

PART I      BACKGROUND

THE APPLICANTS

1.1 The applicant Nugent was convicted on 14 September 1976 of "hi-jacking" a vehicle, ie unlawfully by force or threat thereof or any other form of intimidation seizing control of a vehicle. (He pleaded guilty to this charge). He was sentenced to three years' imprisonment.

1.2. The applicant Hunter was convicted on 27 September 1977 of two offences of possessing explosive substances (one with intent to endanger life or cause serious injury to property, one in suspicious circumstances), and was sentenced to two concurrent terms of imprisonment, of five and three years.

1.3 The applicant Campbell was convicted on 16 June 1977 of two offences possession of a firearm and ammunition with intent to endanger life, and possession of firearms and ammunition in suspicious circumstances and was sentenced to two concurrent terms of imprisonment, of twelve and seven years.

1.4 The applicant McFeeley was convicted on 4 February 1977 of attempted wounding; of possession of a firearm with intent to endanger life; of use of a firearm with intent to prevent arrest; of possession of a firearm in suspicious circumstances; and of two offences of robbery. He was sentenced on the first four offences to concurrent terms of imprisonment of fourteen years, twelve years, twelve years and ten years; for the two offences of robbery he was sentenced to two concurrent terms of

twelve years imprisonment, to run consecutively to the sentences for the other offences. In 1974, the applicant and others blasted their way out of Portlaoise Prison near Dublin.

#### HER MAJESTY'S PRISON MAZE

1.5. The four applicants are serving their sentences in Her Majesty's Prison, near the village of Maze, County Down, Northern Ireland (hereinafter referred to as HMP Maze). The applicant Nugent is in Block 4, and the other applicants are in Block 5. The blocks (termed "H-Blocks" on account of the shape of their ground plan) have been constructed as part of a building programme begun in 1974; the "H"-shape consists of four wings, joined by a central area including medical room, library, classrooms and administration offices. Each wing contains 25 cells, a dining room, toilet and washing facilities and association areas. Each block cost over £1,000,000 to construct, and there are associated recreational facilities. They are among the most modern prison accommodation in the United Kingdom.

#### TRIAL PROCEDURE

1.6. These observations are not intended to cover in detail the applicants' allegations regarding the procedure at their trials, which are irrelevant to the complaints they now make to the Commission. Those trials were conducted according to the procedure prescribed by the Northern Ireland (Emergency Provisions) Act 1973, as amended, and now consolidated in the Act of the same title of 1978. The most notable feature of that procedure is that the trial is before a judge without a jury. This procedure was adopted following the Report dated December 1972, of a commission under the chairmanship of Lord Diplock, a Lord of Appeal in Ordinary, which was appointed to consider "what arrangements for the administration of justice in Northern Ireland could be made

in order to deal more effectively with terrorist organisations by bringing to book, otherwise than by internment by the Executive, individuals involved in terrorist activities ..... ". Among its conclusions was that trials of "scheduled offences" should be by a judge of the High Court, or a County Court Judge, sitting alone with no jury, with the usual rights of appeal. The reasons for this recommendation were, in substance, the risks of intimidation of jurors and of perverse verdicts in a society with deep sectarian divisions. The normal principles of British justice - trial in open court, and the requirement that the prosecution should prove its case against an accused beyond reasonable doubt - remain unchanged. It is to be noted that none of the four/<sup>applicants</sup>has either appealed against his conviction or alleged in the present application that his conviction was unjustified.

#### SPECIAL CATEGORY STATUS

1.7 In June 1972, in the face of a hunger strike involving a number of prisoners, the Government of the day introduced "special category" status for prisoners involved with paramilitary organisations, both Republican and Loyalist, who had been convicted and sentenced to more than 9 months' imprisonment for offences related to the civil disturbances in Northern Ireland. Because of the large numbers involved and **the** lack of normal cell accommodation special category prisoners were housed in compounds. They were not to be required to work, could wear their own clothes and were allowed additional privileges including extra visits and food parcels. However, they had been convicted of criminal offences by the ordinary criminal courts, and were in no sense being accorded 'political status': on 6 July 1972 the then Secretary of State for Northern Ireland, Mr Whitelaw, said in

the House of Commons "I have made it perfectly clear that the status of political prisoner was not being granted".

1.8 By the end of 1973 there were 688 special category prisoners. By 31 December 1974, the number of male special category prisoners had increased to 1065. 545 were in compounds at Maze, 502 in compounds at Magilligan, and 18 in Belfast.

1.9 The use of compound accommodation gave rise to serious problems of control and administration and the whole question of special category status for certain convicted prisoners, and the use of compound accommodation, was subsequently closely examined by the Committee under the chairmanship of Lord Gardiner (the former Lord Chancellor), which reported in January 1975\*. The following is an extract from the Committee's Report:-

"Prisons of the compound type, each compound holding up to 90 prisoners, are thoroughly unsatisfactory from every point of view; their major disadvantage is that there is virtually a total loss of disciplinary control by the prison authorities inside the compounds, and rehabilitation work is impossible."

The report recommended that the earliest opportunity be taken to end special category and that the first priority should be to stop admitting new prisoners to it.

1.10 In November 1975 the Secretary of State, Mr Rees, announced

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\*Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland. (Cmnd 5847).

the Government's intention to start to phase out special category status and that to this end no prisoner convicted of an offence committed on or after 1 March 1976 would be granted special category status. This announcement was given considerable publicity and the paramilitary organisations immediately said that they would oppose the move. There can be no doubt that the implications of the announcement were well known to all those involved in paramilitary activities in the province at the time of the announcement. The phasing out process began with effect from 1 March 1976; no prisoner convicted of an offence committed on or after that date has been granted special category treatment, regardless of the nature of his offence. All prisoners who would formerly have been placed in the special category have been placed in cells, most of them in HMP Maze. Mr Whitelaw has himself stated recently that he considered the creation of a special category to have been a mistake. At the end of February 1976 there were more than 1500 special category prisoners. By 10 December 1978 the number had fallen to 617, essentially as a result of the release of prisoners whose sentences (after taking account of remission) had been completed.

#### THE PROTEST CAMPAIGN

1.11 Since the announcement of the phasing out of special category status, an illegal organisation known as Provisional IRA, together with its political counterpart Provisional Sinn Fein, has been conducting a campaign designed to secure its reintroduction. Their aim is to secure recognition that their members in prison are other than criminals, and to achieve preferential treatment for them, as political prisoners. They believe that if such a status can be secured an amnesty will be granted to their prisoners in due course. The action by prisoners at HMP Maze

is part of the Provisional campaign. The Government's openly stated policy is that all sentenced prisoners will be treated equally, and that no amnesty will be granted to those who have committed terrorist crimes.

1.12 In September 1976 the first prisoners were sentenced for offences committed after 1 March 1976, and it was then that the protest, in the form of refusing to work or to wear prison clothing, began. This action is a breach of the Prison Rules (Northern Ireland) 1954; all the prisoners concerned have been dealt with under the disciplinary procedures laid down in the Rules. These are the prisoners said to be "on the blanket". The disciplinary awards made against the protesting prisoners include loss of remission, generally a day for each day of protesting, and loss of privileges. This means, for example, that the prisoners are not allowed privilege visits, newspapers, radios or parcels. The protesting prisoners are still allowed their statutory monthly visits, normal meals, to use the toilets, normal medical facilities and exercise. They remain entitled to one letter in and out each month and to an extra letter in and out in lieu of a visit.

1.13 Since March 1978 the protest has developed by a series of wilful actions taken by the protesters acting in concert. The chronological order of these actions was as follows:

- 1) The protesters refused to accept clean sheets.
- 2) They refused to clean their cells, to use the toilets, wash-rooms or showers or to empty their chamber pots.
- 3) They refused to co-operate with the orderlies who were detailed to empty their pots.

- 4) They heaped waste food in the corners of their cells, urinated on it, left it to rot and smeared the remnants on the walls of their cells.
- 5) They urinated and defecated in the foot-wear which had been left in their cells as part of their prison clothing.
- 6) They used their prison clothing to wipe up urine and faeces.
- 7) They threw their excreta out of the cell windows, and smeared it on the external walls.
- 8) They smashed the observation panels in their cell doors, and poured out urine, using religious magazines as funnels.
- 9) They destroyed the plastic basins provided for washing.
- 10) They broke furniture and disassembled beds.
- 11) They broke the glass in the cell windows.
- 12) They dismantled cell fittings to obtain implements to attack the fabric of the cells.
- 13) They destroyed plastic eating utensils.
- 14) They smeared excrement on internal cell surfaces.

(Photographs of the applicants' cells are at Annex D. A fuller account of these photographs is given in paragraphs 3.17 and 3.18.)

1.14 Throughout this series of actions, prison officers were subjected to provocations and assaults.

1.15 About 350 prisoners (out of a total population of more than 1100 prisoners in that part of HMP Maze containing cellular accommodation) are now behaving in this way, including 96 convicted of murder or attempted murder and 96 firearms and 100 of explosives offences. The present application to the commission is an integral and important part of the campaign which derives support from it.

1.16 Attached at Annex A is part of the text of a letter intercepted from an inmate in H-Block 6 in the prison, which indicates the aims of the protest, its propaganda value to the protesters and the manner in which it is coordinated by the terrorist organisation. The author of the letter is a suspected member of the Provisional IRA held on remand in H-Block 6. The letter shows that he is writing to another Provisional IRA member in one of the Blocks housing convicted prisoners, and is acting as a link in communications between protesting prisoners within the prison and the Provisional IRA organisation outside.

1.17 The first part of the letter is concerned with co-ordinating the protest so that protesters in all wings behave in the same way. The author says he will write to "all the OC" (officers commanding) about this. The author then goes on to deal with the matter of "clearances". This refers to "clearing" or vetting of remand prisoners, who are members of Provisional IRA, in advance of their trials, to encourage the selected prisoners to join the protest immediately upon their conviction. (There are at present over 200 prisoners with Provisional IRA connections who have not been selected, or who have not chosen, to join the protest.)



1.18 The author then discusses propaganda matters and the need to "get MAX publicity" on the protest; he writes that "a man will have to have a very serious illness for me to give him permission to wash". The last paragraph of the letter refers to a visit to the prison by two members of the United States Congress. It goes on to point out the additional propaganda that will be made from the release of the applicant Nugent who, on completion of his sentence in March 1979, will be the first "dirty protester" to be released.

1.19 It is to be noted how the Provisional IRA has attempted to maintain its structure and hierarchies within the prison, and the manner in which members of the Provisional IRA within the prison are subject to the orders and co-ordination of the Provisional IRA hierarchy. The high propaganda value which is attached to publicity arising from the protest, is also indicated by the letter.

1.20 In a conversation with a Prison Officer on 11 December 1978 the applicant McFeeley referred to the propaganda value of the protest. He said that he thought the culmination of the protest would be when one of the protesters died. At present, he said, the death of a protester was only in the planning stage but if it did happen "all hell would break loose" and Mr Mason (the Secretary of State for Northern Ireland) would have to be relieved. He went on to say that he thought that "Strasbourg" was a "farce" and that he saw little prospect of the Commission finding in favour of the present application.

1.21 Extreme violence played a prominent part in the campaign. During the emergency, eight prison officers have been murdered in NI. Two of these murders have taken place within the last few weeks, and attached at Annex B to these observations are extracts from An Phoblacht, the official publication of Provisional Sinn Fein, which clearly links the recent assassination of the Deputy Governor of the HMP Maze to his responsibilities for the blocks in the prison where the protest is centred. In recent days also letter bombs have been sent to prison officers which have caused serious injuries to their wives. Statements issued by the Provisional IRA following a recent series of bombings on the mainland of Great Britain have directly linked these bombings to the alleged position of their "prisoners of war" in prisons in Northern Ireland. Prison officers have also been constantly subjected to threats from prisoners, and assaults have been frequent. The applicant McFeeley has been found guilty on adjudication of verbally threatening an officer (15 May 1978); disrespect to an officer (24 March 1978) and assault on an officer (15 September 1978); the applicant Hunter of disrespect to an officer (12 June 1978); and the applicant Nugent on two occasions of assault on an officer (29 April 1978 and 25 September 1978).

1.22 **Many** of the prisoners who embarked upon the protest have decided to conform to prison rules (5 in one recent week). They have expressed to prison staff their disillusion with the conditions of the self-imposed protest campaign. As of 2 January 1979 there are 208 prisoners in HMP Maze who have previously been protesting about the ending of special category status and who are now conforming to Prison Rules.