

Mr Abdelbaset Ali
Mohmed Al Megrahi
HM Prison Greenock
Old Inverkip Road
GREENOCK
PA16

July 2009

Kenny MacAskill, MSP
Cabinet Secretary for Justice
Scottish Government

Sir,

**APPLICATION UNDER SECTION 3 OF THE PRISONERS AND CRIMINAL
PROCEEDINGS (SCOTLAND) ACT 1993**

A delegation from Libya met with you and your officials on 6th July 2009. It is my understanding that your officials indicated to those from the Libyan delegation that in order for you to consider the issue of my release under the above section an application ought to be submitted. I hereby make application for my release on compassionate grounds under Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act").

Personal Circumstances

I was born in Tripoli on 1st April 1952 to my parents [REDACTED] (now aged 87 years) and [REDACTED] (now aged 86 years) I am now aged 57 years. I am married to [REDACTED] and have 5 children: [REDACTED]

[REDACTED] My wife resides with [REDACTED] of my children in the family home at [REDACTED] where I resided prior to my travel to Camp van Zeist in The Hague for trial. [REDACTED]

Incarceration

I am aware that in connection with an application made under a Prisoner Transfer Treaty your officials would have, as a matter of course, gathered a great deal of information about me from, amongst others, staff at the prison here in Greenock. I trust that you have a comprehensive picture of my incarceration. In November 1991 I was placed under house arrest in Libya. I voluntarily

surrendered to the United Kingdom and to the prosecution authorities in April 1999 when I travelled, under the auspices of the United Nations, to the jurisdiction of the Scottish Court in Camp Van Zeist. After Trial I was convicted and sentenced to life imprisonment. My initial appeal was unsuccessful. The trial court subsequently imposed a punishment part (tariff) of 27 years on 24th November 2003. An appeal against sentence has been marked in respect of the imposition of the punishment part by both me and by the Crown.

In September 2003, the Scottish Criminal Cases Review Commission received an application from me in connection with my conviction. They took nearly 4 years to refer my case back to the Court of Criminal Appeal on a number of bases. My appeal proceeds before the Appeal Court.

Medical Condition

As a result of some considerable discomfort in August 2008 I consulted the prison doctor. He carried out blood tests. In September 2008, I had an elevated prostate specific antigen (PSA) reading (363 compared to a normal range of 0 – 6.5). This is an indicator of the presence of cancerous cells within the prostate. I consulted with a urologist from Inverclyde Royal Hospital. An MRI scan was carried out. I was diagnosed as suffering from advanced metastatic cancer of the prostate. I was advised that my tumour was given a Gleason score of 9 (4+5). The Gleason score is based upon an assessment of the types of cells contained within the tumour and allows it to be graded on a scale of 1 to 10. The scale is divided into two parts of 1 to 5 which describe, first, the cells which predominate and, secondly, the other cells present. The grading system is based on the extent to which the tumour cells are arranged into recognisable glandular structures. The grading indicates the behaviour and aggressiveness of the tumour. The Gleason score for my tumour was at the top end of the scale with the cells being poorly differentiated. As for the spread of the disease, I was told that this had extended, at the time of my initial diagnosis, beyond the prostate gland and had affected the lymph nodes and skeleton. The Gleason score together with the advanced stage of the disease indicated that the tumour was highly aggressive. I understand that the Scottish Prison Service sought a second opinion from a Consultant Clinical Oncologist, [REDACTED]. He concluded that the data, including my Gleason score, elevated PSA, and staging of the tumour, were indicative of a poor prognosis. He was of the view that my prognosis was uncertain, partly due to the unpredictable nature of prostate cancer. [REDACTED] was of the view that my prognosis was crucially dependent upon my responsiveness to hormone therapy.

The medical evidence, at the time of my diagnosis, was therefore inconclusive as to prognosis. The doctors that I consulted at that time were less than optimistic, but from their experience were aware of analogous cases where similar prognostic features present in my case had led to a relatively long survival period. In October 2008, I submitted an application to the High Court of

Justiciary for interim liberation pending the determination of my appeal. The medical evidence, such as it was at that time, was placed before the Court. The Court concluded in light of this, that the stage had not been reached for my being a suitable candidate for admission to interim liberation and refused my application *in hoc statu*.

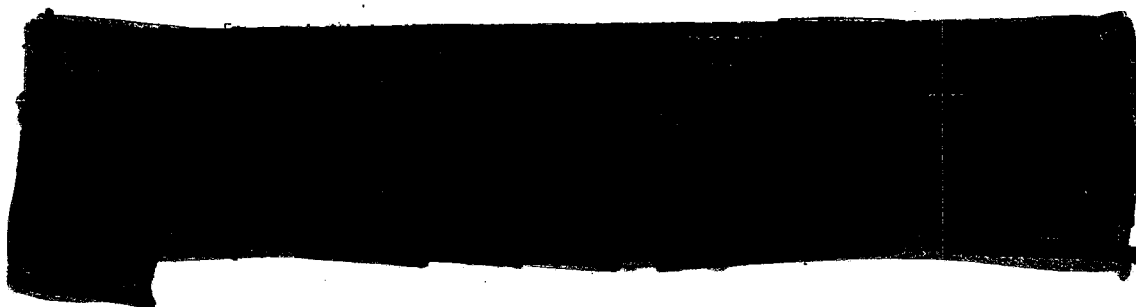
Treatment

I commenced a series of treatments, hormonal in nature, which were intended to "dampen down" my tumour and block the production of hormones which it was understood contributed to my particular cancer. My PSA reading dropped in October 2008 but upon further testing in December 2008 was shown to have risen. This reading continued to rise through January (22.2), April (45.1) and May (61.9) 2009. The significance of this is that the PSA level is generally regarded as an indicator of the responsiveness of the tumour to hormone treatment. The increase in this level means that my tumour is no longer sensitive to the administration of hormone deprivation treatment.

The most recent blood test, taken on 3rd July confirms a grossly elevated figure of 208.1. I attach confirmation of the biochemistry analysis from the Hospital.

As a result of the increasing PSA readings my treatment was altered. I have consulted an oncologist and discussed with him, in the event of further deterioration, the possibility of undertaking a course of chemotherapy. This is intended to be palliative. I am terminally ill. There is no prospect of my recovery. My continued incarceration in HMP Greenock is not conducive to my well being as my life nears its end. Whilst everything is being done to make my time here as comfortable as possible the personnel within the prison are hardly equipped to deal with the many aspects of my terminal illness. It is my view that imprisonment is hastening my decline.

Symptoms



Prognosis

It is my impression from speaking with several doctors about the progression of my illness that the prediction of life expectancy is not a precise science. Part of

this, I am certain, is because of medical professionals being unwilling to be blunt about my longevity. Much of what is said about this subject is a matter of impression informed with reference to published research on the subject, but also the particular professional's experience on a day to day basis with people in similar situations. What I can deduce from the medical personnel I have consulted, is that my disease has not responded well to the treatment administered. I understand that the hormone injections I received would ordinarily keep the disease at bay for a period of around 12 months. In my case, the disease appears to have become relatively immune to the administration of hormone treatment (hormone refractory) as quickly as 3 months from its initial administration. The poor response to hormone treatment, coupled with my initial Gleason score (9 out of a possible 10), is suggestive of the disease burgeoning and spreading rapidly.

I have tried to summarise my medical position as fairly and candidly as possible. I understand that your officials may have received detailed reports upon my deteriorating health condition. The most up to date independent report that I have obtained is from [REDACTED] a Consultant Urologist, and dated 25th June 2009. This is attached. He is pessimistic regarding my life expectancy, and, as can be seen from the second paragraph on page 4, estimates my demise before the end of the year.

Exceptional Circumstances

In the foregoing circumstances, I would ask you to give consideration to my release under Section 3 of the 1993 Act. I understand that you will deal with my case on its own merits. I would contend that there are exceptional circumstances in my particular situation which would enable you to be satisfied that there are compassionate grounds justifying my release.

In terms of section 3(2) of the 1993 Act, the Scottish Ministers are directed to consult the Parole Board for Scotland unless that is considered impracticable. I understand that such consultation would be to assess my risk of reoffending or to evaluate my threat to public safety. I would certainly have no objection to the Parole Board for Scotland considering my case but would suggest that in the particular circumstances of my case that may well be unrealistic. As mentioned before I am a 57 year old man. Up until the time of my surrender to the jurisdiction of the Scottish courts I had no convictions whatsoever. My life in prison has been trouble free also. Since 24 February 2005, I have been classified, in terms of rule 16 of the Prisons and Young Offenders Institutions (Scotland) Rules 2006, as a low supervision prisoner. Such classification is assigned with regard to: the seriousness of the offence for which the prisoner has been convicted; the length of time the prisoner has spent in custody; the prisoner's conduct in custody; and the prisoner's trustworthiness and stability (Rule 17(2)). My classification means that my activities and movements are subject to minimum supervision and restrictions.

Given the advanced stage of my illness, if it were to be considered that there was any question of risk to public safety by virtue of my conviction, my infirmity would render that nugatory.

I understand that there would be administrative measures which would require to be attended to in connection with the carrying into effect of any decision. My solicitor, [REDACTED], is fully aware of the position in this regard and has my authority to furnish you with any information which is required

Details of my family circumstances in Libya I understand have already been furnished to you. It would be my wish to return to my family to spend the short time that I have left with them. I am a family man: first and foremost I am a son, husband, father and grandfather. I have been separated from my family as a result of what I consider to be an unjust conviction. I have tried to bear that with a degree of equanimity and dignity. I have refrained from recourse to publicity in respect of my plight despite my burning belief about the injustice that I have suffered. There have been considerable delays in the process to challenge my conviction. Through my legal advisers I have voiced my concern about that to the Court in a measured way. I have never publicly taken a stance which would seek to impugn your nation and its system of justice. I have behaved with respect to the due legal process which I am subject to. It is with the same respect that I make application to you to enable me to return to my country and my family with what is left of my life, as a son, husband, father and grandfather.

Yours faithfully,



Abdelbaset Ali Mohamed Al Megrahi

