

Press Release: Court to hear Government application to prevent juries acquitting climate and peace groups for taking direct action

- 21 Feb 24, the Court of Appeal of England & Wales will hear the Attorney General's application to remove the last line of legal defence for many taking non-violent direct action - including those taking measures on climate change and for peace in Gaza. If successful, this would prevent many defendants explaining their actions and motivations to the jury.
- Following on from a recent UN report condemning the loss of democratic freedoms in Britain, a substantial public demonstration is expected to take place outside court
- At the same time and place, Julian Assange's final appeal against extradition is also being heard (20th and 21st), as well as a combined NGO legal challenge to the Government's net zero strategy (see Notes to Editors).



'The HSBC 9' - acquitted by a jury last November on the basis of belief in consent

On February 21 at the Royal Courts of Justice, London, the Attorney General's application to remove the last remaining legal defence for many taking non-violent direct action will be heard in the Court of Appeal.

To date, 'belief in consent' as defence has been successfully used by climate groups such as Extinction Rebellion and human rights groups such as Palestine Action, to justify actions they have taken to expose government and corporate crimes.

"Defences such as 'belief in consent' have been vital to people being able to defend themselves throughout history," says a spokesperson for Defend Our Juries. *"At law school we are given the example that breaking the window of someone's car is usually a crime. But if a dog is in the car on a scorching summer's day and you save the dog, you would not be guilty of a crime because you are saving the dog which is more important."*

"If the government succeeds in persuading the court that this right to explain the context of an action should be taken away, as the Attorney General and Conservative MP, Victoria Prentice, is trying to do today, the threat goes way beyond saving dogs' lives, it is a threat to all people who would seek to stand up for the greater good, by doing something that might be normally considered illegal, in order to prevent a much more serious and life-threatening situation."

"Juries bring the common sense of ordinary people into the courtroom. The Government's attempts to undermine trial by jury are truly a threat to British democracy. If juries aren't given all the information behind a case - how can they make up their minds in an informed and just way? We should be ashamed and terrified that this is being attempted in the country's higher courts today."

Precedent from Suella Braverman's reference of the Colston 4 acquittal

Until recently, it was almost unheard of for the government to interfere with legally available defences in this way - the defence of belief in consent was established by Parliament in the Criminal Damage Act 1971, s.5(2)(a).

But following the acquittal of the Colston 4, who toppled the statue of the slave-trader, Edward Colston into Bristol Harbour, previous Attorney General Suella Braverman, made an intervention to prevent other juries reaching similar verdicts in the future, which the Court of Appeal supported [3].

Pattern of acquittals based on belief in consent

Despite this, and other decisions of the higher courts which have removed otherwise available defences (such as ‘necessity’), juries have continued to acquit those charged with crimes for taking proportionate and necessary action to prevent far greater harm. In just the last few months of 2023, there were a number of high profile acquittals based on the defence the Attorney General now seeks to remove. These included a group who sprayed the Treasury with fake blood, to draw attention to the scale of UK Export Finance’s investments in fossil fuels around the world; 9 women who broke windows at HSBC to shine a spotlight on HSBC’s £80bn financing of fossil fuel projects since the Paris Agreement; and members of Palestine Action, who defaced the property of Elbit Systems, the Israeli-based arms company, with facilities in the UK, which is profiteering from the demand for arms used against civilians in Gaza [1][1A][2][2A].

Political interference

On 20 December last year, with public attention moving elsewhere, Attorney General Victoria Prentice announced her application to the Court of Appeal to remove this defence - not for everyone, but just for groups taking direct political action - citing high numbers of recent acquittals in ‘protest’ cases [4].

Just a few months previously, the Guardian reported: ***“Israeli embassy officials in London attempted to get the attorney general’s office to intervene in UK court cases relating to the prosecution of protesters, documents seen by the Guardian suggest.”*** [4A].

Defendants to be prevented from explaining their actions in criminal courts?

As a result, more and more people taking nonviolent direct action as a necessary act, could find themselves in court without any legal defence, and effectively banned from explaining their motivations to the jury.

Extinction Rebellion co-founder Dr Gail Bradbrook has already been denied the use of this defence and was therefore left without any legal defence in her trial last November for breaking a window at the Department for Transport. [5] Others have been imprisoned just for using the words ‘climate change’ and ‘fuel poverty’ in court [5A]. This situation in which peaceful activists are left silenced and defenceless in court, has been described by UN Special Rapporteur on Environmental Defenders, Michel Forst as “terrifying” [5B].

A spokesperson for Defend Our Juries, said: ***“The International Court of Justice’s decision that this the attacks on Gazans are a plausible case of genocide means it’s vital and lawful for people to act on that. How can our Attorney General be criminalising people for trying to stop the genocide and then banning them from explaining themselves to a jury?”***

Last month, the UN issued a special report into the situation in Britain which said: ***“It is very difficult to understand what could justify denying the jury the opportunity to hear the reason for the defendant’s action, and how a jury could reach a properly informed decision without hearing it, in particular at the time of environmental defenders’ peaceful but ever more urgent calls for the government to take pressing action for the climate.”*** [6]

More often than not, when people have been to explain their motivations to a jury of their peers, and to communicate the evidence that direct action is effective in bringing about political change, juries find them not-guilty. The Attorney General is attempting to end the pattern, even if it means compromise to fundamental legal principles, such as the right of a defendant to a serious criminal charge to explain their action to a jury of their peers.

When is a ruling expected?

The hearing of the Attorney General’s application will be completed on 21 February. Although the hearing may give a good indication of the Court’s position, it is common for the Court of Appeal to reserve judgement (ie to issue their ruling at a later date).

Crowds to gather for three revealing hearings

On the same day, two other momentous cases will also be heard at the Royal Court of Justice. The final appeal of Julian Assange against extradition to the US; and the legal challenge to the Government’s ‘net zero strategy’ brought by the Good Law Project, Friends of the Earth and ClientEarth. [7] [8]

Crowds will gather at 9am on 21 February outside the court to hear from a number of those who have been acquitted on the basis of the defence.

A spokesperson for the Defend Our Juries campaign said:

“The Attorney General must know that to interfere in the decisions of juries, just because she doesn’t like the decisions they’re reaching, will be interpreted very badly by UK citizens and the rest of the world. It’s a conflict of interest as blatant as the Post Office prosecuting its own cases, while handing out billion pound contracts to Fujitsu.

“The reason juries keep acquitting environmental defenders is that when they hear the evidence and reasoning, they understand that the defendants are acting

for the greater good. And they can see the government has been captured by the fossil fuel industry and is cheating the public catastrophically.

“The reason juries keep acquitting Palestine Action is that they know it’s wrong for Elbit Systems and others to be profiting from genocide in Gaza. The Attorney General’s predatory attempt to circumvent the moral intuition of juries is an assault on justice, democracy and the rule of law. ”

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Press contact: 07301 315352 / 07901 916489 / 07950 953004

Email: defendourjuries@protonmail.com; Website: defendourjuries.org

Notes for Editors:

About Defend our Juries <https://defendourjuries.org/>

Defend our Juries has the following aims:

1. to bring to public attention the programme to undermine trial by jury in the context of those taking action to expose government dishonesty and corporate greed
2. to raise awareness of the vital constitutional safeguard that juries can acquit a defendant as a matter of conscience, irrespective of a judge’s direction that there is no available defence (a principle also known as ‘jury equity’ or ‘[jury nullification](#)’)
3. to ensure that all defendants have the opportunity to explain their actions when their liberty is at stake, including by explaining their motivations and beliefs.

More more information on the Attorney General’s application, see:

“*Jury Rigged*” (Private Eye, Feb 24): https://twitter.com/PlanB_earth/status/1758047858689798622

“*Climate change protesters could lose defence*” (The Times, 15 Feb 24)

<https://www.thetimes.co.uk/article/climate-change-protesters-could-lose-defence-qq9mcgpgw#:~:text=Cimate%20change%20protesters%20charged%20with,Court%20of%20Appeal%20next%20week>.

[1] Belief in Consent; Criminal Damage Act 1971 Section 5(2)(a)

[1A] Now Extinction Rebellion clowns who bought fire engine then used it to spray fake blood over the Treasury in eco-stunt are cleared of criminal damage:

<https://www.dailymail.co.uk/news/article-12694229/Now-Extinction-Rebellion-clowns-bought-fire-engine-used-spray-fake-blood-Treasury-eco-stunt-cleared-criminal-damage.html>

[2] Jury finds women who broke HSBC windows ‘not guilty’:

<https://extinctionrebellion.uk/2023/11/16/jury-finds-women-who-broke-hsbc-windows-not-guilty>

[2A] Landmark court cases sees Palestine Action’s ‘Elbit Eight’ acquitted on 12 charges – but there’s a catch: <https://www.thecanary.co.uk/2023/12/23/palestine-action-acquitted-elbit/>

[3] The government is undermining the idea of trial by jury after Colston Four verdict:

<https://www.independent.co.uk/voices/colston-4-four-jury-trial-verdict-b2060903.html>

[4] Attorney General seeks criminal damage clarity from Court of Appeal:

<https://www.gov.uk/government/news/attorney-general-seeks-criminal-damage-clarity-from-court-of-appeal>

[4A] Israeli embassy officials attempted to influence UK court cases, documents suggest:

<https://www.theguardian.com/uk-news/2023/aug/20/israeli-embassy-officials-attempted-to-influence-uk-court-cases-documents-suggest>

[5] Extinction Rebellion co-founder convicted after four-year legal saga:

<https://www.bbc.com/news/uk-67288289>

[5A] Activists jailed for seven weeks for defying ban on mentioning climate crisis

<https://www.opendemocracy.net/en/activists-jailed-for-seven-weeks-for-defying-ban-on-mentioning-climate-crisis/>

[5B] "Actors and academics criticise UK over climate 'madness' and limits on protest"

<https://www.theguardian.com/environment/2023/nov/24/actors-and-academics-criticise-uk-over-climate-madness-and-limits-on-protest>

[6] Michel Forst UN Special Rapporteur:

https://unece.org/sites/default/files/2024-01/Aarhus_SR_Env_Defenders_statement_following_visit_to_UK_10-12_Jan_2024.pdf

[7] Julian Assange High Court Hearing: Global media freedom is on trial:

<https://www.amnesty.org.uk/press-releases/julian-assange-high-court-hearing-global-media-freedom-trial>

[8] High Court to hear legal challenges to government's climate plans:

<https://friendsoftheearth.uk/climate/high-court-hear-legal-challenges-governments-climate-plans>