



## Briefing for the Public Petitions Committee

**Petition Number:** [PE1370](#)

**Main Petitioner:** Dr Jim Swire

**Subject:** Justice for Megrahi

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

It would not be possible in this short briefing to provide an in-depth analysis of the evidential and other considerations undertaken at Mr Al-Megrahi's original trial at Kamp van Zeist in 2001. The briefing does provide relevant background information and includes details of the Scottish Government's [timeline of events](#) leading up to Mr Al-Megrahi's release from prison on compassionate grounds.

### Background

Pan Am Flight 103 was blown up over the town of Lockerbie on its journey from London to New York on 21 December 1988. All 259 passengers and crew as well as 11 residents on the ground in Lockerbie were killed. In 1991, following a joint investigation between the Scottish police and US authorities, the UK and United States accused Abdelbaset Ali Mohmed Al-Megrahi and Al Amin Khalifa Fhima, both Libyan nationals, of involvement. In 1999, following protracted negotiations and the imposition of sanctions, Libya agreed to hand over both suspects to the Scottish courts. In order to facilitate the trial, a specially convened Scottish court was set up at Kamp van Zeist in the Netherlands. The trial, which commenced in May 2000 at the Scottish High Court of Justiciary at Kamp van Zeist, was presided over by Lords Sutherland, Coulsfield and MacLean.

The [Opinion of the Court](#) following the trial stated:

It is not disputed, and was amply proved, that the cause of the disaster was indeed the explosion of a device within the aircraft. Nor is it disputed that the person or persons who were responsible for the deliberate introduction of the explosive device would be guilty of the crime of murder. The matter at issue in this trial therefore is whether or not the Crown have proved beyond reasonable doubt that one

or other or both of the accused was responsible, actor or art and part<sup>1</sup>, for the deliberate introduction of the device.

In January 2001, Mr Fhima was acquitted and Mr Al-Megrahi was found guilty of murder. The verdicts returned were by a unanimous decision of the three judges of the court. Mr Al-Megrahi immediately appealed his conviction. The appeal hearing against conviction began at Kamp van Zeist on 23 January 2002 before a Bench of five judges chaired by the Lord Justice General for Scotland (The Right Honourable Lord Cullen), the other Judges being Lord Kirkwood, Lord Osborne, Lord Macfadyen and Lord Nimmo-Smith. Following the appeal hearing, Mr Al-Megrahi's appeal against conviction was refused. (The Opinion of the Appeal Court is available [here](#)). Mr Megrahi was sentenced to life imprisonment with a punishment part of 27 years. This required that Mr Al-Megrahi must serve at least 27 years in custody before he would be eligible for early release.

At the request of Mr Al-Megrahi, the Scottish Criminal Cases Review Commission ("the Commission") undertook to review his case. The review began in 2003. In June 2007, the Commission referred the case back to the High Court on the basis that there may have been a miscarriage of justice. On 28 June 2007, the Commission published an extended [news release](#) which sets out, amongst other things, the grounds of referral. The news release also provides a brief summary of the evidence on which Mr Megrahi's original conviction was based. During its investigation of the case, the Commission had access to a wide range of materials including the following:

- the transcript of the evidence and submissions at trial;
- the Crown and defence productions at trial;
- all witness statements obtained by the police during its investigation including an electronic database of over 15,000 such statements;
- copies of all witness statements obtained by the Crown in preparation for the trial;
- the correspondence files prepared by the firm of solicitors which acted for the applicant at trial and in his appeal against conviction, and copies of all witness statements obtained by them from witnesses based in the United Kingdom;
- an electronic database consisting of all information held on the case by the firm of solicitors which acted for co-accused at trial.

The Commission's news release points out that a reference is simply an indication to the court that a miscarriage of justice may have occurred and that it is in the interests of justice for the court to consider the case. Once a decision is made by the Commission to refer a case its role in the matter is at an end and it is the responsibility of the applicant or his legal representatives to decide upon and formulate the grounds of appeal and thereafter to present the appeal. The subsequent appeal commenced in 2009. Although the Commission had referred the case back to the High Court on six grounds, Mr

---

<sup>1</sup> 'Art and part' is a term used in Scots law to denote the aiding or abetting in the perpetration of a crime, or being an accessory before or at the perpetration of a crime.

Al-Megrahi successfully argued that all grounds of appeal should be heard, which amounted to over 48 grounds. Grounds 1 and 2 (Unreasonable Verdict and Insufficient Evidence) were heard in April and May 2009. No Opinion of the Court has been issued on these grounds. The next grounds were scheduled to be heard in November 2009.

In May 2009, the Scottish Government received an [application](#) from the Libyan Government requesting the transfer of Mr Al-Megrahi under the terms of the Prisoner Transfer Agreement (PTA) which was previously negotiated between the UK and Libyan Governments. A PTA, of which the UK has over 100, is an agreement with another country or nation to allow repatriation of prisoners to serve the remainder of their sentence in their home country.

When the prospect of a Prisoner Transfer Agreement was first raised, the Scottish Government expressed concern and requested to the UK Government that there be an exclusion in the agreement preventing anyone convicted of involvement in the Lockerbie Air Disaster from being considered for transfer. This exclusion was not included in the Prisoner Transfer Agreement, which was ratified by the UK Government in April 2009. Under provisions contained in the Repatriation of Prisoners Act 1984, it is for the Scottish Ministers to decide upon any application for prisoners in Scottish prisons - in practice it is the decision of the Cabinet Secretary for Justice.

In July 2009, the Scottish Government then received an [application](#) from Mr Al-Megrahi requesting compassionate release. Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 gives the Scottish Ministers the power to release prisoners on licence on compassionate grounds. Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) gives the Scottish Ministers the power to release prisoners on licence on compassionate grounds. This process is akin to the system of medical parole that exists in many other jurisdictions.

The 1993 Act requires that Ministers are satisfied that there are compassionate grounds justifying the release of a person serving a sentence of imprisonment. Although the Act does not specify what the grounds for compassionate release are, generally it encompasses:

- those suffering from a terminal illness and death is likely to occur soon. There are no fixed time limits but life expectancy of less than three months may be considered an appropriate period;
- where the prisoner is severely incapacitated; or
- where continued imprisonment would, in light of the conditions in which the prisoner is being held, endanger or shorten his or her life expectancy.

On 14 August 2009, Mr Al-Megrahi’s legal team announced that they had lodged a minute with the High Court seeking permission of the court to abandon both his appeal against conviction and his appeal against sentence.

On 18 August 2009, the court granted leave to Mr Al-Megrahi to abandon his appeal. On 20 August 2009, the Cabinet Secretary for Justice [announced](#) his decision to (a) reject the Libyan Government's application for prisoner transfer; and (b) to release Mr Al-Megrahi on compassionate grounds.

On 24 August 2009 during a [debate](#) on the decision to release Mr Al-Megrahi, the Cabinet Secretary for Justice stated:

There remain concerns to some about the wider issues of the Lockerbie atrocity. This is a global issue, and international in its nature. The questions to be asked and answered are beyond the jurisdiction of Scots law and the restricted remit of the Scottish Government. If a further inquiry were felt to be appropriate, it should be initiated by those who have the required power and authority. The Scottish Government would be happy to co-operate fully in such an inquiry.

The Scottish Government website contains a dedicated page on the decision to release Mr Al-Megrahi: [Lockerbie – Information relating to decision on Mr Abdelbaset Ali Mohmed Al-Megrahi](#).

**Graham Ross**  
**Senior Researcher**  
22 October 2010

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However if you have any comments on any petition briefing you can email us at [spice@scottish.parliament.uk](mailto:spice@scottish.parliament.uk)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.