Amnesty International UK

BRIEFING

VICTIMS AND PRISONERS BILL: House of Lords, Second Reading

AMNESTY INTERNATIONAL IS URGING PEERS TO:

- **Speak up against attacks on the Human Rights Act, namely by rejecting Clauses 49-52 of the Bill in their entirety.**
- **Speak up against Part 3's reforms to the Parole Board and its decision-making processes as risking damage to its independence and being incompatible with Article 5 ECHR.**
- **Consider proposals made by the Justice Committee that substantively address the problem of those that continue to be detained on IPP sentences without ever having been released.**

Background

This Bill arrives from the House of Commons with a contentious legislative history and significantly amended from how it was first published. The Bill is in three parts, the first of which forms the Government's long awaited 'Victims Bill'. As Peers may know, this bill was promised several years ago but was held up for a variety of reasons. During its passage through the House of Commons it was subject to a large number of amendments, with MPs from all sides of the House deeming it to be insufficient for its intended purpose and seeking to strengthen it in various respects. It arrives in the Lords with four additional clauses.

When the Victims Bill finally appeared part of the delay in its arrival was explained by the fact that it was accompanied by two further parts dealing with entirely different subject matter. Part 2 creates a new 'Independent Public Advocate' to provide support to victims of major incidents that lead to public inquiries or inquests, such like the Hillsborough disaster or the Manchester Arena attack. Part 3, entitled 'Prisoners', introduces a set of reforms to the Parole system and wider measures relating to the rights and treatment of prisoners. These reforms were a crucial plank of the then Secretary of State for Justice, Dominic Raab's, wider agenda of reform of the parole system.

When Mr Raab resigned and was replaced by Alex Chalk, it became clear that the Government would be significantly amending at least some of the initial proposals. Most widely contentious, and in practice extremely difficult to implement, were proposals to introduce what was referred to as a 'Ministerial Veto' over Parole Board decisions to release prisoners in so-called 'Top Tier' cases. Such a veto would have been in breach of Article 5(4) of the ECHR, even with the addition in the bill of an appeal mechanism. In light of this reality, along with the practical difficulties of Ministers being forced to re-hear for themselves parole decisions on hundreds of cases a year and the immense expense and prison capacity issues the idea would have produced, at Report Stage these proposals were substantially altered, by government amendment.

Second Reading

This briefing will focus heavily on Part 3 of the Bill, as this is where our organisation has the greatest human rights concerns. Following publication of the Bill in the Commons, Part 3 was widely criticised; including by the Justice Select Committee,[1] the Victims Commissioner for London,[2] the Parole Board itself,[3] campaigners against violence against women,[4] penal reform organisations[5] and human rights organisations.[6]

The Bill now arrives in the Lords with the Ministerial Veto being replaced by a new power for the Secretary of State to refer Parole release decisions in 'Top Tier' cases to a new appeal stage in the Administrative Chamber of the Upper Tribunal, or the High Court in rare cases involving closed material.[7] However, **Part 3 still contains a number of other clauses that raise very serious concerns regarding both the UK's compliance with its Convention obligations and the fairness of its judicial procedures, and more fundamentally, the principle of the universality of human rights.**

AREAS OF CONCERN:

(i) Attacks on the Human Rights Act: Clauses 49-52

Of greatest concern to Amnesty International, is that Part 3 contains a set of direct attacks on the Human Rights Act. Clauses 49-51 disapply Section 3 of the Human Rights Act (HRA); 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 52 seeks to weight any judicial decision-making on qualified human rights raised in connection to a release decision, such as the rights that relate to prisoners' family life, their right to liberty or their right to access to courts and a fair hearing, against the prisoner. These clauses relate to release decisions and all the legislation regarding release, license conditions and recall.[8] As such they affect all sentenced prisoners.

These clauses fundamentally undermine the basic premise of human rights, that rights are universal. The European Convention on Human Rights (ECHR) requires Member States to *'secure to **everyone** within their jurisdiction the rights and freedoms defined in Section I of [the] Convention'*[9] and states that *'The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'*[10]

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

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[1] https://committees.parliament.uk/publications/40270/documents/196660/default/
[2] https://committees.parliament.uk/writtenevidence/121115/pdf/
[3] https://committees.parliament.uk/oralevidence/13109/pdf/
[4] https://www.endviolenceagainstwomen.org.uk/victims-and-prisoners-bill-wont-deliver-what-victims-need/
[5] https://prisonreformtrust.org.uk/wp-content/uploads/2023/05/Victims-and-prisoners-bill-HoC-2nd-reading-PRT-briefing.pdf
[6] https://www.libertyhumanrights.org.uk/wp-content/uploads/2023/03/Libertys-Briefing-on-the-HRA-and-the-Victims-and-Prisoners-Bill-second-reading-HoC-May-2023.pdf
[7] This is accompanied by an attempt to control the number of cases potentially eligible for this referral. 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. The test that the Secretary of State considers that the release of a prisoner would be 'likely to undermine public confidence in the Parole system' is overly broad framing that will inevitably default into becoming political interference in unpopular but lawful parole decisions.
[8] Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (life sentences); Chapter 6 of Part 12 of the Criminal Justice Act 2003; Section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
[9] Article 1 ECHR (emphasis added)
[10] Article 14 ECHR

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,[11] are also socially marginalised and politically unpopular. Indeed, these groups are archetypal cases of why basic human rights protections are and must remain universal, as they have little or no access to other means of protecting themselves from politically motivated attack.

Even leaving aside the principled argument about discriminating against prisoners in terms of human rights protections, **there is no practical need for these clauses in terms of the implementation of Part 3's reform programme or wider policy concerns. Peers should not, therefore, feel constrained to keep them in the Bill.**

When the Victims & Prisoners 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.[12] However, the Bill of Rights Bill has been scrapped. The argument that this is merely bringing those elements of it forwards therefore no longer stands.

The Government's fallback position has been to claim that these measures protect against judges' misusing the powers given to them by the HRA to construe legislation in a way that goes against Parliament's intention.[13] However, its own Independent Human Rights Act Review, chaired by Lord Justice Sir Peter Gross, found that there was no evidence of this being a problem.[14]

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.[15] This is an extraordinarily flimsy basis for proposing such draconian measures. There is no reason to think that judges would suddenly start to do this having not previously done so, and certainly no reason to think that they would do so in relation to sentenced prisoners. Peers from across the House spoke out strongly against the same kind of measures in Clause 1 of the Illegal Migration Bill, as it then was, and we would urge them to do so again in relation to these clauses. **We therefore urge all members to speak out against clauses 49 to 52 at Second Reading and to support amendments to remove them from the bill at later stages.**

(ii) Parole Board Independence

Throughout the Bill's passage through the House of Commons Amnesty International raised serious concerns that other elements in the overall package of reforms to the Parole Board (a) would damage the independence of the Parole Board and (b) risked being found to be incompatible with Article 5 of the ECHR. These concerns related particularly to the powers at clause 54(5)(2C) for the Secretary of State to terminate the chair of the Parole board on grounds of 'public confidence', and the powers at clause 53(b) for the Secretary of State to make Parole Board rules requiring that certain types of persons sit on parole board panels. These clauses remain in the Bill coming into the Lords.

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 only be interpreted as meaning that the chair would be terminated in response to a media outcry and political pressure following an unpopular parole decision or set of

[11] Illegal Migration Act 2023 S 1(5)

[12] https://publications.parliament.uk/pa/bills/cbill/58-03/0286/en/220286en.pdf

[13] https://publications.parliament.uk/pa/bills/cbill/58-03/0286/en/220286en.pdf

[14] https://www.gov.uk/guidance/independent-human-rights-act-review

[15] https://bills.parliament.uk/publications/53289/documents/4128

decisions. 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 controversial cases will still be faced with the looming threat of their Chair being publicly rebuked and dismissed by the Secretary of State, with all the attendant media attention, criticism and instittuional crisis that would go along with that.

The Clause 53(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 there is nothing inherently inappropriate about ex-law enforcement officers sitting on Parole Board panels, **what is inappropriate, 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 to a given case is fundamentally a judicial function that is integral to the independent functioning of that court-like body.** 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 to enhance and insulate its independence; often prompted by losses in court where the Board's setup has been found to violate Article 5.[16] Despite welcome improvements on what was originally proposed, the present package of measures continue to constitute a regrettable backwards step in that trajectory.

(iii) IPP Reforms

We welcome the fact that the government has responded to calls for reform to the Imprisonment for Public Protection (IPP) sentencing regime. IPP sentences have long been regarded as a major mistake in criminal justice policy in the UK. They were ruled to be in breach of Article 5 ECHR by the European Court of Human Rights back in 2012.[17]

Whilst the IPP sentencing regime itself was ended, 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.'[18]

The Government's reforms in clause 48 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, are known to cause. However, **we join with others, including the UN Special Rapporteur,[19] 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.**

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[16] See eg *Weeks v United Kingdom* (1988) 10 EHRR 293; *Thynne v UK* (1991) 13 EHRR 666; and *Hussain v UK* (1996) 22 EHRR 1

[17] J*ames, Wells and Lee v UK* [2012] ECHR

[18] https://www.ohchr.org/en/press-releases/2023/08/uk-un-torture-expert-calls-urgent-review-over-2000-prison-tariffs-under

[19] https://www.ohchr.org/en/press-releases/2023/12/reform-problematic-uk-sentencing-system-welcome-bolder-action-needed-says-un