Amnesty International UK

BRIEFING

Victims and Prisoners Bill – briefing for Second Reading Debate, House of Commons

This briefing summarises Amnesty International's analysis of the Victims and Prisoners' Bill (the Bill) from a human rights perspective, and raises particular concerns around Part 3 of the Bill on reforms to the Parole system in England and Wales.

Amnesty International urges MPs to attend the Bill's second reading and:

- **Call for amendments to Part 1 of the Bill that would enshrine the rights of victims in law, including through creating a firewall to protect migrant victims of crime from immigration enforcement;**
- **Call for amendments to Part 2 of the Bill that would strengthen the independence and powers of the Public Advocate;**
- **Oppose and call for the full removal of Part 3 of the Bill, which is a serious attack on basic human rights**

Part 1: Victims of Criminal Conduct

Part 1 of the Bill is intended to fulfil the government's long-standing commitment to introduce a so-called 'Victims Bill' to provide greater assistance and support to the victims of criminality. Amnesty International shares the widespread view from across victims' representation groups, in particular campaigners against violence against women and girls,[1] that this section of the Bill represents a disappointing missed opportunity.

Of particular concern is the failure of the Bill to include a firewall protection for migrant victims of crime against data-sharing for immigration enforcement purposes.[2] People subject to immigration control, including survivors of domestic abuse, sexual assault and labour exploitation, have fears of engaging with the criminal justice system or other protective branches of the state because of legitimate concerns that their information will be passed to the Home Office and they will be subjected to detention and deportation. Indeed, criminal abusers and exploiters frequently use these risks as leverage to maintain control over their victims. The Illegal Migration Bill currently going through Parliament is set to make this situation immeasurably worse, by gutting limited protections previously put in place by the Modern Slavery Act and creating a wider underclass of people permanently excluded from legal status and access to justice. **Amnesty International supports Migrants' Rights organisations and campaigners against violence against women and girls in calling for full firewall protection and urges MPs to support amendments to this Bill that would provide such protection.**

Part 2: Victims of Major Incidents

Part 2 of the Bill introduces laws to create a form of 'Independent Public Advocate' to provide assistance to the victims and families of victims of major incidents of violence or disaster. The

1 See eg EVAW Coalition, Victims and Prisoners Bill Won't Deliver What Victims Need,
2 See eg LAWRS, Joint response to the Home Office

creation of such a role has been a key ask of Parliamentarians closely involved in supporting and advocating for the survivors and bereaved families of major national disasters.[3]

The concept of an Independent Public Advocate has the potential to greatly assist the state in meeting its obligations under Article 2 of the European Convention on Human Rights (ECHR) to conduct effective investigations into deaths where the state may have had responsibility. Such investigations are frequently subject to delay, withholding and destruction of evidence and other forms of collusion and obstruction by public authorities who are the subject of those investigations. As a result, they can also be alienating and highly adversarial experiences for survivors and bereaved family members. An Independent Public Advocate role has the potential, if sufficiently empowered and resourced, to alleviate some of these issues. However, the proposals in the Bill fall well short of what would is required. The proposed advocate would not be independent, as they would both be appointed and sackable by the Secretary of State (for any reason).[4] They would not have legal powers to require the preservation or production of documents or other potential evidence.[5] They would only act at the behest of the Secretary of State[6] and there would be no legal duty to provide support to any particular survivor or family member.[7]

Amnesty International urges MPs to support amendments that would enhance the independence and powers of the Public Advocate.

Part 3: Prisoners

Parts 1 and 2 of the Bill appear disappointing, but have potential for improvement through amendment. Part 3 is a serious attack on basic human rights principals and must be opposed entirely.

Clauses 42, 43 & 44

Of greatest concern is the proposal to disapply Section 3 (S.3) of the Human Rights Act (HRA) to the operative sections of Part 3 of the Bill.[8] S.3 of the HRA imposes a duty on all public authorities to interpret and apply legislation in line with the ECHR, so far as is possible to do so. In practice this duty means that courts and other public authorities applying legislation (in this case the Parole Board and HMPPS) must try to apply it in a human-rights respecting way, taking into account the relevant caselaw of the domestic and European courts. The apparently-defunct Bill of Rights Bill contained within it plans to repeal S.3 entirely.[9] These plans were unsupported by the government's own Independent HRA Review Panel and were widely criticised. The current Bill's proposal to suspend S.3 in relation to certain prisoners raises very serious practical concerns as well as fundamental points of principle about the UK's respect for human rights and the proper functioning of the country's human rights protection system.

Without the enhanced interpretive powers of S.3, UK legislation is far more likely to be found to be incompatible with Convention rights by the UK's own courts. As elaborated on below, the Bill as

3 See eg Public Advocate Bill, Bill 47 2021-22, https://bills.parliament.uk/bills/2929
4 Victims and Prisoners Bill Clause 25 (2)(a)
5 Victims and Prisoners Bill, Clause 27 (2)(d)
6 Victims and Prisoners Bill, Clause 24(1)
7 Victims and Prisoners Bill, Clause 27 (7)
8 Victims and Prisoners Bill, Clauses 42, 43 and 44
9 See eg https://publications.parliament.uk/pa/bills/cbill/58-03/0117/en/220117en.pdf

currently drafted contains several clauses that already run a severe risk in that regard. Parliamentary and governmental convention is that legislation that is found to be incompatible (through Declarations of Incompatibility under Section 4 of the HRA) is always rectified, usually by amendments to the offending legislation. This is both out of an appropriate respect for minimum human rights standards and an acknowledgement that legislation declared incompatible by the domestic courts is almost certain to then be found to be in violation of the Convention by the European Court itself. The UK would then be under an international law duty to provide remedies to the victims of any such violation and to amend the legislation.[10] In practical terms, therefore, the suspension of S.3 HRA makes no sense, unless the government's intention is to deliberately pass legislation that breaches human rights standards.

More fundamental than this, though, is the basic illegitimacy from a human rights perspective, of switching major parts of the UK's supposedly universal human rights protection system off when the state is dealing with an unpopular or marginalised group of people. For obvious reasons, the people affected by this proposed legislation are already marginalised, have no political voice and rely on the independent courts and justice system to guarantee basic minimum standards of fairness and respect. If Parliament allows S.3 to be switched on and off depending on whichever unpopular group is being targeted by the government of the day, it will be sanctioning the end of universal human rights protections in the UK's domestic law.

Clauses 35 & 36, 45 and 47

Beyond this overarching concern with Part 3, there are a number of specific proposals within it that appear to be at significant risk of breaching the UK's commitments under the ECHR and are, therefore, at risk of being subject to declarations of incompatibility by the UK's own courts. As noted above, this risk would be increased by the suspension of courts' S.3 powers to interpret legislation compatibly with the Convention.

The power for the Secretary of State to sack the Parole Board Chair on grounds of public confidence[11] is a clear and serious encroachment into the independence of the Parole Board, and therefore of its capacity to meet the tests set by Article 5 ECHR, the right to Liberty.[12] The government has attempted to alleviate this obvious problem by changing the role's powers, so as to mean they have no day-to-day involvement in casework.[13] However, the looming threat of getting the Chair fired and their reputation traduced in response to what will inevitably be aggressive media and political criticism, is itself a strong disincentive for Parole Board members to make otherwise lawful but unpopular release decisions. The heavy weighting of the balancing exercise courts are required to make when considering qualified rights' cases under the HRA against prisoners,[14] is not in accordance with relevant Strasbourg caselaw.[15] While the government claims that this falls within the UK's legitimate margin of appreciation, similar proposals were contained in the now-abandoned Bill of Rights Bill and were widely condemned.[16] Most prominent of all, has been the Bill's headline

10 European Convention on Human Rights, Article 13 'Right to an Effective Remedy'
11 Victims and Prisoners Bill, clause 47(5)
12 Article 5(4) ECHR requires that, 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily ***by a court*** and his release ordered if the detention is not lawful.'
13 Victims and Prisoners Bill, Clause 47(7)
14 Victims and Prisoners Bill, clause 45
15 https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf
16 Bill of Rights Bill, clause 6. For reaction, see eg https://prisonreformtrust.org.uk/government-proposals-to-replace-human-rights-act-sends-dangerous-message-on-treatment-of-prisoners/

proposal of giving the Minister direct power to veto Parole Board release decisions.[17] To the extent that the Bill actually achieves this, it would be a clear and obvious violation of Article 5(4)'s requirement that detention be determined by an independent court. The Bill seeks to evade this problem by creating a new appeal right where prisoners subject to such a veto can take their case to the Upper Tribunal,[18] including on what appears to be full merits grounds.[19] If this is a correct interpretation, this aspect of the Bill achieves nothing, other than prolonging the parole process for all concerned (including victims) and giving the relevant minister an opportunity to grandstand in the media before the final substantive decision is then made by an independent judge, as it always should have been. It may still be in breach of Article 5(4), as the proposed three stage process, including a Ministerial determination stage which is itself a clear breach of the relevant Article before a court actually makes the final determination, could hardly be described as 'speedy', as Article 5(4) requires.

In light of these repeated and systemic human rights concerns across Part 3 of the Bill we would urge Parliamentarians to remove Part 3 in its entirety.

17 Victims and Prisoners Bill, clauses 35 and 36
18 Victims and Prisoners Bill, clauses 38 and 39
19 Victims and Prisoners Bill, clause 38, 32ZAD(3)(b)