Amnesty International UK

BRIEFING

Victims and Prisoners Bill – briefing for Report and 3rd Reading, House of Commons

Introduction

This Bill covers three important areas; part 1, relating to provision for victims of crime; part 2, relating to the creation of an Independent Public Advocate to provide support and assistance to the victims of major incidents, and their families; and Part 3, which relates to Prisoners. Our organisation has focussed its analysis on Part 3, as this is the aspect of the Bill that raises the most significant human rights concerns. However, we will also briefly comment on a number of amendments that have been tabled in relation to Parts 1 and 2.

Amnesty International urges all members to: support amendments to remove clauses 43 to 46 from the bill.

Attacks on the Human Rights Act: Clauses 43-46

In addition to the substantive reforms to the Parole Board and its procedures for dealing with so-called 'Top Tier' cases, Part 3 also contains a set of more generalised attacks on the Human Rights Act. Clauses 43-45 disapply Section 3 of the Human Rights Act; one of the most important elements of the HRA, which requires public authorities and judges to interpret and apply legislation in line with human rights, so far as is possible to do so. Clause 46 seeks to weight any judicial decision making for qualified human rights (that is rights that are not absolute and can be interfered with if it is lawful, necessary and proportionate to do so) against a prisoner.

The first thing to note is that these clauses relate to all legislation governing release, license and recall. As such they will impact on all sentenced prisoners and therefore are of much wider application than the other Part 3 reforms, which only relate to 'top tier cases' and parole decisions.

More importantly, though, these clauses fundamentally undermine the basic premise of human rights and of the Human Rights Act; that rights are universal. There is no justification for providing one group in society less protection for their basic human rights than another. It can be no coincidence that the group being targeted here, prisoners, are socially marginalised and politically unpopular; just as it is no coincidence that the other group of people that have recently been targeted in the same way, those that are caught by the terms of the Illegal Migration Act, are also socially marginalised and politically unpopular. Indeed, these groups are archetypal cases of why human rights protections are and must remain universal, as they have no access to other means of protecting themselves from politically motivated attack.

When this bill was first introduced, the government was still claiming that it was intending to proceed with the Bill of Rights Bill, which would have done away with Section 3 altogether and introduced limits on the use of qualified rights claims by prisoners. It therefore justified selectively targeting sentenced prisoners in this bill on the basis that this was merely bringing forward what would eventually happen to everyone. However, as everyone now knows, the Bill of Rights has been scrapped. The argument that this is merely bringing those elements of it forwards therefore no longer stands.

The government's fallback position HRA has been to claim that these measures protect against judges' misusing the powers given to them by the to construe legislation in a way that goes against Parliament's intention. However, its own Independent Human Rights Act Review, chaired by Lord Justice Sir Peter Gross, found that there was no evidence of judges doing this. The government's most recent justification has therefore been that these clauses are effectively an insurance policy against some hypothetical future event where judges do start to misuse their powers in this way. There is no reason to think that they would suddenly start to do this, and certainly no reason to think that they would do so in relation to sentenced prisoners. **We therefore urge all members to support amendments to remove clauses 43 to 46 from the bill.**

Part 3: 'Prisoners'

Part 3 of the Bill introduces a series of reforms to the Parole Board, and the system for granting parole to certain prisoners deemed by the legislation to constitute a 'top tier' of offenders. The Bill originally introduced to Parliament by the then Secretary of State, Dominic Raab, created what was referred to as a 'Ministerial Veto' over Parole Board decisions to release in so-called 'Top Tier' cases. This was justified on the grounds that it was necessary to ensure 'public confidence' in the Parole system. However, the plans were poorly thought through and almost certainly constituted a breach of the UK's duties under Article 5 of the European Convention on Human Rights to ensure that parole decisions are 'determined speedily by an independent court'. In addition to being in violation of basic human rights standards, the plans were effectively unworkable, as the number of cases caught by them (estimated at around 650 a year) would have necessitated the Secretary of State to spend their whole working week re-determining parole decisions.

We therefore cautiously welcome the revisions to this central element of Part 3 tabled by the Government at Report stage, as an improvement on what had previously been proposed. **Government amendment 104 and the range of related amendments to clauses 33-42 and 47 of the Bill**, replace the 'ministerial veto' with a power to refer a decision to release to the Administrative Chamber of the Upper Tribunal, for the decision to be remade. This addresses a key concern we previously expressed in briefing on this bill, regarding a government minister (and a party to the relevant proceeding, no less) being in a position to veto a decision of an independent court, as the Parole Board is when it is making a release decision and as it must be if the UK is to abide by the human rights standards contained within Article 5 ECHR.

We note that this is accompanied by an attempt to control the number of cases potentially eligible for this referral, by limiting referrals to those that firstly would be 'likely to undermine public confidence' in the parole system, and secondly where the Upper Tribunal 'might not be satisfied' that the statutory release test was met. While we can readily understand the need to rein in the number of cases potentially subject to these new powers, we are concerned that the formulation of these limits are simultaneously insufficient and overly broad.

The test that the Secretary of State considers that the Upper Tribunal 'might not be satisfied' that the release test has been met is a very low bar. It appears to only preclude absolutely open and shut cases from being referred on to a second hearing. It is also difficult to imagine many instances in which a case passes the first test by having the potential to undermine public confidence in the parole system, but is nevertheless so open and shut that there is no possibility that the Upper Tribunal 'might' reverse a release decision. As such, it is difficult to see what use this will be in limiting the number of cases the Secretary of State has to be involved in.

Of perhaps greater concern is this first test; that the Secretary of State considers that the release of a prisoner would be 'likely to undermine public confidence in the Parole system'. In our view this is overly broad framing that will inevitably default into becoming political interference in unpopular but lawful parole decisions. We note that the clause is worded to relate to 'the release' of an individual having this potentially damaging effect on public confidence, not the lawfulness or quality of the decision, but the release itself. This must inevitably relate to cases where there is media-generated public uproar about a person's release and a clamour for them to remain imprisoned, regardless of whether or not this is lawful. The necessity for an independent court to make decisions on imprisonment and release is precisely to avoid these kind of political considerations impacting on the fundamental rights of individuals.

The need to limit the ambit of the new referral power is undoubtedly real. However, Parliament should be very slow to legislate to validate what Members would readily recognise in other contexts as illegitimate political interference in a judicial decision.

Parole Board Independence: Remaining Concerns

Our concerns regarding political interference in what are and must remain independent judicial decisions extend beyond the proposed revisions to the Ministerial veto power.

At Second Reading and Committee stages, and in our submissions to the JCHR, we raised serious concerns that other elements in the overall package of reforms to the Parole Board would damage the independence of the Parole Board and would be found to be incompatible with Article 5 of the ECHR. These concerns related particularly to the powers at clause 48(5)(2C) for the Secretary of State to sack the chair of the Parole board on grounds of 'public confidence' and the powers at clause 47(2)(b) for the Secretary of State to make Parole Board rules requiring that certain types of person sit on certain parole board panels. These clauses remain in the Bill coming out of Committee and our concerns about them remain the same.

There is already an established process for the chair of the Parole Board to be removed from office. Creating a new power for the Secretary of State to sack the chair of the Parole Board specifically on grounds of 'public confidence' can, once again, only be interpreted as meaning that the chair would be sacked in response to a media outcry and political pressure following an unpopular parole decision. Any suggestion to the contrary would be nonsensical – there would be no other circumstances in which a purely administrative figure would be sacked in order to secure 'public confidence' in the Parole Board that were not already covered by the existing dismissal procedure. While the Bill seeks to redefine the role of the Parole Board Chair, to remove them from having any dealings with casework or parole decision making, this is insufficient. Parole decision makers in potentially controversial cases will still be faced with the looming threat of their boss being publicly rebuked and dismissed by the Secretary of State, with all the attendant media attention that would go along with that.

The Clause 47(2)(b) powers for the Secretary of State to make rules requiring certain types of person sit on certain Parole Board panels are widely understood to be a reference to requiring that ex-law enforcement officers sit on certain panels. While we would first note that the wording does not limit itself to this stipulation, and thus is open to abuse by future Secretaries of State, there is nothing inherently inappropriate about ex-law enforcement officers sitting on Parole Board panels. What is inappropriate, however, in both Article 5 ECHR terms and basic principles of fairness, is for the Secretary of State to be mandating the composition of a Parole Board panel at all. Article 5 ECHR requires the Parole Board to be an independent Court-like body, and the allocation of decision makers, who can loosely be considered 'judges' for these purposes, to a given case is fundamentally a judicial function that is integral to the independent functioning of that court-like body. Moreover, it must be emphasised that the Secretary of State for Justice is a party to any proceedings in the Parole Board; as such it is an obvious breach of basic principles of justice and common law standards for one party to proceedings to have a determining power over the composition of the judicial panel they are presenting their case to.

We therefore remain concerned that, either taken individually or as a package of measures, Part 3's reforms to the Parole Board and its decision making processes damage its independence and risk being found to be incompatible with Article 5 ECHR. Over many years the Parole Board has been reformed in order to enhance and insulate its independence; often prompted by losses in court where the Board's setup has been found to violate Article 5. Despite welcome improvements on what was originally proposed, the present package of measures continue to constitute a regrettable backwards step in that trajectory.

IPP Reforms

We welcome the fact that the government has responded to calls for reform to the IPP sentencing regime. IPP sentences have long been regarded as a major mistake in criminal justice policy in the UK. In human rights terms, they were ruled to be in breach of Article 5 ECHR by the European Court of Human Rights back in 2012. The sentencing regime itself was ended, but those people that were previously sentenced under it remained caught by its provisions. The consequences of their continued application have recently been described by the UN Special Rapporteur on Torture as 'cruel, inhuman and degrading.'

The governments reforms in **Government New Clause 26** specifically relate to the license period that people released from prison following an IPP sentence will be subject to. In themselves they are a valuable change that will positively impact on a significant proportion of those affected by IPP sentences, particularly given that the previous extended license period was a major contributor to the harms that the IPP regime as a whole are known to cause. However, we join with others, including the Justice Select Committee and the UN Special Rapporteur, in urging Parliamentarians to go further and to substantively address the problem of those that continue to be detained on IPP sentences without ever having been released.

We ask members to support **New Clause 1,** tabled by Chair of the Justice Committee Sir Bob Neill and supported on a cross-party basis, and **New Clauses 2 and 3,** tabled by John McDonnell, which would do just that.

Parts 1 and 2

With regards to the Victims section of the bill, in common with many other organisations, Amnesty International has long supported calls for greater protections for migrant victims of crime, who are placed in a position of extreme vulnerability by a range of immigration policies and laws. In essence, we are concerned that there is a major imbalance, which results in grave human rights consequences for victims, in which immigration policy is prioritised over all other concerns. As such, Amnesty is **strongly supportive** of the motivations behind **New Clauses 8, 28 and 30**.

It is unacceptable that any victim or witness of crime should be deterred from seeking protection, assistance or supporting investigation and prosecution by the current practice of data-sharing with the Home Office for immigration purposes. This is one of the most egregious ways in which immigration policy is elevated above other policy, even at the expense of enabling abusers and empowering perpetrators of serious crime; doing grave harm to both individuals and the wider community. It has been a long-standing concern that survivors of domestic violence and domestic slavery are among many people trapped in exploitation by this dreadful practice of data-sharing.

Individual, family and public protection ought to be prioritised and the police, and other services, be unhindered to assist and protect victims whatever may be their immigration status.

With regards to the Independent Public Advocate, since the publication of the Bill we have supported calls for the Advocate's independence and powers to be enhanced. We therefore **welcome New Clauses 14 and 23**, tabled by the Opposition and the Government respectively, both of which we recognise contribute to that end. **New Clause 14** would create a legally enforceable duty of candour and a duty to assist public inquiries and other court proceedings relating to major incidents. Clause 23 would make the position of Independent Public Advocate a permanent standing one, rather than the ad hoc role as it was originally conceived in the legislation. This seems to us to be an important step in ensuring that the IPA can be as effective as possible as soon as a major incident occurs, and helps its independence by not being dependent on a Minister to appoint such an advocate in a given circumstance.

However, we regret that further changes have not been pursued, particularly with regards to data controlling powers and other measures that would enable an IPA to have a chance to stop the cover ups and collusion that so often follow amongst public authorities and other organisations potentially responsible for a major incident that will be subject to subsequent investigation or inquiry.

30th November 2023