

PE1370/B
PUBLIC PETITIONS COMMITTEE: PE1370

'JUSTICE FOR MEGRAHI' RESPONSE TO THE SCOTTISH GOVERNMENT.

On 7 January 2011, the Petitions Committee Clerk requested an early response from the 'Justice for Megrahi' (JFM) Committee following receipt of Scottish Government answers to questions posed by the Petition's Committee.

At Para 4 of our petition we outlined how, in September of 2010, JFM first asked the Scottish Government to establish an inquiry into the matters raised in the petition.

The Scottish Government declined to mount an inquiry citing the following reasons.

1. *"The questions to be asked and answered in any such inquiry would be beyond the jurisdiction of Scots law and the remit of the Scottish Government, and such an inquiry would therefore need to be initiated by those with the required power and authority to deal with an issue international in its nature."*
2. *"The Scottish Justice Secretary made it clear that under the powers devolved to Holyrood no worthwhile scrutiny could be ordered here because there would be no powers to compel witnesses." <http://www.eveningtimes.co.uk/macaskill-tells-world-why-he-freed-megrahi-1.982718>*

In its most recent response however the Scottish Government has changed its position.

"The Inquiries Act 2005 provides that, to the extent that the matters dealt with are devolved, and criminal justice is devolved, the Scottish Government would have the power to conduct an inquiry. However, the wide ranging and international nature of the issues involved (even if the inquiry is confined to the trial and does not concern itself with wider matters) means that there is every likelihood of issues arising which are not devolved, which would require either a joint inquiry with or a separate inquiry by the UK government."

This is an admission that the initial response was wrong in a number of important ways.

- The Scottish Government does have the power to initiate an inquiry and, under the Inquiries Act 2005, has the power to compel witnesses.
- The Scottish Government was in error in stating, *"The questions to be asked and answered in any such inquiry would be beyond the jurisdiction of Scots law and the remit of the Scottish Government."*
- The Scottish Government is being disingenuous in stating that, *'there is every likelihood of issues arising which are not devolved, which would require either a joint inquiry with or a separate inquiry by the UK government.'* This only means that certain issues might not be able to be fully investigated but clearly many would. As with all inquiries some evidence cannot be adduced for various reasons. This does not invalidate having an inquiry. This "reason" is nothing more than a wafer-thin pretext for inaction. The Scottish Criminal Cases Review Commission (SCCRC) has no jurisdiction and powers outwith Scotland. Yet it managed to conduct an investigation into the Megrahi conviction that enabled it to reach the conclusion that, on six separate grounds, that conviction might have amounted to a miscarriage of justice. There is no conceivable reason why a Scottish inquiry under the Inquiries Act 2005 should have less success in obtaining and uncovering evidence.

It is difficult to understand these errors given the Crown Office and civil service assistance that was available to the Scottish Government. At best this points to grossly inaccurate research and at worst to a deliberate effort to muddy the waters.

In its response the Scottish Government also states: *'The Government does not doubt the safety of the conviction of Mr Al-Megrahi.'*

This is a circular argument and is not salient because it is this conviction which JFM is requesting be reviewed by an inquiry. To use such an argument is the same as saying *'the Scottish Government does not doubt the conviction because he was convicted.'* No reason other than apparent blind faith in the justice system appears to underpin this conclusion.

Moreover, the Scottish Government's failure to take seriously the concerns expressed by the Scottish Criminal Cases Review Commission over Megrahi's conviction is a gross insult to that body. The SCCRC was established as an independent, expert body precisely in order to investigate possible miscarriages of justice. The Scottish Government is treating its findings in the Megrahi case with utter contempt.

While the government might not doubt the conviction, many politicians and commentators within Scotland and elsewhere clearly do. As shown at Para 5 of our petition many influential individuals across the world support our application for an inquiry and obviously doubt that the conviction is safe.

The response to the e-petition on the Parliament website made it clear that many people want the Government to initiate an inquiry.

http://epetitions.scottish.parliament.uk/view_petition.asp?PetitionID=417

There is not enough space to outline the international media storm that has raged around all aspects of Lockerbie and Mr Megrahi's release for over 20 years. That it continues today is further evidence that not everyone shares our government's complacency.

In its response, the government cite this reason for not granting an inquiry:

'A second appeal, following a referral from the Scottish Criminal Cases Review Commission, was abandoned by Mr Al-Megrahi. The conduct of his defence during his trial and the appeals, including his decision not to give evidence at trial and the decision to abandon the second appeal, was entirely a matter for Mr Al-Megrahi and his legal advisers.'

Precisely why the appeal was dropped still remains unclear but the fact that it was cannot be used as an argument to deny an inquiry. If anything it supports the need for an inquiry on the grounds that the SCCRC's reasons for appeal have not been fully tested in law in the interests of justice.

Given the political and media furore from home and abroad that surrounded the release of Mr. Megrahi it is far from clear if pressure was put on the accused and his defence team to drop the appeal. Allegations have been made of pressure being brought to bear on the Scottish Government to release him and the visit by Kenny MacAskill to Greenock prison before his release is still the subject of conjecture. How much pressure was placed on Mr Megrahi and his advisers to throw in the towel in return for repatriation is a question that has never been satisfactorily answered. At any inquiry, it is assumed that both the SCCRC and Mr Megrahi's defence team would be able to give evidence under oath and help clarify these important matters.

Further, the Scottish Government response states:

'The Government's view is that the petition is inviting the Scottish Government to do something which falls properly to the criminal justice system i.e. inquire into whether a miscarriage of justice has taken place. The criminal justice system already provides a mechanism for that to happen.'

As the Scottish Government accepts however, the criminal justice system is doing nothing that meets the needs of the petitioners. There is in fact little that the system can do as things stand unless the Crown Office acts or some other way is found of resurrecting Mr Megrahi's appeal.

Further, the Criminal Procedure (Legal Assistance Detention and Appeals) (Scotland) Act 2010, which was rushed through Parliament on 27 October 2010, will if anything make it more difficult to challenge contentious judicial decisions like the Megrahi conviction. No less a person than the first chair of the 'Scottish Human Rights Commission' Professor Alan Miller wrote to all MSPs outlining the organisation's "significant concerns" about the use of this emergency procedure.

"The extension to the powers of the High Court will undermine access to court for victims of miscarriage of justice. It will have a chilling effect on the important function of the SCCRC to effectively review and address SCCRC alleged miscarriages of justice."

<http://www.scottishhumanrights.com/news/latestnews/article/cadderlegislationcomment>

Effectively, we are faced with a legal system that is unable to act, a Crown Office system that refuses to act and a political system apparently rendered incapable of acting. Despite this, and in the face of international clamour for action, the Scottish Government decides to sit on its hands and claim it can do nothing. We have a Scottish Government with the power and resources to mount an inquiry that could provide at least some of the answers and it chooses to fall back on well worn excuses and effectively abrogates responsibility for ascertaining the truth about one of the biggest terrorist outrage ever committed anywhere in the world.

We believe that the issues under consideration are as much political as legal affecting as they do the freedom of the individual, openness and accountability in Government and the individual's right to justice. Not one single argument presented by the Scottish Government in its statement of 7 January 2011 holds water or is salient to JFM's request for an independent inquiry. JFM has effectively demonstrated that its position vis-à-vis the both Scottish Government's powers to institute such and their executive responsibility to do so are proven.

In circumstances where there is a perceived miscarriage of justice which has not been fully tested in law, and (see above discussion); where the executive accepts that it has adequate power to sanction the opening of an inquiry to address the situation; where the Scottish Government accepts that matter falls squarely under the jurisdiction of Scotland; where, given the new absolute power bestowed upon the judiciary in Scotland to accept or reject hearing appeals in the interest of justice, it appears almost certain that any application to reopen Mr al-Megrahi's appeal will be rejected; where no declared cooperation from either Her Majesty's Government or the UN is forthcoming (in fact, quite the opposite in the context of HMG), what alternative resolution to an independent inquiry held under the auspices of the Scottish Government is offered?

In the final analysis the Scottish Government has a duty to intervene where our justice system might have knowingly or unknowingly allowed a miscarriage of justice to occur and no other machinery exists for its resolution.

As Jim Swire said in his address to the Petitions Committee.

"The 270 victims of the Lockerbie atrocity their family and friends and the Scottish people have a right to demand that justice be done and be seen to be done."

In conclusion, JFM wishes to thank the Public Petitions Committee for its on-going efforts on JFM's behalf. JFM regards the institution of the public petitioning of government in Scotland as one of the most progressive developments in recent UK political history. The Committee has shown courage in advancing this highly contentious and sensitive matter.

Robert Forrester and Jim Swire
On behalf of Justice for Megrahi Committee.