

## **BRIEFING DOCUMENT HOUSE OF COMMONS DEBATE ON JOINT ENTERPRISE 15/01/2018**

### **BACKGROUND**

Formed in 2010 Joint Enterprise: Not Guilty by Association (JENGbA) is a grassroots campaign made up of prisoners and their families who have been convicted under the now discredited common law doctrine of joint enterprise. JENGbA are now supporting over 800 prisoners (who we refer to as our Inside Campaigners) mainly serving mandatory life sentences of an average of 22 years but some much higher. The youngest to receive a Life sentence was just 12 years old when charged.

We have given written and oral evidence to the Justice Select Committee brief inquiry and follow up inquiry in 2011 and 2014 in which the committee raised concerns that the use of joint enterprise was leading to miscarriages of Justice. There was a call from the committee that data on the use of joint enterprise in charging decisions was more stringently applied but Mike Penning MP said this would be too expensive to collate. He did not explain if the MOJ had done a cost estimate to collate the data so we do not know why it is too expensive.

JENGbA have campaigned relentlessly for the last seven years and we have gained strong support from Universities and academics, legal professionals, Unions, other prison reform groups, charitable trusts and numerous Cross-Party MPs hence the call for a debate in the House of Commons. JENGbA are currently facilitating 13 Universities with cases studies for a research project with research findings expected to be released shortly. We call this project JEAP (Joint Enterprise Appeals Project). We also have a strong social media presence and various documentaries have been made about the campaign. Our patrons are Lord Herman Ouseley and the writer Jimmy McGovern whose award-winning drama 'Common' was aired on the BBC to 4.4million viewers. Our petition was taken to Downing Street in 2015 by campaigners and Jimmy McGovern.

JENGbA have argued that this is a common law used against common people that makes no common sense. The police and CPS disregard the most sacred of legal principles innocent until proven guilty; there is often little or no real evidence to prove a person guilty of the most heinous of crimes, murder. The language of the court is mere assumption, inference and notions that individuals "must have known" what someone else was going to do. Families have been told that multiple charging is used as a 'scare tactic' but jurors will not understand this, nor JENGbA believe will many understand the complex language used in courts where joint enterprise (parasitic accessorial liability) is concerned. Also since we have an extremely adversarial court system it is about winning a case so disclosure and lack of evidence are strongly featured.

The Supreme Court ruled in 2016 that the 'law' had taken 'a wrong turn' in 1984 in the case of R v Chan Win Su and overturned R v Jogee, however they also ruled that only cases prior to Jogee could go back to the Court of Appeal if they could prove their conviction was a substantial injustice. Jogee was retried and found not guilty of murder. He received a manslaughter sentence as opposed to a mandatory life sentence. JENGbA argue that any case, where defendants were convicted under the 'wrong' law, is substantial injustice, especially when labelled a murderer and sent to prison when you have not murdered anyone.

Many of our Inside Campaigners were not at the scene and could prove they were not at the scene. Evidence such as Youtube footage of rap videos, mobile phone evidence (when a defendant's phone is switched off at the material time of an incident this is used as 'evidence' that they may have known what was going to happen). Receiving a call from the principal is enough to convict someone

of murder even when there is no evidence of the actual conversation. Witnesses turning Queens evidence so they are not brought into the joint enterprise charge. We are supporting many family members, brothers, cousins, mother and 2 sons, father and son, sisters, and many friends who the prosecution will argue “tell each other everything”. As this common law has been used so ruthlessly our campaign has grown stronger and we will never give up until we get the justice so many deserve. Many of the Inside Campaigners had no criminal background whatsoever and now find themselves serving life for a murder they did not commit or even know was going to happen. Another common feature is the disproportionality of the use of joint enterprise charging on BAME communities, who often find themselves at trial with an all white jury. In fact, many Inside campaigners have told us that the only black people in the court were those in the dock. We submitted evidence to the Lammy review.

The second question certified by the Court of Appeal to be examined by the Supreme Court was “Does joint enterprise over-criminalise Secondary Parties?” JENGBA was granted permission to intervene to the Supreme Court in *R v Jogee* because this is exactly what we have been arguing since we formed. However, we do not believe that the Supreme Court answered this question robustly. It is clearly apparent that joint enterprise definitely over-criminalises groups of innocent individuals, it wrongfully convicts and labels them as murderers in the prison system. Prisoners have an OAYSIS report that stays with them throughout their progression (or for many lack of) through their sentence. This report will state they are guilty of murder not ‘secondary party’ to a joint enterprise. Many prisoners will not progress and they refuse to accept the index offence of which they have been convicted so are seen as ‘deniers’. We believe that the MOJ refuses to collate the data as they know it will not favour the argument that the UK has more ‘Lifers’ than Europe combined, our last figure was UK 20% and the rest of Europe combined was 3%.

The Supreme Court decision did not bring clarity to this issue, it was merely an exercise in stopping the number of defendants going back to the Appeal Court and therefore a fiscal consideration not a justice one. The Court of Appeal has since denied every single joint enterprise appeal even though they included children with learning difficulties and autism citing that they did not prove to have suffered *substantial injustice*.

The CCRC are not able to recommend any JE case back to the Court of Appeal as they do not have the backbone to do so. After the first batch of appeal post *Jogee* were refused the evidential barriers to overturn convictions are insurmountable so even though the CCRC know convictions are unsafe they will not recommend they go back to the Court of Appeal.

**What JENGBA foresee as the solutions to the wrongful use of joint enterprise convictions and charging:**

Fast Track appeals for all secondary parties convicted under the wrong law.

Abolish joint enterprise (parasitic accessorial liability) charging. CPS guidance is still very confusing and actually allows it as public protection policy.

Abolition of Mandatory Minimum Sentences (Schedule 21).

Abolish Child Lifer (Only country in EU that gives children life sentences).

Stop putting secondary parties on remand as it disrupts education, jobs, housing, family life and gives the wrong signal to the jury – which is why the police do it.

Restrict police and prosecutors promotions on the basis of conviction results.

Transparency from the Police and CPS on charging decisions that explain also the evidential case against a defendant that can be challenged by the defence from the outset. The evidential bar MUST rise, presenting a gang narrative, presence at the scene and applying notions of foresight should not be enough to convict.

Police and CPS must stop using the media as a way of constructing the gang narrative and bad character background stories on defendants prior to trials. These stories influence the jury.

Data collection on all Joint Enterprise Secondary party convictions.

MOJ should deliver a report on the cost of keeping joint enterprise prisoners (Lifers) in prison. On average it is approx. £80,000 per year to keep a Lifer in prison but that figure is much higher for children (£250,000 yearly in secure unit).