

Justice Committee

Petition PE1370: Justice for Megrahi

Written submission from Justice for Megrahi

Ex-Scottish Government Ministers: Political Consequences of Public Statements

On 28th June 2011 the Public Petitions Committee referred the Justice for Megrahi (JfM) petition PE1370 to the Justice Committee for consideration. Its terms were as follows.

‘Calling on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.’

The petition was first heard by the Justice Committee on 8th November 2011. On 6th June, 2013, as part of its consideration, the Justice Committee wrote to Kenny MacAskill MSP, then Cabinet Secretary for Justice, asking for the Government’s comments on our request for a public enquiry.

In his reply of 24th June 2013, while acknowledging, that under the Inquiries Act 2005, the Scottish Ministers had the power to establish an inquiry, he concluded:

‘Any conclusions reached by an inquiry would not have any effect on either upholding or overturning the conviction as it is appropriately a court of law that has this power. In addition to the matters noted above, we would also note that Lockerbie remains a live on-going criminal investigation. In light of the above, the Scottish Government has no plans to institute an independent inquiry into the conviction of Mr Al-Megrahi.’

At this time Alex Salmond was the First Minister and with Mr MacAskill was intimately involved in the release of Mr Megrahi on 20th August 2009, a decision which caused worldwide controversy.

Members will be aware that since leaving office both Mr MacAskill and Mr Salmond have commented publicly on the Megrahi conviction indicating that their opinions on the guilt of Mr Megrahi and the findings of the court might have changed somewhat since they left office.

A selection of these statements is shown in the attached appendix ‘A’.

Certain of these statements refer to pressures that were placed on the Scottish Government by outside governments and agencies which have until now been hidden, and which had the potential to affect their decisions.

They also raise important political issues which will not be the subject of the ongoing police investigation and eventual consideration by Crown Office.

It is not clear for instance how many of the issues raised in these public pronouncements were known to Mr MacAskill and Mr Salmond at the time of Mr Megrahi's compassionate release on 20th August 2009 and whether, and how, that information impacted on what was stated at the time to be purely a compassionate release.

Questions arise as to whether any of their statements came from confidential information gleaned while they were serving ministers and had the potential to materially affect the ongoing criminal investigation and any potential appeal submission by the Megrahi family to the Scottish Criminal Cases Review Commission.

Rather than adding clarity to the situation they have only served to raise further important questions in respect of the guilt or otherwise of Mr Megrahi and the safety of his conviction and raised doubts about the political decisions which were made in respect of issues like our enquiry request and Mr Megrahi's compassionate release.

We believe that aside from the relevance to any criminal investigation and possible appeal, which should be dealt with by the appropriate authorities, they raise wider political issues which can only be resolved within the Scottish Parliament.

- Was any confidential information misused in making these statements?
- What is the legal and political position of former senior ministers making public statements containing information, confidential or otherwise, obtained while serving in the Scottish Government and which relate to ongoing police and Crown Office criminal enquiries?
- Was the decision to grant compassionate release to Mr Megrahi based on internal and external pressures on the Government not admitted at the time?
- Did the facts and opinions now being revealed adversely affect JfM's petition for a public enquiry when the request was initially turned down and should that decision be reconsidered in light of them?

A summary of other relevant questions is shown at Appendix 'B' to this submission.

Such political enquiry will not of course affect the ongoing criminal investigations but might cast more light on the political background to them and assist in an overall assessment of the whole Lockerbie question.

As things stand these public statements, about matters relevant to the Scottish Government's decision on an inquiry and the wider need for openness and accountability by ministers past and present particularly where confidential information is involved, are unchallenged.

JfM greatly values the committee's continuing critical political oversight, which we believe is very much in the public interest, of matters related to our petition. These

latest pronouncements by two senior politicians have undoubted relevance to our petition for an enquiry and to wider political matters related to Lockerbie.

We believe that in the interest of accountability and openness the Justice Committee should request, as a matter of urgency, that Mr Salmond and Mr MacAskill appear before it to account for their statements, in order to explore related matters affecting our petition and to serve the wider interests of Parliament and public.

The political issues raised by these interventions will not be the subject of police or Crown Office enquiry but have a direct relevance to the original rejection of our petition by the Scottish Government. They also highlight the political culture in which Lockerbie related decisions were being made.

It is our sincere belief that such a political intervention is long overdue. It is not good enough for the committee to decide to defer these matters until Crown Office has considered the Operation Sandwood report or the SCCRC has made a decision re the Megrahi family submission for a further appeal.

It should be noted that we are not asking the committee to intervene in issues directly related to the investigation and prosecution of crime or any appeal process. We are asking for complementary action purely in respect of the public statements made by Mr Salmond and Mr MacAskill which have impacted, and continue to impact, on Government and parliamentary decision making in relation to all Lockerbie matters past and present, including our petition.

Yours sincerely,

Robert Forrester for Justice for Megrahi
16 March 2018

APPENDIX A: Justice Committee Brief: MacAskill/Salmond Public Statements

FROM THE MEDIA:

The Times: 15th May 2016

'Trade deal link to Lockerbie bomber release'

'In a dramatic new book, serialised exclusively in The Sunday Times, former justice minister Kenny MacAskill also admits his decision to free one of the world's most notorious terrorists was partly motivated by a fear of violent reprisals against Scots if the killer died in Scottish custody.

His account divulges:

- *Ministers refused to travel with MacAskill amid threats to his life;*
- *The SNP sought concessions from Westminster in exchange for Megrahi's possible return.'*

<https://www.thetimes.co.uk/edition/scotland/trade-deal-link-to-lockerbie-bomber-release-28wj2rfsc>

ITV News Website Monday 23 May 2016

'Megrahi conviction "probably unsafe" says MacAskill'

'Scotland's former Justice Secretary has told ITV Border there are doubts about the conviction of the only man found guilty of the Lockerbie bombing.

"I do think there are now doubts upon the conviction and I tend to think that it probably would result in it being found unsafe." '

<http://www.itv.com/news/border/2016-05-23/megrahi-conviction-probably-unsafe-says-macaskill/>

The Times: 25th May 2016

'MacAskill 'has destroyed the Lockerbie conviction''

'Robert Black, QC, said that Kenny MacAskill's contention in his new book that Abdul Baset Ali al-Megrahi had not bought the clothes wrapped around the explosive device that destroyed an airliner amounted to "the end of the conviction".....

"If that were now the official Scottish government position, that is the end of the conviction," Professor Black said. In a statement, the Crown Office said it remained certain of al-Megrahi's guilt.'

<https://www.thetimes.co.uk/article/macaskill-has-destroyed-the-lockerbie-conviction-vnnb5s5q2>

Sunday Herald 29th May 2016

Book Review by John Ashton: 'The Lockerbie Bombing: The Search for Justice' by Kenny MacAskill

'The unravelling of Kenny MacAskill ... and the case against Megrahi'

'Overshadowing these revelations, however, is a single sentence buried among the book's 322 pages, which reads: "Clothes in the suitcase that carried the bomb were acquired in Malta, though not by Megrahi."As the Scottish Criminal Cases Review Commission noted when it referred Megrahi's conviction to the appeal court in 2007, the assumption that Megrahi was the clothes purchaser was critical. Without it, there was insufficient evidence to convict him.'

'The weaknesses in the identification evidence were well known to the Scottish government when MacAskill, as Justice Secretary, was claiming that the conviction was safe,' says JfM's Iain McKie, a former police superintendent who spent 15 years battling the police and Crown Office to clear the name of his daughter Shirley McKie.'

Scotsman: 5th July 2017.

'Kenny MacAskill: Lockerbie conspiracy theories 'absurd''

'The case is complex. It could only ever be thus given who was involved, how it was carried out and where the bomb detonated. That there was a trial at all is down to the remarkable investigation carried out by Scottish officers and colleagues from many forces in the UK and beyond. The planning of the atrocity was global with several countries and organisations involved, and the debris was scattered from the Solway Firth to the Kielder Forest. As a consequence, the evidence could never be the clearest or most compelling.'

<https://www.scotsman.com/news/opinion/kenny-macaskill-lockerbie-conspiracy-theories-absurd-1-4494840>

The Herald 30th November 2017

'Alex Salmond casts doubt on Lockerbie bomber conviction'

'Alex Salmond has cast doubt on the conviction of the Lockerbie bomber, suggesting it was based on evidence that was "open to question".

*The former First Minister – who was in office when Abdelbaset al Megrahi was controversially freed from prison on compassionate grounds – said it was possible "for someone to be guilty, yet wrongly convicted"
However, his conviction was not just based on the strength of that evidence but on identification evidence which is to say the least open to question."*

http://www.heraldscotland.com/news/homenews/15694249.Alex_Salmond_casts_doubt_on_Lockerbie_bomber_conviction/

The National 30th November 2017

'US and UK were 'double-dealing' on Megrahi release'

'In a special St Andrew's Day edition of the Alex Salmond Show on RT today, MacAskill makes the explosive claim that Scotland was "slapped about mercilessly" by the British and American governments, who he accuses of "double dealing".

Salmond himself says the identification evidence which helped convict Megrahi is "open to question" and berates the "total cynicism" of those who attacked the Scottish Government over the decision to send the Libyan home on compassionate grounds because he had terminal prostate cancer. He says the UK Government wanted Megrahi sent home to secure an oil deal. (...)'

The Times: 1st December 2017

'Salmond condemned after casting doubt on Lockerbie conviction'

'Alex Salmond has provoked criticism for claiming that the only man jailed for the Lockerbie bombing was wrongly convicted.

The former first minister said he believed that Abdul Baset Ali al-Megrahi was guilty of playing a part in the terrorist attack that killed 270 people in December 1988, but that the court was wrong to convict him.'

The Cable Magazine: 9th January 2018

'Kenny MacAskill: Reflecting on Lockerbie'

'Megrahi was released by me in 2009, on compassionate grounds, when I was Justice Secretary. In many ways, the trial has overshadowed both the events leading up to it, and actions subsequent to it. For some, it has become a cause célèbre and for others, simply the culmination of the tragedy.....Perhaps there should have been more wariness all those years ago, when an Italian air force plane in UN markings collected Megrahi and his co-accused – Al Amin Khalifah Fhimah – from Tripoli, to take them to the Netherlands for trial. For though this was to be a trial held under Scots law (albeit convened in a former Dutch air force base), the major ground rules had already been set. However, the Scottish judges presiding over the trials has not yet been notified of those rules. Vested financial interests should perhaps also have been discerned. The first Scots lawyers to visit Gadhafi travelled on a plane provided by Babcock and Wilcox. Others later returned on the private jet of Tiny Rowland.'

The Herald: 2nd September 2016

'Kenny MacAskill: Gauci and the benefit of doubt on Lockerbie'

'The issue with the continued trial of the Scottish justice system is that it lets the major security and commercial interests off the hook. The Scottish police did outstanding work both at the crash scene and in the subsequent investigation, along

with law enforcement colleagues globally. Prosecution and judicial authorities acted diligently and honourably. Yet they have been traduced by some, which is a calumny upon them.

The criminal investigation into Lockerbie was overshadowed by commercial and security deals that were ongoing for decades and in which Scotland had no involvement.'

http://www.heraldscotland.com/opinion/14837008.Gauci_and_the_benefit_of_doubt_on_Lockerbie/?commentSort=score

The Herald: 21st August 2016

'Lockerbie bomber release saw Scotland take rap, says Kenny MacAskill'

'Scotland was set up to "take the rap" for the release of the Lockerbie bomber, according to former Scottish justice secretary Kenny MacAskill.

Mr MacAskill likened the SNP government's involvement to "flotsam and jetsam, the same as the bags that fell upon the poor town of Lockerbie and the people there".

Mr MacAskill insisted the Scottish Government had not been complicit in any prisoner transfer deals for Abdelbaset al-Megrahi, the only man convicted of the atrocity, and had "no control and little influence".

The decision to return Megrahi to Libya in 2009 was taken by Mr MacAskill on compassionate grounds.'

http://www.heraldscotland.com/news/14695994.Lockerbie_bomber_release_saw_Scotland_take_rap_says_Kenny_MacAskill/

APPENDIX B: Justice Committee Brief: Relevant Questions

In addition to the four central questions contained in the main submission JfM believes the following ones relevant to any JC consideration.

1. Why do Mr MacAskill and Mr Salmond both now express doubts about the safeness of Megrahi's conviction when their government said that it did not doubt the safety of the conviction¹?
2. MacAskill and Salmond must have known that Mr Megrahi's family might one day resurrect his appeal. Did they not appreciate that, in stating that it did not doubt the safety of Megrahi's conviction, their government was making a public judgement on a process that was supposed to be free from political influence?
3. When they were in government, to what extent were their own and their government's public statements shaped by the Crown Office? In asking this question we note that after the publication of the SCCRC report by the Sunday Herald, the Crown Office and Salmond put a remarkably similar spin on the Commission's findings:

Crown Office statement, 23 March 2012:

'In the Megrahi case, the Commission was asked to look at more than 40 possible grounds for a referral to the Appeal Court. The Commission rejected the vast majority of these and referred the case to the Appeal Court on six grounds, many of which were inter-related.'

Alex Salmond 24.3.12: *'While the [SCCRC] report shows that there were six grounds on which it believed a miscarriage of justice may have occurred, it also rejected 45 of the 48 grounds submitted by Megrahi, and in particular it upheld the forensic basis of the case leading to Malta and to Libyan involvement'*²

4. Was MacAskill briefed by the Crown Office and/or the police when writing his book? On what basis did he state that Megrahi did not buy the clothes for the bomb suitcase from Tony Gauci's shop?
5. MacAskill is aware that a major police investigation, Operation Sandwood, is ongoing in to the JfM allegations of criminality against some of the Lockerbie investigators. In his recent article for Cable, MacAskill states that investigators have been "denigrated for alleged falsities" and that "At the trial stage, both prosecutors and judges acted professionally in dealing with the facts then before them." Did he not consider that this was publicly undermining the investigation?

¹ Scottish government spokesman quoted in the *Herald*, 21 May 2012
http://www.heraldscotland.com/news/13058872.Lockerbie_families_vow_to_force_public_inquiry/.

² Alex Salmond quoted in the Mail Online 25.3.12 <http://www.dailymail.co.uk/news/article-2120243/Calls-probe-conviction-Lockerbie-bomber-al-Megrahi-grounds-appeal-leaked-internet.html>

6. Why did MacAskill pass the JfM committee's confidential allegations on to the Crown Office when he knew that the allegations were against Crown Officials?
7. Why did he insist that the committee must take the complaint to Dumfries and Galloway police, even though its Lockerbie investigation was the subject of the complaints?
8. Why did he not appoint an independent investigator to examine the allegations, as he was empowered to do under the 2005 Inquiries Act?
9. Having been given a summary of the JfM committee's allegations by MacAskill, the Crown Office immediately issued a statement claiming that the allegations were: 'without exception, defamatory and entirely unfounded'? Do MacAskill and Salmond believe that was an appropriate comment for the CO to make? If not, why did they not rebuke the Crown Office?
10. Why did MacAskill tell the Scottish Parliament³ that primary legislation was needed to remove the requirement that all those who had supplied information to the SCCRC must consent to the release of the SCCRC report when in fact all that was necessary under the Criminal Procedure (Scotland) Act 1995 was another statutory instrument? And why did he also state in the same parliamentary answer that publication would be subject to data protection restrictions?

³ Parliamentary answer by Kenny MacAskill, 11 January 2011