Republic of Nauru - 18th Parliament

Criminal Justice (Amendment) Bill 2009

Second Reading Speech
Hon Mathew Batsiua MP, Minister for Justice
13 October 2009

Mr Speaker,

I have introduced to this House today a short Bill for an Act to amend the *Criminal Justice Act 1999*. The Bill contains only five clauses and is quite straightforward. The main aim of this Bill is to make the system of parole fairer.

It may be useful to provide a brief outline of the background to this amendment. The *Criminal Justice Act* was passed by Parliament in 1999, with the aim of providing for new methods of dealing with offenders liable to imprisonment through a system of probation, community service and parole. Until this year, the provisions relating to parole were effectively dormant, because the Parole Board had not been established. These provisions have been brought to life with the appointment this year of the Parole Board in accordance with the Act.

Since the Parole Board commenced, a number of problems with its operation have become apparent. One problem is that the Act currently provides that the Board is to be chaired by the Chief Justice. This is a problem not only because the Chief Justice is seldom on the island, but also because he is, in most cases that come before the Parole Board, also the sentencing judge, and therefore perhaps not the most appropriate person to be making decisions as to parole. The Chief Justice himself has indicated that he is somewhat uncomfortable with this role.

Another problem is the absence of any clear procedure for applying for parole. Under the existing Act, prisoners who are serving a life sentence automatically become eligible to have parole considered after serving a prescribed term of imprisonment, but all other prisoners will only have parole considered if a member of the Parole Board requests the Board to consider the case.

The principal objectives of this Bill are therefore to alter the composition of the Parole Board so that it no longer includes the Chief Justice, and to make provision for application to the Parole Board. The intention behind these proposed amendments is to make the process of considering and granting parole fairer and more transparent.

Mr Speaker, the explanatory memorandum that accompanies the Bill explains in detail the meaning and effect of each clause of the Bill.

In summary, clause 3 would amend section 32 of the *Criminal Justice Act*, with the effect that the Chief Justice would no longer be the Chairman of the Parole Board, but rather, the Chairman would be a person appointed by the Minister, who is a non-Nauruan but lives in Nauru, and who is not a judge, but who has tertiary qualifications in medicine, law, psychology, criminology or other discipline deemed by the Minister to be relevant. The rationale behind prescribing that the person

should be a non-Nauruan is to ensure that at least one member of the Board is a non-Nauruan, who is therefore unlikely to be related to or personally acquainted with the applicants for parole, and therefore better able to be completely objective in considering applications for parole.

Clause 4 of the Bill would amend section 34 of the principal Act by amending subsection (2), repealing subsections (3) to (7), and inserting new subsections (3) to (6). In summary, the main effect of these proposed amendments would be:

- To remove the distinction between prisoners serving a life sentence for murder and those serving a life sentence for any other crime, and to remove the *automatic* consideration of such cases after a prescribed period, and to provide instead that any prisoner serving a life sentence may *apply for* parole after serving 10 years of his sentence;

- To make a new provision that an offender serving 12 months or more may apply for parole after serving *half* of his sentence; and

- To delete the provision that a member of the Board may at any time request the Board to consider a case, and to provide instead that the Parole Board can *only* consider *applications* made in accordance section 34(3).

Clause 5 of the Bill would remove the provision currently found in subsection (3) of section 36 which says that a person who has served the full sentence of imprisonment imposed on him by the court and is released from prison is under probation for one year from the date of his release. It is proposed to delete this provision because it is considered unreasonable to effectively extend a person's sentence beyond that which was imposed by the court. This clause would also amend subsection (1) of section 36 for the purpose of bringing it into line with the Correctional Service Act, as explained in the explanatory memorandum.

Mr Speaker, in preparing this Bill for presentation to Parliament, careful thought has been given to the distinction between remission and parole, and how the two different concepts interact. Remission means that a person's sentence is reduced and he is released as a free person. A person cannot apply for remission; either he earns it based on good behaviour, or he doesn't. Parole on the other hand is still a form of sentence. A person who is released from prison on parole is still under sentence, and is on probation until the expiry of his sentence. The criteria for remission and parole are not the same: remission may be earned under the *Correctional Service Act* for good behaviour, and parole is usually granted not specifically for good behaviour but because of factors such as: the desire to get people back into the community, reducing overcrowding in prisons, and the desirability of release (on probation) of a prisoner who is rehabilitated and who is considered safe. Good behaviour will be helpful to a person who is applying for parole, but it is not the only, or even an essential, factor. Section 34(8) of the *Criminal Justice Act* lists the criteria that the Parole Board must have regard to when considering a case for parole, which include the safety of the public, the likelihood of re-offending, the welfare of the offender, and any recommendation made by the head of the prison.

Because a person released from prison on parole is still under sentence, and may if he breaches the conditions of his probation be placed back in prison, and also taking into account the reasons for which parole is usually granted, there are good reasons for making the point at which a person is eligible to apply for parole *earlier* than the point at which they could be freely released from prison because of remission. Therefore, whilst under the *Correctional Service Act* passed by this House in August, the earliest point at which a person can be released by way of remission is after serving two thirds of their sentence, this Bill proposes that the *Criminal Justice Act* should provide that the earliest point at which a person is eligible to apply for parole is after serving one half of their sentence (or in the case of prisoners serving life sentences, after serving ten years).

To provide an example of what this would mean if a particular prisoner was granted the *earliest* possible parole and the *maximum* possible remission: a prisoner who was sentenced to six years imprisonment, who behaved well and was rehabilitated in prison, and who was assessed as being unlikely to re-offend, could through his good behaviour earn remission of one third of his sentence, which would reduce his effective sentence to four years. This prisoner could apply for and be granted parole after serving three years of his sentence, which would mean that he would be released on probation until the expiry of his effective sentence. In other words, he could be released after three years, be on probation for one year, and be a free man after four years.

Mr Speaker, the amendments to the Criminal Justice Act proposed in this Bill will serve to make the system of parole more fair and transparent, and, as a complement to the behavioural incentive of remission, will make parole another effective incentive for reform, rehabilitation and good behaviour of prisoners.

Mr Speaker, I commend this Bill to the House.

Thank-you Mr Speaker.