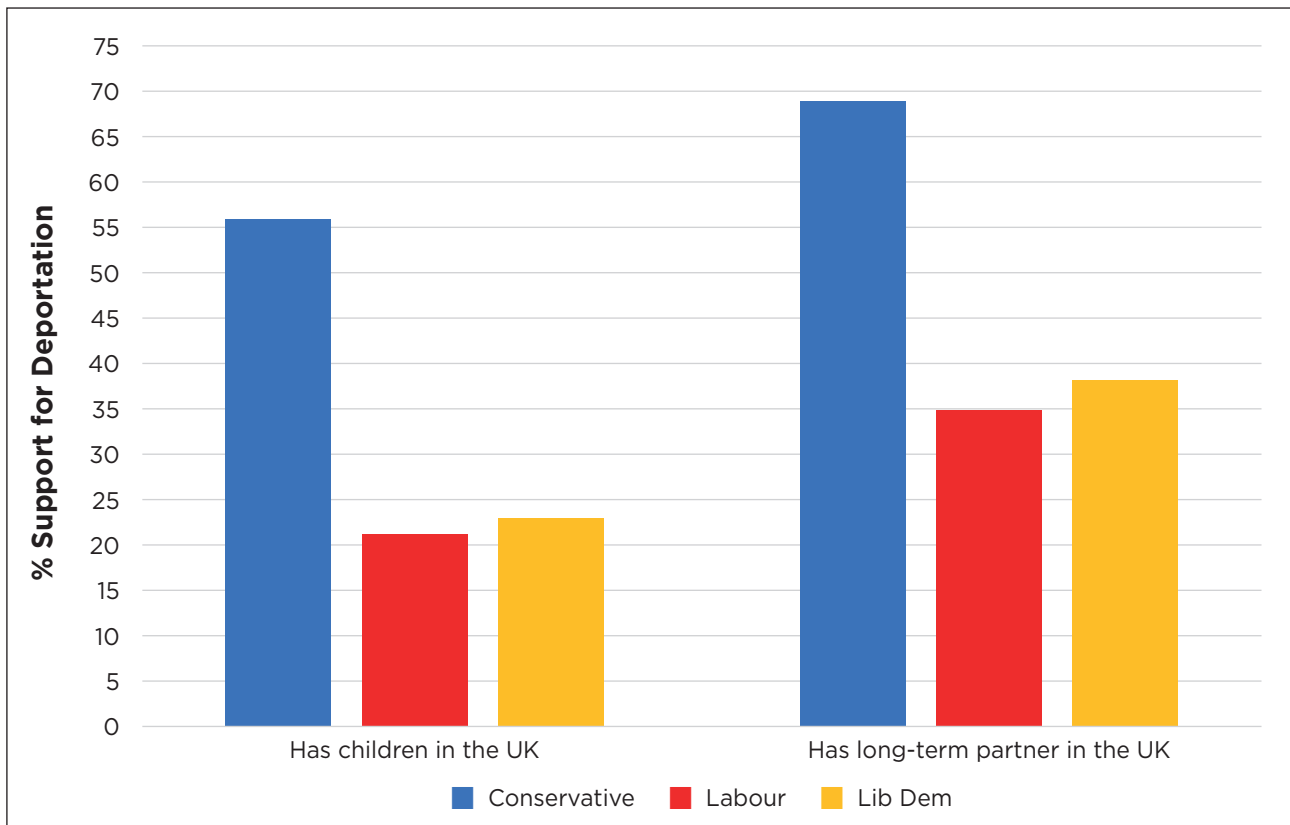
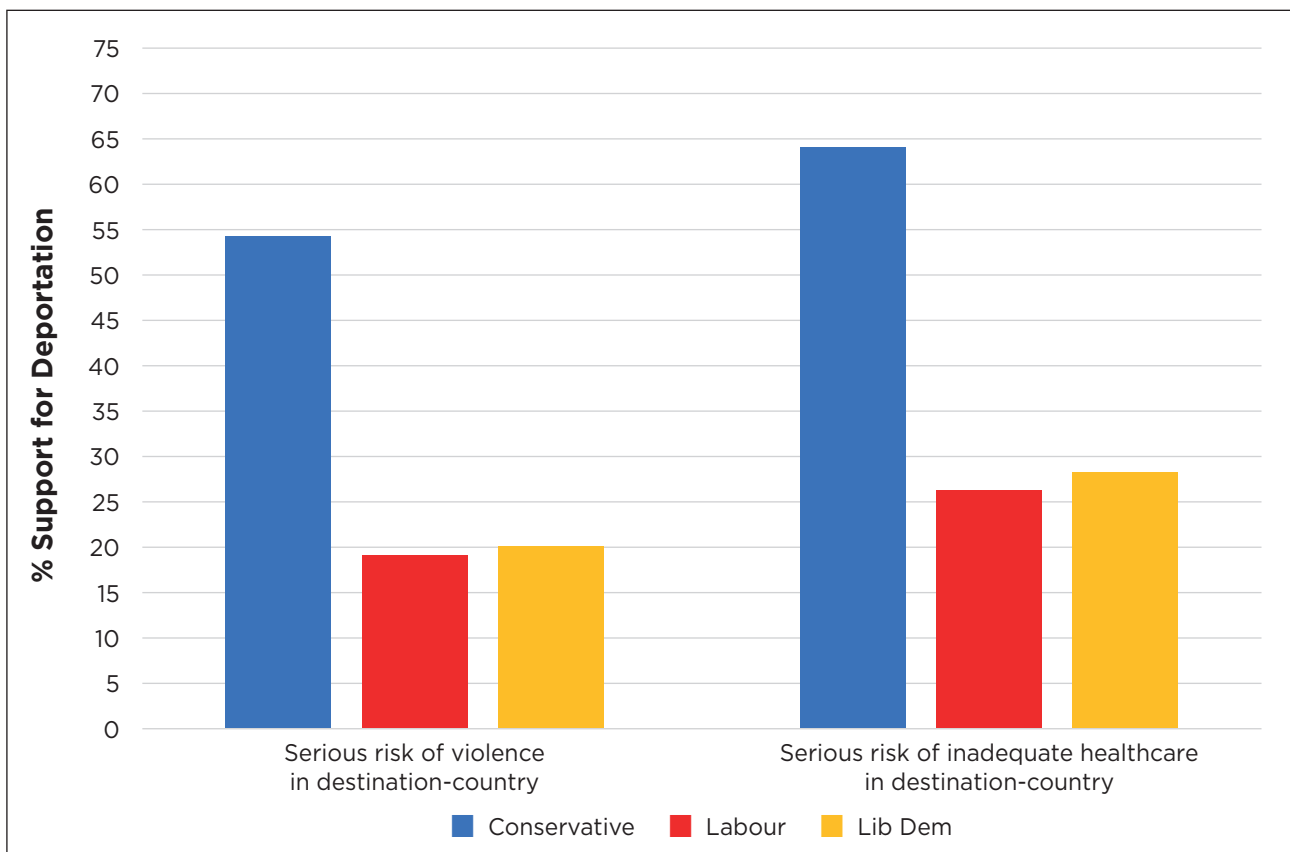


Figure 2: Support for deportation / 2019 UK General Election vote choice (serious risk of facing violence and inadequate healthcare in destination-country)



Support for deportation under the two conditions of family separation is lowest among those who voted for the Labour Party in the last UK General Election (21 per cent and 35 per cent respectively). Support for deportation among those who voted for the Liberal Democrats in the last UK General Election is marginally higher than among Labour voters (23 per cent and 38 per cent respectively).

Figure 2 presents an overview of attitudes towards the deportation of adult migrants who have committed a serious or violent crime (under two conditions of risk in destination-country and compartmentalised by vote choice in the December 2019 UK General Election). It shows that in the case of the deportee facing a) a serious risk of violence in the destination-country; and b) a serious risk of being unable to access necessary medicine and healthcare in the destination-country, the majority of respondents who voted for the Conservative Party in the 2019 UK General Election are still supportive of deportation in both cases (54 per cent and 64 per cent respectively).

Similar to the case of family and relationship separation, support for deportation under these two destination-country conditions is lowest among those who voted for the Labour Party in the last election (19 per cent and 26 per cent respectively). Support for deportation among those who voted for the Liberal Democrats in the last UK General Election is once again marginally higher than among Labour voters (20 per cent and 28 per cent respectively).

3. Data Analysis: Links with Currently/Formerly Proscribed Organisations and Previous Criminal Convictions

For the report, a team of four researchers (led by the report author and including three research assistants) examined Home Office, CPS, and reputable media sources, collaborating to compile a post-1998 list of Islamist terrorism-related offenders with a foreign nationality.²²

Over 15 per cent of the criminals listed had been convicted of criminal offences prior to their main terrorism-related conviction. These criminal offences include:

- religiously aggravated criminal damage
- extremism-related affray
- dissemination of terroristic publications.

Libyan citizen Khairi Saadallah was convicted of a string of criminal offences before killing three people in the June 2020 Reading terrorist attack, including:

- racially aggravated assault
- assault and affray (on an emergency worker)
- possession of a bladed article.

During the research process, the team of researchers also produced a dataset of 45 foreign-national criminals who satisfy the following three conditions:

- convicted of Islamist TROs
- reached the end of their prison sentence for the terrorism-related conviction
- not recorded as being officially deported by the UK Government.

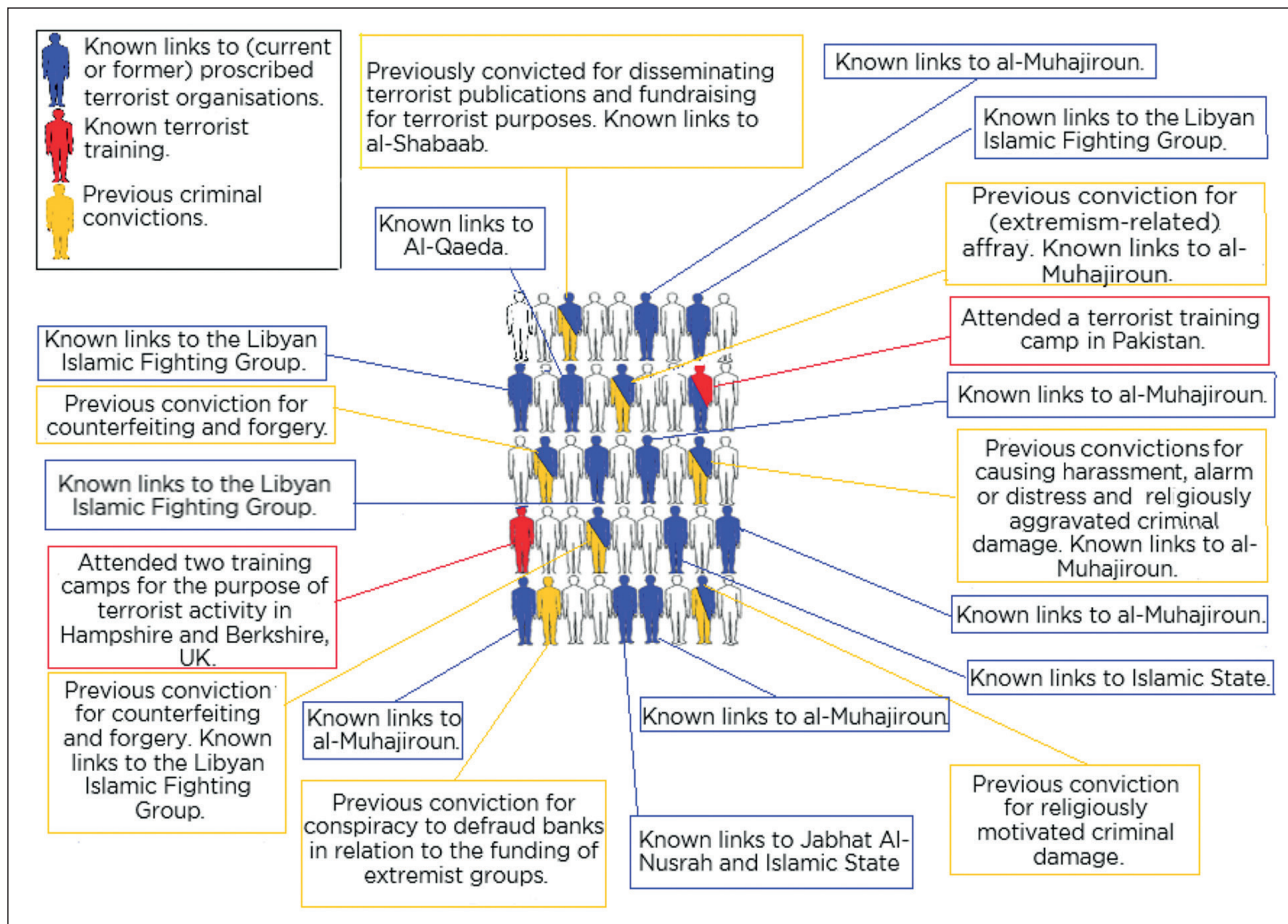
For this pool of 45 convicted foreign-national terrorists who have been identified as being released from prison and suspected of remaining in the UK:

- 18 have known links with currently or formerly proscribed organisations
- seven were found guilty of criminal offences prior to their main terrorism-related conviction
- two are known to have participated in terrorist training exercises
- the average age at time of main terrorism-related conviction is 30
- the most common nationality is Libyan, closely followed by Algerian, Pakistani, and Iraqi
- 84 per cent are male.

Figure 3 presents an overview of the known links with either currently or formerly proscribed organisations, previous criminal convictions, and known participation in terrorism training camps. The visual representation shows that 18 of the 45 foreign criminals have known links with organisations either currently or formerly proscribed by the UK Home Office – such as

²² Much of the information used for the report's data analysis was drawn from: Stuart, H. 'Islamist Terrorism: Analysis of Offences and Attacks in the UK (1998-2015)', *The Henry Jackson Society* (2017) (which was supported by the UK Home Office) and 'The Counter-Terrorism Division of the Crown Prosecution Service (CPS) – Successful prosecutions since 2016', Crown Prosecution Service (2020).

Figure 3: Known links with currently or formerly proscribed organisations, known record of terrorist training, and previous criminal convictions



Islamic State, Al-Qaeda, Al-Muhajiroun, Libyan Islamic Fighting Group, Al-Shabaab, and Jabhat al-Nusrah.

Seven were found guilty of criminal offences prior to their main terrorism-related conviction. This includes individuals who were found guilty of raising funds for terrorism-related activities, plotting to defraud banks to provide funds to terrorist organisations, extremism-related affray, religiously inspired criminal damage, and disseminating terroristic publications. Other previous convictions include counterfeiting and forgery, and causing harassment, alarm, and distress.

Two of the FNOs have a record of participating in terrorist training exercises – one at an Al-Qaeda training facility located in Pakistan, with the other attending terrorist training camps based in the southeast English counties of Berkshire and Hampshire.

Table 1 shows the percentage breakdown for 19 instances of known links with organisations either currently or formerly proscribed by the UK Home Office.²³ The reason the number of instances is one higher than the figure of 18 foreign nationals with known links to either currently or formerly proscribed organisations is because one of the individuals in this subset of 18 criminals has known links with two separate organisations – Islamic State and Jabhat al-Nusrah (see Figure 3, centre of final row).

²³ Home Office, 'Proscribed Terrorist Organisations', 17 July 2020, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901434/20200717_Proscription.pdf, last visited: 27 October 2020. Al-Qaeda (p.8), Jabhat Al-Nusrah (p.8), Al-Muhajiroun (p.8), Al-Shabaab (p.9), Islamic State (p.15). De-proscription of LIFG (p.6).

Table 1: Known links with currently and formerly proscribed organisations

| Name of Organisation | Proportion of Organisational Links (%) | Description for Organisation |
|--------------------------------------|--|--|
| Al-Muhajiroun (AM) | 42% | Proscribed in July 2006. Al-Muhajiroun is an Islamist group which seeks to create an Islamic state ruled by sharia law. The group is based and operational in the UK. |
| Islamic State (IS) | 11% | Proscribed in June 2014. Abbreviations include ISIS and ISIL. A genocidal Islamist terrorist group originating in Iraq and Syria, with affiliates, operations, and supporters around the world. The group adheres to a global jihadist ideology. |
| Al-Qaeda (AQ) | 16% | Proscribed in March 2001. Formerly led by Osama Bin Laden, the group's main aims include the expulsion of Western military forces in the Middle East region, the destruction of Israel, and the eradication of Western influences in Muslim-majority societies. |
| Al-Shabaab (AS) | 5% | Proscribed in March 2010. Al-Shabaab is an extremist organisation which strives to establish a fundamentalist Islamic state in Somalia. |
| Jabhat Al-Nusrah (JN) | 5% | Proscribed in July 2014. The UK Government laid an Order which stated that JN should be treated as an alternative name for the organisation which is already proscribed under the name "Al-Qaeda". |
| Libyan Islamic Fighting Group (LIFG) | 21% | Proscribed in October 2005; De-proscribed in November 2019. The LIFG sought to overthrow Colonel Muammar al-Gaddafi's regime in Libya, in the hope of replacing it with a hard-line Islamic model of governance. The group has been previously described as an affiliate organisation of Al-Qaeda. |

The data depicted in Table 1 shows that 42 per cent of the 19 instances of known links with either currently or formerly proscribed organisations involve Al-Muhajiroun (which was proscribed by the UK Home Office in July 2006). The second highest figure is 21 per cent, for the Libyan Islamic Fighting Group (LIFG). The anti-Gaddafi organisation was banned worldwide (as an affiliate of Al-Qaeda) by the United Nations 1267 Committee.²⁴ Proscribed in the UK in October 2005, the LIFG was de-proscribed by the Home Office in November 2019.

²⁴ United Nations Security Council, 'Libyan Islamic Fighting Group', 17 April 2018, available at: https://www.un.org/security-council/sanctions/1267/aq_sanctions_list/summaries/entity/libyan-islamic-fighting-group, last visited: 5 November 2020.

4. Data Analysis: Successful and Failed Deportations

This conclusion section of the report focuses on two overarching trends of importance when considering the deportation of FNOs convicted of Islamist TROs: overseas region of origin and living circumstances in the UK. This essentially relates to two ECHR articles of particular relevance in this context – Article 3 and Article 8. This will be an integral part of the broader identification of key patterns for both failed and successful deportations, in respect of foreign criminals convicted of Islamist TROs.

The number of comparable cases is near-identical. In the category of successful deportations, *not including* extradition or voluntary repatriation, there are 11 logged cases; and in the category of failed deportations, *not including* pending cases, there are 12 registered cases. This gives us a useful set of data that allows straightforward cross-comparisons between two similarly sized samples.

4.1: Geographical Origin and Overseas Torture Risk

In the category of successful deportations, five out of the 11 cases (45 per cent) were of nationalities in the European region (German, French, Albanian and Serbian) which are either current (Germany and France) or prospective candidate (Albania and Serbia) members of the European Union (EU).²⁵ This diplomatic relationship and geographic position is significant in that all members of the EU must be signatories of the ECHR under Article 6(2) of the Lisbon Treaty, demonstrating a commitment to the Rule of Law and the doctrine of human rights.²⁶

This facilitates deportation on one crucial ground: human rights compliance in the destination-country. While the logistical requirements of deportation being simplified by geographic proximity may strengthen the case for removal from the UK, the assurance of a robust legal framework designed to prevent the violation of an individual's human rights is critical in this context. Two other recipient nations of deportees convicted of Islamist TROs in the UK – Jamaica and India – are both widely considered to be liberal democratic members of the British Commonwealth of Nations. This highlights the importance of human rights compliance and the integrity of legal structures in other parts of the world, which facilitates the deportation of foreign criminals from the UK and to a non-European country of origin.

Of the remaining successful cases of deportation, four (36 per cent) have been returned to African countries, specifically Morocco (one), the Gambia (one), and Algeria (two). However, an equal number of cases have *failed* in their deportation to the same geographic region; importantly, two cases of failed deportations also originated from Algeria. In comparison to the European nations, Algeria is listed as 'not free' by the US-based non-governmental organisation Freedom House, which claims that the country imposes serious restrictions on the right to free speech and freedom of assembly (including protests).²⁷ When one takes into account the charges against each potential deportee to Algeria (all of whom were found guilty of funding terrorism), this suggests the mitigating factors surrounding each case must be considered further, such as family circumstances (see Section 4.2). What matters here is that both failed deportations were resisted on the grounds that Algeria would be

²⁵ European Commission, 'Candidate countries and potential candidates', 14 September 2020, available at: <https://ec.europa.eu/environment/enlarg/candidates.htm>, last visited: 3 November 2020.

²⁶ 'Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community' (2007/C306/01), *Official Journal of the European Union*, 17 December 2007, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF>, last visited: 3 November 2020.

²⁷ 'Freedom in the World', *Freedom House* (n.d), available at: <https://freedomhouse.org/report/freedom-world>, last visited: 5 November 2020.

fundamentally unsafe, with one case explicitly arguing that the individual was at risk of facing torture if deported.

If, however, we turn specifically to failed deportations, we can see similar trends of geographic significance. For instance, three cases (25 per cent) originated from Libya, and all three were co-accused of an effort to fund the formerly UK-proscribed LIFG, which attempted to depose Colonel Muammar Gaddafi prior to 2011 and since then has fought as part of the Libya Shield Force.²⁸ All three cases fought deportation on the grounds of potential torture which, given their history of funding terrorism and Libya's current status as a 'failed state', is by no means beyond the realms of possibility.

Similarly, five cases (42 per cent) originated from a collection of unstable nation-states in the form of Eritrea, Kenya, Sudan, Ethiopia, and Iraq – all of which are considered to either be or to be on the verge of becoming 'failed states'.²⁹ This presents a significant problem: if the current legal frameworks in fragile nation-states have disintegrated to the extent that assurances cannot be made against torture, then the chances of deportation from the UK are significantly reduced. For example, the case of deportation to Eritrea was contested on the grounds that the individual involved was at serious risk of facing inhumane treatment in the East African country.

In addition, failed deportees also originated from the Indian subcontinent's two Muslim-majority countries – Pakistan and Bangladesh. Indeed, the only instance of a case successfully leaving the UK was a case of voluntary repatriation to Pakistan (which has been excluded from this report's data analysis). Pakistan and Bangladesh, both members of the British Commonwealth of Nations, pose problems from a human rights perspective. In Pakistan, for instance, the Pakistani Taliban and other Islamist terrorist groups remain active and, as the Human Rights Watch organisation notes:

During counterterrorism operations, Pakistani security forces often are responsible for serious human rights violations including torture, enforced disappearances, detention without charge, and extrajudicial killings, according to Pakistan human rights defenders and defence lawyers.³⁰

Given such information is widely available, it makes deportation particularly difficult. There are also human rights concerns in respect of Bangladesh:

Impunity for abuses by security forces, including enforced disappearances and extrajudicial killings, remained pervasive. The government continued to violate international standards on freedom of speech in its crackdown on government critics.³¹

²⁸ The Libyan Shield Force is an armed organisation founded in 2012 following a merger of anti-Gaddafi militant groups spread throughout Libya.

²⁹ Hogendoorn, E.J., 'Eritrea: world must act to prevent another "failed state"', *International Crisis Group*, 7 October 2010, available at: <https://www.crisisgroup.org/africa/horn-africa/eritrea/eritrea-world-must-act-prevent-another-failed-state>, last visited: 5 November 2020; Olad, M., 'Preventing Ethiopia's descent into a failed state', *Ethiopia Insight*, 29 October 2020, available at: <https://www.ethiopia-insight.com/2020/10/29/preventing-ethiopias-descent-into-a-failed-state/>, last visited: 5 November 2020; 'Sudan a "failed state": expert', *Dabanga*, 17 December 2013, available at: <https://www.dabangasudan.org/en/all-news/article/sudan-a-failed-state-expert>, last visited: 5 November 2020; Njenga, H.N., 'How Is Kenya Not Among East Africa's Least Developed Countries?', *Business Today*, 20 September 2019, available at: <https://businesstoday.co.ke/kenya-failed-state-least-developed-countries-east-africa/>, last visited 5 November 2020; Cordesman, A., 'Iraq as a Failed State', *CSIS*, 12 November 2019, available at: <https://www.csis.org/analysis/iraq-failed-state>, last visited: 5 November 2020.

³⁰ 'Pakistan: Events of 2018', *Human Rights Watch* (2019), available at: <https://www.hrw.org/world-report/2019/country-chapters/pakistan>, last visited: 5 November 2020.

³¹ 'Bangladesh: Events of 2019', *Human Rights Watch*, (2019), available at: <https://www.hrw.org/world-report/2020/country-chapters/bangladesh>, last visited: 5 November 2020.

In summary, the geography of potential destination for deportations is a serious factor in the success of each case – not so much due to the geography itself, but rather the country’s human rights record and the integrity of its legal structures.

4.2: Living Circumstances in the UK

Overseas risk of human rights abuse is not the full story though; the circumstances surrounding family life in the UK also appears to be an influential factor in deportation outcomes. This becomes even more significant when one considers one such failed deportation was contested successfully on the grounds that deportation would “breach his human right to family life” (however, this appeal also contested deportation on the grounds of torture risk in the destination-country). Therefore, while family life remains significant, it clearly is not sufficient grounds to prevent deportation alone.

What remains significant, however, is that the majority of successful deportations – 64 per cent – were either living alone or independently of their family (of which more than half had family in the countries to which they were scheduled to be deported). Clearly, this opens up an avenue for deportation in that there is no “right to family life” in the UK to be exercised – and, in many instances, this right enshrined in Article 8(1) of the ECHR can be better exercised by the deportee being deported from the UK to their country of origin. Of the remaining four cases of successful deportations, two appeared to be living with a family with no dependents, with the other two living with their own families, who had dependents but also had long-term partners capable of caring for their children.

What this reveals is that a minority of successful deportations involved deportees with UK-based dependents (18 per cent). When comparing this to failed deportations, however, a significant majority of individuals – around two-thirds – were living with family. In comparison, only 17 per cent of individuals who successfully appealed against their deportation were confirmed to be living alone. These patterns suggest that where a “right to family life” can be legitimately claimed, there is a currently effective legal argument against the deportation of foreign-national criminals convicted of TROs. It is worth noting, however, that only one case fought deportation exclusively on the defence of the right to family life. This suggests that while the right to family life can be grounds for fighting deportation, it is usually used in conjunction with other legal protections.

In conclusion, there are (at least) two very clear influences on the success and failure of the deportation of foreign nationals convicted of Islamist TROs: the risk of overseas torture in the destination-country and the family-related circumstances of the individual in the UK. What is salient, however, is that both of these factors extend from the same principle: the respect for human rights, as enshrined in the ECHR. Whilst the regional and national factors are intimately related to the capacity for the individual’s human rights to be respected once deported, the circumstances of the individual’s family life prior to deportation are also considered – especially when UK-based British dependents are involved.

5. Conclusion and Policy Recommendations

This report highlights trends which should be of concern in terms of public security in the UK. The set of released foreign criminals convicted of Islamist TROs includes individuals who have previous links with organisations proscribed by the UK Home Office – such as Islamic State, Al-Qaeda, and Al-Muhajiroun. The fact that a notable portion of FNOs are of Libyan origin is reflected by the reality that other linked organisations include the recently de-proscribed LIFG – an organisation that domestic Islamist terrorist Salman Abedi is reported to have developed links with before he carried out the May 2017 Manchester Arena bombings which killed 22 people.³²

Within this pool of convicted terrorists who have served their sentences are individuals who were found guilty of criminal offences prior to their terrorism-related conviction. This includes individuals who were found guilty of raising funds for terrorism-related activities, plotting to defraud banks to provide funds to terrorist organisations, extremism-related affray, religiously inspired criminal damage, and disseminating terroristic publications. This particular subset of FNOs also includes individuals who are suspected of previously attending terrorism training camps – both in the UK and abroad.

When considering the broader pool of FNOs convicted of Islamist TROs since 1998 – in the region of 100 – around a quarter either claimed or were granted asylum in the UK. Libyan citizen Khairi Saadallah, who was granted asylum in the UK before carrying out his deadly June 2020 terrorist attack in the Berkshire town of Reading, is a recent addition to this list. This understandably gives rise to questions over the degree to which British public safety is prioritised within the workings of the UK's asylum system.

Islamist extremism undisputedly remains the prevailing terror threat in the UK, with Khairi Saadallah's attack serving as a timely reminder. When examining the matter of deportation of foreign criminals convicted of TROs, it is evident that major policy reforms are required to enhance British national security and strengthen public trust in existing security structures. There is the argument that the degree to which the UK has national sovereignty when it comes to maximising collective public security is offset by the international legal obligations that come with being a signatory of the ECHR. Indeed, this is the contemporary dilemma for Western nation-states that wish to assert greater national sovereignty on matters of public security but are also wary of undermining long-standing international legal norms.

In light of the key debates summarised and data trends reported, this report makes the following policy recommendations:

- With there being a recent decline in served deportation orders, it is evident that meaningful policy reforms need to take place to better facilitate the deportation of foreign criminals who represent a serious risk pool in British society.³³ This includes individuals convicted of TROs. Article 3 of the ECHR, which states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”, has formed the basis for a number of successful appeals against the deportation of foreign criminals convicted of TROs. To curb legal activism in this area of human rights law,

³² Doward, J., Cobain, I., Stephen, C. and Quinn, B., ‘How Manchester bomber Salman Abedi was radicalised by his links to Libya’, *The Guardian*, 28 May 2017, available at: <https://www.theguardian.com/uk-news/2017/may/28/salman-abedi-manchester-arena-bomber-radicalisation>, last visited: 17 November 2020.

³³ Heale, J. and Owen, G. (2020), ‘Priti Patel to mount a crackdown on foreign criminals after legal loopholes let 2,000 more crooks dodge deportation’, *Mail Online*, 20 June. Available at: <https://www.dailymail.co.uk/news/article-8443181/Priti-Patel-mount-crackdown-foreign-criminals-loopholes-let-2-000-dodge-deportation.html>, last visited: 23 November 2020.

based on an ECHR provision derived from the horrors of Nazism during the Second World War, the terms “inhuman” and “degrading” should be tightly redefined by the UK Government through statute. This modernisation of legal definitions should be designed to limit forms of judicial activism which prevent the deportation of convicted foreign-national terrorists from the UK – and should form an integral part of the UK Government’s upcoming Fair Borders Bill.

- In June 2020, the Prime Minister of the UK, Boris Johnson, announced that the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO) would be merged to create a new department: The Foreign, Commonwealth and Development Office (FCDO).³⁴ This department should pursue a strict policy of conditionality for the provision of development assistance – which if not met by recipient countries ought to have a direct impact on the level of future assistance provided by the UK Government. One of the key shared commitments with ‘partner governments’ should be respecting human rights and other international obligations – incorporating foreign nationals who are being deported from the UK for TROs and returned to their country of origin. The recently created FCDO should encourage ‘partner governments’ of interest – including those in North Africa, the Horn of Africa, and the Indian subcontinent – to improve their record on human rights and the administration of state-led criminal sanctions, tying this with the provision of development assistance. This importantly has the potential to strengthen the grounds on which the Home Office can deport foreign criminals convicted of TROs to their countries of origin (which include ‘partner governments’ of interest).
- The fall in served deportation orders has also seen the utilisation of Article 8(1) of the ECHR: “Everyone has the right to respect for his private and family life.” For the UK Government, future UK legislation must stress the vital aspects of the following clause in the ECHR (Article 8[2]), which states that public authorities can interfere in the exercise of the rights enshrined in Article 8(1) on the grounds that it is “necessary in a democratic society in the interests of national security, public safety... for the prevention of disorder or crime...”.³⁵ Similar to the case of Article 3 of the ECHR, legal protections on this front ought to be curbed to facilitate the deportation of foreign-national criminals convicted of TROs. The UK Government’s Fair Borders Bill should include provisions which emphasise the conditions stipulated in Article 8(2) of the ECHR, with the intention of better facilitating the deportation of foreign criminals who have a clear history of being a threat to British national security and public safety through their terrorism-related activities.
- In Article 8(2) of the ECHR, it is stated that public authorities in democratic societies should not interfere in an individual’s right to respect for private and family life, unless it is deemed necessary “in the interests of national security... for the prevention of disorder or crime”.³⁶ Sections 29 to 32 of the 1998 Crime and Disorder Act created racially or religiously aggravated offences (which carry higher maximum penalties than the non-aggravated versions of those offences).³⁷ An offence is racially or religiously aggravated for the purposes of sections 29–32 of the 1998 Act “if the offender demonstrates hostility

³⁴ ‘Press Release: Prime Minister announces merger of Department for International Development and Foreign Office’, UK Government, 16 June 2020. Available at: <https://www.gov.uk/government/news/prime-minister-announces-merger-of-department-for-international-development-and-foreign-office#:~:text=The%20Prime%20Minister%20has%20announced,begin%20immediately%20on%20the%20merger.&text=UK%20aid%20will%20be%20given%20new%20prominence%20within%20our%20ambitious%20international%20policy>, last visited: 5 November 2020.

³⁵ European Convention of Human Rights (ECHR), Article 8(2), p.10.

³⁶ Ibid.

³⁷ Crime and Disorder Act 1998, Section 29, available at: <https://www.legislation.gov.uk/ukpga/1998/37/section/29>, last visited: 11 November 2020.

towards the victim based on his or her membership (or presumed membership) of a racial or religious group, or if the offence is (wholly or partly) motivated by racial or religious hostility".³⁸ It has been reported that one of Khairi Saadallah's previous criminal convictions, before he carried out the deadly June 2020 Reading stabbings, was racially aggravated assault.³⁹ The UK Government's Fair Borders Bill should include a provision which clearly states that, in the event of a foreign national being convicted of a racially or religiously aggravated offence under the 1998 Crime and Disorder Act, the conviction automatically results in a deportation order (irrespective of the length of sentence for imprisonment). This can be justified on the grounds of Article 8(2) of the ECHR, which implies that the UK Government can interfere in an individual's right to a private and family life in order to strengthen public safety in the UK's multi-racial, religiously diverse democratic society.

- Based on the February 2020 YouGov poll on deportations (see Section 2.2), the British public is deeply split on the question of separating a foreign criminal from his or her children. For some, this might be a strategic choice, as separating parents from their children can expose the child to radicalisation through social isolation and resentment towards the British state.⁴⁰ While the UK Government is widely expected to adopt a hard-headed approach in terms of removing foreign nationals who have been convicted of serious offences – including those of a terrorism-related nature – it must also show a compassionate approach in terms of mitigating against the potentially negative family-related effects of deportation. In cases where this leads to a separation between a deported convicted terrorist and their UK-based family (including British children), it is important that extensive social support is provided by the UK Government and local public authorities to counter the potentially negative impacts on the societal, economic, and psychological well-being of families affected by deportations.
- With a notable portion of FNOs having an asylum background before being convicted of Islamist TROs, there are serious questions to be asked of the UK asylum system's prioritisation of British national security. This will only intensify following the whole-life prison sentence given to Libyan refugee Khairi Saadallah over the June 2020 Reading terrorist attack in Forbury Gardens. It is also worth noting that Salman Abedi, who carried out the Manchester Arena Islamist bombings which killed 22 people, was born in the north-west English city just weeks after his Libyan-origin family was granted asylum by the UK Government.⁴¹ Cases of failed integration for asylum seekers from dysfunctional religio-cultural contexts which vastly differ from British liberal democratic society represent major social risks. This report recommends that the Home Office creates a new UK Asylum Reform Taskforce. This special committee of experts will be tasked with the responsibility of identifying the most problematic aspects of UK asylum procedures from a national security and social cohesion perspective, and providing practical policy proposals which are designed to create a more security-oriented national asylum system for the long term.

³⁸ '1. Racial or religious aggravation – statutory provisions', Sentencing Council (2020), available at: <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/hate-crime/1-racial-or-religious-aggravation-statutory-provisions/>, last visited: 13 November 2020.

³⁹ Gantzer, O., 'Who is Khairi Saadallah? The man guilty of the Reading terror attack', *The Reading Chronicle*, 11 November 2020, available at: <https://www.readingchronicle.co.uk/news/18864267.reading-stabbing-spree-terror-attacker-khairi-saadallah/>, last visited: 13 November 2020.

⁴⁰ 'Protecting children from radicalisation', NSPCC, available at: <https://www.nspcc.org.uk/keeping-children-safe/reporting-abuse/dedicated-helplines/protecting-children-from-radicalisation/>, last visited: 29 October 2020.

⁴¹ Osuh, C., 'The making of a monster: How Manchester boy Salman Abedi became a mass murderer', *Manchester Evening News*, 17 September 2017, available at: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/salman-abedi-manchester-arena-bomber-13601393>, last visited: 6 November 2020.

The deportation of FNOs found guilty of TROs must form an integral part of post-Brexit national security. Foreign criminals convicted of terrorism-related activities – a notable proportion of whom have known links with proscribed organisations such as Islamic State and Al-Qaeda – collectively represent a serious risk pool in British society. With a concerning portion of foreign-national Islamist TROs in the UK having an asylum background, there is a strong argument that the UK's benevolence and altruism have at times been to its detriment. The UK Government needs to pursue innovative methods which help to better prioritise collective public safety, without fundamentally undermining the UK's long-standing commitment to international legal obligations.

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By Dr Rakib Ehsan

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The Henry Jackson Society
Millbank Tower, 21-24 Millbank
London SW1P 4QP, UK

www.henryjacksonsociety.org



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